

PUBLIC HEARING

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1986
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before

ASSEMBLY ENERGY AND NATURAL RESOURCES COMMITTEE

on

ASSEMBLY BILL 2342

(Provides for the systematic review of development activities in and around freshwater wetlands.)

ASSEMBLY BILL 2499

("Freshwater Wetlands Preservation Act," establishes a comprehensive system to protect, preserve and regulate the State's freshwater wetlands.)

July 16, 1986
Labor Education
Center Auditorium
Rutgers Campus
New Brunswick, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Maureen Ogden, Chairwoman

ALSO PRESENT:

Assemblyman John S. Penn
District 16

Norman Miller
Office of Legislative Services
Aide, Assembly Energy and
Natural Resources Committee

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New Jersey State Legislature

**ASSEMBLY ENERGY AND
NATURAL RESOURCES COMMITTEE**

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-7676

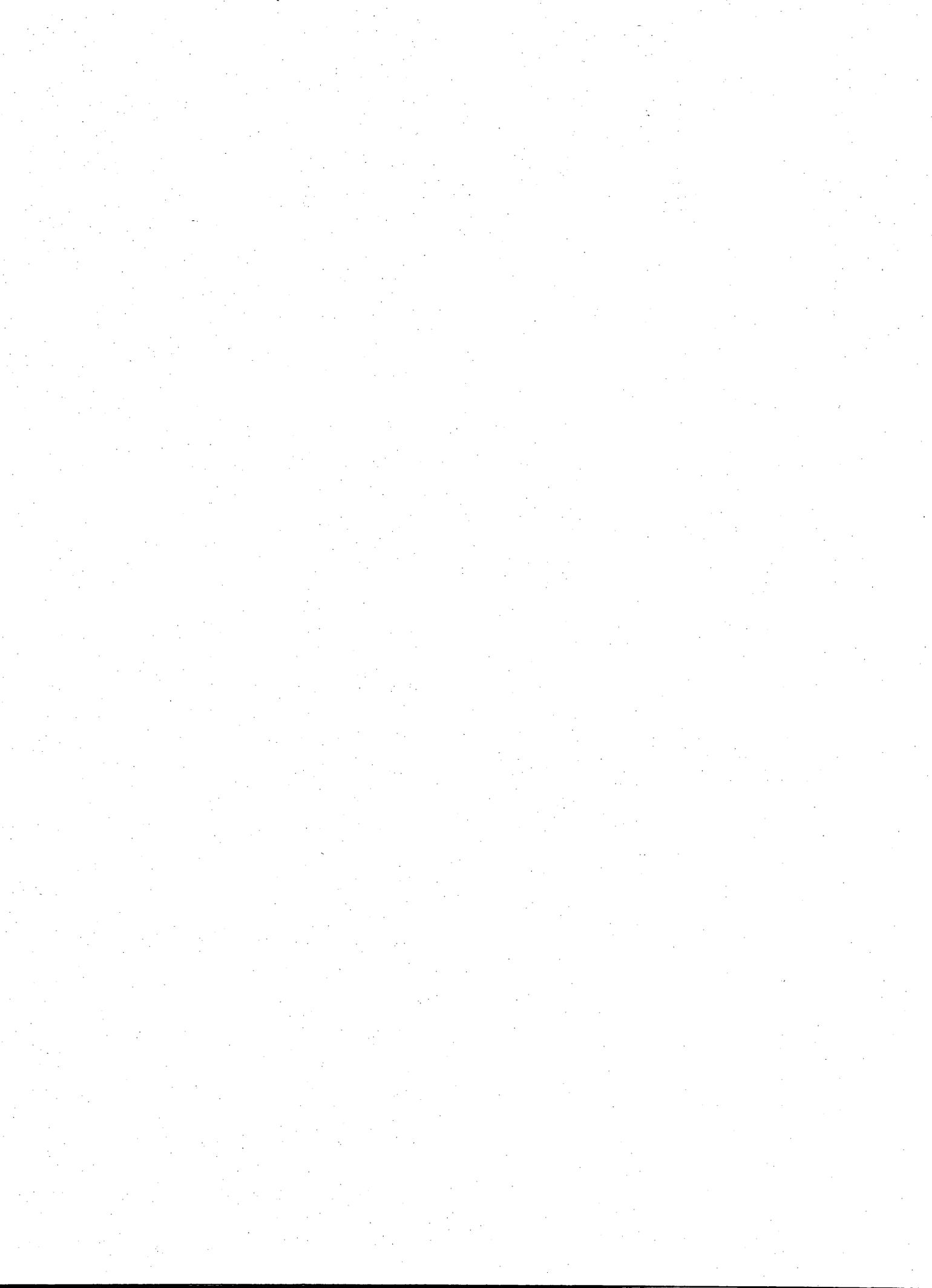
July 10, 1986

NOTICE OF A PUBLIC HEARING

The Assembly Energy and Natural Resources Committee will hold a public hearing on Wednesday, July 16, 1986, beginning at 10:00 A.M. in the Labor Education Center Auditorium, Rutgers Campus, New Brunswick, New Jersey (corner of Ryders Lane and Clifton Avenue).

The purpose of this hearing is to take testimony pertaining to Assembly Bills No. 2342 and 2499, both concerning Freshwater Wetlands.

Anyone wishing to testify at the hearing should contact Norman Miller, Committee Aide, at (609) 292-7676.



ASSEMBLY, No. 2342

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1986

By Assemblywoman OGDEN, Assemblymen BENNETT, SCHUBER, WEIDEL, Assemblywoman RANDALL, Assemblymen FRELINGHUYSEN, KERN, Assemblywoman DONOVAN, Assemblymen GENOVA, PALAIA, ROONEY, Assemblywoman MUHLER, Assemblymen SMITH, FELICE, DARIO, MAZUR, ARANGO, CATRILLO, GARGIULO, FRANKS, Assemblywoman SMITH, Assemblyman BAER and Assemblywoman CRECCO

AN ACT concerning the regulation of freshwater wetlands, supplementing Title 13 of the Revised Statutes, and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Freshwater
2 Wetlands Act."

1 2. a. The Legislature finds that freshwater wetlands play an
2 integral role in maintaining the quality of life through material
3 contributions to the water quality and supply of the State, its
4 economy, food supply, and fish and wildlife resources by:

5 (1) Serving as an integral and invaluable component of the
6 surface water systems of the State, which function to support the
7 biological viability and natural and finite effluent purification ca-
8 pacity of surface and ground waters, to the benefit of the general
9 public;

10 (2) Providing a natural means of flood and storm damage pro-
11 tection through the absorption and storage of water during high
12 runoff periods and through the reduction of flood crests, thereby
13 protecting against the loss of life and property;

14 (3) Serving as a buffer zone between dry land and water courses,
15 thereby retarding soil erosion;

16 (4) Providing essential breeding, spawning, nesting and winter-
17 ing habitats for a major portion of the State's fish and wildlife,
18 including migrating birds, endangered species, and commercially
19 and recreationally important wildlife; and

20 (5) Maintaining critical base flow to surface waters through the
21 gradual release of stored flood waters and ground water, particu-
22 larly during drought periods.

23 b. The Legislature further finds that:

24 (1) While the State has acted for the public benefit to protect
25 coastal wetland areas, it has not, except indirectly, taken concom-
26 itant action to protect the State's inland waterways and wetlands;
27 that in this the most densely populated State, located in the North-
28 east corridor where pressures for commercial and residential
29 development define the pace and pattern of land use, and while
30 wetland conservation is a matter of State concern because a wet-
31 land in one jurisdiction may be affected by acts on a river, lake,
32 stream or wetland of another jurisdiction, it is consistent with the
33 public interests to establish a program for the systematic review
34 of activities in and around freshwater wetlands areas to provide
35 predictability in the protection of the finite and valuable resource.

36 (2) The public benefits arising from the natural functions of
37 wetlands, and the public harm from wetland losses, are distinct
38 from and often exceed the private value of wetland areas.

39 (3) It shall be the policy of the State to preserve the purity
40 and integrity of freshwater wetlands from random, unnecessary
41 or undesirable alteration or disturbance.

42 (4) In an effort to preserve and protect freshwater wetlands
43 areas it is important that the State secures, as expeditiously as
44 possible, the assumption of the permit jurisdiction exercised by
45 the United States Army Corps of Engineers pursuant to the "Fed-
46 eral Water Pollution Control Act," (33 U. S. C. s. 1344).

1 3. As used in this act:

2 a. "Buffer" or "buffer zone" means an area of land adjacent to a
3 freshwater wetland which serves to protect the wetland from ad-
4 verse impacts or serves as an integral component of the wetlands
5 ecosystem;

6 b. "Commissioner" means the Commissioner of the Department
7 of Environmental Protection;

8 c. "Department" means the Department of Environmental Pro-
9 tection;

10 d. "Environmental commission" means a municipal advisory
11 body created pursuant to P. L. 1968, c. 245 (C. 40:56A-1 et seq.);

12 e. "Freshwater wetland" means an area that is inundated or
13 saturated by surface water or ground water at a frequency and
14 duration sufficient to support, and that under normal circumstances
15 does support aquatic life or a prevalence of vegetation typically
16 adapted for life in saturated soil conditions, commonly known as
17 hydrophytic vegetation;

18 f. "Freshwater wetlands permit" means a permit to engage in
19 a regulated activity issued pursuant to the provisions of this act;

20 g. "Hazardous substances" means those substances enumerated
21 in section 3 of P. L. 1976, c. 141 (C. 58:10-23.1b);

22 h. "Hydrophyte" means plant life adapted to growth and repro-
23 duction under periodically saturated root zone conditions during
24 a significant portion of the growing season;

25 i. "Linear development" means land uses such as roads, sewerage
26 and stormwater management pipes, gas and water pipelines, elec-
27 tric, telephone and other transmission lines, and the rights-of-
28 ways therefor whose basic function is to connect two points to
29 serve a public purpose. Linear development shall not be construed
30 to mean residential, commercial, office or industrial buildings and
31 associated roadways or utilities;

32 j. "Person" includes corporations, companies, associations, so-
33 cieties, firms, partnerships and joint stock companies as well as
34 individuals, unless restricted by the context to an individual as
35 distinguished from a corporate entity or specifically restricted
36 to one or some of the above enumerated synonyms and includes
37 agencies of this State, the United States, any other state of the
38 United States, and any foreign country or government lawfully
39 owning or possessing property within this State;

40 k. "Regulated activity" means an activity which would alter a
41 freshwater wetland in any of the following ways:

42 (1) The removal, excavation, disturbance or dredging of soil,
43 sand, gravel, or aggregate material of any kind;

44 (2) The drainage or disturbance of the water level or water
45 table;

46 (3) The dumping, discharging or filling with any materials;

47 (4) The driving of pilings, or the erection of buildings or struc-
48 tures of any kind;

49 (5) The placing of obstructions whether or not they interfere
50 with the flow of water;

51 (6) The destruction of plant life including the cutting of trees,

52 except when performed to the minimum extent feasible in connec-
53 tion with survey soil borings for environmental investigations.

1 4. a. A person proposing to engage in a regulated activity may,
2 prior to applying for a freshwater wetlands permit, request from
3 the department a letter of interpretation to establish that the site
4 of the regulated activity is in fact located in a freshwater wetland.

5 b. A person proposing to engage in a land use within a buffer
6 zone may, prior to applying for a buffer zone waiver pursuant to
7 section 6 of this act, request from the department a letter of inter-
8 pretation to establish that the site of the land use is in fact located
9 in the buffer zone.

10 c. Within 20 days after receipt of a request for a letter of in-
11 terpretation, the department may require the submission of any
12 additional information necessary to issue the letter of interpre-
13 tation.

14 d. If no additional information is required, the department shall
15 issue a letter of interpretation within 30 days of receiving the re-
16 quest.

17 e. If additional information is required the department shall
18 issue a letter of interpretation within 45 days of receipt of the
19 information.

20 f. If a person requesting the letter has not made a reasonable
21 good faith effort to provide the department with information suf-
22 ficient to make a determination, the department shall issue a letter
23 of interpretation requiring the application for a freshwater wet-
24 lands permit.

25 g. The department may charge a fee for reviewing the informa-
26 tion submitted and for issuing a letter of interpretation.

1 5. a. A person proposing to engage in a regulated activity shall
2 apply to the department for a freshwater wetlands permit, for a
3 fee not to exceed the cost of reviewing and processing the appli-
4 cation, on forms and in the manner prescribed by the commissioner
5 pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410
6 (C. 52:14B-1 et seq.). An agency of the State proposing to engage
7 in a regulated activity also shall apply to the department for a
8 freshwater wetlands permit on forms and in a manner prescribed
9 by the commissioner, but shall not be required to pay a fee there-
10 for. The application shall include at least the following:

11 (1) A plan of the site containing all proposed development
12 activities and a written description of the proposed regulated
13 activity, the total area to be modified, and the total area of the
14 freshwater wetlands to be affected.

15 (2) Verification that a notice has been forwarded to the clerk,
16 environmental commission and planning board of the municipality,
17 and the planning board of the county, and landowners within 200
18 feet of the site of the proposed regulated activity which notice may
19 be filed concurrently with notices required pursuant to P. L. 1975,
20 c. 291 (C. 40:55D-1 et seq.) wherein the regulated activity is to
21 occur, which notice shall describe the activity and advise these
22 instrumentalities of local government of their opportunity to sub-
23 mit comments to the department;

24 (3) Verification that notice has been published in a newspaper
25 of local circulation.

26 (4) A statement detailing any potential adverse environmental
27 effects of the regulated activity and what measures may be neces-
28 sary to mitigate those effects.

