
Committee Meeting

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

The following bill will be considered:

SCR-180

“Determines the Department’s proposal to revise Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules is inconsistent with legislative intent”

“The Committee will also hear testimony on possible revenue-generating activities at Liberty State Park”

LOCATION: Committee Room 1
State House Annex
Trenton, New Jersey

DATE: October 19, 2015
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Richard J. Codey
Senator Samuel D. Thompson



ALSO PRESENT:

Judith L. Horowitz
Office of Legislative Services
Committee Aide

Kevil Duhon
Senate Majority
Committee Aide

Brian Ahrens
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

**SENATE CONCURRENT
RESOLUTION No. 180**

**STATE OF NEW JERSEY
216th LEGISLATURE**

INTRODUCED OCTOBER 19, 2015

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator LINDA R. GREENSTEIN

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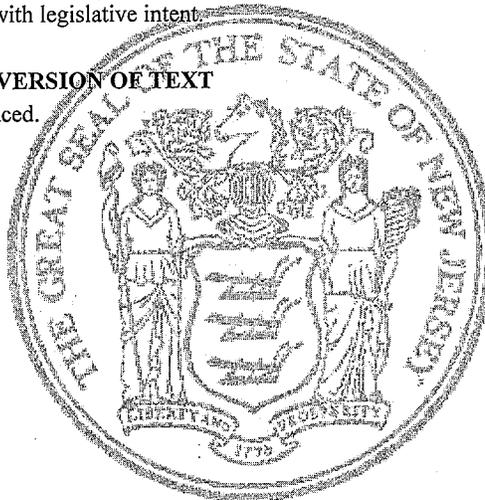
Senator Pou

SYNOPSIS

Determines that DEP's proposal to revise Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules is inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



1 **A CONCURRENT RESOLUTION** concerning legislative review of
 2 certain proposed Department of Environmental Protection
 3 regulations pursuant to Article V, Section IV, paragraph 6 of the
 4 Constitution of the State of New Jersey.

5
 6 **WHEREAS**, Article V, Section IV, paragraph 6 of the Constitution of
 7 the State of New Jersey provides that the Legislature may review
 8 any rule or regulation adopted or proposed by an administrative
 9 agency to determine if the rule or regulation is consistent with the
 10 intent of the Legislature as expressed in the language of the statute
 11 which the rule or regulation is intended to implement and, upon a
 12 finding that the rule or regulation is not consistent with legislative
 13 intent, may transmit the finding to the Governor and the head of the
 14 agency; and

15 **WHEREAS**, On June 1, 2015, the Department of Environmental
 16 Protection proposed for public comment in the New Jersey Register
 17 a rule proposal to revise its Flood Hazard Area Control Act
 18 (FHACA) Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone
 19 Management (CZM) Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on
 20 July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater
 21 Management (SWM) Rules, N.J.A.C.7:8-1.1 et seq.; and

22 **WHEREAS**, The notice of proposal lists the following statutes as the
 23 authority for the rule proposal: N.J.S.A.13:1D-1 et seq. (the statute
 24 establishing the department); N.J.S.A.13:1D-29 et seq. (commonly
 25 referred to as the "90-Day Law"); N.J.S.A.13:20-1 et seq. (the
 26 "Highlands Water Protection and Planning Act"); N.J.S.A.58:10A-
 27 1 et seq. (the "Water Pollution Control Act"); N.J.S.A.58:11A-1 et
 28 seq. (the "Water Quality Planning Act"); and N.J.S.A.58:16A-50 et
 29 seq. (the "Flood Hazard Area Control Act"); and

30 **WHEREAS**, According to the rule proposal, the department is
 31 proposing comprehensive changes to the FHACA Rules to reduce
 32 unnecessary regulatory burden, add appropriate flexibility, provide
 33 better consistency with federal, State, and local requirements, create
 34 additional permits-by-rule and general permits, and address
 35 implementation issues identified since the repeal and
 36 repromulgation of the rules in November 2007, and the "proposed
 37 amendments, repeals, and new rules consolidate similar provisions,
 38 simplify language, incorporate additional detail and description
 39 regarding the substantive standards that must be met to undertake
 40 regulated activities, and harmonize certain procedural provisions
 41 with the Department's other land use regulations"; and

42 **WHEREAS**, The proposal further notes that it is proposing related
 43 amendments to the CZM Rules and the SWM Rules for consistency
 44 with the FHACA Rules regarding development in flood hazard
 45 areas and the preservation of vegetation and habitat within and
 46 adjacent to surface waters; and

47 **WHEREAS**, Notwithstanding the above description, the proposal
 48 includes lessening and removing protections for headwaters,

1 allowing development in vulnerable areas and mitigation elsewhere,
2 weakening stream buffer requirements, and making it easier to
3 obtain permits to build in flood-prone areas; and

4 **WHEREAS**, In a state as densely populated as New Jersey that suffers
5 from severe and chronic flooding events, causing on some
6 occasions significant property damage and inflicting incalculable
7 harm to the economy of the State, the protection and preservation of
8 New Jersey's water resources, including the quality and quantity of
9 the State's limited water supply, are essential to the quality of life
10 and the economic health of the citizens of the State; and

11 **WHEREAS**, The Legislature has repeatedly found and declared that it is
12 the policy of this State to restore, enhance, and maintain the
13 chemical, physical, and biological integrity of its waters, to protect
14 public health, to safeguard fish and aquatic life and scenic and
15 ecological values, and to enhance the domestic, recreational,
16 agricultural, industrial, and other beneficial uses of water; and

17 **WHEREAS**, The Legislature, and the voters of the State, have
18 repeatedly supported the acquisition of flood-prone lands in order to
19 remove people and property from harm's way, and the proposed
20 regulatory changes to allow development and the disturbance of
21 vegetation in riparian zones are contrary to the State's efforts in this
22 regard; and

23 **WHEREAS**, The Legislature found and declared, in the Water Pollution
24 Control Act, that it is in the interest of the people of this State to
25 minimize direct regulation by the federal government of wastewater
26 dischargers by enacting legislation to continue and extend the
27 powers and responsibilities of the Department of Environmental
28 Protection for administering the State's water pollution control
29 program, so that the State may implement the permit system
30 required by the federal act; and

31 **WHEREAS**, The federal Clean Water Act requires states to establish
32 and maintain water quality standards that include anti-degradation
33 policies to maintain and protect high quality state waters from
34 increased loadings of pollutants resulting from regulated activities,
35 such as development and direct or indirect discharges; and

36 **WHEREAS**, The United States Environmental Protection Agency
37 Region 2 recently submitted comments to the Department of
38 Environmental Protection on the June 1, 2015 proposal to revise the
39 Flood Hazard Area Control Act Rules, Coastal Zone Management
40 Rules, and Stormwater Management Rules stating, among other
41 things, that "measurable changes to Category 1 (C1) waters as a
42 result of proposed changes to the rules would not comply with New
43 Jersey's water quality standards"; and

44 **WHEREAS**, While the Legislature supports and encourages regulatory
45 changes that reduce complexity, correct conflicting regulations, and
46 streamline the permitting process, the regulatory changes proposed
47 by the Department of Environmental Protection in its June 1, 2015
48 proposal go far beyond doing such and would weaken the State's

1 protection for flood-prone lands and water quality, resulting in
2 more flooding and more pollutants entering State waters, and any
3 regulatory changes that jeopardize the State's ability to implement
4 the National Pollutant Discharge Elimination System program are
5 inconsistent with the intent of the Legislature; and

6 **WHEREAS**, The proposed amendments, repeals, and new rules
7 contained in the proposal published by the Department of
8 Environmental Protection in the New Jersey Register on June 1,
9 2015 to revise the Flood Hazard Area Control Act Rules, Coastal
10 Zone Management Rules, and Stormwater Management Rules are
11 inconsistent with the intent of the Legislature; now, therefore,

12
13 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
14 *General Assembly concurring*):

15
16 1. The Legislature declares that the proposal by the Department
17 of Environmental Protection, published for public comment in the
18 New Jersey Register on June 1, 2015, to revise the Flood Hazard
19 Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone
20 Management Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6,
21 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management
22 Rules, N.J.A.C.7:8-1.1 et seq. is not consistent with legislative
23 intent.

24
25 2. Copies of this resolution, as filed with the Secretary of State,
26 shall be transmitted by the Secretary of the Senate or the Clerk of
27 the General Assembly to the Commissioner of Environmental
28 Protection.

29
30 3. Pursuant to Article V, Section IV, paragraph 6 of the
31 Constitution of the State of New Jersey, the Commissioner of
32 Environmental Protection shall have 30 days following transmittal
33 of this resolution to amend or withdraw the proposed rules and
34 regulations or the Legislature may, by passage of another
35 concurrent resolution, exercise its authority under the Constitution
36 to invalidate the rules and regulations in whole or in part.

37
38
39 STATEMENT

40
41 This concurrent resolution embodies the finding of the
42 Legislature that the Department of Environmental Protection's
43 proposal to revise the Flood Hazard Area Control Act Rules,
44 Coastal Zone Management Rules, and Stormwater Management
45 Rules, published for public comment in the New Jersey Register on
46 June 1, 2015, is not consistent with the intent of the Legislature.

47 The Commissioner of Environmental Protection will have 30
48 days from the date of transmittal of this resolution to amend or

SCR180 LESNIAK, B.SMITH

5

1 withdraw the proposed rules and regulations, or the Legislature
2 may, by passage of another concurrent resolution, exercise its
3 authority under the Constitution to invalidate the rules and
4 regulations in whole or in part.



BOB SMITH
Chairman

LINDA R. GREENSTEIN
Vice-Chairwoman

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New Jersey State Legislature

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: **COMMITTEE MEETING - OCTOBER 19, 2015**

The public may address comments and questions to Judith L. Horowitz or Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Pamela Petrone, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Senate Environment and Energy Committee will meet on Monday, October 19, 2015 at 10:00 AM in Committee Room 1, 1st Floor, State House Annex, Trenton, New Jersey.

The committee will also hear testimony on possible revenue-generating activities at Liberty State Park.

The following bill will be considered:

SCR-180 Lesniak/ Smith, B/Greenstein (pending intro and referral)	Determines that DEP's proposal to revise Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules is inconsistent with legislative intent.
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Issued 10/9/15

For reasonable accommodation of a disability call the telephone number or fax number above, or TTY for persons with hearing loss 609-777-2744 (toll free in NJ) 800-257-7490. The provision of assistive listening devices requires 24 hours' notice. Real time reporter or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, call 800-792-8630 (toll-free in NJ) or 609-292-4840.

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SENATOR BOB SMITH (Chair): Good morning.

Welcome to the most interesting Committee in the Legislature.

(laughter)

We have two hearings today. Senator Codey and Senator Greenstein are running a little late, but they are going to be here.

The batting order for today is -- we're going to do the SCR-180 first, and then we'll have a hearing on Liberty State Park, second.

With regard to SCR-180, we have in front of us a very seldom-used constitutional provision -- concurrent resolution to, in effect, legislatively invalidate proposed rules by one of our State agencies. The criteria that the Legislature is supposed to use is that the proposed rules violate legislative intent -- previously adopted statutes, policy, whatever.

And in today's hearing we need to hear everybody's position on that issue; and we do have the DEP here to testify, as well -- which is excellent.

And the points that I would like to have addressed by everybody -- although you don't have to do it, in general you can tell us anything you want -- we know that we are under the laws of the United States of America and we have a Federal Clean Water Act. And that Federal Clean Water Act requires states to establish and maintain water quality standards, that also include antidegradation policies to maintain and protect high-quality state waters from increased loadings of pollutants resulting from regulated activities -- such as development and direct or indirect discharges.

So one of the criteria that we're looking at is, do the proposed rules comport with the Federal Clean Water Act? Secondly, the United

States Environmental Protection Agency, in Region 2, recently submitted comments to the Department of Environmental Protection on the June 1 proposal to revise the Flood Hazard Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules stating, among other things, that “there are measureable changes to Category 1 -- CI waters -- as a result of the proposed changes to the rules that would not comply with New Jersey’s water quality standards.” So I would specifically like the Department to respond to that, when they’re up.

Now, we have a lot of people who want to testify on SCR-180. We’re going to start with the sponsor, Senator Raymond Lesniak.

Senator Lesniak, if you would come forward.

SENATOR RAYMOND J. LESNIAK: Well, thank you, Mr. Chairman.

And first of all, let me thank you for being the co-lead prime sponsor -- co-prime sponsor of this resolution, as well as having a prompt hearing.

And you described it best, I believe, that this constitutional procedure will enable DEP -- once we pass it, and I believe we will from both houses, I presume and I’m hoping to go back to the drawing board. All of these regulations, the so-called *streamlining*-- There is some streamlining, and those regulations should stay in place. But there is also some change in the regulations that not only conflict with legislative intent, but also have the potential to have extreme -- potentially extreme impact on communities that have seen increased flooding over the past years as a result of climate change. And these regulations, on their face, will definitely increase that flooding, as you very well know that these sensitive CI

streams will no longer have the buffer protection that the law does -- and definitely conflicts with Federal and State law.

So I want to thank you. I must go to my Committee; I have a bill up. But I want to thank you for considering this, and ask that after you hear the testimony that you move it so that these regulations can, ultimately, be put in place that protect the public, as well as streamline the process.

So I want to thank you very much for hearing this today.

SENATOR SMITH: Senator, thank you.

Our second witness will be Mr. Tittel; and our third witness will be the DEP.

Mr. Tittel indicates-- First of all, he was kind enough to put together a memo indicating what he thinks are the major issues in the proposed rules. And he also indicates that he has to leave quickly. And that's a good point/counterpoint. We'll put the issue on the table; the Department will be next, and they'll have a chance to answer.

So Mr. Tittel, if you would. What do you believe are the problems with the proposed rules?

J E F F T I T T E L: Well, I think we start off by just saying, does anybody in New Jersey think that we have not had enough flooding over the last decade? Does anybody in New Jersey think that we can tolerate more water pollution in our streams and reservoirs?

And I think that's the context that you have to look at this from -- that these rules that were put in place by this Administration, and are still up in the public comment, we believe overturn at least 15 years of improvements to water planning and to protections of our streams put

together by, at least, three or four different Administrations -- even including the Whitman Administration, in some areas.

And the reason I say that is that New Jersey has seen some of the worst flooding in the nation. We have had 22 major floods just in this Administration. New Jersey is a state that has only one stream segment-- One stream in the entire state -- the Flat Brook -- meets all criteria for water quality. But as we say that, this Legislature has, over the years, passed some of the most important laws when it comes to protecting our waterways: The New Jersey Clean Water Act, the New Jersey Water Pollution Control Act, the New Jersey Water Quality Planning Act, the New Jersey Clean Water Enforcement Act -- and the list goes on. We've also set up some very important institutions, like the Drinking Water Quality Institute, or the Clean Water Council as well. We passed the Highlands Act. And the reason we did all these things was to protect our drinking water. New Jersey's three largest industries are water-dependent, and we know that from just looking at the region: it's pharmaceuticals and petrochemical; it's tourism; and it's food processing. And we know water, in New Jersey, drives our economy, from Tylenol, to Manischewitz Matzos, from Goya beans to Budweiser, to so many other important products. And that's why the Legislature has passed those laws. Also, we did it to implement the Federal Clean Water Act, which we have a Memorandum of Agreement to have delegation.

And so when you look at those pictures, you realize why the original rules were put in place: to protect our waterways and to protect people from flooding. And when you look at these rules, there are major,

major rollbacks of protections. And this really is an attack on clean water and the environment and, in a way, our economy.

So I want to just go through where I think there are some really major issues for the Legislature. Because an SCR's purpose is to look at where these rules intersect with the laws that you have passed. And first and foremost I want to say that the DEP says that they're streamlining, and what they're actually doing is putting more pollution into our streams.

And I'll start off that the previous rules were based on scientific studies that were done by DEP. First and foremost, the upgrading of streams to Category 1 -- which was a major initiative of the State of New Jersey -- was done to protect drinking water and to protect water quality. Part of a Category 1 stream -- very simple; it's in the Surface Water Quality Standards, and it's in the law -- no measurable or calculable change in water quality. New Jersey -- based on the best scientific evidence, based on its own scientists -- said that the 300-foot buffer on Category 1 streams was a critical way of meeting the antidegradation criteria. They went on further to say that the SWRPA -- the Special Water Resource Protection Areas -- which were the 150-foot buffer on both sides of the channel where you could not do any disturbance -- you could do it in the 300-foot, up to 150, but nothing within 150 -- was our best way of meeting the antidegradation criteria. And the reason is, because vegetative buffers absorb pollution, they filter the water, they protect properties from flooding because it recharges it back into the groundwater, as well as absorbs phosphorous and other chemicals. And that was the way of us doing that.

As part of that rule, we also protected the headwaters -- which are the top 50 acres of a stream, where a stream comes out of the ground.

And again, that was to meet our antidegradation requirements, because when you develop in the headwaters you can lose a stream because of the cascading effect of pollution.

Sixty-five percent of New Jersey streams are impaired for phosphorous; only 5 percent meet all criteria, and the rest we either don't have enough information or-- But the point is that this was our major goal and achievement in doing that.

These rules undo that. They eliminate the SWRPA so you now can build within 150 feet of a C1 stream. You can automatically disturb up to 650 square feet of land. You can discharge pipes from stormwater going almost directly into those streams. You can put a septic tank 50 feet from a stream. That's going to cause water pollution -- you don't have to be a scientist; you know if you put a septic tank 50 feet from a C1 stream, you're going to get pollution. You're going to put a lawn in, you're going to get pollution. Plus, you're going to lose the absorption of pollution that those buffers have created, plus the forested areas -- the forest over the streams help protect water quality because of temperature and keeping the sunlight out.