29 b. The department shall, after according consideration to the
30 comments of the environmental commission and planning board of
31 the county wherein the regulated activity is to take place, federal
32 and State agencies of competent jurisdiction, other affected munici-
33 palities and counties, and the general public, issue a freshwater
34 wetlands permit only if it finds that the regulated activity does
35 not constitute linear development and the activity meets all of the
36 following:

37 (1) Requires access to water or freshwater wetlands or is water
38 dependent as a central element of its basic function;

39 (2) Has no prudent and feasible alternative site which does not
40 involve freshwater wetlands or a significantly reduced area of
41 freshwater wetlands;

42 (3) Does not result in an unacceptable disruption to wetland
43 resources. In determining whether a disruption to the wetland
44 resources is unacceptable, the findings set forth in section 2 of
45 this act shall be considered;

46 (4) Is in the public interest, is necessary to realize the benefits
47 derived from the activity, and is otherwise lawful.

48 c. To assist in determining whether the activity is in the public
49 interest, the applicant shall provide information comparing the
50 benefits which may reasonably be expected to accrue from the
51 proposal and the reasonably foreseeable adverse effects of the
52 activity. The decision by the department shall reflect the national
53 and State concern for the protection of natural resources from
54 pollution, impairment and destruction. The following criteria shall
55 be considered:

56 (1) The relative extent of the public and private need for the
57 proposed activity;

58 (2) The availability of feasible and prudent alternative loca-
59 tions and methods to accomplish the expected benefits from the
60 activity;

61 (3) The extent and permanence of the beneficial or detrimental
62 effects which the proposed activity may have on the public and
63 private uses to which the area is suited, including the benefits the
64 wetland provides;

65 (4) The probable impact of each proposal in relation to the
66 cumulative effect created by other existing and anticipated activi-
67 ties in the watershed;

68 (5) The probable impact on recognized historic, cultural, scenic,
69 ecological, or recreational values and on the public health or fish
70 and wildlife;

71 (6) The size of the wetland which may be affected;

72 (7) The amount of the remaining wetland in the general area;

73 (8) Proximity to any waterway; and,

74 (9) The economic value, both public and private, of the proposed
75 land change to the general area.

76 d. If the regulated activity constitutes linear development the
77 department shall issue a freshwater wetlands permit only if:

78 (1) The existing hydrologic function of the wetland will be
79 maintained to the maximum amount feasible;

80 (2) There is no prudent and feasible alternative site for the
81 activity that is not a freshwater wetland or which affects a signifi-
82 cantly reduced area of freshwater wetlands;

83 (3) The alignment of the proposed activity is located in existing
84 transportation rights-of-way to the maximum extent practicable;
85 and

86 (4) The proposed activity will not facilitate additional develop-
87 ment in freshwater wetlands or promote degradation of freshwater
88 wetlands.

89 e. The department may use the National Wetland Inventory
90 maps prepared by the United States Fish and Wildlife Service for
91 the State, and the county soil surveys prepared by the Soil Con-
92 servation Service of the United States Department of Agriculture,
93 or any other maps or information which will aid the department
94 in its review.

95 f. If a freshwater wetlands permit is approved and issued pur-
96 suant to the provisions of this act the department may reduce or
97 eliminate the buffer zone as required to accommodate the approved
98 use.

99 g. Under all circumstances the department shall require that,

100 as a condition of the freshwater wetlands permit, all appropriate
101 measures have been carried out to mitigate adverse environmental
102 impacts, restore vegetation, habitats, and land and water features,
103 prevent sedimentation and erosion and minimize the area of fresh-
104 water wetlands disturbance. The department may require the
105 creation or restoration of an area of freshwater wetlands for
106 regulated activities or any other special conditions the department
107 deems necessary.

108 h. The department shall require a person applying for a permit
109 or in receipt of a permit to provide any information the department
110 reasonably requires to assure compliance with the provisions of
111 this act. Upon reasonable cause or obtaining a search warrant,
112 the department may enter the premises wherein a regulated activ-
113 ity is located or where the information required under this sub-
114 section is located.

1 6. a. There shall be a buffer zone adjacent to freshwater wet-
2 lands which shall have the following purposes:

3 (1) Ecological transition zone from uplands to wetlands which
4 is an integral portion of the wetlands ecosystem, providing tem-
5 porary refuge for wetlands fauna during highwater episodes,
6 critical habitat for animals dependent upon but not resident in
7 wetlands, and slight variations of wetland boundaries over time
8 due to hydrologic or climatologic effects;

9 (2) Sediment and storm water control zone to reduce the im-
10 pacts of development upon wetlands and wetlands species;

11 b. The following average buffer zone distances shall be applied
12 by the department in considering applications for buffer zone
13 waivers under subsection d. of this section:

14 (1) 300 feet for hazardous and solid waste facilities, industrial
15 facilities as regulated under the "Environmental Cleanup Respon-
16 sibility Act," P. L. 1983, c. 330 (C. 13:1K-6 et al.), office or com-
17 mercial developments greater than 100,000 square feet in floor
18 space, and residential subdivisions or developments greater than
19 100 units;

20 (2) 200 feet for office or commercial developments greater than
21 50,000 square feet in floor space, residential subdivisions or de-
22 velopments of greater than 50 units, and linear development;

23 (3) 100 feet for commercial or office developments of 50,000
24 square feet of floor space or less, and residential subdivisions or
25 developments of less than 51 but more than one unit. The actual
26 buffer zone distance shall be delineated in such a way as to maxi-
27 mize the protection of freshwater wetlands, with an average buffer

28 zone meeting the criteria established in paragraphs (1) through
29 (3) of this subsection, so that the wetlands protection provided by
30 the buffer zone will be essentially consistent throughout the zone,
31 with a minimum distance of 20 feet in any section of the buffer zone.

32 c. A person proposing to engage in a land use described in sub-
33 section b. of this section within 300 feet of a freshwater wetland
34 shall apply to the department for a determination as to the ap-
35 plicable presumed buffer zone for the proposed use, for a fee of
36 \$25.00 per application. The application shall describe the proposed
37 land use with respect to the criteria in subsection b. of this section
38 and include a map showing the freshwater wetland boundary, the
39 proposed land use and the proposed freshwater wetland buffer.
40 The department shall notify the applicant of the applicable buffer
41 zone for the proposed land use, within 30 days of the receipt of
42 the application.

43 d. A person proposing to engage in a land use described in sub-
44 section b. of this section within a buffer zone shall apply to the
45 department for a buffer zone waiver, for a fee not to exceed the
46 cost of reviewing and processing the waiver application, on forms
47 and in the manner prescribed by the commissioner pursuant to the
48 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
49 et seq.). An agency of the State proposing to engage in such a
50 land use in a buffer zone shall also apply to the department for a
51 buffer zone waiver on forms and in a manner prescribed by the
52 commissioner but shall not be required to pay a fee therefor. The
53 waiver application shall include at least the following:

54 (1) A plan of the site containing all proposed development
55 activities and a written description of the proposed land use, the
56 total areas to be modified, and the total area of the buffer zone to
57 be affected;

58 (2) Verification that a notice has been forwarded to the clerk,
59 environmental commission, and planning board of the municipality,
60 and the planning board of the county wherein the land use is to
61 occur, which notice shall describe the land use and advise these
62 instrumentalities of local government of their opportunity to sub-
63 mit comments to the department;

64 (3) A statement detailing any potential adverse environmental
65 effects of the land use on the freshwater wetlands and what mea-
66 sures may be necessary to mitigate those effects.

67 e. The department shall, after according consideration to the
68 comments of the environmental commission and planning board of
69 the municipality and the planning board of the county wherein the

70 land use is to take place, and the general public, issue a buffer
71 zone waiver only if it finds that the land use:

72 (1) Will have no adverse impacts on the freshwater wetlands,
73 and maintains the purposes set forth in subsection a. of this sec-
74 tion as well as the protection of endangered and threatened species
75 as listed by the department; or

76 (2) Is necessary to avoid an extraordinary hardship on the
77 applicant brought about by circumstances peculiar to the subject
78 property, or to meet a compelling need of such importance to the
79 public as to override the public intent in protecting freshwater
80 wetlands as established by this act, provided that the impact on
81 freshwater wetlands is minimized.

82 f. This waiver shall permit a reduction of the average buffer
83 zone distance by no more than 80% or to a minimum of 20 feet,
84 whichever is larger, except where the land use is a State, county or
85 local roadway, or a stormwater management facility, in which case
86 the waiver may permit further reduction of average buffer zone
87 distances if there is no prudent and feasible alternative location
88 and the roadway or stormwater management facility will result
89 in minimum feasible adverse impacts on the freshwater wetlands.

90 g. If the department determines and sustains proof that the
91 buffer zone distance as provided in subsection b. of this section is
92 insufficient to protect habitat critical to endangered or threatened
93 species as listed by the department or a major concentration of
94 wildlife or to sufficiently attenuate sedimentation and stormwater
95 impacts upon the wetlands, the department may require additional
96 average buffer zone distances up to 100 feet.

1 7. a. The department shall consolidate wetlands related aspects
2 of other regulatory programs which affect activities in freshwater
3 wetlands including, but not limited to, sewer extension approvals
4 required pursuant to P. L. 1977, c. 74 (C. 58:10A-1 et seq.), per-
5 mits required pursuant to P. L. 1973, c. 185 (C. 13:19-1 et seq.),
6 and any permits and approvals required pursuant to P. L. 1977,
7 c. 75 (C. 58:11A-1 et seq.) and P. L. 1962, c. 19 (C. 58:16A-50 et
8 seq.), with the freshwater wetlands permit process established
9 herein so as to provide a timely, consistent and coordinated permit
10 process.

11 b. Within 60 days after receipt of the completed application and
12 fee, the department may hold a hearing. If a hearing is held, it
13 shall be held in the county wherein the wetland is located, when-
14 ever practicable. The department may approve or disapprove a
15 permit application without a public hearing unless a person requests

16 a hearing, in writing, within 20 days after the publication of notice
17 of the permit application in the bulletin of the department.

18 c. If a hearing is not held, the department shall approve or
19 disapprove a permit application within 90 days following the date
20 that the application is deemed complete, or within 180 days of
21 submittal, whichever is sooner. If a hearing is held, the depart-
22 ment shall approve or disapprove the permit application, request
23 modification in the application, or deny the permit within 90 days
24 of the hearing. If the department approves the permit, the de-
25 partment shall send notice thereof to the applicant. If the depart-
26 ment denies, or requests a modification of, the permit application,
27 the department shall send notice thereof to the applicant. The
28 department may approve a permit imposing conditions necessary
29 for compliance with this act. If the department does not approve
30 or disapprove the permit within the time provided by this subsec-
31 tion, the permit shall be considered approved and the department
32 shall be considered to have made the determinations required under
33 subsection b. of section 5 of this act. The action taken by the de-
34 partment under this section may be appealed in accordance with
35 the "Administrative Procedure Act."

36 d. Fees for the freshwater wetlands permit and buffer zone
37 waiver shall be those established in sections 5 and 6 of this act,
38 plus the fees charged for those permits, as required, enumerated
39 in subsection a. of this section.

1 8. a. If a freshwater wetlands permit is denied, the owner of
2 record of the property affected may request, and the local tax
3 assessor shall provide that, this fact be taken into account when
4 the property is valued, assessed and taxed for property tax pur-
5 poses.

1 9. a. Any person may obtain review of a decision made pursuant
2 to sections 4, 5, 6, or 7 of this act by the Office of Administrative
3 Law by filing a petition with the Office in accordance with the
4 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
5 et seq.).

6 b. Any person may obtain judicial review of a decision made
7 pursuant to sections 4, 5, 6 or 7 of this act by filing a petition in
8 the Appellate Division of the Superior Court of New Jersey within
9 30 days after the approval or rejection. The court shall have the
10 power to make and enter an order enforcing, modifying, and en-
11 forcing as so modified, remanding for further specific evidence
12 or findings, or setting aside, in whole or in part, an action of the
13 department. The findings of fact on which the decision is based

14 shall be conclusive if supported by substantial evidence on the
15 record considered as a whole.

1 10. a. Whenever, on the basis of any information available to
2 him, the commissioner finds that any person is in violation of any
3 provision of this act, or any rule, regulation or permit issued
4 pursuant to this act he shall:

5 (1) Issue an order requiring any such person to comply in ac-
6 cordance with subsection b. of this section; or

7 (2) Bring a civil action in accordance with subsection c. of this
8 section; or

9 (3) Levy a civil administrative penalty in accordance with sub-
10 section d. of this section; or

11 (4) Bring an action for a civil penalty in accordance with sub-
12 section e. of this section; or

13 (5) Petition the Attorney General to bring a criminal action in
14 accordance with subsection f. of this section.

15 Use of any of the remedies specified under this section shall not
16 preclude use of any other remedy specified.

17 b. Whenever, on the basis of any information available to him,
18 the commissioner finds that any person is in violation of any pro-
19 vision of this act, or of any rule, regulation or permit issued pur-
20 suant to this act, he may issue an order: (1) specifying the pro-
21 vision or provisions of this act, or the rule, regulation or permit
22 of which he is in violation; (2) citing the action which caused such
23 violation; (3) requiring compliance with such provision or pro-
24 visions; and (4) giving notice to the person of his right to a hear-
25 ing on the matters contained in the order.

26 c. The commissioner is authorized to commence in a civil action
27 in Superior Court for appropriate relief from any violation of
28 this act or of a permit issued hereunder. Such relief may include,
29 singly or in combination:

30 (1) A temporary or permanent injunction;

31 (2) Assessment of the violator for the costs of any investigation,
32 inspection, or monitoring survey which led to the establishment
33 of the violation, and for the reasonable costs of preparing and
34 litigating the case under this subsection;

35 (3) Assessment of the violator for any cost incurred by the
36 State in removing, correcting or terminating the adverse effects
37 upon the wetland resulting from any unauthorized activity for
38 which the action under this subsection may have been brought;

39 (4) Assessment against the violator of compensatory damages for
40 any loss or destruction of wildlife, fish or aquatic life, and for any

41 other actual damages caused by an unauthorized activity. Assess-
42 ments under this subsection shall be paid to the State Treasurer,
43 except that compensatory damages shall be paid by specific order
44 of the court to any persons who have been aggrieved by the un-
45 authorized discharge;

46 d. The commissioner is authorized to assess a civil penalty of
47 not more than \$10,000.00 for each violation and each day during
48 which such violation continues shall constitute an additional, sep-
49 arate and distinct offense. Any amount assessed under this sub-
50 section shall fall within a range established by regulation by the
51 commissioner for violations of similar type, seriousness and dura-
52 tion. No assessment shall be levied pursuant to this section until
53 after the discharger has been notified by certified mail or personal
54 service. The notice shall include a reference to the section of the
55 statute, regulation, order or permit condition violated; a concise
56 statement of the facts alleged to constitute a violation; a statement
57 of the amount of the civil penalties to be imposed; and a statement
58 of the party's right to a hearing. The ordered party shall have 20
59 days from receipt of the notice within which to deliver to the
60 commissioner a written request for a hearing. After the hearing
61 and upon finding that a violation has occurred, the commissioner
62 may issue a final order after assessing the amount of the fine
63 specified in the notice. If no hearing is requested, then the notice
64 shall become a final order after the expiration of the 20-day period.
65 Payment of the assessment is due when a final order is issued or
66 the notice becomes a final order. The authority to levy an admin-
67 istrative order is in addition to all other enforcement provisions
68 in this act, and the payment of any assessment shall not be deemed
69 to affect the availability of any other enforcement provisions in
70 connection with the violation for which the assessment is levied.
71 Any civil penalty assessed under this section may be compromised
72 by the commissioner upon the posting of a performance bond by
73 the violator, or upon such terms and conditions as the commissioner
74 may establish by regulation.

75 e. Any person who violates this act or an administrative order
76 issued pursuant to subsection b. or a court order issued pursuant
77 to subsection c., or who fails to pay an administrative assessment
78 in full pursuant to subsection d. shall be subject upon order of a
79 court to a civil penalty not to exceed \$10,000.00 per day of such
80 violation, and each day during which the violation continues shall
81 constitute a separate violation. Any penalty incurred under this
82 subsection may be recovered with costs in a summary proceeding

83 pursuant to "the penalty enforcement law" (N. J. S. 2A:58-1
 84 et seq.). The Superior Court shall have jurisdiction to enforce
 85 "the penalty enforcement law" in conjunction with this act.

86 f. Any person who willfully or negligently violates this act shall,
 87 upon conviction, be guilty of a crime of the fourth degree and shall
 88 be punished by a fine of not less than \$2,500.00 nor more than
 89 \$25,000.00 per day of violation, or by imprisonment for not more
 90 than one year or by both. Punishment for a second offense
 91 under this subsection shall be a fine of not less than \$5,000.00 nor
 92 more than \$50,000.00 per day of violation, or by imprisonment for
 93 not more than two years, or both. Any person who knowingly
 94 makes a false statement, representation, or certification in any
 95 application, record, or other document filed or required to be main-
 96 tained under this act shall, upon conviction, be subject to a fine
 97 of not more than \$10,000.00 or by imprisonment for not more
 98 than six months, or both.

99 g. In addition to the penalties prescribed in this section, a notice
 100 of violation of this act shall be recorded on the deed of the property
 101 wherein the violation occurred, on order of the commissioner, by
 102 the clerk or register of deeds and mortgages of the county wherein
 103 the affected property is located and with the clerk of the Superior
 104 Court and shall remain attached thereto until such time as the vio-
 105 lation has been remedied and the commissioner so orders.

1 11. The following activities are exempt from the provisions of
 2 this act:

3 a. Agriculture management practices recommended pursuant to
 4 P. L. 1983, c. 31 (C. 4:1C-1 et al.) on lands valued, assessed and
 5 taxed pursuant to P. L. 1964, c. 48 (C. 54:4-23.1 et seq.) and actively
 6 cultivated or used for production agriculture;

7 b. Regulated activities which have received individual permit
 8 approval or a finding of no jurisdiction by the United States Army
 9 Corps of Engineers pursuant to section 404 of the "Federal Water
 10 Pollution Control Act" (33 U. S. C. § 1344), and which have re-
 11 ceived a grant waiver pursuant to the "National Environmental
 12 Policy Act of 1969," (42 U. S. C. ss. 4321 et seq.) and which have
 13 received all freshwater wetlands related permits from, or ap-
 14 provals by, the department, prior to the effective date of this act.

15 c. Areas regulated as a coastal wetland pursuant to P. L. 1970,
 16 c. 272 (C. 13:9A-1 et seq.).

17 d. State or federally funded roads which are planned and de-
 18 veloped in accordance with the "National Environmental Policy
 19 Act of 1969," (42 U. S. C. ss. 4321 et seq.), section 404 of the

20 "Federal Water Pollution Control Act," (33 U. S. C. s. 1344) and
21 with Executive Order Number 53, approved October 5, 1973.

22 e. Regulated activities on land under the jurisdiction of the
23 Pinelands Commission pursuant to P. L. 1979, c. 111 (C. 13:18A-1
24 et seq.) provided the Pinelands Commission shall adopt regula-
25 tions to regulate activities in freshwater wetlands within its juris-
26 diction in a manner consistent with the purposes of this act.

27 f. Regulated activities on land under the jurisdiction of the
28 Hackensack Meadowlands Development Commission pursuant to
29 P. L. 1968, c. 404 (C. 13:17-1 et seq.).

30 g. The harvesting of peat for the commercial production of
31 peat moss.

1 12. a. The department may, after notice and opportunity for
2 a hearing, issue general permits on a Statewide or county basis
3 for the following categories of activities if the department deter-
4 mines that the activities will cause only minimal adverse environ-
5 mental impacts when performed separately, and will have only
6 minimal cumulative adverse impacts on the environment:

7 (1) Emergency activities carried out to protect the public health
8 and safety;

9 (2) Maintenance, reconstruction, or repair of roads or public
10 utilities lawfully existing prior to the effective date of this act or
11 permitted under this act;

12 (3) Maintenance or repair of active irrigation or drainage
13 ditches lawfully existing prior to the effective date of this act or
14 permitted under this act;

15 (4) Maintenance and repair of storm water management facili-
16 ties lawfully constructed prior to the effective date of this act or
17 permitted under this act;

18 (5) Maintenance, reconstruction or repair of buildings or struc-
19 tures lawfully existing prior to the effective date of this act or
20 permitted under this act;

21 (6) Appurtenant improvements or additions to residential dwell-
22 ings lawfully existing prior to the effective date of this act, pro-
23 vided that the improvements or additions require less than a cumu-
24 lative surface area of 750 square feet of fill and shall not result
25 in new alterations to the freshwater wetlands outside of the fill
26 area;

27 (7) An activity which would ordinarily be regulated under the
28 provisions of this act but which is proposed for a freshwater wet-
29 land less than three acres in size and not contiguous to a surface
30 water tributary;

31 (8) Water supply facilities planned, designed, acquired and con-
32 structed in a manner consistent with the New Jersey Statewide
33 Water Supply Plan.

1 13. a. The department shall, pursuant to the provisions of the
2 "Administrative Procedure Act," adopt rules and regulations to
3 carry out the provisions of this act.

4 b. The department shall, within one year of the effective date
5 of this act, adopt as a regulation a list of vegetative species which
6 are classified as hydrophytes, as defined in section 3 of this act,
7 which are indicative of freshwater wetlands and consistent with
8 the geographical regions of the State.

9 c. The department shall within 180 days of enactment of this
10 act, forward to the clerk of each municipality copies of the appro-
11 priate National Wetlands Inventory maps prepared by the United
12 States Fish and Wildlife Service for the State and direct the clerk
13 to notify the residents of the municipality of the availability for
14 inspection of these maps, by publication in a newspaper of general
15 circulation.

16 d. The department shall take appropriate action as necessary
17 to secure the assumption of the permit jurisdiction exercised by
18 the United States Army Corps of Engineers pursuant to the
19 "Federal Water Pollution Control Act," (33 U. S. C. s. 1344).

20 e. The department shall, within one year of the effective date
21 of this act, conduct a public education program on the provisions
22 of this act and its accompanying rules and regulations.

1 14. Counties, municipalities or any political subdivision thereof
2 shall not regulate activities in freshwater wetlands in a manner
3 inconsistent with the provisions of this act, but are encouraged
4 to control land uses in a manner that protects the long term via-
5 bility and public values of land regulated under this act.

1 15. a. The department shall, within two years of enactment of
2 this act, prepare and submit a report to the Governor, to the Presi-
3 dent of the Senate and the Speaker of the General Assembly, and
4 to the Senate Energy and Environment Committee and the Assem-
5 bly Environmental Quality Committee, or their designated suc-
6 cessors. The report shall describe:

7 (1) The success or failure of mitigation measures performed in
8 actual development situations, both within the State and in other
9 states, and the nature thereof, as well as the current state of the
10 art techniques used for mitigation;

11 (2) Recommendations for legislative or administrative actions
12 necessary to ensure the long term preservation of freshwater wet-

13 lands from damage and degradation resulting from land use activi-
14 ties, pollution, and hydrologic changes which occur in upstream
15 regions of the same watersheds of particular freshwater wetlands.

16 b. The department shall submit, within 18 months of the enact-
17 ment of this act and after public hearing, a draft report containing
18 the findings and recommendations required in subsection a. of this
19 section. The information obtained at the public hearing shall be
20 considered in the final report.

1 16. The object, design, and purpose of this act being the pro-
2 tection of the freshwater wetlands resources of the State, this act
3 shall be liberally construed.

1 17. There is appropriated from the General Fund to the depart-
2 ment the sum of \$500,000.00.

1 18. This act shall take effect on the 180th day after enactment
2 except section 17 which shall take effect immediately. The depart-
3 ment shall take all appropriate actions necessary prior to the
4 effective date to implement the provisions of this act on the effec-
5 tive date.

STATEMENT

This bill provides for the systematic review of development activities in and around freshwater wetlands to better protect the citizens of the State from chemical contamination of water supplies, flood and storm damage, and depletion of natural resources which serve both recreation and commercial purposes. The bill requires that a proposal to dredge, fill, develop, or in any other way alter freshwater wetlands be accompanied by an application to the Department of Environmental Protection for a freshwater wetlands permit to engage in the activity.

The bill utilizes technical terms generally consistent with federal and State law and provides a procedure for identifying freshwater wetlands, describes the conditions under which certain activities may take place, and exempts those activities which will not harm the resource.

To prevent duplicative procedures with respect to freshwater wetlands already regulated, the bill exempts lands located in the pinelands areas as defined in section 10 of the "Pinelands Protection Act," P. L. 1979, c. 111 (C. 13:18A-11), those lands under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to P. L. 1968, c. 404 (C. 13:17-1 et seq.), and those areas regulated as coastal wetlands pursuant to P. L. 1970.

c. 272 (C. 13:9A-1 et seq.) from the requirements of the bill.

The bill specifically provides that a freshwater wetlands permit may be issued if the activity:

- (1) Requires access to water or freshwater wetlands or is water dependent as a central element of the basic function of the activity;
- (2) Has no prudent or feasible alternative site which does not involve freshwater wetlands;
- (3) Does not result in unacceptable disruption to wetland resources, and
- (4) Is in the public interest, is necessary to realize the benefits derived from the activity and is otherwise lawful.

The bill also provides for the regulation of the buffer area immediately adjacent to the wetlands.

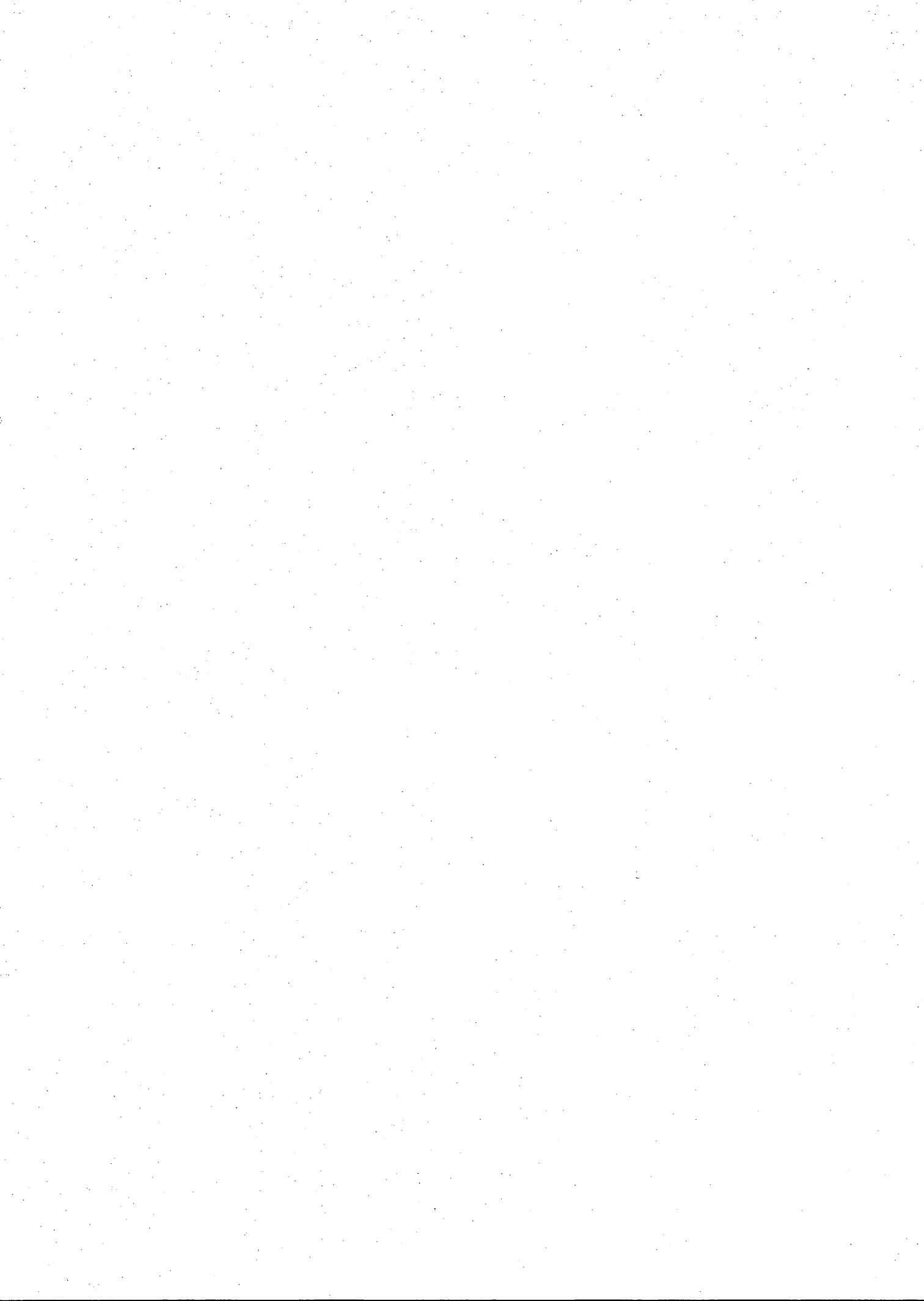
Certain administrative and procedural provisions have been included to provide for regulatory efficiency and predictability. For instance a letter of interpretation as to whether the site of a proposed activity is in fact a freshwater wetland has been provided so as to clarify situations wherein freshwater wetland permits may or may not be required. Specific time limits have been established for the issuance for these letters of interpretation. Included in the provisions of the bill is a specific direction to the department to consolidate other related permits and approvals required by State law, with the freshwater wetlands permits process, and to take appropriate action to secure the delegation of the permit jurisdiction of the United States Army Corps of Engineers under the "Federal Water Pollution Control Act." This program is commonly referred to as the "404" program and provides limited regulation of wetland areas. Finally, the bill provides that the department must approve, conditionally approve or deny a permit application within 90 days of the submission of a complete application or within 180 days of the original submission of the application, whichever is sooner.