And so we're eliminating that. We're eliminating the SWRPA under this. We're eliminating headwater protections. And so we believe that just on that alone these rules should be challenged by the Legislature for violating the antidegradation criteria.

But now I'm going to get into a few more areas, because I think it's critical. The change in definition of *streams* -- where it's now only-- The definition of a stream in New Jersey, historically, has been a stream from where the tributary hits the main stem to where the spring comes out of the

ground. Under this rule, the definition of a stream is up until the regulated areas under stream encroachment -- which means the top 50 acres do not get buffers or protection. That also violates the Waters of the United States rules by the EPA, because a stream is a stream. It's not a regulated area under stream encroachment. That's another area where we think that this violates the law.

Another important part of this is the Water Quality Planning Act, because the 300-foot buffers were removed from sewer service as part of our implementation of the Water Quality Planning Act. Now we're going to be allowing development within those buffers -- which means more point pollution and nonpoint pollution. And that gets into the Pollution Control Act; because by adding these new areas into sewer service, you're going to be generating more point-source pollution, and that impacts the Water Pollution Control Act as well, and the standards that were put in place to protect streams, especially high-quality streams.

This rule also removes all the buffers on trout maintenance waters. And trout are, in New Jersey, a threatened species. And so therefore it is going to have direct impact because a lot of those streams are also water supply. They're not Category 1; they're Category 2 trout maintenance. By removing those buffers, it's going to be impacting trout. And removing the forested area will also be hurting trout production waters. And trout, again -- as a threatened species it impacts that dramatically. And that's another area of law, which is the New Jersey Endangered Species Act.

The next big area that I wanted to get into, from a legal standpoint, is that it defers criteria from DEP, on stormwater, to the Natural Resources and Conservation Service. We believe that violates not

only the Clean Water Act but the separation of powers. The DEP cannot give its authority away to another agency for implementation of stormwater or Category I waters.

The next area where we see serious concern is that it unilaterally allows for more fill in the Highlands. It's not justified by the Highlands Act.

And then I want to get into some of the more technical areas where we think this is important. New Jersey has signed up under Federal Clean Water Act to clean up the Passaic and Raritan rivers. And part of that process is called a *TMDL*, or *Total Maximum Daily Load*. Under our TMDL, which is an agreement with the EPA to implement the Clean Water Act, we state, very specifically in both, that one of the ways that we are meeting the TMDL is through having the 300-foot buffers and, more importantly, the SWRPA -- based on having a 150-foot vegetative area to absorb pollutants, that is part of the way we're going to meet our reductions in phosphorous for our TMDLs. Now we're eliminating the SWRPA. Therefore, we are going to be violating our TMDLs because we're going to be allowing more point and nonpoint pollutions into those streams.

We also, as part of our TMDL process -- the protection of the Highlands, which we are now weakening. The protection of headwaters -- because, again, it goes to antidegradation -- are also part of it, because of the pollution that we would prevent from hurting those streams and would be absorbing, by protecting those streams. So we believe it violates the TMDL.

The next point I want to do is the MS4 program, where many towns in New Jersey -- especially a lot in Monmouth County -- have signed

up, under EPA, under stormwater, to do above and beyond. The SWRPA isn't (*sic*) a part of that as well, as are the 300-foot buffers, as are the 150-foot buffers for trout maintenance waters; and in South Jersey, as is the 150-foot buffers for acidic streams, which are very important in the Pinelands. Those are streams that come out of cedar swamps and others that have different criteria -- that we used to protect it; under these rules we don't.

Just to give you a kind of an understanding of how these rules work: Not only can you disturb within the buffers and put septics in, there are 63 different permits-by-rule, certifications, and other things opening up our waterways into Swiss cheese. There's also this concept of Permit by Certification where you, basically, apply to DEP and grant yourself a permit. I don't see the statutory authority for that. That is part of the problem.

And then another point is that it allows you to disturb even more than you're entitled to, but you can mitigate for it. So you could go build a house next to a C1 stream in Mahwah, and go plant a bush on a farm field in Sussex. There is no connection between the mitigation sites and where you're doing the disturbance. And that, in turn, we believe, violates the State Clean Water Act because you're not looking at localized impacts for water quality or flooding. More importantly, I don't see any statutory authority for this trading scheme. I mean, I look at it as sort of a Bernie Madoff Ponzi scheme; but I don't see any statutory authority. Usually when we have mitigation programs, like the Wetlands one, it's in the statute. I don't see it in our statute. I could be wrong, but I cannot find an authority to it.

So I don't want to spend too much time, but I wanted to just lay out the areas where I thought this rule intersects with your legislative authority. And we're very concerned by it.

Another area that I forget to mention is, FEMA has concerns because it allows for more development in *V* zones and in *A* zones. And they've raised a whole series of issues as well. And the bottom line is that this is a state that's been devastated by flooding and flooding impacts. To allow these rules to go forward, I think, not only hurts the environment, but puts more people and property at risk.

And that's really why we need the Legislature to step in. You have written some of the best laws in the country in protecting our waterways; and you have also worked to help implement some of those laws -- Governor Codey and the Highlands Act, which this goes after. And so we think that you need to step forward because New Jersey has had too much flooding, too much water pollution.

And I just want to leave you with one other point because, again, we want to talk about science. Under these rules, we're still using the 1981 flood hazard mapping for regulatory purposes -- which means that we're going to be allowing building in areas that, under current and the most updates maps, show that they're in flood hazard areas and are prone to flooding. And I think that that's going to hurt us with the flood insurance program and other things as well. Plus, there's nothing in these rules dealing with climate change, or sea level rise; we even allow building on piers -- which, again, violates NFIB, and FEMA has raised concerns.

So when you look at this, this is exactly the reason why the Legislature passed this program in the first place -- the SCRs. This is

exactly the reason, because you have a legal right, as a legislative body, to look at rules and how they implement the laws that you have written. We believe that this rule violates those laws that I've laid out, and violates legislative intent. And that's why it is so important, for the future of this state, for you to act. We believe that this is one of the most important regulations of legislative acts that this body could ever take on clean water. We think that this is really critical for the future of the state.

And we thank you, Senator Smith, for being co-sponsor on this and for hearing the hearing; and Senator Lesniak.

Of anything you do this year, this is the most important thing, because this is really about protecting clean water and protecting people from flooding. So we urge you to move forward with this, and we thank you for having this hearing because this is critical.

SENATOR SMITH: Thank you, Mr. Tittel.

Let me recognize the presence of Governor Codey and Senator Greenstein.

Thank you.

And let us hear from the DEP. We have Ray Cantor, Ginger Kopkash, and Vincent Mazzei.

RAYMOND E. CANTOR, Esq.: Thank you, Mr. Chairman and members of the Committee. We appreciate the opportunity to come here and testify before you today.

With me today is Assistant Commissioner Ginger Kopkash, who runs our Land Use Management program; and Mr. Vincent Mazzei, Supervising Environmental Engineer. Mr. Mazzei is the prime, I believe, drafter of the regulations that are before you that we're talking about today.

Before I turn it over to them to get more into the details of these regulations, I'd like to talk about our Flood Hazard Program generally, and some of the specific concerns that are in the SCR.

Our Flood Hazard Program is, and remains, and will continue to be one of the most stringent -- if not the most stringent -- flood protection program in the nation. We have the largest buffers, from a statewide program, in the nation -- again, 300-foot buffers. We protect our C1 streams, and a whole 44 percent of our streams and rivers are designated as C1 and getting 300-foot buffers.

We have the most protective water quality protections in the nation around our streams and waters. And let me assure you today that this proposal will change nothing of those protections. We will remain the most stringent flood protection program in the nation, the most protective water quality program in the nation, and our buffers are not appreciably changing.

Let me talk about some of the specific concerns that are listed in this Resolution. It mentions -- and the prior speaker had mentioned that we are eliminating protections of headwaters. It does not. When we first heard that comment, we went back and looked at our proposal; maybe we missed something? We went back and we studied. We cannot find anything in this proposal that changes or lessens the protections of headwaters. There is obviously a misunderstanding, on some people's part, as to what we are doing. And when we respond to comments, we will clarify and explain why those comments are misplaced.

If, by some chance, we have missed something -- we don't think we have at the moment -- we will fix that, because it is not our intent to, at

all, eliminate or lessen standards and protections of headwaters. If anything, this Resolution and those comments are a little bit premature; but again, that's not our intent, that's not what these regulations do.

It mentions that we are making or allowing more development in vulnerable areas. It does not. What this regulation does is just clarifies and simplifies when you come in for a permit, and you're going to be developing potentially in the buffer zone, what you can and cannot do.

There's a difference, by the way, between the flood hazard area and the riparian zone. One deals specifically with flooding; the riparian zone -- while it may help to eliminate flooding, is not necessarily even in the flood hazard zone. You can have a riparian zone of 300 feet that is totally above and beyond a flood hazard area.

So the changes we are making in this rule are not at all to do with -- specifically with putting people at all in harms way; it does not and it will not.

By the way, I will mention as well that prior to the regulations that were adopted in 2004 and 2007, the regulation that DEP had in place for decades was either 25 or 50 feet beyond the stream banks. So it would be hard for me to even contemplate how a 300-foot buffer is inconsistent with legislative intent when 25- and 50-foot buffers were in place for decades.

More importantly -- and Mr. Chairman, you mentioned this as well -- is the issue of water quality and what this rule would be doing to our streams, and as it relates to the Water Pollution Control Act and the State's and the Federal Clean Water Act. It does not change a single thing. In fact, it may even enhance and, in many instances, does enhance water

quality. The merit standards in our MS4 stormwater permits are not changing. The end-of-pipes discharge standards are not changing. There will be no measureable change to water quality that will at all impact our delegation from EPA.

I want to emphasize, more particularly, EPA's role in this, because I know a lot of people are focused on the EPA letter and, again, the Resolution itself even mentions the EPA letter. As I mentioned before, prior to 2004-2007, when two different sets of buffers came out, the buffer (indiscernible) that were in our regulations -- not even the law -- were 25 or 50 feet, depending on what type of stream it was.

In 2004 we adopted, in our stormwater rules, a SWRPA standard, which applied a 300-foot buffer around C1 streams. And that's a little simplification; it gets a little bit more complicated, but that's essentially what it did. In 2007, the Flood Hazard rules were amended to also apply a 300-foot buffer around C1 streams. So what you had, at that point in time, is a 300-foot buffer under a stormwater program, and a 300-foot buffer around our Flood Hazard program. It applied to almost all the same streams, but the definitions were slightly different. It had some different standards as to what you could or could not do; but basically you had two different programs with two different sets of buffers -- both 300-foot buffers around our C1 waters. All this rule does is merge them into one uniform rule applying 300-foot buffers around the same C1 stream, and being much more specific as to what you can and cannot do around those. And we'll get into more details about that later.

The reason that EPA had sent us that letter that is being referenced here today is because somebody sent EPA a note, or an e-mail,

that said that DEP is eliminating the SWRPA; it was sent to the Regional Administrator. It was a very misleading e-mail because it did not mention that we are maintaining our riparian buffers around those streams. As a result of that e-mail, EPA sent us a letter expressing concerns, and our staffs began talking to each other.

After communicating with EPA, and having different conference calls, the EPA then understood that we were not eliminating the riparian zones; we were basically taking two sets of regulations and combining them into one. EPA was -- essentially removed their concerns that they had previously expressed. As a matter of fact, I will read to you from an article from *Inside EPA* on October 5. The article is entitled, "EPA steps back criticism of New Jersey stormwater rule changes."

SENATOR SMITH: What is *Inside EPA*?

MR. CANTOR: *Inside EPA* -- I assume it's a publication. They cover-- It's a news publication.

SENATOR SMITH: Published by whom?

MR. CANTOR: I assume whomever *Inside EPA*-- It's private; it's not a public entity.

SENATOR SMITH: Why should it be considered reliable?

MR. CANTOR: Because it quotes EPA. And again, I will tell you--

SENATOR SMITH: How about you get a letter from EPA saying that they withdraw their objections?

MR. CANTOR: Well, we'll--

SENATOR SMITH: Make everybody's life a little easier, here.

MR. CANTOR: We will talk to them. Again, in e-mails, we've explained this. In conversations with EPA -- that staff has relayed to me -- EPA has said they are no longer concerned.

SENATOR SMITH: Then it should be easy to get a letter.

MR. CANTOR: And we will. And actually, they've issued a press release, or a statement which they sent to *Inside EPA*, in which a Region 2 spokesman told *Inside EPA* in a statement that, "EPA is less concerned about the proposed changes after meeting with State officials. Those meetings left EPA with the conclusion that, 'The impetus behind DEP's proposed changes is a desire to streamline regulations governing the State's riparian buffers and not to lessen water quality standards.'"

So again, we will--

SENATOR SMITH: The problem, Ray, is that in the legal business, that's called *hearsay*. You don't know who the source is, and you're reading somebody else's comments. Just get the letter.

MR. CANTOR: We will get the letter.

SENATOR SMITH: Get a letter from EPA saying, "We have no objections," and then there's no discussion whether the EPA has a problem with the rules as written or not.

MR. CANTOR: We will get the statement, Mr. Chairman, and we will send it to this Committee and to the sponsor of the legislation.

SENATOR SMITH: Thank you.

MR. CANTOR: And we will respond appropriately in our response to comments.

SENATOR SMITH: Good.

MR. CANTOR: So again, contrary to what has been said, we are not eliminating headwater protections; we're not allowing development in the most vulnerable and sensitive areas; this will not result in more flooding; we are not allowing more pollutants into our waters; and we are not jeopardizing our delegation under the Clean Water Act.

What we are doing is basing our decisions on science and experience; we're reducing meaningless complexity; we're streamlining the permitting process; and we're enhancing water quality protections.

I will now turn it over to Mr. Mazzei who will get into a little bit more specifics of these regulations.

SENATOR SMITH: So you're the guy who wrote the rules.

VINCENT MAZZEI: Yes.

SENATOR SMITH: Okay. Would you, after you make your general comments -- I would appreciate it if you would deal with the specific issues raised by Mr. Tittel, okay?

MR. MAZZEI: Yes, sir.

First of all, I thank you for the opportunity to speak today. It's an honor to be here and I appreciate that you -- this Committee is looking into these matters. These are important matters; the Flood Hazard Area Control Act is one of the premier legislations in the country for flood protection. New Jersey, as Ray mentioned, has the most stringent statewide flood mitigation rules and the most stringent buffers in the country -- statewide buffers. There are some communities here and there that have stringent rules as well, but we're the only statewide program that exists.

Let me give you a little background: My name is Vince Mazzei; I'm a New Jersey licensed profession engineer. I've been with DEP for 27

years. I wrote the 2007 rules that we're amending. I wrote the 2013 amendments that incorporated the FEMA mapping -- the advisory mapping that they released after Hurricane Sandy. And I substantially wrote this current proposal.

Flooding used to be something that we had to convince people was a problem. And we all know, now -- everybody in this room has probably been affected by flooding, one way or another -- and so we don't need to convince everybody that this is an important issue. New Jersey does have unique flooding problems because of our density and all the urban areas that we have are in flood zones, so this is something that we are all familiar with.

The Flood Hazard Area Control Act does provide us with very broad powers to protect the citizens of the state from flooding; and the current rules do that. We have some things that are unique in the nation; we have what's called a *zero percent net-fill rule* where, if you have an area that floods and you develop that area -- you put fill or buildings in that area -- we know that area will -- the water that would go in that area has to go elsewhere, and so then it would cause flooding to get worse. So we don't allow fill to be in the floodplains generally, with a few exceptions.

We regulate a flood that's larger than FEMA's 100-year floodplain, in most of the state. We add a factor of safety to that. And then, on top of that, we make people build their homes one foot above the flood elevation that we delineate. So we're more stringent than NFIP in A zones.

And we have riparian zones. So I'd like to talk about the differences between, as Ray mentioned, the 2004 stormwater 300-foot buffer and the 2007 Flood Hazard Area buffer.

So in 2004, stormwater rules were adopted, and these were comprehensive and very important rules that governed the quality, the quantity, and the amount of recharge that development would occur. (*sic*) Part of that rule implements a 300-foot Special Water Resource Protection Area, SWRPA, around Category 1 waters and tributaries within the same HUC 14 watershed that are depicted on either a USGS map or on a county soil survey. So any of those features would have a 300-foot buffer if the Stormwater Management Rules were implemented.

Now, the Stormwater Management Rules only kick in if a project is a major development. A major development is a project that disturbs either an acre of land or adds a quarter-acre of impervious surface. So if you were building one home, or you were doing something that was below those thresholds, the Stormwater Rule does not apply and, therefore, there would be no SWRPA. So that was adopted in 2004.

Now, the inner half of the SWRPA is -- development is prohibited and you cannot have discharges; you cannot have any development whatsoever. In the outer 150 -- the outer half of that SWRPA -- you can redevelop it, provided that the applicant demonstrates that the functional value of that buffer has been maintained to the maximum extent practicable.

Now, what we noticed after 2004 were a couple of things. One, is that we had projects that were subthreshold -- that could go right up to a stream -- and we wanted to prevent that from happening, because people

could still go up pretty close to the Category 1 waters with smaller projects. We also noticed that there were sometimes appropriate development within the inner 150. Sometimes we had situations where you had stream bank erosion, or you had a site remediation project, or you had a situation where there was a *takings* -- where an entire piece of property was within the inner 150. So what would happen is, since the Stormwater Rule doesn't have exemptions for a lot of these things, it would push people into hardship exceptions. And so we'd have to-- The Stormwater Rules don't have authority on their own; they're kind of piggy-backed on other Department rules. So if somebody came in for a Flood Hazard permit, or a CAFR permit, or a Wetlands permit, and it's a major development, then these rules would kick in and the Department would review it.