The bill appropriates \$500,000.00 to the Department of Environmental Protection.

The bill would take effect 180 days after enactment to provide the department with time to develop and adopt regulations to implement its provisions.

NATURAL RESOURCES

Provides for the systematic review of development activities in and around freshwater wetlands.



ASSEMBLY, No. 2499

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1986

By Assemblymen PENN, KAVANAUGH, Rocco, Foy, Haytaian, Moran, Singer, Rafferty, Assemblywoman Smith, Assemblymen Schuber, Hendrickson, Arango, Muziani, Miller, Dario, Assemblywoman Cooper, Assemblymen Brown, Kelly, Loveys, Zangari, Azzolina, Paterniti, Doyle, Deverin, Naples, Otlowski, Pelly, Assemblywoman Crecco, Assemblymen DiGaetano, Shusted, Kline, Assemblywoman Kalik, Assemblymen Riley, Felice, Assemblywoman Donovan, Assemblymen, Gargiulo, Marsella, Gorman, Bryant, Hudak, Doria, Karcher, Schwartz, Zecker, Palaia, Assemblywoman Randall, Assemblymen Colburn, Shinn, Thompson and Charles

AN ACT concerning the regulation of freshwater wetlands and enacting Chapter 9B of Title 13 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Freshwater
2 Wetlands Preservation Act."

1 2. a. The Legislature finds that large contiguous freshwater wet-
2 lands play an integral role in maintaining the quality of life through
3 material contributions to the water quality of the State, its econ-
4 omy, food supply, and fish and wildlife resources by:

5 (1) Protecting subsurface and potable drinking water sup-
6 plies by serving to purify surface water and groundwater
7 resources;

8 (2) Providing a natural means of flood and storm damage
9 protection through the absorption and storage of water dur-
10 ing high runoff periods and through the reduction of flood
11 crests, thereby protecting against the loss of life and property;

12 (3) Serving as a buffer zone between dry land and water
13 courses, thereby retarding soil erosion; and

14 (4) Providing essential breeding, spawning, nesting, and
15 wintering habitats for a major portion of the State's fish and
16 wildlife, including migrating birds, endangered species, and
17 commercially and recreationally important wildlife.

18 b. The Legislature further finds that:

19 (1) While the State has acted for the public benefit to
20 protect coastal wetland areas, it has not, except indirectly,
21 taken concomitant action to protect the State's inland water-
22 ways and wetlands; that in this the most densely populated
23 State, located in the Northeast corridor where pressures for
24 commercial and residential development define the pace and
25 pattern of land use, it is consistent with the public interests
26 to establish a program for the systematic review of activities
27 in freshwater wetlands areas to provide predictability in the
28 protection of the finite and valuable resource.

29 (2) In order to advance the public interest in a just man-
30 ner the rights of persons who own or possess real property
31 affected by this act must be fairly recognized and balanced
32 with public environmental interests.

33 (3) In an effort to preserve and protect freshwater wet-
34 lands areas it is important that the State secures as expe-
35 ditiously as possible the delegation of freshwater wetlands
36 permit jurisdiction currently exercised by the United States
37 Army Corps of Engineers pursuant to the "Federal Water
38 Pollution Control Act," (33 U. S. C. § 1344, et seq.).

1 3. As used in this act:

2 a. "Commissioner" means the Commissioner of the Department
3 of Environmental Protection;

4 b. "Department" means the Department of Environmental Pro-
5 tection;

6 c. "Environmental commission" means a municipal advisory body
7 created pursuant to P. L. 1968, c. 245 (C. 40:56A-1 et seq.);

8 d. "Freshwater wetland" means an area that is inundated or
9 saturated by fresh surface water on groundwater at a frequency
10 and duration sufficient to support, and that under normal circum-
11 stances does support a prevalence of vegetation typically adapted
12 for life in saturated soil conditions, commonly known as hydro-
13 phytic vegetation, and where a hydric soil condition simultaneously
14 exists, and where appropriate hydrologic conditions exist con-
15 sistent with a determination of hydrologic regime as defined below.
16 provided that any one of the following exists:

17 (1) it is contiguous to an inland lake or pond, or a river
18 or stream, or

19 (2) it is not contiguous to an inland lake or pond, or a river
20 or stream, and more than five acres in size, or

21 (3) it is not contiguous to an inland lake or pond, or a
22 river or stream, and five acres or less in size, if the commis-
23 sioner determines that protection of the area is essential to
24 the preservation of the natural resources of the State from
25 pollution, impairment or destruction.

26 Cultivated or disturbed hydric soils which do not contain
27 hydrophytic vegetation on the date of enactment of this act
28 shall not be considered a freshwater wetland.

29 Hydrologic regime shall be determined utilizing five foot
30 piezometer readings, from November to May, corrected for
31 unusual precipitation events. Under this approach, lands where
32 the water table is at or within 12 inches of the surface for
33 a significant portion of the growing season shall be considered
34 an appropriate hydrologic condition for a determination of
35 wetlands.

36 e. "Freshwater wetlands permit" means a permit to engage in
37 a regulated activity issued pursuant to the provisions of this act;

38 f. "Hydric soil condition" means soil that is saturated at or
39 near the soil surface with water that virtually is lacking in free
40 oxygen for significant periods during the growing season or soil
41 which is flooded frequently for long periods during the growing
42 season;

43 g. "Hydric soil" means the hydric soils listed for New Jersey
44 by the Soil Conservation Service of the United States Department
45 of Agriculture;

46 h. "Hydrophyte" means plant life adapted to growth and repro-
47 duction under saturated root zone conditions during a substantial
48 portion of the growing season;

49 i. "Linear Development" means land uses or utilities such as
50 roads, sewer lines, water lines, stormwater facilities or drainage
51 pipes, gas lines, electric lines, telephone lines and other transmis-
52 sion lines, and the right-of-way therefor, whose basic purpose is
53 to provide a utility service;

54 j. "Person" includes corporations, companies, associations, so-
55 cieties, firms, partnerships and joint stock companies as well as
56 individuals, unless restricted by the context to an individual as
57 distinguished from a corporate entity or specifically restricted to
58 one or some of the above enumerated synonyms and includes
59 agencies of this State, the United States, any other state of the

60 United States, and any foreign country or government lawfully
61 owning or possessing property within this State;

62 k. "Regulated activity" means the discharge of dredged or fill
63 material into a freshwater wetland such that it would alter a fresh-
64 water wetland.

1 4. A person proposing to engage in a regulated activity shall
2 apply to the department for a freshwater wetlands permit, for
3 a fee not to exceed the cost of processing the application, on forms
4 and in the manner prescribed by the commissioner pursuant to
5 the "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
6 et seq.). An agency of the State proposing to engage in a regu-
7 lated activity also shall apply to the department for a freshwater
8 wetlands permit on forms and in a manner prescribed by the
9 commissioner, but shall not be required to pay a fee therefor. The
10 application shall include at least the following:

11 (1) A conceptual site plan depicting the proposed develop-
12 ment activities and a written description of the proposed
13 regulated activity, the total area to be modified, and the total
14 area of the freshwater wetlands to be affected;

15 (2) Verification that a notice has been forwarded to the
16 clerk, environmental commission and planning board of the
17 municipality, and the planning board of the county, and land-
18 owners within 200 feet of the proposed regulated activity which
19 notice may be filed concurrently with notices required pursuant
20 to P. L. 1975, c. 291 (C. 40:55D-1 et seq.) where in the regu-
21 lated activity is to occur, which notice shall describe the activity
22 and advise these instrumentalities of local government of their
23 opportunity to submit comments to the department;

24 (3) Verification that notice has been published in a news-
25 paper of local circulation;

26 (4) A statement detailing any potential adverse environ-
27 mental effects of the regulated activity and proposed mea-
28 sures to mitigate those effects.

1 5. a. Within 60 days after receipt of the completed application
2 and fee, the department may hold a hearing. If a hearing is held,
3 it shall be held in the county where the wetland on which the
4 permit is to apply is located. Notice of the hearing shall be made
5 in the same manner as for the promulgation of rules under the "Ad-
6 ministrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et
7 seq.). The department may approve or disapprove a permit
8 application without a public hearing unless the department de-
9 termines that the permit application is of significant impact to
10 warrant a public hearing.

11 b. If a hearing is not held, the department shall approve or
12 disapprove a permit application within 90 days following the
13 date that the application is deemed complete, or within 180 days
14 of submittal, whichever is sooner. If a hearing is held, the depart-
15 ment shall approve or disapprove the permit application within
16 90 days after the conclusion of the hearing. The department may
17 approve a permit application, request modifications in the appli-
18 cation, or deny the permit application. If the department approves
19 the permit application, the department shall prepare and send
20 the permit to the applicant. If the department denies, or requests
21 a modification of the permit application, the department shall
22 send notice of the denial or modification request, and the reasons
23 for the denial or the modifications requested to the applicant.
24 Department approval may include the issuance of a permit con-
25 taining conditions necessary for compliance with this act. If the
26 department does not approve or disapprove the permit applica-
27 tion within the time provided by this subsection, the permit appli-
28 cation shall be considered approved, and the department shall
29 be considered to have made the determinations required by sec-
30 tion 6. The action taken by the department may be appealed
31 pursuant to the "Administrative Procedure Act," P .L. 1968,
32 c. 410 (C. 52:14B-1 et seq.).

1 6. a. A permit for a regulated activity shall not be approved
2 unless the department determines that the issuance of a permit
3 is in the public interest, that the permit is necessary to realize
4 the benefits derived from the activity, and that the activity is
5 otherwise lawful.

6 b. In determining whether the activity is in the public interest,
7 the benefit which reasonably may be expected to accrue from the
8 proposal shall be balanced against the reasonably foreseeable
9 detriments of the activity. The decision shall reflect the national
10 and State concern for the protection of natural resources from
11 pollution and destruction. The following general criteria shall be
12 considered:

13 (1) The relative extent of the public and private need for
14 the proposed activity.

15 (2) Where there are unresolved conflicts as to resource
16 use, the practicability of using reasonable alternative loca-
17 tions and methods to accomplish the objective of the pro-
18 posed activity;

19 (3) The extent and permanence of the beneficial and or
20 detrimental effects which the proposed activity may have on
21 the public and private uses to which the area is suited: and

22 (4) The economic value, both public and private, of the
23 proposed activity or land change to the general area.

24 c. In considering a permit application, the department shall
25 give serious consideration to findings of necessity for the pro-
26 posed activity which have been made by other State agencies.

27 d. A permit shall not be issued unless the applicant shows
28 either of the following:

29 (1) The proposed activity is primarily dependent upon
30 being located in the wetland; or

31 (2) A practicable alternative does not exist.

32 e. The department shall develop a general permit process for
33 the issuance of permits for linear development, provided that such
34 linear development would not have a significant adverse effect on
35 five acres or more of wetlands deemed of high quality as defined
36 in section 8 of this act.

1 7. a. The permit requirements of sections 5 and 6 of this act
2 shall be satisfied by the creation of new freshwater wetlands or
3 the enhancement or expansion of existing wetlands to produce
4 substitute wetlands whose size or ecological value is equivalent
5 to or greater than that of the predeveloped wetlands. Such crea-
6 tion, enhancement or enlargement of substitute freshwater wet-
7 lands shall be permitted on or off site. Such proposed mitigation
8 shall be evaluated by the department as part of the application
9 for a freshwater wetlands permit and shall not require a separate
10 permit application.

11 b. The commissioner shall also develop a program of mitigation,
12 enhancement or replacement opportunities on State owned lands
13 in order to:

14 (1) Maximize the environmental value of State owned
15 lands;

16 (2) Provide for mitigation opportunities where a prac-
17 ticable alternative does not exist at or near the location of
18 the regulated activity.

1 8. The department shall develop a classification system which
2 will rank or prioritize wetlands values so that they are regulated
3 consistent with the benefits they provide. As such, wetlands of
4 a high ranking may exhibit such qualities as: areas inhabited
5 with rare or endangered species listed in accordance with federal
6 statute or regulation; extremely high wildlife species diversity;
7 extremely high water quality characteristics; or extremely high
8 recreational values. Conversely, wetlands of a low ranking will
9 exhibit low or degraded values of those enumerated above.

1 9. The department shall consolidate other regulatory programs
2 which affect activities in freshwater wetlands including, but not
3 limited to, any permits and approvals required pursuant to P. L.
4 1977, c. 74 (C. 58:10A-1 et seq.), P. L. 1973, c. 185 (C. 13:19-1
5 et seq.), P. L. 1977, c. 75 (C. 58:11A-1 et seq.), P. L. 1962, c. 19
6 (C. 58:16A-50 et seq.) and P. L. 1977, c. 224 (C. 58:12A-1 et seq.),
7 with the freshwater wetlands permit process established herein
8 so as to provide for a timely, consistent and coordinated permit
9 process.

1 10. Any person may obtain judicial review of a decision made
2 pursuant to sections 4, 5, and 6 of this act by filing a petition in
3 the Law Division of the Superior Court of New Jersey within
4 30 days after the approval or rejection. The court shall have the
5 power to make and enter an order enforcing, modifying, and en-
6 forcing as so modified, remanding for further specific evidence
7 or findings, or setting aside, in whole or in part, an action of the
8 department. The findings of fact on which the decision is based
9 shall be conclusive if supported by substantial evidence on the
10 record considered as a whole.

1 11. The following activities are exempt from the provisions
2 of this act:

3 a. Agriculture management practices recommended pursuant to
4 P. L. 1983, c. 31 (C. 4:1C-1 et seq.) on lands valued, assessed and
5 taxed pursuant to P. L. 1964, c. 48 (C. 54:4-23.1 et seq.);

6 b. Emergency activities carried out to protect the public health
7 and safety;

8 c. Maintenance, reconstruction, or repair of roads or public
9 utilities lawfully existing prior to the effective date of this act;

10 d. Maintenance or repair of active irrigation or drainage ditches
11 lawfully existing prior to the effective date of this act;

12 e. Maintenance and repair of storm water management facilities
13 lawfully constructed prior to the effective date of this act;

14 f. Maintenance, reconstruction or repair of buildings or struc-
15 tures, and appurtenant or accessory uses, lawfully existing prior
16 to the effective date of this act; and

17 g. Site plans and subdivisions for which preliminary approval
18 has been applied for or received pursuant to the provision of P. L.
19 1975, c. 251 (C. 40:55D-1 et seq.) prior to the effective date of this
20 act, and which have received final approval thereof within six
21 years of enactment of this act.

22 h. State or federally funded roads which are planned and
23 developed in accordance with the "National Environmental Policy

24 Act of 1969," P. L. 91-190 (42 U. S. C. § 4321 et seq.) or with
25 Executive Order Number 53, approved October 5, 1973, except that
26 this exemption shall expire three years after the date of enactment
27 of this act or when the department secures the delegation of, or the
23 general permit to carry out the permit jurisdiction exercised by,
29 the United States Army Corps of Engineers pursuant to the
30 "Federal Water Pollution Control Act" (33 U. S. C. § 1344.)
31 whichever is earlier;

32 i. Regulated activities which have received approval by the
33 United States Army Corps of Engineers pursuant to section 404
34 of the "Federal Water Pollution Control Act" (33 U. S. C. § 1344),
35 and which have received a grant waiver pursuant to the "National
36 Environmental Policy Act of 1969" (42 U. S. C. § 4321 et seq.), or
37 which have received all freshwater wetlands related permits from,
38 or approvals by the department, prior to the effective date of the
39 act.

1 12. The department shall make application to secure the delega-
2 tion of, or a general permit to carry out, the permit jurisdiction
3 exercised by the United States Army Corps of Engineers pursuant
4 to the "Federal Water Pollution Control Act" (33 U. S. C. § 1344)
5 within six months of enactment of this act.

1 13. If a person violates this act, the Department of Environ-
2 mental Protection may institute a civil action in the name of the
3 State in a court of competent jurisdiction for injunctive relief to
4 enforce this act and to prohibit and prevent that violation, and the
5 court may proceed in the action in a summary manner. A person
6 who violates this act is subject to a penalty of not less than \$250.00
7 nor more than \$3,000.00 for each offense, to be collected in a civil
8 action by a summary proceeding under "the penalty enforcement
9 law" (N. J. S. 2A:58-1 et seq.), or in any case before a court of
10 competent jurisdiction wherein injunctive relief had been re-
11 quested. The Law Division of the Superior Court shall have
12 jurisdiction to enforce "the penalty enforcement law." If the
13 violation is of a continuing nature, each day during which it con-
14 tinues constitutes an additional, separate, and distinct offense.

1 14. a. The department shall, pursuant to the provisions of the
2 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
3 et seq.), adopt procedural rules to carry out the provisions of this
4 act.

5 b. The department shall, within one year of the effective date of
6 this act, adopt as a regulation a list of vegetative species which are
7 classified as hydrophytes, as defined in section 3 of this act, which

8 are indicative of freshwater wetlands and consistent with the
9 geographical regions of the State.

1 15. The department shall, within one year of the effective date
2 of this act, conduct a public education program on the provisions
3 of this act and its accompanying rules and regulations.

4 a. The department shall make or cause to be made a preliminary
5 inventory of all freshwater wetland areas in this State on a county
6 by county basis and file the inventory with the register of deeds,
7 county clerk, and municipal clerk, which inventory shall be mapped
8 at a scale of one inch equals 200 feet.

9 b. A hearing shall be held by the department after publication
10 and due notice so that interested parties may comment on the
11 inventory. After the hearing the department shall issue a final
12 inventory which shall be sent and kept by the register of deeds,
13 county clerk and municipal clerk. Legislators shall receive an
14 inventory of a county or regional classification for their districts
15 including both preliminary and final inventories unless the legis-
16 lators request not to receive the materials.

17 c. Before an inventory is made of a county, interested persons
18 may request the department to inspect property and the depart-
19 ment shall make a written wetland determination. The determina-
20 tion shall be made within 20 days after the request. Completion of
21 the inventory shall not delay implementation of this act.

1 16. a. As inventories of wetland are completed, the inventories
2 shall be used as one of the criteria by the department in issuing
3 permits. The inventories shall be periodically updated every five
4 years. The maps, ground surveys and description of wetlands
5 included in the inventories shall be submitted to the respective
6 county register of deeds and shall become a public document
7 available to review by any member of the public.

8 b. Aerial photographs and satellite telemetry data reproductions
9 shall be made available to the respective county register of deeds
10 for cost as determined by the department.

1 17. As wetland inventories are completed as specified in section
2 14, owners of record as identified by the current property tax roll
3 shall be notified of the possible change in the status of their
4 property. Notification shall be printed on the next property tax bill
5 mailed to property owners in the county. It shall contain informa-
6 tion specifying that a wetland inventory has been completed and
7 is on file with the register of deeds, county clerk and municipal
8 clerk, and that property owners may be subject to regulation
9 under this act.

1 18. a. This act shall not be construed to abrogate rights of
2 authority otherwise provided by law.

3 b. For the purposes of determining if there has been a taking of
4 property without just compensation under New Jersey law, an
5 owner of property who has sought and been denied a permit or has
6 been made subject to modification or conditions in the permit under
7 this act or the department's action or inaction pursuant to this
8 act may file an action in a court of competent jurisdiction.

9 c. If the court determines that an action of the department
10 pursuant to this act constitutes a taking of the property of a
11 person then the court shall order the department, at the depart-
12 ment's option, to do one or more of the following:

13 (1) Compensate the property owner for the full amount of
14 the lost value.

15 (2) Purchase the property in the public interest as deter-
16 mined before its value was affected by this act or the depart-
17 ment's action or inaction pursuant to this act.

18 (3) Modify its action or inaction with respect to the prop-
19 erty so as to minimize the detrimental effect to the property's
20 value.

21 d. For the purposes of this section, the value of the property
22 may not exceed that share which the area in dispute occupies in
23 the total parcel of land, of the State equalized evaluation of the
24 total parcel, multiplied by two, as determined by an inspection of
25 the most recent assessment roll of the township or city in which
26 the parcel is located.

1 19. There is appropriated to the department, the sum of \$2
2 million to carry out the provisions of this act.

1 20. This act shall not take effect until such time as the delegation
2 of, or a general permit to carry out, the permit jurisdiction exer-
3 cised by the United States Army Corps of Engineers pursuant to
4 the "Federal Water Pollution Control Act" (33 U. S. C. § 1344.)
5 has been secured by the State of New Jersey, except that sections
6 14, 15, 18 and 19 shall take effect immediately. From the date of
7 enactment of this act, until such delegation occurs, all freshwater
8 wetlands jurisdictional and regulatory determinations shall be
9 made by the United States Army Corps of Engineers. The depart-
10 ment shall take all actions necessary prior to the effective date to
11 implement the provisions of this act on the effective date.

STATEMENT

This bill, known as the "Freshwater Wetlands Preservation Act," establishes a comprehensive system to protect, preserve and regulate the state's valuable freshwater wetlands.

The bill is modeled after a wetlands preservation law in Michigan, the only state allowed by the federal government to assume regulation of wetlands under the "Federal Water Pollution Control Act." The legislation is designed to regulate wetlands development in an economically-feasible and environmentally-sound manner.

The bill provides for a systematic review and management of freshwater wetlands by the Department of Environmental Protection, beginning with a thorough inventory and classification of freshwater wetlands to serve as the criteria for consideration of permit issuance.

The bill establishes a permit process in the department, designed to meet federal standards for state assumption of regulatory responsibilities and to eliminate duplicative permit procedures. The legislation appropriates \$2,000,000.00, the present annual cost of federal regulation of freshwater wetlands in New Jersey, to the department to implement the preservation act.

The bill exempts a number of wetlands activities, including certain agriculture management practices, emergency activities to protect the public health and safety, and maintenance and reconstruction of roads and buildings lawfully existing prior to the effective date of this act.

The bill establishes an equitable mitigation program and freshwater wetlands classification rating system under the management of the commissioner of the department, to provide fair compensation for the environmental value of freshwater wetlands affected by the granting of a department permit.

The bill would take effect upon delegation of the permit jurisdiction of the United States Army Corps. of Engineers under section 404 of the "Federal Water Pollution Control Act."

NATURAL RESOURCES

Provides for the regulation of freshwater wetlands by the State.

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NOTE: A copy of the video white paper on freshwater wetlands referred to, sponsored by the Builders League of South Jersey and produced by Sean Reilly, Environmental Consultant, is available for viewing. Eleven minutes long, the copy is on file with the OLS Hearing Unit.

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ASSEMBLYWOMAN MAUREEN OGDEN (Chairwoman): I'm Assemblywoman Maureen Ogden, Chairman of the Energy and Natural Resources Committee, and I'd like to welcome all of you here this morning to the first of two hearings on two bills dealing with freshwater wetlands. The first bill, that I'll make a statement on, is my bill, Assembly Bill 2342, and the other bill, sponsored by Assemblyman Jack Penn, is A-2499.

Since we have almost 40 people signed up to speak today, and we're not going to run this hearing beyond 3:30 this afternoon -- as I said we are also going to have another hearing on the 30th -- but I do realize that there are some people who are able to be here today and not able to come also on the 30th, so we certainly are going to try to fit everyone in. And, in order to do that, we're going to have to have time limits.

I'm going to call first those who are speaking for governmental agencies, then elected public officials, spokesmen for organizations, and individuals. And, I'm going to reserve the right of the Chair to ask people to cut their testimony short if it goes too long. We would encourage those who are testifying today at this public hearing, although it is being transcribed, and it will be available for those who want a copy -- but we're encouraging anyone who has brought written copies here to submit them to the Committee, and if possible, to summarize their statement.

Assemblyman Albohn, who is on this Committee, called me up yesterday and said that unfortunately, because of a sudden change in his company, he wasn't going to be able to be here. I hope that the other members of the Committee are going to come at some point today. The Aide to the Committee, Norman Miller, hasn't heard from them as to whether they're coming or not, but we certainly hope that they will. I'd like to begin by reading a brief statement about my bill, and then I'll give Assemblyman Jack Penn an opportunity to do the same thing on behalf of his legislation.

And, starting off by saying once more, I am sponsoring legislation A-2342, and when I think about it, this is the fourth year that Senator Lynch and I are going into the advocacy of freshwater wetlands, and as someone who has kept track of the number of bills we've had, this is the 32nd version -- the current version of A-2342 -- and I feel that what that reflects is an effort on the part of both Senator Lynch and myself to listen to the various objectors over the past three years to make modifications, and to be responsible to valid objections, but at the same time, to keep a bill that will truly protect the freshwater wetlands.

Once more, I am sponsoring Legislation A-2342 to protect the State's remaining 200,000 acres of freshwater wetlands -- 4% of the State of New Jersey. A similar bill passed the Senate last year, but was never posted for a vote in the Assembly.

Senator John A. Lynch, who is sponsor of identical Legislation S-2003, and I, have been pressing for passage of our legislation for three years. Governor Kean has called for its enactment in two State of the State addresses, and has said he will sign the bill when it reaches his desk.

The current version represents an effort by Senator Lynch and myself to follow federal guidelines to permit delegation by the EPA to the New Jersey DEP of the Army Corps 404 Program. Such an assumption would eliminate cumbersome duplication. In our bill, the definition of wetlands parallels the widely accepted wording found in the Federal Clean Water Act, which established the 404 Program. The permit process has been streamlined, and the DEP has been given a specific time period for its review of applications. The enforcement section has been brought into line with the federal criteria.