So in 2007, the Flood Hazard Rule -- what we did-- As Ray mentioned, previous to that it used to be called *Stream Encroachment Rules* -- we had 25-foot and 50-foot buffers. We had 50-foot buffers on Category 1 waters, trout maintenance and trout production waters, areas where there were threatened and endangered species, and areas where there are acid-producing soil deposits. What we did, in 2007, is that we bumped the 50-foot up to 300 for Category 1 waters to match the Stormwater Rule; we bumped up trout maintenance, trout production, threatened and endangered species, and acid soils to 150; and then the default was 50 feet. So basically anything that was 50 feet became 150 or 300; and everything that was 25 became 50.

And we recognized, though, that there were some types of development that had to occur within the buffer. We couldn't, under the Flood Hazard Rules, do a no-build zone because we recognized that people

needed to have access to their properties. We had situations where people were landlocked by streams, and they had to cross a stream to get to the property that was otherwise in an upland area -- and they were unable to do so under the Stormwater Rule. So that pushed people into hardship exceptions.

And we found that the reliance on mapping that the SWRPA has -- the reliance on the USGS mapping and the soil survey became problematic, especially after the Soil Conservation Districts removed their hydrography layer off their maps. So in other words, we used to have these books that would show where all the streams were, and they were just drawn on these maps. And they've gone digital, and they've removed all the streams from those maps. So trying to find these books from, like, the 1970s has been very difficult -- to try to see where these streams would be. And sometimes you would go out into the field and find out that what was depicted as a line on map -- there was actually no feature there.

So the 2007 Flood Hazard Rules apply to those riparian zones on features that are actually present -- on any feature that's on the ground that drains at least 50 acres of land, or any naturally occurring feature with a bed and bank, irrespective of its drainage area.

So that's how it's been implemented, and those will not change under the proposal. We're not proposing to remove buffers along those tributaries to the headwaters; we're not proposing to remove them from streams that drain over 50 acres.

We've amended some situations where there was manmade water, and it was either lined with concrete or, if it's a ditch that drains less

than 50 acres, we clarify some of our jurisdiction there. But the intention was not to remove protections from headwaters.

We've also noticed that there were problems with stormwater discharges. When stormwater runoff from a site that's outside a buffer has to be managed, the Soil Conservation District will require that it be managed in a safe manner. And so what happens is that our rules currently require that discharges can't be located within the 300-foot or 150-foot riparian zone. And so what happens is the Soil Conservation Districts--

G I N G E R K O P K A S H: (off mike) So a graphic or a picture of that.

MR. MAZZEI: Soil Conservation Districts came to us and said, "You know, you're actually causing a lot of erosion by forcing people to have discharges outside the riparian zone." And they felt that there were opportunities for safe discharge within the riparian zones, so we wrestled with that. Ginger's going to speak about some of the stakeholder issues -- the stakeholder process, and how we became aware of a lot of these issues.

But I'm a Supervising Engineer, and so I supervise a staff of engineers who would look at these permits. And people would come in, and have a 300-foot SWRPA on their property and a 300-foot riparian zone. And they applied in different situations; they had different standards. And it was very difficult for even the DEP staff to understand how this would all fit in. And so it was very difficult to advise people how to avoid the areas or how to develop the areas.

So the thinking was that, under this proposal, the SWRPA is deleted out of the Stormwater Rule, and then some aspects of the SWRPA are put into the 300-foot riparian zone in the Flood Hazard Rule. So there

are some aspects that go away, but there is still a 300-foot riparian zone. So the 50, 150, and 300 riparian zones remain; in acid-producing soil areas -- I think Mr. Tittel mentioned this -- that currently we have a 150-foot riparian zone in areas that contain acid-producing soil deposits. Now, acid-producing soil deposits are naturally occurring features that, due to the bedrock geology, produce soil deposits that when exposed to oxygen create sulfuric acid. And so when that occurs, obviously that's a problem if there is any kind of rain, because then it can wash the sulfuric acid into the stream and then it kills everything in the area.

So the old Stream Encroachment Rules that were adopted in 1995 had a section on how to mitigate for impacts to acid-producing soils, and there was a 50-foot riparian zone in those areas. In 2007, we bumped it up to 150 feet thinking that if we kept people out of that area, then that would make sure that those acid soils would not be exposed.

The Soil Conservation Districts have standards, though, that supersede and are more stringent than DEP's standards, in the sense that wherever these acid-producing soil deposits are -- it's a band through New Jersey that's kind of like along the Turnpike, pretty much, so it's a decent area of New Jersey. And when these areas are exposed, they have measures in place, under the Soil Erosion and Sediment Control Standards, that require people disturbing soil to mitigate. So basically, you put a certain amount of lime on it; you make sure that it was not exposed for too long so that sulfuric acid isn't going to form and wash into streams.

So we found that our DEP standards and our current rules -- in the 2007 rules, because the standards were continued from 1995 -- we

found that they were not as robust as what the Soil Conservation Districts had; that they actually contradicted, in some cases.

SENATOR SMITH: So what does the Soil Conservation Service do that's more robust than what DEP does?

MR. MAZZEI: Well, what they do is we, under the Flood Hazard Rules, have jurisdiction over the Flood Hazard Area and the riparian zone. So we would only look at those areas for exposure of soils, right? The Soil Conservation Districts look anywhere within that band and make sure that no matter whether you're 1,000 feet or 50 feet from a stream, that when acid soils are being exposed that they're quickly mitigated in the proper manner.

SENATOR SMITH: And by *mitigation*, you mean covered?

MR. MAZZEI: Generally, they'd be covered quickly. Let's say you're putting a utility line in. So there's a number of hours that you can have an open cut; you have to put a certain amount of lime on it; at the end of the day, you might have to cover it. There are different measures that are used to mitigate and offset the acidic properties of the soil.

MR. CANTOR: Could you also mention the erosion issues that we're facing as a result of our rule -- the 150?

MR. MAZZEI: Yes. So as I mentioned before, what was occurring -- the Soil Conservation Districts came to us after the rule was adopted and said, "You're not allowing people to discharge stormwater within that inner 150." And we said, "Yes, because we don't want people going in there," because we felt that exposing those soils would be deleterious to the environment. And they said that, well, the problem is, that by discharging stormwater outside the 150-foot riparian zone it was

eroding channels through the area that we were trying to protect. And they dragged me and others out into the field and showed us these areas where headwall -- stormwater discharges had kind of blown out the bank and exposed all these acid soils -- kind of on a continuous basis. Because once the discharge is there, it's very difficult to move it.

SENATOR SMITH: So is the soil erosion -- that Sediment Control District comment -- one of the comments as part of the rulemaking process?

MR. MAZZEI: Yes, sir.

SENATOR SMITH: So what are you going to do as a result of that comment?

MR. MAZZEI: What the proposal does is it says that-- So in New Jersey, we have something called the *Water Quality Design Storm*, and that is in the Stormwater Rule. And the Water Quality Design Storm is kind of the first flush of stormwater -- which is generally the most pollutant-loaded. And that's one-and-a-quarter inches of rain. So what we said is that the-- So the Stormwater Rules require that the Water Quality Design Storm be treated. So if I were going to pave -- if I were going to develop a site and put a parking lot in, I'd have to collect that runoff, treat it to certain levels that are in the Stormwater Rules, and then discharge it to a safe location. What we are saying is that that storm does not cause erosion. So that storm, because it's so small, should be discharged outside the riparian zone. But for larger storms, the ones that cause erosion, the proposal allows pipes to go down to the stream and carry those larger storms to a location that the Soil Conservation District says is safe -- which would be right to the stream.

So the first inch-and-a-quarter of rain would not get to the stream, but there would be like an overflow so that larger storms would get to the stream.

MR. CANTOR: And that first inch-and-a-quarter is the one that carries most of the pollutants, and that's being treated.

MR. MAZZEI: Correct.

MR. CANTOR: It's the larger storms which don't have as much pollutants, because everything's been flushed away, that are being allowed to be discharged to the stream.

MR. MAZZEI: The larger storms generally have less pollutant-loading because it's the first flush that generally carries the phosphorus and the suspended solids. The Stormwater Rule focuses on total suspended solids, so this is like colloidal material that's in the water that can be removed.

So that water quality design storm needs to be treated, and we're not affecting the treatment of that because that's under the Stormwater Rule.

SENATOR SMITH: You say you're going to revise the public rule because of that comment.

MR. MAZZEI: No, this was part of the current proposal.

MR. CANTOR: It was part of our stakeholder process over the last several years -- that we learned from the Soil Conservation District, and we changed the rule in this proposal to address their concerns and to make us more protective.

SENATOR SMITH: Okay, thank you.

Go ahead.

MR. MAZZEI: In the Highlands, the Flood Hazard Area Control Act doesn't have jurisdiction if it's a Highlands major development. The Highlands rules cover that, and we're not opening the Highlands rule. What we found -- we have a zero-percent net fill rule, as I mentioned, in the State. So basically if I were developing a lot in a Flood Hazard Area, and I imported fill or I placed some buildings in the Flood Hazard Area -- because that material can displace flood storage, and that flood storage can go elsewhere -- you have to balance or create flood storage on your property to make up the difference. So in other words, if I bring in 10 cubic yards of fill on my site, I have to take out 10 cubic yards from my site. And that's a statewide requirement, with a few exceptions. The exceptions are for things like one single family home where there's no opportunity for compensation, in most cases. You know, you're just plopping a house down on a lot, and you have crawlspace, so there's not a lot of fill there.

We are proposing a couple new exemptions for net fill for site remediation projects that require-- So if you have a site that requires capping, we've had situations where fill would need to be brought in to place a cap on a site, and if the site remediation project was in a Flood Hazard Area, they were prohibited from doing that. So again, it was a hardship exception, and they had to demonstrate that there was -- it was very difficult to do that, administratively.

So we've allowed-- Under the rule, we're allowing a certain amount of fill, under the proposal, for site remediation projects where fill is unavoidable; for solid landfill closures -- solid waste landfill closures where, again, there's no opportunity to balance the fill; and for fixing failing septic systems. A lot of times we have situations where people have existing septic

systems in a floodplain, and if it's failing, and they have to put a mounded system in because of the groundwater, they have to bring fill into the site. And a lot of times it's your single-family homeowners, and there's really no opportunity on a small lot to export hundreds of yards of soil. So we've added some exemptions, and that would apply statewide including the Highlands area, but not if it's a Highlands major development.

SENATOR SMITH: Okay. Would you-- Vince, are you a little dry there?

MR. MAZZEI: Yes, sorry.

SENATOR SMITH: Why don't you pour yourself-- Oh, you have water.

MR. MAZZEI: Thank you.

SENATOR SMITH: So you had a chance to hear Mr. Tittel's concerns. Do you have any response to those individual concerns?

MR. MAZZEI: I'm sorry, sir.

SENATOR SMITH: You didn't hear the question?

MR. MAZZEI: I did not; I'm sorry.

SENATOR SMITH: That's all right.

You had a chance to hear Mr. Tittel's concerns earlier. Do you want to respond to them?

MR. MAZZEI: I feel that I've addressed pretty much the issues that he's raised, have I not?

SENATOR SMITH: Well, I don't know. I took some notes, but I'm not the world's greatest.

MR. MAZZEI: One thing I would like to address is flood mapping.

SENATOR SMITH: Sure, go ahead.

MR. MAZZEI: So it's interesting -- New Jersey has flood maps that go back to the 1970s and 1980s. NJDEP, themselves, contracted the State to map out most of the floodplains in the state along the larger rivers -- so the Passaic, most of the larger rivers. FEMA also has flood mapping. FEMA maps the 100-year flood; and the State maps a flood that's 25 percent larger than that flood.

Now what's happened, over time, because floodplains have gotten larger and FEMA has funds to remap the state where the State doesn't, FEMA's mapping has sometimes gotten larger. So in 2013, we amended the Flood Hazard Rule, as emergency amendments after Superstorm Sandy, to incorporate any FEMA mapping that was greater in size than the Flood Hazard mapping. So that way it's the best available data. So when somebody comes into us for a permit to build a building or put fill on a site, we require that they use the highest and best flood elevation. So whether that's the State or FEMA--

Same thing along the coastline. You might recall that there was advisory flood mapping that was issued in 2012 after Superstorm Sandy. What happened is, during Hurricane Katrina in the Gulf, the powers-that-be were working on new flood mapping, but they did not release them in time for the rebuild to occur along the coast. So people along the Louisiana coast built back to the old FEMA maps because that's usually what people use. You have to make sure that your lowest floor is elevated properly for flood insurance and for safety. And what happened is that they realized that people were building too low. Because when the maps actually came out, it turned out that the actual flooding was two or three feet higher. So

we didn't want that to happen along the coastline after Superstorm Sandy; so we require people to use the highest elevation that FEMA had -- whether their newer mapping, or their older mapping, or the State mapping -- whichever is the highest is what people have to use.

So it's rare that the old 1970s and 1980s maps are the most stringent. But if they are, then that's what people would have to use.

SENATOR SMITH: So you think we're going to be using the most current knowledge about the--

MR. MAZZEI: Yes, the current rules require that, and the proposal does not change that.

SENATOR SMITH: Okay. The difference between a riparian corridor versus a buffer: Is the buffer -- under the existing rules, is the buffer more stringent than the riparian corridor?

MR. MAZZEI: So a buffer is sort of like a generic term that we would use for any kind of stream buffer, right? There are two types of buffers under our rules: There's the SWRPA under the Stormwater Rule, which is 300; and then there's the riparian zone, which is 50, 150, or 300, depending on the quality of the water.

So what was your question, Chairman?

MR. CANTOR: But all C1 streams all get the 300.

MR. MAZZEI: All Category 1 waters have a 300-foot buffer on them.

SENATOR SMITH: Under the new rules, isn't the difference now that you are going to permit some development in that 300-foot buffer? For example, the stormwater pipe -- which actually sounded reasonable -- that you were going to remove erosion problems. You are now

going to allow the pipe to go through it and discharge into a stream. That was not permitted before, correct?

MR. MAZZEI: That's correct.

SENATOR SMITH: So what development activities are you going to allow in the 300-foot buffer -- whatever you want to call it -- that are not currently permitted?

MR. MAZZEI: So in the Flood Hazard Rule -- in the current rule and in the proposed rule there's a table that tells you the types of activities that you can do in a riparian zone, and the area of disturbance that you're allowed for that activity, depending on the width of the riparian zone.

So these activities generally fall into three categories: They are either, first, something that's of the public benefit -- so a public roadway improvement, or a new public roadway, or a flood-control project, or a public utility. So those are allowed to go through the riparian zone provided that certain limitations are met. And if those limits are exceeded-- Let's say that somebody comes in and says, "I can't-- I need to add a lane to the Turnpike and I can't meet the limits that are in the table," then there's an opportunity for the applicant to demonstrate to us that there's no other alternative to the project. And then they have to offer mitigation for what exceeds the allowance. So if I'm allowed half an acre, and I'm doing one acre, then I owe you -- the developer owes you the half-acre in mitigation.

SENATOR SMITH: That was another comment that we heard -- that the mitigation did not necessarily have any nexus to the area of disturbance. Are there any limits on where the mitigation can occur?

MS. KOPKASH: Yes.

MR. MAZZEI: Yes, yes. Ginger, you were going to--

MS. KOPKASH: Yes.

MR. MAZZEI: I'd like to defer to Ginger on explaining the mitigation.

SENATOR SMITH: All right, so why don't you flip it over, just on that question.

MR. MAZZEI: Yes, sure.

SENATOR SMITH: And then we'll come back to you.

MS. KOPKASH: Okay.

Good morning -- hopefully, it's still morning, right? Thank you for the opportunity to testify.

Prior to becoming to Assistant Commissioner for Land Use Management, I worked at the DEP for 25-plus years; one of those moments in my career I spent overseeing our Wetland Mitigation Unit and developing our Freshwater Wetland Mitigation Program.

In this rule proposal, through the stakeholder process, as well as through a desire to provide regulatory conformity across all of our Land Use programs, we looked at the mitigation standards that are currently housed in the Flood Hazard Rules and compared it to our other programs that mitigate for resources that are being impacted. And currently in the Flood Hazard Rules there are, maybe, about two lines on how to mitigate for an impact to a riparian zone. And what it allows for is, if you are disturbing riparian zone vegetation, you can either -- that exceeds the table that Vince mentioned -- you can either take out paving and replant the area to mitigate for that impact, or you can plant trees in an area that currently doesn't have

trees along that segment of the water body. So there are no standards regarding monitoring, success criteria, or anything.

So through the implementation of the rule, we found, in some circumstances, it wasn't feasible to take out pavement or to replant an area; that the entire corridor could be very much forested. But under a Watershed Management Protection Plan there could be a desire to preserve the stream corridor and the wooded areas along it, and placing a conservation easement along it. It was the nonpoint source preferred alternative.

So with this rule proposal, we looked at our other mitigation standards and found that we could increase the suite of options available. So we've added preservation as an alternative to mitigate for an impact, as well as *creation* -- that is, taking a stream that is currently piped and daylighting it and planting a buffer adjacent to it -- which is an alternative; it's allowed.

We require them to take place within the Watershed Management Area. First it's onsite -- you have to look -- and then offsite, in greater concentric circles, you have to look for a mitigation alternative. And then, once again, it has to occur within the same Watershed Management Area. So there is a direct nexus.

We also have in the rules -- one thing that Mr. Tittel also mentioned -- we have very clear standards that say that the mitigation is not part of the examination of whether or not we should approve the project. The project stands on its own merits. And then, therefore, after it's determined that you have no alternative, then you mitigate for the loss. So you can't say, "I'm going to give you a great mitigation project; approve my

proposal.” And that’s a standard that was carried through from the Freshwater Wetlands Protection Act.

We also-- Another thing that I mentioned -- we added monitoring, we added financial assurance to ensure that the mitigation area is built and is successful.

SENATOR SMITH: I appreciate the comment.

Back to Vince: One of the comments that was made was that we’re removing buffers on trout maintenance streams. Would you respond to that?

MR. MAZZEI: Yes, it’s interesting.

So the structure of the rule is as follows -- the way that I wrote it in 2007: First, the rule defines what *surface waters* are. And then it says, “These are the surface waters in New Jersey that we regulate,” and they’re called *regulated waters*. And then it goes into saying that, “Certain regulated waters have a Flood Hazard Area, and certain regulated waters have a riparian zone.” So the rule defines all those terms.

And the way that it’s structured, it says that, for example, “All Category 1 waters and all upstream tributaries within the same HUC14 watershed,” which is-- New Jersey is broken down into these watershed areas that are delineated by USGS. So it’s kind of a few square-miles area. So it says, “Any Category 1 water and all upstream tributaries have a 300-foot buffer.” So the intention there is to say all of the waters that we regulate in that watershed get a 300-foot buffer.

So the term *tributary* caused some confusion, and thinking people then thought that we would regulate waters that we weren’t regulating, right? So the proposal changes the term *tributary* to *regulated*

waters just to clarify what the rule had done. So we had no intention of reducing the number of tributaries; we just were trying to clarify that, of the waters that we regulated that get a riparian zone, if they are over here (gestures) they get a 300-foot buffer; and if they are over there (gestures) they get 150-foot buffers. So there's no place I know of in the rule that would change that.

SENATOR SMITH: What about the comment that the TMDLs for the Passaic and Raritan rivers are part of the deal with, I guess, the EPA?

MR. CANTOR: Those are not at all part of this rule. We deal with the TMDLs to honor the (indiscernible) program and setting the standards there. There is nothing in the rule that I'm aware of that would impact that.

MS. KOPKASH: You still have to meet it.

SENATOR SMITH: Vince?

MR. MAZZEI: I'm not aware of that; I don't know.

MS. KOPKASH: You still have to meet it.

MR. MAZZEI: Yes, the standards still remain, and it's not part of this rule.

The earlier question that you had asked before Ginger spoke about what the difference is between the 300-foot buffers-- Did you want me to finish it?

SENATOR SMITH: Sure.

MR. MAZZEI: Okay. There are basically three categories of things that the riparian zones allow -- the Flood Hazard Rule allows in the riparian zone. One is, as I mentioned, roadways -- private roadways; the

construction of one single-family home -- which is the same as the SWRPA, it has the same exemption; things like bank stabilization projects; and some minor things like that -- flood control projects. We're adding in to the SWRPA allowances for repairing septic systems, for putting new septic systems in for homes, for site mediation projects, for cleanups, for solid waste closures, for trails and footbridges, some minor things like that for public access.

The difference is that the SWRPA doesn't allow anything within the inner 150; and in the outer 150, is actually sometimes more permissive than the riparian zone. So if you're in the inner 150, the SWRPA says you can't do anything; and in the outer 150, you're allowed to do many things; where the riparian zone looks at each type of activity and says, "Okay, well, this activity -- you have to justify why you're in the riparian zone, and this is the limit that you have for that activity."

SENATOR SMITH: Do you have any concern about allowing septic tanks in that first 150?

MR. MAZZEI: Well, the existing rule-- Well, two things: One is that the SWRPA would only kick in if it's a major development. So you'd have to disturb an acre of land or a quarter-acre of pavement. So a lot of times if I was a homeowner and I'm putting a septic system in, it would not trigger the SWRPA because it's smaller than that size. It would trigger the riparian zone. The riparian zone rules -- the 2007 rule actually has like a 25-foot setback on most developments. So even within those buffers you can't do anything within 25 feet on top a bank, generally -- except for, like, discharges or roadways.

So the current rules actually allow septic systems within 25 feet of the top of a bank. And so we added it, and said, “Well, if you’re going to put a new one in, or if you have to repair one, you should relocate it so it’s at least 50 feet outside.”

I looked into-- Since I was concerned about this issue, I looked into the -- the Department has rules on septic systems. And there’s a section in there that deals with placing septic systems in Flood Hazard Areas. So the two rules would work together on that.

MS. KOPKASH: Can I just--

SENATOR SMITH: Yes--

MS. KOPKASH: I just really want to--

SENATOR SMITH: I was actually going to say it’s Ginger’s turn on the hot seat.

MS. KOPKASH: I just really want to emphasize a point here, because sometimes these statements are made and I want to make sure it’s really clear.

If you are developing a house, it’s not considered a major development -- or repairing a septic system is not considered a major development. You don’t-- You can do that in the inner 150; you can do it right up to the stream because the stormwater rules would not apply to that development. Same thing with a roadway widening; it wouldn’t apply. Same thing with the trails that we added to our list of types of projects that you could do.

So then that’s where the Flood Hazard rule -- as Vinnie tried to explain -- kind of took over and addressed the things that may not fall under the threshold of being regulated under Stormwater rules.

The other thing is -- there's another perception, I believe, that development has taken place within the inner 150. The rules do allow it to happen if the Department, through the Flood Hazard Rules, processes a hardship exception. And that does happen for remediation projects, because if the hazardous waste is within the first 150, we're going to allow it to be remediated. Landfill closures -- that's happening; but we're making people go through this robust hardship exception process for those types of activities -- which is why we added it the table.

So what's another thing? The bank stabilization -- that wouldn't be something that the Stormwater rules -- would more than likely not regulate, because it doesn't rise to the level of a major development. So we're allowing those types of things. And I just wanted to make that really clear -- that the Stormwater rules don't actually touch everything that we added to the table.

SENATOR SMITH: Got it.

MS. KOPKASH: Okay.

SENATOR SMITH: Ginger, I think it's your turn, if there's anything more you want to add to this presentation.

MS. KOPKASH: I had a lot I wrote down; I might even want to go to some of the highlights.

As Ray mentioned before, and Vinnie, we did go through a very robust stakeholder process. We took it very seriously, and we worked as a team. At one point-- Vinnie wrote these rules in 2007; and prior to that -- in a closed room all by himself, interacting with very few people. And this rule proposal-- (laughter)

SENATOR SMITH: That sounds a little weird. (laughter)

MR. MAZZEI: It was a bad time.

MS. KOPKASH: Yes, it does.

MR. MAZZEI: Yes, I had problems. (laughter)

MS. KOPKASH: And in this rule proposal, we opened up the doors and we welcomed everybody's comments, and really listened to what they had to say; and debated it internally, as a team. The team of rule writers has more than 120 years experience at DEP. I was part of that team before I was Assistant Commissioner for Land Use, and personally I believe it was a really great process. Because out of that, what we heard from a lot of people is they want to comply with rules, but they were confusing and there were conflicts. The SWRPA was a great example of that. There would be streams shown on a map -- soil survey -- that didn't actually exist on the site. But we would have -- but when you go out on the site, there's a stream in a completely different location, naturally occurring.

So the staff would debate, "Well, where do I place the buffer? How do those two things interact?" The other thing that happened when the 2007 rule went into effect -- that we gathered information on with respect to the acid soil deposits and their exposure -- is people started asking legitimately very good questions, such as, "If I discharge my stormwater upstream--" I was going to get into some of these great pictures, which were actual sites that SCDs have to take a look at, where the outfall caused huge erosion and exposure of these acid deposits. And that's kind of like that bluish-grey soil that we see here.

SENATOR SMITH: You should turn that around, too, so that the public can see that as well.

MS. KOPKASH: Sure.

And they also ask questions about -- or made comments about, "Well, what if I'm not even digging them up or exposing them? I'm only -- I did some soil borings on my site, and they're 20 feet down, and I'm just putting a parking lot on it. I'm not exposing them. So therefore the danger, that you think is going to happen, is not occurring."

People also said to us, when they would do the testing on a site to see if these deposits did occur on the property -- sometimes they wouldn't even find them even if the map showed them to be located there; or they were found outside the 150-foot buffer and we were, indeed, pushing the development to right where they were.

So as a result of this gathering of information from our different stakeholders, we found that -- we started to do a punch list of items that we really wanted to get at. And that was conformity between what's a regulated water that has a 300-foot buffer, and the tributaries or the waters that flow into it that would also have that 300-foot buffer; and what would be the standards that we would impose on that development that would take place there. And once again, for things like site remediation projects, landfill projects that we would always determine were in the public's interest to remediate, let's not have them go through a robust and costly permit process only to get, at the every end -- which would be a positive finding that they would receive a permit. So that was one of our major issues.

The other was regulatory alignment. I spoke earlier last year on that topic; how important it was for us to do regulatory alignment of all of our land use rules. It's only in the public's interest for us to move that forward. This rulemaking has a tremendous amount of that incorporated

into it, and we did not roll back our standards. In fact, for Flood Hazard, there is no public notice process; but in this rule, they're going to have to -- we require public notice for all permits that are going to be submitted to DEP.

SENATOR SMITH: What kind of notice?

MS. KOPKASH: We require in conformance with municipal land use law, sir, so it would be--

SENATOR SMITH: Two hundred feet?

MS. KOPKASH: Within 200 feet; yes, sir.

And we also, in this rulemaking, heard from people about how, "If I want to do something good, it's really hard to do it in your current rulemaking." A good thing would be -- it happened in this city -- which would be the daylighting of a stream corridor. The Assunpink was a very grueling permit process. You wouldn't think it would be the case, but when the rules were written -- Vinnie was writing it for the development projects he was seeing that were coming in. And now we have all these great restoration projects that are taking place in our state. And these rules, the current rules, don't incorporate those standards in them; so in the proposed rules, that we have out right now, we did. We're allowing for habitat restoration, for stream bank stabilization projects, as well as for daylighting of streams -- which are--

SENATOR SMITH: And they would not be permitted under the current rules?

MS. KOPKASH: They have to go through the hardship exception process. There are no standards in the rules that allow it; in fact, the rules say you can't modify a channel. So it would be difficult, and it

was difficult but we kept saying, “This is a good thing; we have to figure out a way to get this approved.”

The other thing that we added to this rule, which we heard from individuals, was conformity in how we protect threatened and endangered species. Throughout the Flood Hazard Rule, as it’s currently written, it would have things like “protect threatened and endangered species; documented habitat.” And then there was some confusion whether it meant that if the E and T was present on the site, was it still protected? So in this rule, we made it very clear: It can either be present, or documented for the threatened and endangered species to be protected under the rules. That’s in that proposal.

Also in the proposal is the incorporation of terrestrial crossings for threatened endangered species and species of concern, through a culvert or through a bridge corridor. Currently, the rules make it very hard for us to incorporate those wildlife passages. We had a project -- Atlantic City Expressway -- where we had two Wildlife Management Areas on either side with threatened and endangered species migrating back-and-forth. We, through a very difficult review process, were able to incorporate a terrestrial passage in the culvert. But the reason it was hard is because, when you open up the sides of a culvert to allow for this terrestrial crossing, you possibly increase the amount of flood water that goes through that pipe, therefore potentially increasing, for the people on the receiving end downstream, increased flooding.

So through Vinnie -- who is a brilliant engineer -- and working with a larger stakeholder group with municipal, and county, and State

engineers, we were able to develop standards that we felt were protective of people downstream but, at the same time, allow for this wildlife passage.

The other thing-- We met with, as I mentioned before, numerous stakeholders. But municipal, county, and State engineers came to us and said, "Most of our projects are simple culvert replacements or bridge replacements;" lots of taxpayer dollars spent on that type of activity. And they were having a very difficult time getting permits from us. And so what we did was, we looked at how do we make it easier to get through -- clearer, I guess, standards to get through the process, but also still be protective, once again, of people downstream. So this rule -- we made major changes with respect to bridge and culvert replacements as a result of our stakeholder process.

I think those are my main highlights.

SENATOR SMITH: Okay.

MS. KOPKASH: Those are the main ones I wanted to get at.

SENATOR SMITH: So let me open up to other members of the panel.

Governor Codey.

SENATOR CODEY: Yes. At any point, did you have input from the Administration on these rules?

MS. KOPKASH: At the end, you mean?

MR. CANTOR: I will speak to that.

I'm not sure what you mean, Governor. We have a prescribed rule process that we do within the Department where the program prioritizes their rule amendments -- not based on when the expiration of the

rule is, but when we think rules need to be changed to solve problems, or to address issues, or to promote certain policies.

Ginger -- she mentioned -- before becoming Assistant Commissioner, she was part of the rule team looking at all land use programs. And this was very much a, say, bottom-up and very inclusive process where the program staff looked at their years of experience in implementing both the SWRPA and the Flood Hazard rules -- the riparian zone -- and came up to the management with a series of suggestions. We worked very closely over the last several years; we have an extensive stakeholder process; and--

SENATOR CODEY: Okay, but you're not answering my question, sir.

SENATOR SMITH: Yes, pretty much.

SENATOR CODEY: You're not even coming close.

MR. CANTOR: Well, I was going to say -- this was, very much, a staff- and DEP-driven process.

SENATOR CODEY: Again, you're not answering my question.

MS. KOPKASH: Can I-- I think I can answer--

SENATOR SMITH: So the answer -- is the answer "no"? That the Governor's Office had no input on the rules?

MR. CANTOR: The Governor's Office did not give us any directions to draft the rules in any specific way.

SENATOR SMITH: That's answering the question.

MS. KOPKASH: Everything on our list was from -- we developed spread sheets -- came out of the stakeholder process; every item that was on our punch list.

SENATOR SMITH: Okay.

MS. KOPKASH: Okay.

SENATOR SMITH: Any other questions for the panel? (no response)

I know the request was that, after you made your presentation, you probably had to go someplace. Could you leave Vince as a hostage? (laughter)

MR. CANTOR: Actually, since we are all on the same bus together, we will all remain here throughout the rest of the testimony.

SENATOR SMITH: Okay.

MR. CANTOR: We will be willing, if you want, Mr. Chairman--

SENATOR SMITH: To answer any other questions.

MR. CANTOR: --to respond to any comments that come up.

SENATOR SMITH: Good.

MR. CANTOR: And we will provide you, as quickly as we are able, the statement from EPA addressing -- or their lack of concerns with these regulations.

SENATOR SMITH: Got it. Thank you very much for your presentation today.

Is there a Gary-- I'm sorry; is there a representative of the Watershed Association here?

Mike Pisauero. Mike, you win the prize as the next witness, because you presented one God-awful long letter (laughter), which will be entered into the record.

And this is for all witnesses: I want you to be very focused on your testimony. What do you think? Don't say, "The rules are bad," or "The rules are good." Tell us, focusing on particulars of the rules, where you think there are legitimate issues with regard to the environment in New Jersey -- or whatever your issue is. But be focused, and don't read letters and testimony. (laughter)

So Mike, what-- And Mike is with the Stony Brook Watershed Association (*sic*).

Mike, take it away. Mike Pisauero.

MICHAEL L. PISAURO, Esq.: Thank you, Mr. Chairman. And I want to thank the sponsors of SCR-180, which we support.

You've heard quite a bit of testimony already, and I have multiple pages of notes which may already, sort of, surpass my written comments.

What you have before you is the written comments that we submitted on behalf of the proposal, in opposition.

There may be some good parts to this rule; terrestrial crossings may be a good thing. That does not mean the rule in and of itself is a good thing. When we reviewed these rules to prepare comments we looked, as the Chairman noted, beforehand, "How do they meet the legislative requirements?" And those two requirements are protecting and enhancing water quality, and getting people out of harm's way from flooding.

You heard a lot of testimony, but you did not hear a lot of science. The difference between the proposal in 2015 and the 2007 proposal, and the stormwater proposal before that, was there was scientific data, scientific studies to back up the increase in buffers. And there was a comment earlier that, "Well, years ago the buffers weren't as big; so therefore, this is still better than what we had years ago." We have learned, over the decades, over the years, the importance of vegetative buffers. In fact, the 2015 rules note that forested buffers are better at protecting water quality than nonvegetative buffers; but they don't provide any -- the proposal does not actually protect those any better than anything else.

SENATOR SMITH: I have to tell you, I heard something different.

MR. PISAURO: Okay.

SENATOR SMITH: I thought I heard the DEP say we are trying to make our regulations more reasonable; a little more user-friendly, but that they're not changing the buffers. That's what I thought I heard them say. With the exception that they are saying they're now going to-- If the rules are adopted, they're going to allow trails; perhaps a stream to be opened up -- daylighted; and I think the third one was having a regimen which would allow, rather than allowing -- allowing a discharge into a stream of stormwater in such a way that would reduce bank erosion. And then, after that, then you could still do a single-family home. That was considered to be not a major project. And that's currently allowed under the rules.

What is the decrease in the buffer, what is the increase in development that the DEP is not saying they're doing?

MR. PISAURO: Sure. One thing, you can now impact-- Well, you can impact a forested buffer and not be required to put back or mitigate and restore a forested buffer. You can put in a grassland buffer, which is not as good.

Talking about the SWRPA: Under the Stormwater rules -- and yes, it does not apply to everything, which is a problem. If you're going to make it consistent and protect water quality -- which is our mandate under the Clean Water Act, as well as our Water Quality Planning Act and Water Pollution Control Act -- we should be moving towards improving water quality. Because Chairman, as you know, and has been testified to in these hearings many times over the years, something like 90 percent of our waterways do not meet water quality standards.

So, just as an example, 16 percent of our waters meet the standard for recreational use; only 23 percent of our waters meet the designated standard for aquatic life.

SENATOR SMITH: Right. I got the statistics.

MR. PISAURO: Right.

SENATOR SMITH: But the question is, do these rules make that worse or make it better?