The bill requires that a proposal to dredge, fill, drain, develop, or in any other way alter freshwater wetlands be accompanied by an application to the DEP for a freshwater

wetlands permit to engage in the activity. The permit will be issued if the activity requires access to water, lacks an alternative site, and is in the public interest.

A-2342 provides for a buffer zone ranging from 100 to 300 feet, depending upon the type and intensity of development. These distances can be reduced by 80% -- 20 to 60 feet -- if the development won't impair the proper functioning of the wetland, or to avoid hardship or meet a public need. The buffer section is necessary to prevent an ecologically sensitive wetland from being destroyed by intensive activity at its very edge.

Five hundred thousand dollars is appropriated to the DEP for administration. During the two years following enactment, the bill provides for a public education program, a compilation of wetlands species, an analysis of mitigation measures, and an evaluation of the program's effectiveness.

Densely populated New Jersey lies in the Northeast Corridor where pressures for commercial and residential development define the pace and pattern of land use. It is important to promote economic development where environmental costs are low, and it is important to leave undisturbed the areas where public benefits are high. Continued loss of freshwater wetlands will cost New Jersey residents more dollars to control flooding, more dollars to fight drought, more dollars to purify water, and more dollars to provide research, education, and recreation opportunities. You cannot allow economic development in the short term to be underwritten by long term public losses.

During the past few decades, neighboring states have acted to protect their disappearing wetlands. In the early 1970's, the New Jersey Legislature passed legislation to save its coastal lands. It is now past time for New Jersey to enact legislation that will enable us to pass on to future generations invaluable resources that we have inherited.

The wetlands are a resource that can shrink, but not grow. We cannot afford to pretend to save our wetlands. We must stop the continuing loss of New Jersey's freshwater wetlands, and A-2342 will accomplish that goal.

Now I'd like to give Assemblyman Jack Penn an opportunity to make a statement on his bill.

ASSEMBLYMAN PENN: Thank you, Maureen. And, thank you all for being here this morning.

I wish to thank the Committee for this opportunity to testify in support of the Freshwater Wetlands Preservation Act. I am sponsoring Assembly Bill 2499 out of a deep commitment that New Jersey must design a fair, comprehensive, and effective response to the compelling need to protect our State's valuable freshwater wetlands. I am delighted that an overwhelming majority of our colleagues in the State Assembly, as well as a majority of the members of this Committee have joined in cosponsoring this bipartisan legislation.

Our proposal offers a thorough and balanced approach to wetlands management. It unifies a regulatory authority over wetlands; it provides for precise delineation and mapping of our wetlands; it creates an imaginative mitigation program to not only protect but also increase the total amount of freshwater wetlands in our State. Governor Kean has called for the enactment of a wetlands management program for New Jersey. My bill represents response to that call. It represents an opportunity for New Jersey to step forward and seize control of its environmental destiny.

Presently, management of wetlands in New Jersey is vested in the Army Corps of Engineers. Ben Franklin once described New Jersey as a keg being tapped at both ends by New York and Philadelphia. That is what's happening to our wetlands. Jurisdiction is divided between the Army Corps office in Philadelphia for South Jersey, and New York for North Jersey. It's time we took control of our wetlands, and managed

them through the New Jersey Department of Environmental Protection in Trenton.

The Federal Clean Water Act permits a state to assume jurisdiction of wetlands management subject to the approval and monitoring of the United States Environmental Protection Agency. To my knowledge, only the State of Michigan has succeeded in achieving this delegation of power. Such a delegation of wetlands management responsibility would be highly desirable for us in New Jersey.

Virtually everyone in both the environmental and development communities express dissatisfaction with the current state of wetlands management at the federal level. Full delegation to New Jersey can only be an improvement. In order to achieve that goal, I looked to the State of Michigan, since it's the only successful model in the country, and adopted much of what is working there in Assembly Bill 2499.

I believe it is of paramount importance that New Jersey have a program that will allow for delegation. Therefore, I have included in my legislation a provision that certain sections only become effective upon delegation of permanent jurisdiction from the Army Corps of Engineers to the New Jersey Department of Environmental Protection.

Without such a provision -- and none is in the alternate bill before you today -- we might make the mistake of adding a new level of State permit requirements on top of the existing federal system. That would be a nightmare. We should not force property owners to have to go to both State government and federal government and quite possibly receive conflicting decisions on wetland applications.

My bill went through a number of drafting stages in order to refine it to meet the requirements of delegation. Additionally, I met with EPA Regional Administrator Chris Daggett, and his staff, to seek their input and guidance. They were most helpful, and I believe stand ready to work with New Jersey to achieve delegation.

One of the things I learned in these meetings and discussions were that delegation could be achieved only if the New Jersey Legislature adopted statewide a comprehensive program for wetlands management. My legislation is statewide in scope. The alternate bill before you today exempts significant portions of the State -- the Pinelands and the Hakensack Meadowlands -- from its coverage. I fear this would effectively preclude delegation and lead to a two-tier permit system.

In the last Legislative Session, the Senate passed and sent to the Assembly a wetlands bill that clearly would have failed to meet the test for delegation. It contained a mere \$90 thousand appropriation.

In deciding if wetlands powers can be delegated to New Jersey, EPA will look to see if we are giving the DEP the personnel and resources it will need to effectively manage a program. \$90 thousand would not begin to put a dent in that need.

I'm glad to see the proponents of the bill have increased their appropriation this year to 500 thousand, however, I still do not believe that it is an adequate amount of funds for DEP. My legislation provides a \$2 million appropriation.

I'm sure you will join with me in giving DEP whatever resources they need to effectively manage and implement this program. To give an agency a broad mandate without adequate resources, as was done with ECRA, produces inordinate delays, and inefficiencies in decision making. Our citizens are entitled to timely response from their government.

We should give DEP the resources and exercise this oversight to make sure that happens. I'm sure that you will hear a great deal of testimony today about the differences between the two bills before this Committee. Some of those differences, particularly in the area of definition of wetlands

and buffer zone requirements, are sharp in significance. However, I would like to take a moment to emphasize a common ground in these two proposals. I believe they both share a deep appreciation for a commitment to the environment of New Jersey. I believe they both represent a declaration of independence from the federal government and a major step forward in land use management. I believe both proposals share desire to achieve prompt delegation to the New Jersey Department of Environmental Protection on the Federal Wetlands Program, though we may take different paths to seek that objective.

I'm glad that the Committee is taking the first step forward to gain control of our precious resources. New Jersey will only be a better place for it. And I stand ready to work with you to achieve that end.

And, thank you, Maureen, you've done a good job with you legislation. We're going to work together.

ASSEMBLYWOMAN OGDEN: Thank you, Jack. At this time, I would like to call Commissioner Richard Dewling, Commissioner of the Department of Environmental Protection.

COMMISSIONER R I C H A R D T. D E W L I N G: Good morning. I am delighted to have the opportunity to appear here this morning to discuss the freshwater wetlands issue. Helen Fenske, Assistant Commissioner for Natural Resources is also here and will be presenting the Department's comments to you on the two bills presently under consideration. We are both here to tell you that the Department supports A-2342, and to emphasize the seriousness with which DEP views the need to protect freshwater wetlands.

Many of the issues that consume most of our Department's time and budget are the result of practices that were once routine and unquestioned but are now known to have long-term harmful effects, from dumping hazardous materials on vacant land to discharging sewage without proper treatment. If

we had better information and acted on that information earlier, we would not need the huge sums of dollars today necessary to address the results of these earlier practices.

Freshwater wetlands offers an opportunity to do it better; to take advantage of a natural resource that offers us low cost environmental protection. I'd like to describe some of the environmental benefits provided by this resource, and to encourage you to enact A-2342 this year.

One of the most important services provided by a freshwater wetland is its natural flood moderation. Without any capital expenditures by residents, business, and taxpayers, freshwater wetlands serve as basins that both detain and retain flood waters. The filling of freshwater wetlands aggravates flooding problems, and one of the principal reasons for freshwater wetlands protection is to prevent the unnecessary aggravation of New Jersey's existing or any future flooding problems. It makes no sense to, on one hand, spend hundreds of millions of dollars to resolve flooding problems in areas such as the Passaic River Basin, and on the other hand, aggravate flooding problems through the unnecessary filling of freshwater wetlands that also provide important natural resource services besides flood protection.

Among the most important of these other services are the removal of some water pollutants through physical, chemical, and biological processes and the protection of water resources through such processes as aquifer recharge and maintenance of base stream flow.

Another benefit provided by freshwater wetlands is the protection of wildlife habitats. The biggest threat to New Jersey's wildlife resources is the steady loss of habitat caused by land development. These wildlife resources are of immense recreational and ecological value to the citizens of New Jersey, and are also of substantial economic value. Freshwater wetlands are an especially valuable kind of wildlife

habitat which provide a wide variety of wildlife for food, water, breeding sites, resting areas, or protection from weather, predators, and disturbance from man's activities. Freshwater wetlands provide much of the wildlife habitat remaining in the State, including much of the habitat for rare and endangered species. The loss of wildlife habitat caused by the unnecessary loss or alteration of freshwater wetlands is detrimental to the welfare of the citizens of New Jersey.

Not all of these processes occur in all freshwater wetlands, and not all of these processes are fully understood. But this does not argue against the need for protection of freshwater wetlands.

If wrong decisions are made now on the basis of incomplete information, those decisions may not be correctable in the future. The loss or alteration of freshwater wetlands is usually permanent. Once freshwater wetlands are lost or altered, it is unlikely that those freshwater wetlands will be restored at some future date. We generally do not get a second chance to protect freshwater wetlands, and this is one of the biggest reasons why additional, substantial loss or alteration of freshwater wetlands should be permitted only in extraordinary circumstances, and with appropriate mitigation.

We all know that some freshwater wetlands are lost to development every month. It would have been better to have protected them 20 or 25 years ago, but we lacked the widespread public appreciation of wetlands and the legislative initiative that we have today. With these hearings, your Committee is taking the commendable step of further focusing public attention of this resource and the urgent need to protect it. I hope that you will continue the momentum you have helped to generate and pass A-2342 as quickly as possible before additional freshwater wetlands are lost to the State of New Jersey.

Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much, Commissioner. There are just a couple of questions that I'd like to ask you, Commissioner Dewling.

One of the issues between Assemblyman Penn's Bill and mine is the question of budget. Now, we came up with the \$500 thousand because that's what it was advocated in terms of your agency. And, I don't think there are too many agencies that ask for less money than they need. What would you say between the 500 thousand and the 2 million? Do you have any comment on which would be the most appropriate sum?

COMMISSIONER DEWLING: In typical government you always ask for the most, but I don't know I could really honestly say that right now. I think it's, depending upon what bill finally works out, I think it would be prudent for us to sit down to lay out what the impact would be and what the cost would be. I agree with Assemblyman Penn that when they had the ECRA Program, not having the finances there at the first front end of it caused some great grief in the State. So, without the funding there -- proper funding -- I think it's necessary to have that in place before we move on it. And I will get back to whomever, however you want to work it out, to say what should be the funds.

ASSEMBLYWOMAN OGDEN: Since delegation by the EPA of the Army Corps 404 Program is a key thrust in both our bills, would you comment on which bill you feel would be the most appropriate to do that? •

COMMISSIONER DEWLING: Right now we figure that, in our assessment of it, 2342 seems to allow us to get the delegation. Assemblyman Penn's Bill, right now, we don't feel allows that, as we interpret the conditions of the federal statute. But, we have to wait for the EPA to make that type of assessment for us. But, that's our own independent assessment.

ASSEMBLYWOMAN OGDEN: Thank you. You have any questions, Jack?

ASSEMBLYMAN PENN: Yeah, I have a couple of questions. You had mentioned in your testimony about flooding and floodways, and so forth. Aren't floodways, or flood hazard areas, or flood zones already regulated today?

COMMISSIONER DEWLING: To some extent, they are. But, the freshwater wetlands issue -- the natural sponge capacity of freshwater wetlands, and the development of that area is what's causing the problems -- the overextension of development by local communities. And, we don't have the total protection of the freshwater wetlands. Obviously, if we did, we wouldn't be here today to discuss either bill.

ASSEMBLYMAN PENN: I think what we're trying to do is -- so we don't have a duplication. You need stream encroachment permits today, and that sort of thing, which are in a way controlling the wetlands to an extent.

Another thing, does DEP recognize the fact that wetlands come in many varieties, and that some are more valuable than others?

COMMISSIONER DEWLING: No question about that. Let me just talk about stream encroachment permits. We have tried to use stream encroachment permits as a way of protecting wetlands, and I think we've gone beyond the interpretation of the law in terms of what we're trying to do with it. Originally, stream encroachment was primarily for hydraulic flow. And, I think rightfully, we have taken the position that without a bill we are using stream encroachment to the best of our ability to provide freshwater protection so we don't get the scouring, we don't get the deposition in freshwater wetlands, and we don't lose the capacity of the freshwater wetlands.

ASSEMBLYMAN PENN: Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much, Commissioner Dewling. We also have the Assistant Commissioner of DEP, Helen Fenske, who wishes to testify.

ASST. COMMISSIONER H E L E N C. F E N S K E: My name is Helen Fenske, and I am Assistant Commissioner for Natural Resources in the New Jersey Department of Environmental Protection. On behalf of the Department, I would like to start by thanking you for convening this series of public hearings and for the opportunity to testify before you.

I am here this morning to make two points. First, freshwater wetlands offer unique environmental values which are forever lost as these areas are developed; and second, A-2342, introduced by Chairwoman Ogden, offers a much more effective program to protect these areas than is offered by A-2499, introduced by Assemblyman Penn.