MR. PISAURO: When they removed the SWRPA -- they removed it from the Stormwater rules-- The SWRPA did not allow impacts to the 150. They only allowed impacts to the outer 150 if that outer 150 had been previously disturbed and the applicant demonstrated that, by allowing that development in the outer 150, there would not be any measureable changes.

So now that is gone from the stormwater rules as a result of this proposal, all right?

SENATOR SMITH: By the way, do you think the ultimate criterion on this -- remember, we're about legislative intent.

MR. PISAURO: Correct.

SENATOR SMITH: Protecting the environment of New Jersey. There is a letter from the EPA saying, "We're concerned." If they're able to get a letter from the EPA saying, "We do not see a violation of the Clean Water Act or the Federal Water Pollution Control Act," should we use that as the ultimate judge of whether or not there is a violation or a nonviolation of legislative intent?

MR. PISAURO: No. I believe that New Jersey being in the forefront of not only environmental protection, as well as environmental issues -- we are the most densely populated state; we are the state that's going to reach build-out the fastest and the quickest; we're the ones with the historic levels of pollution that we are trying to address. So we're on the forefront of all of those.

The Federal experiment, under the Clean Water Act, is that is the floor. And the ultimate goal of the Clean Water Act and of New Jersey's legislation is to protect, but also restore and enhance water quality. So what these rules should be doing is moving us towards that. There's nothing -- or very little in these rules that actually move us forward towards meeting water quality standards, from -- protecting us from flood hazards.

As was testified, the Table 11.2 increased the amount of development allowed in the riparian zones before you had to go get a hardship. That's not moving us towards--

SENATOR SMITH: I got your point.

MR. PISAURO: We're taking people away.

SENATOR SMITH: I got your point.

Any other big issue unaddressed, Mike? Especially a big, specific issue.

MR. PISAURO: Under the Clean Water Act and the WOTUS rules that were recently adopted, there is a conflict with the way waters are defined. Under the WOTUS rule, it doesn't matter the drainage area; if it is a stream, under these proposals if a stream segment drains less than 50 acres it may get a riparian zone. So that matters for two things: one, a lot of our headwaters do not necessarily have defined beds and bank, and may drain less than 50 acres because they're the headwaters.

SENATOR SMITH: Got it.

Vince, how do you respond to that comment? Suppose your headwater is less than 50 acres.

MR. MAZZEI: I'm sorry, Chairman. Can you please repeat that question?

SENATOR SMITH: Yes. The comment from Mr. Pisauro was that we may be losing protections for those headwaters that drain less than 50 acres.

MR. MAZZEI: The existing rule puts a riparian zone on any stream that drains -- irrespective of the drainage area -- as long as it is naturally occurring and has a bed and bank. So if it's a manmade feature, we don't put a riparian zone on it.

Is this question related to the definition of *riparian zone* and the word *tributary*?

MR. PISAURO: Well, under these rules, if a headwater does not have a defined bed and bank and drains less than 50 acres, it does not have a riparian zone and, therefore, is not protected. But those are the waters we should be protecting.

SENATOR SMITH: Okay.

Respond to that?

MR. MAZZEI: That's true. If a feature drains less than 50 acres, and it doesn't have a bed and bank-- In other words, if it doesn't have a discernable or definable channel, then it's not regulated under the rule and it does not have any Flood Hazard Area or riparian zone under the definition.

SENATOR SMITH: Well, I think Mike's trying to say that's a bad thing.

MR. MAZZEI: This is-- The current rule does that as well. Like, that's something that we're not changing.

SENATOR SMITH: That might be a change for the better -- I'm just suggesting.

All right, thank you, Vincent.

MR. MAZZEI: Sure.

SENATOR SMITH: Mike, any other big issues?

MR. PISAURO: Also, if a water had been natural and is now piped, it also would not get a riparian zone -- especially if it was draining less than 50 acres. So that segment is draining less than 50 acres and had been channelized at some point. It's still part of a natural watercourse, but it's not receiving the riparian zone protections. So nonpoint pollution --

which is 60 percent of our water quality issues -- is flowing through that section and into the adjacent waterway, and is not receiving the protections.

SENATOR SMITH: Is Mike correct, Vince?

MR. MAZZEI: If a stream-- Under the proposal, if a stream does not have -- if it's piped, then it doesn't have a riparian zone. And that's the way we've been implementing it since 2007, because during the comment response, somebody raised that question and said, "Does a piped stream have a riparian zone?" And so in the response to comments, in 2007, we said no, it didn't. So now we're codifying that.

SENATOR SMITH: Okay. Thank you for your comments.

MR. MAZZEI: Sure.

SENATOR SMITH: Mike, any other big item?

MR. PISAURO: No, I think Jeff covered quite a bit of it. And I will say the issue of acid-producing soils -- what you're doing is, as Vince mentioned, you are catching that design quality storm. But you are piping directly into the waterway -- that additional water. So you're increasing the velocity of water that might be hitting that stream; so therefore you may be increasing erosion in the stream itself. You are not allowing the vegetative buffer to now sort of filter out and slow down that stormwater that had once been going through there.

The solution to the erosion issue is to provide increased dispersion of that water outside of the areas of concern. I mean, rain gardens, other green infrastructure so you're not having a huge amount of water hitting a stream at once. Because beforehand, it was being slowed by vegetative buffer, it was being filtered. And now you're piping at least a portion of that directly into the stream without water quality pollution

controls; and increasing the flooding that may hit downstream, because that water's hitting quicker and faster than it would have been otherwise.

SENATOR SMITH: Thank you for comments.

MR. PISAURO: Thank you.

John Kirkenir and Tony DiLodovico, New Jersey Builders, in opposition to the SCR.

JOHN H. KIRKENIR: Good morning, Mr. Chairman, members of the Committee. I'm John Kirkenir, an officer of the New Jersey Builders Association and President of Alliance Homes.

In the interest of time, we submitted a copy of our detailed comment letter to the DEP's proposed amendments to the Flood Hazard Area Control Act, Coastal Zone Management, and Stormwater Management Rules -- which are the subject of SCR-180.

SENATOR SMITH: Right.

MR. KIRKENIR: But I would like to highlight NJBA's position.

There is no secret that New Jersey's economy continues to lag; one reason is costly, inconsistent, lengthy regulatory and land use approvals.

SENATOR SMITH: John, we don't have your submission.

MS. HOROWITZ (Committee Aide): Where did he send it?

SENATOR SMITH: Did anybody turn it in? Was there a written document?

MR. KIRKENIR: Yes.

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) We turned it in prior to the Committee hearing starting, yes.

MR. KIRKENIR: I'm sorry about that.

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) We gave it to the Sergeant-at-Arms.

With my testimony as well.

SENATOR SMITH: Do we have it, anybody?

MS. HOROWITZ: Oh, here it is.

SENATOR SMITH: Okay, go ahead.

Now, John, you're not going to read that, right?

MR. KIRKENIR: Oh, no. (laughter)

SENATOR SMITH: All right. We actually do read what is submitted to us.

MR. KIRKENIR: No, no -- that's the backup. We're giving you just the quick highlights.

SENATOR SMITH: And we understand the economy stinks in this state.

MR. KIRKENIR: Okay.

SENATOR SMITH: All right? We've got that.

MR. KIRKENIR: And you understand that the approval process--

SENATOR SMITH: Why does this rule help your constituency? What does it do for New Jersey Builders that they don't currently have? It didn't sound to me like they were allowing any more development in the 300-foot buffer other than trails -- the three things, which I forget for the moment. What does it do for builders -- what does the rule do for builders that you would come here to endorse it?

MR. KIRKENIR: Tony, you want to-

TONY DiLODOVICO: Yes. Well, what it does is it streamlines the process.

SENATOR SMITH: All right -- and you are?

MR. DiLODOVICO: My name is Tony DiLodovico.

SENATOR SMITH: Okay, Tony.

MR. DiLODOVICO: I am a consultant with Bowman Consulting, and here representing NJBA.

MR. KIRKENIR: Remember, the State Senate Soil (indiscernible).

MR. DiLODOVICO: It's still scientific-based, and gives a commonsense approach to how we do permits. I've been-- I'm a consultant who gets permits for all types of developments -- not just homebuilders, but for any type of public and private development. And the Flood Hazard Rules, the way they're written now, are very difficult to implement. It's very difficult for me to give guidance to a client as to what can and cannot happen. These rules now, streamline--

SENATOR SMITH: Okay. What changed in the process -- streamlines it, as far as you're concerned?

MR. DiLODOVICO: It streamlines it in that it opens up Permit by Rules, Permit by Certifications that we all agreed -- in our Permit Efficiency Task Force that we did under Commissioner Jackson -- was needed. And that way smaller projects, that are quite obvious this is what you do and you won't have an impact, can just go through and not impact the regulatory review process that the larger projects must have.

SENATOR SMITH: Which Permit by Rules were you (indiscernible)?

MR. DiLODOVICO: They've added 63 Permit by Rules--

SENATOR SMITH: Sixty-three Permit by Rules?

MR. DiLODOVICO: Yes. They had -- I don't know the exact number, but they've added a lot more Permit by Rules; they've added 15 Permit by Certifications. So they've added a number of Permit by Rules, Permit by Certifications that, if you do this, this, this, you can move forward and--

SENATOR SMITH: Which one do you think is the most significant?

MR. DiLODOVICO: I don't know if I can say which one is the most significant. They were all -- they're all helpful.

MR. KIRKENIR: The one you need that day. (laughter)

SENATOR SMITH: Is there any one that really would make life easier?

MR. DiLODOVICO: Is there any one that makes life easier for me?

SENATOR SMITH: Any one, or two, or three of them that really make your life easier -- that you can point out.

MR. DiLODOVICO: No, not one specifically; no.

MR. KIRKENIR: But they all would make your life easier.

MR. DiLODOVICO: It makes it easier and it gets (indiscernible)

MR. KIRKENIR: Because you know you can get an approval.

MR. DiLODOVICO: --out of the system, you know?

SENATOR SMITH: And by the way, we've heard the complaint before that the DEP is a shadow of its former self; it's harder to get things done. We've heard that before.

Besides streamlining, is there anything else that your constituency feels is meritorious about the rule.

MR. DiLODOVICO: It adds criteria where you can have disturbance in riparian zones. You have to prove that you have to have; you can't just go in and disturb a riparian zone. You have to prove that you have to be in there. And as I mentioned before, when we have cleanup of sites -- hazardous waste cleanup sites, redevelopment sites where you always have significant disturbance in the riparian zone -- these rules, now, give a clearer process of how you can do certain activities that one, there was no automatic: you could do that if you follow these three steps. Now, if you have a hazardous waste cleanup, you do this, this, this, and you can move forward.

There's no expansion of disturbance of the riparian zone without any consequence. If you have to go in and disturb -- especially a CI water riparian zone, 300 feet -- you have to do mitigation. So if you can prove that you have to be in there-- First of all, there has to be existing disturbance there, anyway, and then you'd have to provide for mitigation from a large development project.

The things that are allowed more are the things that were like public safety-type projects and individual homeowners, where that's their land and there's nothing else you can do. But you still have to stay as far away from the water as you can; you have to prove that it has to be there; and you have to ensure that you're not having any greater impact. And

where you can't completely comply with no increased disturbance, you have to, then, mitigate for that. And most mitigation is 2-to-1; some is 3-to-1, some is as much as 10-to-1 on mitigation.

SENATOR SMITH: Any other big issues that you want us to know about -- knowing that we're going to read the letter that you submitted for some of the other details? So are there any other big issues beyond the streamlining and the Permit by Rule?

MR. KIRKENIR: Those are the big ones, but we also -- we do appreciate the stakeholder process that's gone on for the last four years. And the fact that the DEP has taken the years of experience that they've had administering these programs, and incorporated more logical and predictable -- which is what I guess we're all looking for -- outcomes in certain permit processes.

MR. DiLODOVICO: And Senator, I'd also like to add that, currently, under the SWRPA rule, under the Stormwater Rule -- the SWRPA -- that only applies to mapped streams on the USGS map, and they're old and outdated and aren't even in existence, printed NRCS maps. It doesn't apply to streams that are actually there, or small headwater less than 50-acre streams that are actually there. The Flood Hazard Rule applies to all of them. So under the SWRPA rule, all of those headwater-type streams -- even when there are channels -- aren't covered by the SWRPA right now.

SENATOR SMITH: I appreciate the comments, gentlemen.

MR. DiLODOVICO: Thank you.

SENATOR SMITH: Jerry Haimowitz, professional engineer. Jerry doesn't seem to be affiliated with anybody in particular, but he does want to testify and he's in favor of the SCR.

Jerry.

JERRY HAIMOWITZ: Yes. I'm also a licensed Drinking Water Operator.

First of all, I'd like to comment on the photograph that the DEP showed of the eroded pipe. I don't think that photograph proves anything because it's out of context. Did the original engineer improperly design the pipe? Was it a failure of the operating agency to maintain the pipe; or was there some exceptional storm event that took the pipe out, regardless of proper design and maintenance?

I'm not going to go into the details; I just want to comment on the overview of the background; of what to be thinking of as you consider this.

The New Jersey Water Supply Master Plan was issued in 1996. Page 13 states that it should be updated every five to seven years. We've been waiting 19 years, and there is still no sign of it.

These proposals will diminish both the quantity and quality of the water available in the State of New Jersey for drinking. And how can you do that when you don't know how much water you need, and we already have some areas in the state that are running out of drinking water? In particular, where I live -- Monmouth County -- we've got one reservoir that's silting up, and where will our water supplier get water in the future?

Also concerning drinking water: EPA states that source water protection is the most effective and usually the least costly approach to

protecting drinking water quality. The CI streams are the most pristine aquatic ecosystems. The proposed DEP rules will result in degradation of the CI ecosystems.

And the last issue is the proposed Permit by Rule, Permit by Certification -- decreases public input and, in some cases, eliminates it. Now, remember the picture of the pipe. Did the engineer make a mistake in the design? Having the engineers issue their own permits without oversight is not a good idea. I've been in local government my entire career, and I've seen plenty of engineers make mistakes where we could go back to the rulebook and say, "Wait a minute; can't do that."

I thank you very much, gentlemen

SENATOR SMITH: Thank you very much.

Ed Wengryn, New Jersey Farm Bureau, in opposition.

Ed.

EDWARD D. WENGRYN: And Tom Beaver, on our staff, is coming in case you guys have any questions.

Thank you for holding this hearing, and hearing our comments on this. We've enclosed, for the Committee members, the comments we sent in on the rules; they should be in your packet there as well.

Agriculture is really where the land meets the water. And the activities that happen between there are very critical for successful agriculture. The things you want to do to clean up water, prevent soil erosion into streams, to prevent chemical runoff into streams, when they use manure when it's a more organic farming situation -- all of these things interface with the waterways. The rules are laid out in the proposal we

support because they simplify the process for doing good things on the land to improve water quality.

In the past, when farmers wanted to do grass filter strips -- riparian plantings, all of that stuff -- if you're doing it in the upland portion of your farm, you just pretty much went to the Soil Conservation District, and NRCS designed the plan, and you did it. When you started to do it -- in, now, the extended buffer area since the 2007 rule, the 300-foot buffers -- you had to go to the DEP. And then if you were doing it in the riparian area, you needed to get individual permits, which would cost farmers over thousands of dollars just to get the permit to do the right thing.

And so a lot of farmers stopped participating in those programs and doing those things, because to do the right thing it shouldn't cost you money upfront. This simplifies that and allows them to do it Permit by Rule -- a simpler fee structure. We'd still like to see the fee structure reduced more; that was one of our comments in the rules. But these things actually say that when you're doing the right thing on the land, and you're doing it for the right purposes, you shouldn't have to jump through a million hoops and pay a million fees and fines. And that's what we support, and that's why we like the rule.

SENATOR SMITH: Thank you, Ed.

THOMAS BEAVER: Just to add some context to what Ed said.

In particular, a lot of commonly accepted farming practices -- provided they're done in accordance with Natural Resource Conservation Service best management practices or under the guidance of the Soil Conservation District -- would not be eligible for a Permit by Rule. It certainly simplifies things significantly. We're talking about construction of

livestock fences across fords and waterways, certain forestry practices -- a whole range of natural resource conservation activities. And then beyond that, activities like debris and sediment removal, and roadway construction across flood hazard waterways would now be applicable for a Permit by Certification; which, like Ed said, carries with it a fee that we still don't love, but it certainly makes it easier for a landowner to do the right thing. Because prior to this, we found instances where farmers were actually precluded from doing things that they might otherwise have done in the best interest of their farming operation because of that individual permit structure and some of the complications with getting a permit. So from that standpoint, we think this is really a step in the positive direction. And I think, in general, as far as the process is concerned, we're certainly glad to see DEP here today, and think that they ought to be afforded the opportunity to respond to some of the concerns that have been raised; and that we shouldn't, kind of, throw the baby out with the bathwater with some of the positive developments that could come along with these updates for our constituents.

SENATOR SMITH: We appreciate the comments.

MR. WENGRYN: Thank you.

SENATOR SMITH: Bill Wolfe.

Bill, are you representing New Jersey PEER (*sic*) today?

B I L L W O L F E: No.

SENATOR SMITH: Okay. So it's Bill Wolfe, individually, in favor of the SCR.

MR. WOLFE: Thank you.

Thank you, Mr. Chairman; thank you for sponsoring this, thank you for hearing it. We've heard some outstanding testimony thus far; I think I'm going to put a finer point on it. And I would be glad if the Department could come up and discuss some of my concerns.

The origin of this program was, in 2002, in Governor McGreevey's commitment to improve water quality protections. I was part of the team and led the team at DEP that drafted the Category I designation methodology that defines the universe we're here to discuss today with respect to the buffers, as well as the language in the Stormwater Rule.

And I can tell you right now that the intent of the effort was fully aware of the Flood Hazard rules, the riparian zones, the regulatory loopholes in those rules, and the engineering approach to those rules that created the ability to disturb buffers and impair water quality.

So the rule was drafted with the express purpose to establish far more restrictive standards on buffers -- not just with respect to the width of the buffer, but with respect to the demonstration that a developer and permit applicant had to make in order to justify disturbance. And in between the 300- and 150-foot edge, if disturbance was to be allowed, then the applicant had to show equivalent ecological protection. And that standard is a regulatory standard.

There are different types of regulatory standards -- there are numbers, and there are legal standards. And what the Department said today in their testimony -- that they were not reducing protections or changing any standards -- is legally false. And I was the one, the unidentified entity, who made an allegedly misleading e-mail to the

Regional Administrator in New York at EPA. And it is legally correct to say that the Special Water Resource Protection Area buffers are repealed. That has legal and regulatory meaning, and I'll be very specific as to the -- these are the regulatory standards that have to be complied with in the Stormwater Rule.

SENATOR SMITH: Is this Federal regulatory, or--

MR. WOLFE: This is a State regulatory, but-- And here's the Federal hook which, again, got obfuscated in testimony.

The Federal hook is that the Category 1 waters are technically part of the New Jersey Surface Water Quality Standards. Surface Water Quality Standards are required to be adopted by states under the Clean Water Act. The Clean Water Act leaves to states the choice of how to adopt and how to administer, but they have to be there.

So New Jersey incorporated the Category 1 designations under what's known as the *Antidegradation Policy*. That's, again, a federally mandated policy requirement, and it has gone through EPA and received review and approval. And what's called the *Antidegradation Policy Implementation Procedure* -- one of the tools to attain that water quality standard of no reduction in existing water quality -- is the buffer. So these are all federally approved BMPs for antidegradation policy implementation under the Clean Water Act. They've gone through the DEP, regulatorily. When the DEP adopts the Surface Water Quality Standards -- of which the Category 1 streams are part -- they go up to New York, and Region 2 signs off on them. If you're going to make a substantive amendment to them in any way, direct or indirect-- And again, this obfuscation about how the

Category 1 rules apply in various regulatory programs was also not made clear.

But let me get back to the standards that are changing.

SENATOR SMITH: Well, stop for a second.

Vince. (laughter)

(Mr. Mazzei returns to witness table)

MR. MAZZEI: Hey, Bill.

MR. WOLFE: Hey, Vince.

MR. MAZZEI: Good to see you.

MR. WOLFE: Good to see you, too.

SENATOR SMITH: Are we going to be in trouble with the Federal government?

MR. MAZZEI: I don't know how to answer that question; I'll be honest with you, Chairman. I'm not an attorney, and you know--

SENATOR SMITH: No, but I think the comments were made earlier by Mr. Cantor that there had been discussions with the EPA, and now their concerns are allayed. Hopefully, he's going to get us a letter so we know what their position is. The comments that Bill made are not that -- the Federal Clean Water Act, and that this is part of our submitted strategy for meeting Federal law -- that we can't remove it without, I guess, changing our plan or getting permission from the Feds. You agree with that comment?

MR. MAZZEI: My understanding is that, yes, the Antidegradation Policy is part of the implementation of the Federal requirement; sure.

SENATOR SMITH: All right. So Ray, you're trying to say something -- Ray Cantor. What are you trying to say?

MR. CANTOR: I do agree. Again, the C1 designations are part of our water pollution control. There are two designations; they are BMPs. But all we're really doing in these rules are substituting different BMPs. And we believe that they are going to have the exact same purpose; we're not changing any (indiscernible)--

SENATOR SMITH: Do you have to get Federal approval on the substitute?

MR. CANTOR: Oh, we'll need Federal approval for that. But again, I'll agree with Mr. Wolfe that we can't have backsliding; we don't believe that these regulations, at all, are backsliding.

MR. WOLFE: Now, let me explain how we backslide.

SENATOR SMITH: All right; so in any case, thank you, guys.

All right, Bill, go ahead.

MR. WOLFE: I completely agree with both statements.

SENATOR SMITH: We got the point-counterpoint. You believe that this is going to be in violation of Federal law; they believe that's not the case.

MR. WOLFE: And let me explain the standards that are changing with respect to the difference--

See, the argument here is this alignment of regulatory programs. And the DEP's argument is that by capturing more streams and capturing more regulated activity, that that improvement offsets the diminution of the reduction in protections you get from changing from the

Category 1 SWRPA to the riparian zone. That's the DEP's argument. There is no fact to support it, but that's their argument.

But my argument is based upon the regulatory standards that apply to the Special Water Resource Protection Area, which is the Category 1 buffer. And those are in rules; they are in the Stormwater Management Rules -- it's 7:85.5(h). And they specifically set forth the restrictions. All those restrictions about the demonstration for equal protection in the zone, from 300 to 150, and the prohibition on disturbance from 150 to the stream, and the hardship waivers, and the variances that you can get under the riparian zones -- all those are taken out of and are no longer applicable; and therefore they've eliminated protections.

So an applicant does not have to demonstrate to get approval-- To get approval for a C1 buffer inside the 150, you would have to go to a court of law and establish a takings. There are no hardship waivers, exemptions, or waivers included in the C1 Stormwater Rules. It was written that way intentionally because we knew that the stream encroachment riparian zone standards were designed to accommodate development; they were designed to establish permissible disturbance levels, and they were designed to provide hardship waivers. The stormwater C1 buffers are written in such way that even if you have a landlocked piece of land that you need to put a bridge in to get to develop, you can't do it. And that was intentional. And therefore, if an applicant could show a court of law a taking, which is-- You know the taking standards in court; very different from getting a feasibility waiver -- which is now this case under these rules, under the riparian zone. So complete gutting of a legal standard to protect

disturbance of the water that was put in place with intention, all right? So that's very important, and they no longer exist.

So when we talk about *backsliding*, we're talking about not just the width of the buffer; we're talking about, number one, the allowable disturbance which is specified -- and it's not just the public projects that we heard, it's not just the good stuff. It's in the table in the proposal, and those purposes are all forms of crossings -- railroad, public roadway, private driveway serving a single-family home or duplex; all other roadways not listed above -- meaning if you have a development and you need a stream crossing, you can put a road in. If you have roadways that are part of a development, you can put them there -- bank stabilization, stormwater discharge, utility lines, single-family homes or duplexes, tidal development, other projects. And then it ticks off some of the minor ones.

So what was a program to prohibit or severely restrict any form of disturbance is now changed to a program that explicitly provides minimal and maximum disturbance standards, and all forms of hardship, and exemption, and loophole, and Permit by Rule, and Permit by Certification. That is a fundamentally different regulatory regime, and it fundamentally will, by the Department's own statements -- which I've quoted at length and I submitted to you in writing -- I'd be glad to do it again -- the Department itself acknowledges that additional disturbance will result from these rules. It's just a question of whether they think, without any evidence, that the increase in capturing additional streams that you get from the geographic mapping system, or the standard at which you define a stream under the riparian rules is broader than the C1 buffer. So you're going to get more

streams, and you're going to get more regulated activity in the riparian zone regulations.

But you have better protections in the CI buffers. So in order to determine whether your realignment is increasing your protections or decreasing your protections, you have to have an analytical basis for that. The Department has the capability to do that -- and not showing big blowup photographs -- they have a very sophisticated GIS team, that I worked with, that they could put on a map -- they could show, statewide, every acre of land in a Category I buffer and every acre of land in a riparian zone. And they could tell you, with data and maps, what the wash is. They didn't even try to do that analysis.

And I wish Senator Codey was here, because his question about the Department's consultation with the front office-- The Hearing Officer is here today -- Ms. Kopkash, the Assistant Commissioner. In the Trenton public hearing, which I attended, which she was the Hearing Officer for, she explicitly said the words -- this was *regulatory relief*. It's in the hearing transcript; I heard it. Have her come forward and say -- because it's totally germane to Codey's question as to whether this was implementing the Administration's policy. The Administration's policy is in Executive Order No. 2; regulatory relief is part of the policy regime with respect to new regulations.

The stakeholder process they talked about -- about being so open and robust. I was not allowed to participate; I knew nothing about it; I know no environmental group that endorsed it. I went and did a final review and read every single comment. There are 25 environmental groups that opposed this rule, and at least half of them opposed the notion of,

“Hey, I participated in the stakeholder process, but I didn’t sign on to any of this,” you see?

And call up the environmentalists and ask them that, because they all wrote that. And for the Department, here, to say that this originated from the bottom-up and it was pursuant to an open, and transparent, and inclusive stakeholder process is a falsehood. And I’m not going to sit here and let it go, all right? And I’ll get-- Mr. Cantor, come up and try to rebut me on that one.

So the points are very, very--

SENATOR SMITH: You made your point.

MR. WOLFE: All right.

SENATOR SMITH: And by the way, you do realize that there’s going to be a transcript.

MR. WOLFE: That’s good.

SENATOR SMITH: When the Legislature reviews this, I think no matter what side of the issue you’re on, the issues are being thoroughly vetted at this point.

MR. WOLFE: Correct.

SENATOR SMITH: And every member of the Legislature will get a copy of a transcript which they will be able to read before they take action.

MR. WOLFE: Good. My second point, and then I’ll be done on this one--

SENATOR SMITH: Sure.

MR. WOLFE: --because I only wanted to make the two points.

One is the CI buffers, which is very, very, very important. The second point is, with respect to the mitigation trading and banking scheme -- the Department asserts, in the rule proposal, that they're merely realigning the riparian zone mitigation scheme that they had and bringing it into an alignment with the wetlands mitigation scheme. But the wetlands mitigation scheme was created by an act of the Legislature in the Freshwater Wetlands Protection Act. It created the mitigation scheme, it created the mitigation bank, it created the Mitigation Council, it created standards and procedures under which mitigation could be done -- very public; and there was accountability. And there was legislative express and legislation authorization. None of the above applied to riparian zone trading. There is no legislative authority; it cannot possibly be consistent with legislative intent because there is no legislative authority.

And the transfer of development rights bank, and the freshwater wetlands, and the Highlands Act, and the Pinelands Act all include legislative authorizations for various forms of trading with respect to land credits and wetlands credits. You cannot wave a magic wand and take the wetlands scheme -- statutorily authorized; it doesn't mention riparian zones, or buffers, or streams, and water bodies throughout the entire state -- and merely say, "We're just aligning the rules." That is a legal joke; that should be offensive.

So there is no legislative authority; there cannot be legislative intent. And on that basis alone, the rule should be struck.

Thank you.

SENATOR SMITH: We appreciate your comments.

Tony Russo, Commerce and Industry Association, opposed.

Mr. Russo.

T O N Y R U S S O: Thank you, Mr. Chairman, members of the Committee.

Again, Tony Russo with the Commerce and Industry Association. We represent about 900 companies from virtually every business sector.

We're opposed to this Resolution because, as mentioned earlier, there are a lot of good things that the Department did in this rule, with streamlining how the program is administered. And just to kind of pick up on a point that was made by the previous speaker: The protections and standards haven't changed here; it's how the Department administers the oversight.

So why is that a bad thing when the Department is moving a lot of things over into Permit by Certification, or Permit by Rule, or general permit? You still have to certify and comply with the conditions. The thing that made it easier -- and I'll use site remediation as an example -- before, an LSRP -- he or she would have to stop, file for the hardship waiver or whatever that situation is in that regulated area, and the cleanup stops until the approval comes back.

So what they've done here is now made the process, again, streamlined: You know, apply for your permits, you're still on the record, you still are certified. And as far as the stakeholder process-- Even though I wasn't personally involved, I could tell you many of our members were; it was a four-year process. The Department really should be commended; that's the way the process should work -- is you deliberate these issues at

the stakeholder process. And it's a shame that a lot of the environmental groups chose not to participate.

But again, looking at-- We've talked -- we've spent a lot of time today thinking of the bad parts of this rule. It should be highlighted that there are a lot of good things with this rule, as far as streamlining the requirements.

Thank you.

SENATOR SMITH: Thank you, Mr. Russo.

Ed Potosnak, New Jersey League of Conservation Voters.

Ed.

E D P O T O S N A K: Good morning, Senator Thompson and Chairman Smith. Ed Potosnak, New Jersey League of Conservation Voters. We represent environmentally concerned citizens of New Jersey -- Republicans, Democrats, and unaffiliated voters. And we are supportive of this Resolution, and we are opposed to the rules.

I want to respond to a couple of different things and make a few different points. But to my knowledge, we've attended all the meetings we've been invited to on this, which have been -- I don't recall, but not very many. I think when you hear *stakeholders*, what it really means is the folks who are for-profit; that's the builders and other individuals who are typically applying for these kinds of permits, or waivers, or variances. And I think it's also important to know that, I think, when someone says *easier*, or *faster*, or -- I think one of the terms -- *streamlined*, that means cheaper and not always better.

New Jersey, as the most densely populated state -- we have a lot of threats. We have more Superfund sites than any state in the nation.

And we certainly know when industry or for-profit business runs amok that taxpayers -- that citizens are left cleaning up. And that's why we're really concerned about these rules and we're supportive of the Resolution. We don't need to take a step backwards.

And I think you heard it in the testimony from the Department -- the honesty in these situations that have occurred, and how they were able to come up with a solution that worked. There is a process in place, and it seems as though they're doing their job to move towards a satisfactory implementation of mitigating different, very rare circumstances.

I'm going to step back for a second. I'm a licensed contractor -- I'm not sure if you are aware of that -- and I also sit on a Planning Board in Franklin Township, in your District, in addition to being an environmentalist; and really concerned, for future generations, about their clean water supply in the state. And when a business decides whether to play by the rules or go forward to try to get an exemption from the rules, or a variance, or come up with some other solution to a problem that's outside of the rules you can easily follow, they make a decision based on economic choices. Is it worthwhile to go forward with the process that is existing, or should I just play by the rules? And generally, those rules are there to protect the water supply and to protect our land for future generations.

If they choose to go forward and get out of the rule, or have some sort of special circumstance created for them -- that's an economic choice. I think what we're saying -- and I think what the environmental community is saying in supporting this Resolution -- is there really are good rules in a state that needs them. And to make it easier to not follow them is

going to end up destroying some of the great opportunity that we have to protect clean water.

And as someone who has an opportunity to see variances come before us and is involved in that process, I will say I would like it to be a high threshold when we're not following the rules. And that streamlining, in this case, is not better. It will end up hurting our families.

Thank you.

SENATOR SMITH: Thank you, Ed.

Mike Egenton, New Jersey State Chamber of Commerce, in opposition.

M I C H A E L A. E G E N T O N: Thank you, Chairman. Michael Egenton, Senior Vice President, New Jersey State Chamber of Commerce.

I just handed the Committee our regulatory comments that we provided to the DEP. I won't read them verbatim, Chairman.

Essentially I want to reiterate what's been said here today by the regulated community. Before I do that, I want to commend the DEP -- Ray, Ginger, and Vince -- for the open process, the stakeholder process. We believe that that process worked; it involved expert stakeholders. We had a representative, on behalf of the Chamber, who was engaged with the Department.

In a nutshell, Chairman, in our comments -- as you can review -- no standards were diminished. We believe it provides predictability and brings about clarification, and it makes the permit process less cumbersome and gives the regulated community a sense of what to expect and when.

One thing I'll add, Chairman: The State Chamber, along with our friends in the other Chambers, as well as the other trade associations,

last month held an unprecedented business summit in Atlantic City; over 500 business people attended.

Just the one point I want to make on the bill -- I know you're looking at me -- the issues that permeated at that business summit from the 500 attendees were taxes, quality workforce, transportation, and regulatory reform. I think this is an example of an open process that we had stakeholders involved. It worked out well. It's an ongoing process, as you've heard from the Department today, so we commend them for the work that they've done and look forward to continuing that dialogue and discussion with them, Chairman.

Thank you.

SENATOR SMITH: Thank you for your comments.

So all of the remaining slips-- There are no more opposition witnesses. And you'll notice that there's a method to our madness; our madness is pro-con-pro-con-pro-con, all right? Everything else that's left is in favor of the Resolution. And what I'd like to do is ask everybody who has signed up to say what they wanted to say -- but to say it very, very succinctly, all right? I think we have fleshed out a lot -- most of the issues on this.

Amy Hansen, New Jersey Conservation Foundation, in favor.

And after Amy will be Christine O'Rourke.

A M Y H A N S E N: Hello, Chairman and Committee member Thompson.

I'm Amy Hansen with New Jersey Conservation Foundation, and I particularly want to point to the proposal on wildlife passages to allow new barriers, such as a bridge or culvert.

The language in the proposal does not provide sufficient protection for rare species. And the single word *species* should be replaced in every instance by *overwhelming majority of individuals within a population of a rare species that could be expected to encounter the proposed barrier*.

We are concerned, at New Jersey Conservation Foundation, that, say, a few turtles, or a turtle or a snake would be seen using a passage to avoid the new barrier. And that then, if one or two of these individuals are able to pass through the barrier, that folks will think that they don't need to go further with Land Use requirements. And threats to the entire population of the species, however, can still exist.

SENATOR SMITH: Amy, did you get those comments in as part of the--

MS. HANSEN: To the DEP? Yes.

SENATOR SMITH: So they have them.

MS. HANSEN: Yes, and I have copies that I will provide you with.

SENATOR SMITH: Okay.

MS. HANSEN: So, just to reiterate: A passage should never alleviate the need for land acquisition and mitigation to offset potentially enormous negative impacts on the connectivity of subpopulations. And passage structures should not be used to justify new development and habitat fragmentation.

SENATOR SMITH: Thank you.

Christine O'Rourke; and after Christine will be Elliott Ruga. Christine is from the League of Women Voters.