Commissioner Dewling has already described the value of freshwater wetlands for moderating the impacts of floods, protecting water supplies, offering habitat for threatened and endangered wildlife species, and providing aesthetically pleasing open space areas. I am delighted that in just the last few years these benefits have come to be so widely recognized that we no longer debate whether these areas should be protected, but rather how they should be protected.

This is an important development that supports the growing national appreciation for the value of freshwater wetlands. This growing consensus, however, cannot hide the fact that the Legislature now has before it two radically different approaches with which to address this issue. While there are many differences between the two bills which we will analyze and provide to you in writing in great detail before your next hearing, I want to indicate to you the four key areas in which I believe A-2342 would provide a more effective tool for regulating and managing freshwater wetlands than A-2499.

First, one of the regulatory objectives of the Department of Environmental Protection is to gain delegation of the 404 permit program from the Army Corps of Engineers. This would enable us to eliminate dual regulatory processes that

developers have to go through, and to more quickly and efficiently review development applications at less cost to developers. A-2342 provides definitions and standards that we believe would be sufficient to enable the Army Corps of Engineers to delegate the program to us.

On the other hand, we believe the criteria in A-2499 would make such a delegation unlikely or impossible. More importantly, A-2499 would not take effect until the Corps made that delegation to the State. Thus, even if you pass the Penn Bill quickly, no freshwater wetlands in New Jersey would be protected by that action until the delegation took place. While we will pursue that delegation diligently no matter what bill you pass, it must be recognized that the delegation is a federal process not controlled by the State and that, to date, only the State of Michigan has been able to gain delegation of this program. I want to stress to you that passage of any bill that includes a provision not allowing it to take effect until the delegation of the federal program would cause the continued destruction of freshwater wetlands and, I believe, even increase that destruction as developers would understandably want to speed up any projects they were contemplating in freshwater wetlands before the bill took effect.

Second, another similar provision concerning grandfathering projects distinguishes the two bills. The Penn Bill would allow anyone who had applied for preliminary approval under the Municipal Land Use Law to ignore the freshwater wetlands act provided they received their final approval within six years of enactment of the act. Again, that provision would mean that the bill would not only not protect the wetlands, but it would probably speed up their destruction. In contrast, the Ogden Bill provides exemptions, but only for projects which are more advanced in the planning and approval process.

The third aspect of A-2342 that I would like to praise is the provision allowing the Department to analyze and, when necessary, impose buffer zones around freshwater wetlands. A-2499 contains no such provisions. Our experience with coastal wetlands and other sensitive areas has shown that to merely protect the area of immediate concern without retention of some control over a buffer area can lead to destruction of the sensitive area. At the same time, however, we have found that when we have regulatory control over a buffer area, most often we are able to allow the proposed development to take place, but with some redesign that serves to protect the environmentally sensitive area. That is the same kind of program that I would envision taking place if A-2342 is enacted, but which would not be possible under A-2499.

Fourth, A-2342 contains a definition of freshwater wetlands which is scientifically defensible and currently in use by the federal agencies involved in the review of Section 404 permits. While that does not guarantee that the federal program would be delegated to New Jersey, it makes delegation easier and much more likely. Moreover, it means that for whatever period of time the State and federal permit programs must co-exist before delegation, we will be much better able to coordinate our reviews with the federal agencies and provide clearer information to the general public about which areas need permits and which areas do not. A-2499, on the other hand, does not, in our opinion, adequately define freshwater wetlands.

In summary, I believe A-2342 is a good bill to protect freshwater wetlands. It does not go as far as some would like, but it would be a major step forward. I would also note that we believe it is a workable bill that the Department would implement efficiently and effectively.

I want to again thank the Committee for scheduling these hearings and devoting so much attention to this important

environmental issue. I am very concerned that at the same time we are gaining ever growing respect for the value of this resource, we are losing precious acres every month to poorly planned developments, and I believe that this should be the year in which a freshwater wetlands law is enacted in New Jersey.

The Department of Environmental Protection stands ready to continue to provide you with any technical assistance or information you may need as you continue to review this issue. As I indicated to you earlier, we will be providing the Committee with a detailed comparative analysis of both A-2342 and A-2499 prior to your next hearing. I would also like to add that we will go into some depth in terms of what is required for implementation of each of the bills.

Thank you. I would be happy to answer any questions you may have.

ASSEMBLYWOMAN OGDEN: Thank you, Mrs. Fenske. Do you have any questions, Jack.

ASSEMBLYMAN PENN: I just have a couple of questions.

ASSEMBLYWOMAN OGDEN: Okay.

ASSEMBLYMAN PENN: In your testimony, you referred a couple of times to the Michigan bill. As you know, my bill is modeled almost exactly after the Michigan bill. And, don't you feel that, therefore, I think the delegation would become quicker to my enactment of my bill than it would the other bill. It's the only bill that has been -- or the only state that has enacted a bill -- so far.

ASST. COMMISSIONER FENSKE: Yes, and I'm not prepared to go into details, but we have analyzed the difference between the two, and your bill extracts a portion of the Michigan bill, but does not encompass all of the encompassing parts of the Michigan bill, and is therefore, considerably weaker. There are a lot of problems with the Michigan bill, and taking only portions of it and trying to apply it to New Jersey is difficult and we feel not applicable.

Further, EPA has remanded to all of the state's that the Michigan delegation should not be used as a model. That, in fact, it's an imperfect model, and are encouraging states to approve on their approach.

ASSEMBLYMAN PENN: Well, I think maybe it depends on which EPA office you go to. I met in the New York office, and I was referred to the Michigan bill as the model, and the bill that we should concentrate on.

One other question. You know, we talk about when the bill would take effect. During the process of the delegation -- in other words, if you were to enact either one of the bills immediately -- for instance, Maureen's Bill -- you would have a dual permit process for a period of time. Is that correct?

ASST. COMMISSIONER FENSKE: Yes. Until the delegation takes place, you would have the same process.

ASSEMBLYMAN PENN: And what would you think the time frame might be for delegation?

ASST. COMMISSIONER FENSKE: I could not say. It would depend upon the bill that was passed and the reaction of the EPA.

ASSEMBLYMAN PENN: So, it might be a significant period of time when you would have to have a dual permit system.

ASST. COMMISSIONER FENSKE: Yes.

ASSEMBLYMAN PENN: Thank you.

ASST. COMMISSIONER FENSKE: It might be significant and it might be short.

COMMISSIONER DEWLING: I'll try to answer the question, having been from EPA. The wetlands program is managed in the region but directed out of headquarters EPA. And they all have said that the Michigan program is a model, but not a perfect model. And it can stand improvement. I think that was the position the Department has taken.

ASSEMBLYWOMAN OGDEN: Thank you very much. Both the two federal agencies, the EPA, which has been mentioned, and

Fish and Wildlife are going to be presenting testimony at the next hearing on July 30th, and therefore, are not here today.

Are there any other representatives of either federal or State agencies, before we go to county agencies? (no response) If not, I would like to call at this time a representative of the Somerset County Mosquito Commission, Henry Rupp.

HENRY RUPP: Madame Chairwoman, I am Superintendent of the Somerset County Mosquito Extermination Commission. Extermination is a term which we all are frightened of, particularly in the company of so many environmentalists.

Ironic as it may seem, one of the principal objections of the New Jersey mosquito control community to Assembly Bill 2342 is that it encourages -- enforces if you will -- a reliance on pesticides as a principal means of controlling nuisance and disease-bearing mosquitoes in New Jersey. This irony is compounded by the rather bizarre spectacle of one part of the Department of Environmental Protection -- the Division of Environmental Resources -- supporting legislation that encourages and stimulates the use of pesticides and another part -- the Bureau of Pesticide Control -- encouraging the use of alternate means of control.

We are not amused. We are opposed to A-2342 because it will not allow us to use the more environmentally desirable, the time-proven, habitat management practices for the control of mosquitoes we have employed in the past. We have been told that our mosquito control interests are very narrow, parochial and unsophisticated, because one of our practitioners had the temerity to say publicly, even though using very qualifying language, "...it appears in certain cases that it" -- NJDEP -- "is putting ducks ahead of people." Insupportable? Intolerable?

Well, what really appears in A-2342 is the following exemption: "emergency activities carried out to protect the

public health and safety." Great, you say. They recognize the public needs protection on occasion. But listen to the stipulations. The exemption may be granted if the activity "will cause only minimal adverse environmental impacts when performed separately, and will have only minimal cumulative adverse impacts on the environment." If this is not telling people that they are worth only a minimal impact on the environment, then I, too, will have to plead guilty to being narrow, parochial, and unsophisticated.

At the risk of continuing in this unenlightened mode, one wonders what emergency activities in the wetlands consist of. One recalls seeing news films of workers frantically piling up sandbags to restrain the rampaging waters of a flooding river, but one has not heard of a rampaging wetland. The wetlands are not the place for frantic activities, not the place for quick solutions that involve temporary alteration of the environment. The only emergency action -- here construed as an action taken in a timely manner to prevent undesirable results -- available to mosquito control agencies is the application of pesticides if the larval or adult populations warrant such actions. I shall not dwell on the feeling in the mosquito control community that an emergency means a disease outbreak with the consequent sickness or death by which time it is usually too late in the game. Emergency measures do not measure up to preventive measures.

Since our comments on A-2342 forestall any logical discussion of the issues, one must putter along irrationally returning to the language of A-2342, language which does not preclude the possibility of small bodies of water being construed as upland wetlands, since size is not a criterion in the bill.

There are far too many instances on construction jobsites where, through interruption of normal drainage patterns, water collects and may lie for a year or more during

which time it develops aquatic flora and fauna. Presto change-o, an upland wetland. Under the language of A-2342, the developer who is not timely in his environmental maintenance may put his buyers at the mercy of mosquitoes that breed in the wetlands he has inadvertently created.

Perhaps, having broached the topic of created wetlands, we might well turn to the new art form in New Jersey called mitigation. We can only hope that in the creation of these new free-form structures, there will be as serious study for the creation of a wetland as there is for its destruction. In new Jersey, a hole in the ground that retains water has a better than 70% chance of breeding mosquitoes. Need one add that since this inviolable wetland would in all probability be near the people who are its cause for existence, there would be calls for mosquito control and the use of pesticides. Is this really what you want?

Although A-2342 states the intent of the bill is not to abrogate the rights of authority otherwise provided by law, we would be remiss if we did not point out that this bill does abrogate the powers of boards of health in NJSA 26:3-46 where maintaining mosquito breeding waters is not perceived as an acceptable act. At the risk of being redundant, one can only repeat that A-2342 seems concerned with an environment in which people are not really an essential element. Now, this may be true; we are indeed inundated with a plethora of people. However, those of us in mosquito control are concerned with that plethora; it is our reason for existence. Boards of chosen freeholders have been providing mosquito control to New Jersey citizens since 1913. We would be false to those who went before us if we did not oppose this bill which so limits our work and puts us so firmly in a position of having pesticides as our primary control weapon.

It is obvious that some regulation of human activities in the wetlands must be achieved. In our opinion, Assembly

Bill 2499 seems to take greater cognizance of the human factor and thus warrants our support. There are, however, areas where we would like to see changes in A-2499; areas where research and experience tell us there are likely to be problems.

First, we would like to see all stormwater management facilities exempted from the provisions of A-2499. There are detention basins now in existence that qualify as wetlands because somebody put in a riprap low water channel rather than asphalt or concrete. The presence of cattails would eliminate a future site from maintenance provisions. Similarly, siltation of retention basins could create wetlands where they were never intended. Second, we would like to see assurances that wetlands created under mitigation activity are closely monitored so that they do not become the source of winged pollutants and thus the cause for increased pesticide usage. Finally, we would like to see activities carried out under Title 26 of New Jersey Statutes Annotated exempted from the provisions of the bill as they were from the Wetlands Act of 1970.

The members of this Committee, sitting and listening to the various arguments about wetlands, should remember that there is a wide range of wetlands. Some wetlands can be thousands of acres in size; others can be only a few square feet. Some wetlands are not a problem; they get themselves in ecological balance and produce so few mosquitoes that we do not bother with them. You see, we do have some responsibilities to the people as to how we spend their tax dollars. Other upland wetlands are serious mosquito problems, the resolution of which is often inextricably tied to river drainage. Here, water management activities may be purposeless until the larger problem is resolved. Upland wetlands describe a wide range of environments: some natural, some the results of man's inveterate tinkering with the world around him.

The members of this Committee would do well to ponder the language of the two bills before them. One, A-2342, is broad in its language and is meant to shelter all wetlands, no matter how loosely defined and no matter how or why they were created, under the increasingly spreading wings of the Department of Environmental Protection. The other bill, A-2499, is precise in its language and it defines a wetland so that even a layman like myself can understand what and where it is. A-2499 is a bill directed at protecting the wetlands while at the same time protecting the people from the encroachments and encumbrances of big government getting bigger. It deserves and it merits your support.

Thank you.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Jack?

ASSEMBLYMAN PENN: No.

ASSEMBLYWOMAN OGDEN: Mr. Rupp, I have one question. You state that if A-2342 were passed it would give you only pesticides for controlling mosquitoes. What role do pesticides currently play in your control of the mosquito population?

MR. RUPP: Our program is a smaller program than most, so I don't want to generalize on New Jersey through us. But, in the off non-breeding season, we do water management; that is, we clean ditches, we drain old ditches to make sure they flow. Some of these -- at least the copy of the bill I have seems to give us a very loose definition -- would put us in a permanent process. The experience of the New Jersey mosquito control community, and I speak as a whole, has generally not been good with the Stream Encroachment Act. They have encountered increasing difficulties.

But, water management is preferred because it is a permanent elimination of a breeding site, if the breeding site warrants it. I want to emphasize that. Just because there is water is no reason to remove it. There are areas that do not breed; they are no problem. But if there is a serious problem,

rather than go back and put pesticides and pesticides-- I don't think I need to tell you that there is a growing concern about the use of pesticides in this country, in New Jersey in particular. This is a State where we have more toxic substances, I think, than most others, you know, per area of square mile. So, we are very concerned about the fact that our activities will be circumscribed and put us in one camp.