CHRISTINE O'ROURKE: Right.

My name is Christine O'Rourke; I'm speaking on behalf of the League of Women Voters of Monmouth County. The League is a nonpartisan, nonprofit, public interest organization with a long-standing position in support of protecting our drinking water.

Monmouth County is a critical water supply area -- number one in New Jersey -- due to serious depletion of the sole source aquifer we rely on. When the Manasquan Reservoir came online in 1990, our water purveyors had to severely restrict their take from aquifers and rely more on surface water supplies.

Much development and increasingly fragile areas of water supply watershed has taken place since the Water Supply Master Plan of 1996. This should be updated, as we can do intelligent planning and rulemaking.

The increase in imperviousness and the development of natural flood plain areas has led to badly eroded stream corridors for our Category I streams supplying our reservoirs. Our swimming river reservoir serving northern and eastern Monmouth County suffers from siltation and eutrophication. Every storm erodes the gluconic soils of the watershed and carries silts and clays that encourage the growth of bacteria like *E. coli* to the reservoir.

SENATOR SMITH: Christine, I don't want to be a meanie (laughter), but you have something that you're reading from.

MS. O'ROURKE: I am.

SENATOR SMITH: You can give it to us, and we'll make copies. The point of your testimony is that you feel very strongly that these

rules are not helpful to the environment, and you're pointing out the examples in Monmouth County.

MS. O'ROURKE: Yes.

SENATOR SMITH: Okay. If you would give us a copy of that, I promise we'll read it, all right?

MS. O'ROURKE: Thank you.

SENATOR SMITH: All right. Elliott Ruga, New Jersey Highlands Coalition.

ELLIOTT RUGA: Thank you, Mr. Chairman.

We support SCR-180 because we believe it is the absolutely correct response of this Legislature to these proposed rules.

On July 31, we submitted a comment letter to the DEP. I'm not going to read from it, but I'd like to submit it--

SENATOR SMITH: As evidence? Sure.

MR. RUGA: --as evidence.

But I would like to talk about one area in particular that's been controversial this morning, and very much affects the Highlands. Currently, tributaries to a CI stream that drain an area of under 50 acres -- if they are shown on the USGS quadrangle maps or on the county soil surveys, they are regulated. This will delete that protection.

SENATOR SMITH: Stop.

Is that true, Vince?

MR. MAZZEI: (off mike) It will take the buffer away from those features unless it's already regulated. In other words, some of the features-- I'm sorry.

SENATOR SMITH: Come on up to the mike; yes, that would be great.

MR. MAZZEI: As we mentioned before, the Special Water Resource Protection Area applies to mapped features; the riparian zone applies to features that are on the ground. So to the extent where a feature is mapped but it's not picked up by the riparian zone, because it doesn't have a definable bed and bank or there is some other reason -- then those features would not have a 300-foot buffer.

SENATOR SMITH: Thank you.

MR. RUGA: And I would like to discuss why this is a problem in the Highlands.

SENATOR SMITH: Go ahead.

MR. RUGA: The Highlands -- to use a poetic turn of phrase -- are the gathering grounds of the headwaters that, further downstream, grow into the defined streams and rivers that become some of the state's most important resources. The uppermost--

SENATOR SMITH: And you're saying this to me because I don't know this? (laughter)

MR. RUGA: You know this well, Senator. You could sing along with me. (laughter)

SENATOR SMITH: Yes.

MR. RUGA: The uppermost origins of these river systems are the swales and the intermittent streams that, under the proposed deletion, would no longer be regulated. In the western Highlands, where limestone is the predominant bedrock, important tributaries to Category I water bodies are easily misidentified because only a small segment of a water body may

actually rise to the surface. And when miscategorized as an isolated wetland feature, it loses the protection the SWRPA rule currently enforces.

SENATOR SMITH: Got it.

MR. RUGA: The Department justifies the deletion of the SWRPA buffers due to confusion between the list of regulated waters under Flood Hazard Area Control Act and the regulated water under the Department's Surface Water Quality Standards. These are buffer regulations promulgated to protect different kinds of resources and for different reasons. Flood Hazard Area riparian buffer standards were developed primarily to protect life and property during flood events; whereas, buffers under SWRPA were developed primarily to protect water quality.

Having parallel sets of regulations for functionally different riparian buffers is a rather simple concept. Any confusion this causes is either self-inflicted or overstated -- and certainly not justification for the deletion of these buffers. More streamlined regulatory language and better cross-referencing would clear up any lingering confusion by the persistently challenged.

SENATOR SMITH: Got it.

Anything else outside (indiscernible)?

MR. RUGA: Yes.

I'd like to comment on these robust stakeholder meetings.

In DEP's summary of the rule proposal, they mentioned the New Jersey Highlands Coalition as a consulted stakeholder. We were never aware of these meetings, nor did we participate.

You also had a question, Senator, about the areas that could be used to mitigate for development in the Flood Hazard Area. They can be proposed in the same Watershed Management Area or an adjacent one. Watershed Management Areas are roughly the size of counties in New Jersey. So I could mitigate for development in a Flood Hazard Area in Mount Olive, and plant a few trees in Clifton -- and would have met the bar.

And I just want to mention one fact -- that, according to FEMA, between January 1, 1978 through July 31, 2015, there were 188,459 flood insurance claims in New Jersey, representing \$5,671,284,597.41. New Jersey, in this period of time, represents the third-highest amount of these claims and total property damage. We need to be more aggressive addressing flooding in this state -- not weakening the regulations.

Thank you.

SENATOR SMITH: Thank you for your comments.

Stacy McCormack, American Littoral Society.

S T A C Y M c C O R M A C K: Thank you, Senator Smith. Stacy McCormack, Director of Government Affairs, American Littoral Society.

I just want to make a few comments -- that the American Littoral Society did participate in the stakeholder meetings that DEP held. But I will also add that we have very serious concerns about the process for the stakeholder meetings, as was mentioned before: invitation only. And I will also add that we commented extensively on all of these rules and participated in the stakeholder meetings, and also participated in all of the post-Sandy hearings.

So we're really disappointed that none of our input was considered. The rules do not reflect our concerns about environmental issues, as well as post-Sandy recovery in terms of moving development away from vulnerable places. These rules roll back environmental issues, as well as put vulnerable people -- put people back into harm's way after the storm.

I think that is all I have, but I also would like to submit specific comments to you on the rules, where we have issues that I said we submitted to the Department that are not reflected in these current rules.

SENATOR SMITH: We appreciate -- we need you to submit that, and anything you wanted to add into the record in the next seven days.

MS. McCORMACK: Okay.

SENATOR SMITH: Get it to Judy.

Jennifer Coffey, ANJEC.

J E N N I F E R C O F F E Y: Good afternoon. Jennifer Coffey, Executive Director, from ANJEC -- the Association of New Jersey Environmental Commissions.

And for the record, I also spent an inordinate amount of time at DEP stakeholder meetings on the Flood Hazard rules. I did not receive an invitation to their final Flood Hazard stakeholder meeting because, despite changing my e-mail address from switching jobs more than a year-and-a-half ago, they sent it to the wrong address. And Ms. Kopkash and I had a conversation about that.

I want to focus -- specifically, given the time -- on the riparian buffers. These rules, as you have heard, do a lot. They propose to do a lot in the 936 pages that have been published. The Flood Hazard rules are

meant to protect public health, safety, and the environment. But the rules, as proposed, do create what I see as enormous rollbacks. These rules have layers within themselves in terms of protection with the SWRPA -- the Special Water Resource Protection Area -- and the riparian buffers. And they also relate to the Stormwater Rules, as we have heard.

The riparian buffer protections in the old rules provide some specific and tightly controlled activities within buffers. The new rules, by right, in Table 11.2, allow for a quarter-acre of disturbance of riparian vegetation. That's a quarter of a football field. So from the end zone to the 25-yard-line -- all the way across -- you can clear that, by right, of riparian vegetation.

That's inappropriate in a state when we are increasingly experiencing dramatic flood events to property, health, and safety. We cannot afford to allow by-right clearing of riparian vegetation.

So that's an objection that we have, and we've written to the Department about that.

I would also like to register as one of the "someones" who has spoken to the EPA, who has spoken to the Legislature, who has spoken to mayors -- because we are extremely concerned about these regulations and how they interrelate with the Clean Water Act, as well as how they relate down the chain to riparian buffer ordinances that are enacted at the local level that reflect the stormwater rules and the Flood Hazard rules as they are written. This rule opens up more development opportunities in our riparian buffers. So we have more clearing and we have more development opportunities within the riparian buffers.

And, given the time, I want to register that that is the point that I wanted to focus on today. I would welcome the opportunity to continue this discussion. As I've said, there are 936 pages of regulations; they propose to do an awful lot. And so I'm happy to continue this discussion at any point that you see fit.

SENATOR SMITH: Thank you for your comments.

MS. COFFEY: Thank you, Senator.

SENATOR SMITH: Diane Burke, from Quench; in favor.

D I A N E B U R K E: Good morning. Thank you for giving me the opportunity to speak.

My name is Diane Burke, and I am from a small grassroots group called Quench, in support of the Resolution.

And it's my understanding that the proposed DEP revision makes not a single mention of climate change, despite suggesting that they include lessons learned from Sandy.

There is no mention of global warming, sea level rise, or New Jersey's unique topography -- which is simultaneously experiencing gradual sinking.

There is no mention of climate change within a state that needs to prepare for an increase of extreme storm events, precipitation, and surges; and the aftermath impacts, including surge waters contaminated by biological and chemical pollutants, which will create added environmental and public health challenges.

Effective management of water resources demands a holistic approach, and this approach includes recognition that the challenges before us today require a review of the current science of climate change to best

anticipate and plan effectively for the impacts of this most essential resource in New Jersey.

What we need to do is strengthen and extend these protections, unlike the current proposals which repeal Special Water Resource Protection Areas, and establish a system that masquerades as mitigation while bartering away protections. It is a most curious oversight for a mandate designed to minimize damage.

SENATOR SMITH: Thank you.

MS. BURKE: Thank you.

SENATOR SMITH: Doug O'Malley, Environment New Jersey.

After Doug will be Andrea Bonette.

Doug -- emphasis on succinct.

DOUG O'MALLEY: Short and sweet.

SENATOR SMITH: Yes, please.

MR. O'MALLEY: That being said, Mr. Chairman, I wanted to thank you -- not only for sponsoring this legislation, but for having a hearing that goes this long. Because I cannot imagine an issue that is so important.

I want to-- There is obviously a lot to comment on; I can't touch on all of it. I did want to make a couple of global comments before I get into some specifics. And I specifically wanted to talk about the history around these protections, around Category 1.

First off, these rules, when they were proposed, had tremendous public support behind them, both during the gubernatorial campaign -- leading up to that, there were more than 35,000 citizens who commented --

and then during the rule proposal itself; between 2002 and 2004, you had more than 40,000 members of the public commenting.

More than 14 years ago, when these Category 1 rules were initially proposed, one of the strongest opponents was Nancy Wittenberg, who was the lobbyist, at that time, from the New Jersey Builders Association. The New Jersey Builders Association subsequently sued DEP in State Court on this regulation -- both in 2003 and then later. Those legal suits lost, and I think what we see here with these rules is a continuation of that battle. Because, clearly, we have a Trojan horse situation where the Category 1 buffers are being replaced with riparian buffers.

I also want to mention, too, that Commissioner Martin has very publicly stated to the Commerce and Industry Association that this is part of a larger process of not only overhauling these rules, but moving toward a general permit nirvana. We have seen that today with the announcement from NJDEP that they're overhauling and repealing Water Quality Management Rules, as well as the Highlands Rules. This is part of a larger agenda.

I understand that you understand that, Mr. Chairman. But it's critical that this SCR continue from the Senate Environment Committee hearing.

Just some very, kind of, specific points regarding some of the testimony that we heard today.

Specifically with the riparian buffers themselves -- there was a 2012 document, that was on DEP's website, talking about the scientific analysis of antidegradation. The Surface Water Quality Standards -- to

answer your question, Mr. Chairman, starting off this hearing -- this is clearly a violation of the Clean Water Act, and clearly weakens those antidegradation protections. And this is why EPA Region 2 is getting involved and should continue to get involved, because those protections, put forward under Governor Kean, talked about exceptional ecological significance. They also talked about drinking water. And so that analysis that we saw in those rules in 2003 and in that analysis in 2012 is not seen in DEP's testimony. We have a clear-- Where is the scientific analysis that measures up to the analysis that was brought in more than a decade ago, and was cited in that 2012 document?

I also want to point to a specific example around the Category I protections more than a decade ago regarding, in Hunterdon County, the fight over Milligan Farms and Windy Acres. It would be helpful to have analysis of whether this proposal would still block that development process, and more broadly more-- Because obviously this proposal is more than just one development. The analysis and the mapping of what the current antidegradation standards in the Category I and SWRPA look like versus what's being proposed in the riparian buffers seems like it should be a no-brainer -- that NJDEP has that analysis. They don't, and that is intentional because this is a weakening, as has been stated by previous testifiers.

I just want to wrap up my testimony here with three additional points. One, we have not talked a lot about the Coastal Zone Rules. Obviously there are tremendous concerns with those. I won't get into that right now. Two, let it be noted that we've heard a lot from representatives here. Some of the citizens, I know -- there are others who want to comment

on the ability under these riparian buffers to allow pipelines to be infiltrating that riparian buffer. That is a critical point because there are 31 Category 1 streams that are in the line of the PennEast Pipeline. It is no accident, in my mind, that NJDEP is putting forward these regulations at the same moment that PennEast is trying to build their pipeline and traverse 31 C1 streams.

In addition, the testimony that we heard from Bill Wolfe -- he helped to craft these rules. He is obviously not employed by DEP right now, but his analysis is pristine and should be -- and members of the Committee should look at the work he's put on his website, *wolfenotes.com*.

And then, finally, the reality that you have a mitigation bank that's created as part of these rules -- this strikes me as-- Even if it's under the same Watershed Management Area, essentially allowing developers to be able to flood someone else's property -- that should not be allowed under these rules. Just the reality of having a mitigation bank strikes me as having a need to have a legislative -- not only legislative intent; but legislation itself. It's another clear example of how these regulations are beyond the pale.

Thank you, Mr. Chairman.

SENATOR SMITH: And that was the short version. (laughter)

MR. O'MALLEY: Exactly.

SENATOR SMITH: Andrea Bonette (indicating pronunciation). Am I saying it correctly, Andrea?

A N D R E A B O N E T T E: Thank you for asking; Bonette (indicating pronunciation), but you're close enough.

SENATOR SMITH: Bonette.

MS. BONETTE: And I would like to say this is my favorite Committee. With all the dry testimony that goes through all these committees, this one is occasionally brightened by all-too-brief moments of levity, and I appreciate that very much.

Ninety seconds, please.

I have lived in the Sourlands for 40 years and have been very deeply involved, as a municipal elected official and as a Trustee of the Sourland Conservancy, in our efforts to protect the largest contiguous forest in central New Jersey.

We have, in the Sourlands, many headwater streams which flow into the Delaware or Raritan rivers. I am here in support of SCR-180 because I can see already one huge imminent threat to the many Sourland headwater streams, not to mention dozens of others. The planned PennEast Pipeline is routed across not only the Delaware River, but 67 streams -- 31 of them Category I waters -- and also 15,000 feet of wetlands.

The PennEast will exploit every possible shortcut to save money on construction. And just as an example, if the rules are adopted, PennEast will have a wonderful shortcut for their stream crossings. Under the new rule, a pipeline will be able to only -- get away with disturbing -- limiting disturbance only to 25 feet; whereas the old rule would protect the buffer zone with 150 feet on each side of the stream.

I am here because I'm especially worried about the potential damage that 118-mile pipeline will do if it is approved next year by FERC. PennEast has demonstrated repeatedly in their filings that they are making vague promises, couching weasel words like *mitigate* and *minimize impact*, to the extent possible, to effects on the environment.

This is just one example of the looming threats to our state's water quality. We are all stakeholders. Please do everything you can to squash this dreadful DEP effort.

Thank you.

SENATOR SMITH: Thank you for your comments.

Fairfax Hunter, followed by Dave Pringle.

F A I R F A X H U N T E R: Hello. I'm just here to support this Resolution.

As a citizen, I consider myself a stakeholder. My main concern is for the CI streams and their riparian buffers that have been demonstrated as necessary by science. The 63 Permits by Rule would be a developer's open season on these streams without oversight or consideration of cumulative impacts. The exemptions and expansion of disturbance in riparian zones will not steer transmission towers or pipelines to avoid these areas and minimize their impacts, and the public interest is too often left to the discretion of the DEP Commissioner and without adequate consultation with the public.

But I'm basically just very in favor of this resolution.

Thank you.

SENATOR SMITH: Thank you for taking the time and trouble to come down and give us your opinion.

Dave Pringle, Clean Water Action; followed by Britta Wenzel, who is our last witness.

D A V I D P R I N G L E: Thank you, Mr. Chairman. I'll be brief. I just want to highlight a couple of things that I don't think have been said quite enough and/or counter some of the ridiculousness I've heard.

I would like to associate myself, especially, with the testimony of Bill Wolfe, Jeff Tittel, and Doug O'Malley.

Everybody wants streamlining, but this proposal is streamlining and weakening when we need streamlining and strengthening -- or, at the very least, not making things worse. One person's burden is another person's critical protection. This rule, if it moves forward, will mean somebody gets to build a house and dry up somebody else's well; somebody gets to build a house and contaminate somebody else's drinking water; somebody gets to build a house and flood somebody else's property. So it's all about balance, and this rule goes too far.

I wish Senator Codey was here to hear me; I think it was a rhetorical question. I don't think anybody who is serious thinks that this isn't coming from the front office. There is zero separation between Ray Cantor, Bob Martin, and the Governor's Office. If you polled-- If they had an opportunity to speak freely without losing their job, the overwhelming majority--

SENATOR SMITH: Dave, Dave, Dave. You are off the Bill. Let's try to keep this not personal; let's talk about the legislation.

MR. PRINGLE: This isn't personal. We heard testimony today from DEP, and I have folks-- Jobs are on the line if they tell the truth. And the overwhelming majority of rank-and-file DEP folks, on this rule, would support the environmental community's position -- not Mr. Cantor's.

The stakeholder process is a joke. The vast majority of us, including my organization, were specifically excluded from this one and the vast majority of others. We've asked repeatedly, collectively, to participate;

and, unfortunately, the environmental community -- many of us said if we can't -- if the environmental community can't decide who our representatives should be, then none of us should participate. Unfortunately, there wasn't unanimity and, therefore, they created an opening. And it's all well and good to say that folks were in the room, but they weren't in the room -- they weren't listened to, and a lot of that testimony you're hearing today is misleading at best.

The one thing that hasn't been talked about -- how these rules -- how this weakens existing protections. The Permits by Rule, the Permits by Certificate, the general permits, which are significantly increasing there, means much less enforcement. DEP, as you pointed out, already is a shell of its former self. But these rules are basically saying the developer comes in and says, "Trust us." When you're having your house built you don't just trust a builder, you make sure they have insurance. You have municipal code officials to make sure that the plumbers and the electricians and everybody else is doing right. "There's no reason that we shouldn't be trusting builders to do the right thing on their own, scout's honor." We have too many stories to know why that is foolhardy.

We should be playing to the highest common denominator; this rule plays to the lowest. And this really is a reality check. This Legislature -- especially with the Highlands and many of the rules that the Legislature has supported over the last 15 years -- has really put New Jersey in a better spot. And this rule is part of a concerted effort -- and this is only about round two or three; it's getting more serious. And Doug mentioned another rule proposal that just got proposed today, and it is even worse.

So this is really a gut-check for the Legislature. Are you going to cater to the most anti-environmental Governor in modern history, or are you going to finally, effectively, say “no,” because you need a simple majority? Tell this Governor “no.” Our water is at risk.

Thank you.

SENATOR SMITH: Thank you, Mr. Pringle.

Britta Forsberg-Wenzel from Save Barnegat Bay; in favor.
Today, you’re the anchor lady.

BRITTA FORSBERG - WENZEL: I guess I’ll take it.

Britta Wenzel, Save Barnet Bay.

Thank you, Mr. Chairman, members of the Committee. I really am here just to--

SENATOR SMITH: Push the button (referring to PA microphone). There you go.

MS. WENZEL: Chairman, members of the Committee, thank you for having us today and sponsoring SCR-180. Save Barnegat Bay is in favor of this Resolution.

Just for the record -- generally, processes yield good results. And Save Barnegat Bay is a 45-year-old organization; the Barnegat Bay is the largest body of water in the State of New Jersey -- and we were not invited to participate in some stakeholder process.

We also have the Barnegat Bay Partnership, which is a federally recognized national estuary program. We have a Science and Technical Advisory Committee. What strikes me as problematic in these rules proposals is the lack of science analysis and mapping, pointed out by Mike Pisauo and Doug O’Malley; also the reduction of protective measures,

pointed out by Bill Wolfe. Without repeating all of their comments, we are in support of those things.

The Barnegat Bay Watershed, Ocean County's Wastewater Management Plan projects some 18,000 additional acres of development. What Barnegat Bay needs is more clean water coming into the Bay from the creeks, streams, and rivers. And the homes that are there now, post-Sandy -- I happen to live in Lavallette -- are bigger and there are more homes when you come over the bridge.

We cannot afford that kind of development. Barnegat Bay will not survive. These measures are not protective or restorative of water quality in the State of New Jersey, and we support the Resolution.

SENATOR SMITH: Thank you.

And that concludes all the witnesses.

I think we have a very good record for the Legislature to look at when they consider this measure.

Senator Greenstein, I hope, will move the rest of the Resolution.

SENATOR LINDA R. GREENSTEIN (Vice Chair): I will move it.

SENATOR SMITH: And I will be happy to second it.

And if you would take a roll call vote.

MS. HOROWITZ: On Senate Concurrent Resolution 180, Senator Thompson.

SENATOR THOMPSON: This Concurrent Resolution determines that the DEP proposal to revise Flood Hazard Control Act rules,

Coastal Zone Management rules, and Stormwater Management rules is inconsistent with legislative intent.

We've heard a tremendous amount of testimony today from individuals opposing the proposed regulations, and testimony in support of the regulations. I don't read the Resolution saying, "We're voting on the regulations." We're voting on whether or not the regulations comply with legislative intent. There was very little said today about what was the intent of the legislation, and how does this conflict with the intent of the legislation. Does it, or does it not? People have said they are very discontented with a lot of things in the regulations, and some have said, "Yes, they're good." But very little has been said about whether or not it complies with the intent of the regulations. I didn't hear anything that said it doesn't.

So therefore, I vote "no."

MS. HOROWITZ: Senator Codey left a "yes" vote.

Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: I'm going to respectfully disagree with my good friend, Senator Thompson. I thought the record was loaded with comments from our witnesses today about legislative intent -- specifically, citing statutes that have been passed by the Legislature; very clear indications of where the Legislature in the past had been; concerns about whether or not we are in violation of our delegated authority from the Federal government. It is replete throughout the record; there are some, I think, very serious issues with regard to this.

I wasn't particularly thrilled to hear the comments about a stakeholder process that sounded seriously flawed. You really need to get people in the room talking about the issues, so you get the best possible regulations -- or at least the best possible proposal.

And that being said, I think the DEP put a lot of time and effort into this; I know you're trying to deal with the issues that you have internally. But in the bigger picture, water-- You know, we're not-- We have our own water issues, but you look at the rest of the country -- the West, in particular, and the water issues that they are going through, I think when I look at that section of the country, I think it's because they made a lot of serious mistakes. And in the case of New Jersey, we're holding our own with regard to water quality and water quantity; but I'm not quite sure, the way that these rules have been designed, whether this is in the best interest of the water in the State of New Jersey.

So I'm going to vote to release; I feel very good about the record that we've developed today. And I think it will allow the rest of the Legislature to hear from the experts and figure this out for themselves.

So with that being said, this hearing is now over. We now have hearing number two, with which we have nine minutes (laughter) because we were so interested in this.

The second hearing is on Liberty State Park. We received a-- I have a little hearsay on this.

By the way, if you're leaving, leave quickly and quietly.

And if you're staying-- Just to have an opening comment, we have an e-mail from Jeff Climpson saying that "Ray Cantor called me and said that Commissioner Martin respectfully declined to speak at the

hearing.” You need to know that we did invite him; we invited him in writing. We did respectfully invite the Commissioner to talk about the development of Liberty State Park. In any case, Ray reiterated the DEP’s statements made previously to the press that there’s no plan to develop the Park; they’re just gathering information. If they do eventually do a plan, the Commissioner will be glad to speak to the Committee about it.

So quite frankly, that’s the position of the DEP -- at least, by hearsay.

Now, we’ve had a lot of people -- well, it’s not as many. We have six people signed up, and we don’t have much to talk about. But I would like you to try to get on record. If you take a minute each to tell us your position -- because we have to be out of here at 1 o’clock; there’s another Committee.

Sam Pesin, Friends of Liberty State Park.

Sam.

And I am sorry we’re short-shrifting you. I hope you don’t feel abused. You saw the importance of the prior hearing, too.

S A M P E S I N: I did, Senator. I would like at least a couple of minutes. I’m representing 700 members, and the people and groups around the state, for almost 40 years, who express themselves on the Park. I think it’s great that the Park is on the agenda today, and I will rush through my edited version.

Liberty Park’s future is threatened by privatization and commercialization plans from Governor Christie’s top privatizer, Commissioner Martin, and his privatization czar, Lou Valente. The DEP paid for the New Jersey Future report, and I praise you and this Committee

for trying to obtain it on behalf of the public's right, to have it for the public discussion of the Park's future.

The Governor's "Sustainable Parks" goal of further monetizing, privatizing, commercializing Liberty Park is wrong-headed. That our priceless open space is wasted space to give away to developers and long-term leases -- and as you know, the Governor insisted on language to get the Sports Exposition Authority involved. It's all wrong-headed.

The Park is a very special public space and a national treasure. Former Majority Leader Bernard Kenny once said that after the Gettysburg Battlefield, Liberty Park is the next most-sacred place in America. And Senator Kenny stated to Governor Whitman, during a previous battle, that, "Liberty Park should be a symbol of the true values of our nation, now and for decades to come." And Senator Kenny added, "Those who ensure that Liberty Park's open space is forever there will be recognized as strong and caring leaders."

So I urge all of you to be such leaders, and I strongly oppose the Governor's coming plans. There is no better neighbor, or tribute to Lady Liberty and Ellis Island, than a free park where people of all colors, cultures, and religions can enjoy themselves.

SENATOR SMITH: Sam, let me make one suggestion.

MR. PESIN: Sure.

SENATOR SMITH: First off, your comments are right on topic. What I would suggest -- we're going to keep the record open on this issue for another seven days. If you could send us a letter, we'll include that in the official record of this discussion. So that would be helpful.

MR. PESIN: Right. Let me just take one more minute, if I could.

SENATOR SMITH: Literally, one.

MR. PESIN: Okay.

SENATOR SMITH: We're going to be chased out of here. The cops are coming and chasing us out.

MR. PESIN: I understand; okay.

A key point: For the Park's 39 years, overwhelmingly the majority has always wanted a free park, not a commercialized one. This Park already makes \$1.5 million a year from the ferry concession, and the marina, and the two restaurants. Parks should not be paying for themselves; they serve the public good.

There are normal ways -- legislative budget allotments, corporate business taxes, and other ways -- that the Park can bring in money.

And lastly, I would say that Liberty Park is New Jersey's Park; it's America's Park; and it's the people's park. And the Park is a beautiful green space, and it must be left for future generations.

SENATOR SMITH: Thank you, Sam.

MR. PESIN: Thank you.

SENATOR SMITH: Howard Moskowitz.

Mr. Moskowitz.

H O W A R D M O S K O W I T Z, Esq.: Mr. Chairman, Senator Thompson. I'll be very brief.

I am co-counsel in the OPRA litigation that is seeking the release of the New Jersey--

SENATOR SMITH: Good luck.

MR. MOSKOWITZ: Thank you.

I'd just like to comment, very briefly, on that statement you read from the DEP representative.

SENATOR SMITH: Yes.

MR. MOSKOWITZ: It would be nice if DEP was a little bit more straight with us. The contract that DEP entered into with New Jersey Future was for a report on how to privatize Liberty State Park. It's stated right there. So for DEP to say, "We have no plans," is just lacking in credibility.

I've submitted to you some documents with regard to whether or not the report is a final report. My letter attaches the three checks to New Jersey Future, totaling \$120,000. In other words, payment has been made in full, was six months ago. This report was submitted close to a year ago. And the payment voucher submitted by New Jersey Future -- the most important one being the third one -- on the next-to-last page of the attachments, in which Mr. Kasabach, the Executive Director of New Jersey Future, describes the item being -- sought to be paid for as a "draft final report." That was written by an individual who was well familiar with the Open Public Records Act and its exemption for draft documents.

This is a final report. DEP should be straight with the public.

Let me just say one other thing. The most important legislative step that this Legislature can take right now is to repeal the proviso clause in the so-called *Liberty State Park provision*, N.J.S.A 10 8:5-19(m) (*sic*), effective July 6, which specifically exempts Liberty State Park development

projects from any and all competitive or public bidding requirements. That is the law today. That should not be the law a week from now.

I would just say that the legislation that the Governor signed on July 6 also repeals the general applicable public bidding requirement for the Meadowlands District -- which is similarly outrageous.

SENATOR SMITH: Do you have any idea when that contract was signed?

MR. MOSKOWITZ: May 30, 2014, by Mr. Kasabach; and June 2 by the Commissioner himself, on behalf of DEP.

SENATOR SMITH: June 2--

MR. MOSKOWITZ: June 2, 2014.

And it required the reports to be submitted by November 1. I have no reason to think that it was not timely submitted, Senator; none whatsoever. The fact that Mr. Kasabach waited until February 5 to submit his final voucher is neither here nor there. It was--

SENATOR SMITH: Is it your position, Mr. Moskowitz, that they could have avoided competitive bidding back in 2014, or only under this new law?

MR. MOSKOWITZ: Oh, in terms of LSP development projects? Oh, the bill that the Governor signed on February--

SENATOR SMITH: I'm not talking about the project; I'm talking about the contract of New Jersey Future to put together a plan. Was that part--

MR. MOSKOWITZ: Arguably, it's a professional services contract, which is exempt. You know, I don't think -- I could make the other argument that it stretches it, but I'm not--

SENATOR SMITH: Just so you know, we have -- one of the things that was sent into us was an e-mail from Frank Gallagher.

MR. MOSKOWITZ: Yes; he would have loved to have been here, Senator.

SENATOR SMITH: And it says, "Honorable Senators, there are two issues I'd like to bring up. As a former Assistant Director for the State Park Service, it appears that the awarding of a noncompetitive contract to New Jersey Future, disguised as a grant, is a clear violation of the procurement process." At least, that's his opinion. We'll put this in the record as well -- this e-mail.

MR. MOSKOWITZ: Even if it were, at this point, it's neither here nor there, frankly. The contract was let, the report was done, and it's a public record that ought to be released.

SENATOR SMITH: Thank you, sir.

MR. MOSKOWITZ: Thank you.

SENATOR SMITH: Dave Pringle, opposed to privatization and commercialization. Does that sum it up, Dave?

MR. PRINGLE: (off mike) (indiscernible)

SENATOR SMITH: You can't help yourself; I know. Go ahead, quick. We're literally being pushed out.

MR. PRINGLE: Thirty seconds.

SENATOR SMITH: The other members want to come in.

MR. PRINGLE: I just find it especially outrageous that this report is out there and we don't have access to it. I think you should ask New Jersey Future to testify, and I hope that's someone would bring a lawsuit to expose the report.

SENATOR SMITH: Thank you for your comments.

Ed Potosnak. And by the way, we did just-- FYI, not only did we ask the Commissioner to come in, we did ask New Jersey Future to come in as well.

MR. POTOSNAK: (off mike) No need to testify. Just that we're opposed--

SENATOR SMITH: You're affiliating yourself with earlier testimony.

MR. POTOSNAK: We're opposed to the commercialization.

SENATOR SMITH: All right. Jeff Tittel, who is not here, but I pretty much can guess his remarks -- namely, that he would like to know more about the proposed plans.

Bill Wolfe, no need to testify; and Jamie Zacharia, opposed to the privatization of Liberty State Park.

Jamie, do you feel the need to get up?

JAMIE ZACHARIA: (off mike) (Indiscernible)

SENATOR SMITH: All right, listen. We will know--

Oh, we have the Baykeeper, Greg--

GREG REMAUD: I brought props.

SENATOR SMITH: --who we invited.

MR. REMAUD: Thank you.

SENATOR SMITH: All right, Greg.

MR. REMAUD: Hi. Greg Remaud, Deputy Director, New York/New Jersey--

SENATOR SMITH: If those are your remarks in that box, we're in trouble. (laughter)

MR. REMAUD: No. They are -- what these are in the box are from past-- We've had this fight about commercialization, as anyone in New Jersey knows, dozens of times. These commercialization plans that's being brought by Lou Valente and the Christie Administration has already been beaten back dozens of times.

What's in this box are 5,000 postcards from citizens in New Jersey who've written things like, "Keep the Park green," "No more building," "We want the Park open," "We don't want commercialization." Those are all 5,000 comments that essentially say that.

SENATOR SMITH: Did you get any comments saying, "We're in favor of commercialization"?

MR. REMAUD: There were a couple that said-- There were; there were a few, but it was a majority -- I forget what the count was, but it was less than 1 percent.

SENATOR SMITH: Okay.

MR. REMAUD: I have a hat here; I think it's disgusting that New Jersey Future and Pete Kasabach is not here to defend his grant. We talked to him multiple times. He assured us that this was going to be -- the development was going to be limited to the Central Railroad Terminal, and as that evolved to the whole Park--

The reason I have that hat -- the reason I have the hat is because the workers aren't being represented.

SENATOR SMITH: Yes, I know. But we might have some ethics rules here.

MR. REMAUD: I'm not giving it to anybody. (laughter)

UNIDENTIFIED MEMBER OF AUDIENCE: It's for your perusal.

SENATOR SMITH: It's been perused.

MR. REMAUD: Thanks.

So the-- I mean, the real problem -- and I'll leave it at this, because of the testimony -- I appreciate Senator Weinberg (*sic*) and everybody being here. And I hope Senator Thompson doesn't hold this against us for delaying lunch (laughter) or anything else -- but thank you.

The real crux of it is the backwards policy. When we give money to developers as subsidies -- and in some cases it's well-deserved, but in other cases it's not, like the mall up in the Meadowlands. It makes no sense to give subsidies to private development and then come and call on the parks and pay somebody like Lou Valente, a private -- Assistant Commissioner who is not here, who answers only to Commissioner Martin. He's not here, he doesn't -- we haven't heard anything from him, but he's making a big salary. And the point being is, why should parks have to pay for themselves while we're subsidizing other projects? And that Liberty State Park, time and time again, people have come out and argued against commercialization. The public record is there; it will be there again.

And we thank you all very much for your time.

SENATOR SMITH: We appreciate it, and this could be a topic for future hearings -- especially if we get to find out what's actually in that report.

Thank you all for coming today.

The meeting is adjourned.

(MEETING CONCLUDED)