For instance, in Florida some years back, the commissions were selling all water management equipment and drawing almost totally on pesticides. We do not feel that this is the way to go. The use of pesticides has to be timely. If it is not timely, you get adult mosquitoes, and adult mosquito control means more pesticides being put into the environment.

ASSEMBLYWOMAN OGDEN: But, during the breeding season, wouldn't you be using pesticides primarily?

MR. RUPP: Yes, ma'am, but the fewer places we have to use them, the better off it is for everybody, we believe. There are some areas, through man's messing about in the world, which you are not going to be able to control, but we don't need help from any others.

ASSEMBLYWOMAN OGDEN: Thank you very much, Mr. Rupp.

The other county organization we have represented here this morning is the Monmouth County Planning Board. Is Mr. Richard Roedner here at this time? (affirmative response)

R I C H A R D R O E D N E R: Good morning. My name is Rich Roedner. I am representing the Monmouth County Planning Board and the Monmouth County Environmental Council.

Both the Planning Board and the Environmental Council feel freshwater wetlands are one of the State's most valuable assets and have supported the bills sponsored by Assemblywoman Ogden and Senator Lynch in the past. While we are still reviewing the particulars of Assembly Bill 2342 and Senate Bill 2003, we think they are an improvement over past proposals.

Specifically, we feel that the State's adoption of the Army Corps of Engineers' 404 Program will streamline the permitting process, to everyone's benefit.

Additionally, we support the proposed tax abatements for wetlands owners who lose some degree of use of their land.

Further, we all realize that everything in this world is interconnected. With this in mind, we applaud the concept of a buffer zone. Protection that stops at the boundary of a wetland is not enough. We have to ensure the integrity of a wetland by providing a protective buffer zone.

Finally, we point to the Monmouth County Growth Management Guide, which advocates the protection of wetlands through acquisition, local ordinances, and Federal and State management programs.

Freshwater wetlands are an invaluable and irreplaceable resource that the State can ill afford to lose. We feel the Ogden/Lynch bill will go a long way toward ensuring their viability for generations to come. The people of New Jersey deserve nothing less. We urge that a strong freshwater wetlands bill be adopted this year.

Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Do you have any questions, Jack?

ASSEMBLYMAN PENN: In your statement here you refer, I think, to tax abatement on certain lands that might be affected.

MR. ROEDNER: Correct.

ASSEMBLYMAN PENN: Do you view this-- In other words, if you had a tract of land and 50% or 60% of it were taken and, indeed, were wetlands or a buffer area, how do you see yourself, as the owner of this land, being reimbursed for the lack of development rights?

MR. ROEDNER: The Planning Board has not come out with an official position on the bill. My personal opinion -- not that of the Planning Board -- would be through property tax adjustments, a change in the value of the land.

ASSEMBLYMAN PENN: Would the property have any value?

MR. ROEDNER: It would to the State -- to the people in the State.

ASSEMBLYMAN PENN: Oh, so actually what you're saying is, the State, probably through its right of eminent domain, should then buy the land from the owner, or that Monmouth County should acquire the land?

MR. ROEDNER: I am not in a position to make an official statement on that.

ASSEMBLYMAN PENN: All right. I just wondered, since you mentioned tax abatement-- I am not sure that tax abatement would be sufficient. I just wanted to see how much further your thoughts might go on the subject. Thank you.

MR. ROEDNER: Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much.

I wonder if former Commissioner and former Senator John Horn is still here. I know he wanted to speak. Oh, there you are, John. While Mr. Horn is coming up, if there are any other spokesmen for county agencies, please let us know because we are going to go on now to the organizations after Mr. Horn speaks.

J O H N J. H O R N: Thank you. Good morning, Assemblywoman Ogden and Assemblyman Penn. My name is John Horn and I am speaking on behalf of the New Jersey State Building and Construction Trades Council AFL-CIO in opposition to Assembly Bill 2342. Before giving you my reasons for opposing this legislation, let me share with you some personal background.

I served in the General Assembly for eight years, so I know what it is like to have to face tough issues such as that before you today. I went on to serve in the State Senate and was selected by Governor Byrne in 1976 to be Commissioner of Labor and Industry. I held that Cabinet position through Governor Byrne's second term. At that time, the Department of

Commerce and Economic Development did not exist. The job-creating functions of that Department were then my responsibility within the Department of Labor and Industry.

Based upon my experience in both the Legislative and Executive Branches of government, it is hard for me to imagine a bill more threatening to the economic well-being of New Jersey than Assembly Bill 2342. This legislation would effectively drive new jobs and industry away from our State.

Let me explain how that would happen. Assembly Bill 2342 has an extraordinarily broad definition of wetlands. It goes far beyond the Federal definition in the Clean Water Act or in Assembly Bill 2499, which is also before you today. If the Ogden will were adopted, hundreds of thousands of acres of land in New Jersey would be removed from the potential pool of land available for economic development in our State. By diminishing the supply of land available, you would drive up the costs of the remaining developable land. This would make New Jersey far less attractive to businesses in evaluating states for potential expansion.

I also know from my experience in the Department of Labor and Industry how important it is for business to get quick and clear decisions on their permit applications. Assembly Bill 2342 adds still another layer of required permits for development. In this regard, Assembly Bill 2499 is far more preferable. It provides that State permitting requirements would be a substitute for Federal permitting requirements. State permits for wetlands development would be required only after the Federal government delegated its wetlands enforcement powers to New Jersey.

Under Assembly Bill 2342 it is likely that an applicant would have to go to both the State and the Federal governments for wetlands permits and might well get conflicting decisions. This is the kind of situation that drives developers and jobs away from our State.

I urge you to avoid that outcome. If you feel the State must go forward with a wetlands permit program, I would suggest that it be a substitute for the Federal program, not an addition to the Federal program, and that you follow the model outlined in Assembly Bill 2499.

Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you. Do you have any questions, Assemblyman Penn?

ASSEMBLYMAN PENN: No.

ASSEMBLYWOMAN OGDEN: Just one point here, Mr. Horn. You say that the definition in A-2342 goes far beyond the definition in the Federal Clean Water Act. It is actually the duplicate. The wording is the same.

MR. HORN: Well, Assemblywoman, from my former experience as the Commissioner, one of my biggest problems in the Department at that particular time was the permitting situation. You may well remember some of the publicity, which said that the permitting situation in this State was so outrageous that it took months and months, and sometimes years, to get a permit through for the development of a factory, or a building, or whatever the like. As a result of that, I am happy to see over the years now that that has been cleared up pretty well, and that the permitting procedures today are sensible and workable. We are fearful that this may not be so under your piece of legislation.

ASSEMBLYMAN PENN: I wonder if I could make one comment.

ASSEMBLYWOMAN OGDEN: Yes.

ASSEMBLYMAN PENN: I just want to say that the definition in the Ogden bill is not what is used by the Army Corps. It is contained in the Federal Clean Water Act. My bill defines, in specific terms, the precise working definition of fresh water wetlands that the Army uses in the field. I think that is where the difference comes in.

ASSEMBLYWOMAN OGDEN: Just another comment on that though, Jack. The reason we took the definition from the Clean Water Act was because that is a Federal statute. The working definition the Army Corps uses has been adopted by rules and regulations that can be changed.

When whatever bill is finally adopted is adopted, I'm sure that, you know, for working purposes, we would probably go along with what has been used in the past. But I would also like to reply to another point you made, Mr. Horn, which is that certainly the aim in my bill is not to have duplication. We actually provide for the consolidation of all the current six programs into one program under wetlands protection. It is unfortunate that we have to have any regulation or permitting at all, but on the other hand, the goal is to protect an invaluable resource, and that is why it is necessary.

MR. HORN: Well, one of the big problems I also had-- As a matter of fact, there was some legislation in both houses for oversight. One of the big problems in a bill such as this, is that once it leaves both houses and leaves the Governor's desk and is signed into law, it then goes into the regulatory provisions. There are many times, as you well know, that many pieces of legislation which are well-intended are not even understandable after the regulations have been written. This is one of the fears of our organization.

ASSEMBLYMAN PENN: I concur.

ASSEMBLYWOMAN OGDEN: And, as you may know, Assemblyman Franks has introduced legislation -- and I think it has passed -- to set up a commission on regulatory efficiency and effectiveness. I'm sure that that agency will deal -- or that commission will deal with whatever legislation is finally enacted.

Thank you very much for your comments.

MR. HORN: Thank you for the opportunity to be here.

ASSEMBLYWOMAN OGDEN: We have one other spokesman at the State level, Senator Lynch, who I see standing in the back of the room. I know you have a very hectic schedule, Senator Lynch, so we would like to give you time to speak now.

S E N A T O R J O H N A. L Y N C H: Thank you very much. I appreciate the courtesy of the Chair, particularly since this is my hometown.

I have testified on this legislation so many times now that I forget the number. I think we have probably discussed this bill and the components of it with more people, at more times, made more compromises, and had more input than any other piece of legislation that I have become familiar with during my brief tenure in the Senate, some four and a half years. I venture to say that I have a larger file on the wetlands than I have on Mount Laurel, and I have about two trunksful of Mount Laurel.

But I think that through your sponsorship and through the work that you have accomplished, we have a bill here that is truly meaningful. It is designed to protect the over 200,000 acres of remaining freshwater wetlands. It is sensitive to the environment that relates directly to the protection of our sub-surface and potable drinking water by providing a natural means of flood and storm damage protection, and serving as a buffer from the drylands and water courses etc. providing essential breeding and spawning grounds, as has been indicated so many times.

I think the bill takes into consideration the need for continued growth in the State. It is sensitive to those concerns. It is sensitive, at the same time, to the environmental concerns which we, in a very urbanized State like this, are much, much more sensitive to than we have been in the past.

So, I really appreciate the opportunity to be here. I would be glad to answer any questions. I think the time has

come in this State for the freshwater wetlands bill to be enacted. I think we have worked long and hard with so many different people over so many years, and to allow this bill to drift on and on and on while so much of our natural resources here are being eroded, and so many of our protections are being eroded, that it would be foolhardy. I think it would be in the best interest of this State if this Committee would continue to move forward to release this bill to get it in place for a vote. I hope to see the same action taken in the Senate in the very near future.

ASSEMBLYWOMAN OGDEN: Thank you very much, Senator Lynch. We appreciate your coming.

I received a note that we have one more spokesman for a county organization. He is from the Essex County Department of Parks, Recreation, and Cultural Affairs, Mr. Tom D'Angelo.

T H O M A S D ' A N G E L O: Good morning. My name is Tom D'Angelo. I work as an Environmental Specialist with the Essex County Department of Parks, Recreation, and Cultural Affairs.

The Essex County Department of Parks, Recreation, and Cultural Affairs has a history of protecting wetland areas as open space and public recreation areas. Our commitment to wetlands protection continues today with the proposal submitted to the State -- the Green Acres Program -- for the purchase of a 35-acre wetland named Long Meadows in Fairfield. This parcel of land will become the latest addition to the West Essex Park System, which has components in the municipalities of Fairfield, West Caldwell, Roseland, and Livingston. Most of the West Essex Park System consists of wetlands.

The Essex County Department of Parks, Recreation, and Cultural Affairs recognizes the value of protecting wetlands. Western Essex County is within the flood-prone Central Passaic River Basin, and wetlands in this region are crucial for storing flood waters and decreasing the severity of flooding peaks. Much of the western portion of our County has been

designated as a soil source aquifer by the United States Environmental Protection Agency.

The wetlands and wetlands edge are among the primary sources of recharge for our drinking water. Our wetlands purify groundwater which flows through the region, provide habitat for a variety of wildlife, and, importantly to us, provide open space for our densely populated County.

The Ogden freshwater wetlands bill will help to accomplish the Department's goals of protecting our valuable wetlands. The Ogden bill will provide an enforcement element to ongoing wetlands violations in our County. Since January, DEP has stopped work at 12 separate construction sites in the Central Passaic River Basin portion of Essex County. Ten of these sites were previously wetlands. The Ogden bill will protect the wetlands by providing buffers from incompatible development. The Ogden bill will regulate all activities in the wetlands and allow only compatible uses, and will establish one permanent system eliminating the process of having to contact the U.S. Army Corps of Engineers. The Ogden freshwater wetlands bill will help to protect the many public values which wetlands provide to the people of our County.

For these reasons, the Essex County Department of Parks, Recreation, and Cultural Affairs supports the Ogden/Lynch bill. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much.

ASSEMBLYMAN PENN: Well, first of all, I would like to commend you on purchasing the wetlands. I think that's good. I think the park systems today which recognize this and are out purchasing the property and maintaining it as a wetland should be commended. Green Acres money is being made available. I know that in our district a number of properties have been purchased. I think that is very commendable and I am happy to see it.

The only other thing I would like to comment on is, you talked about the one permanent process, and under the Ogden bill, until such time as there is delegation, you wouldn't have one permanent process here. Are you aware of that?

MR. D'ANGELO: I heard mention of that this morning.

ASSEMBLYMAN PENN: You would still have to go to the Army Corps or the EPA to get your permit, as well as to the State. So, it would not be a one-process thing. That is my only comment. Thank you..

ASSEMBLYWOMAN OGDEN: I assume at this point that there is no one else here from any governmental agency. Therefore, we will start with the groups. The first speaker will be from the National Association of Industrial and Office Parks, Morton Goldfein. If he is not here, is there a spokesman for that group?

FROM AUDIENCE: He is due here in about an hour.

ASSEMBLYWOMAN OGDEN: Oh, I see.

FROM AUDIENCE: If he could be called later we would appreciate it.

ASSEMBLYWOMAN OGDEN: All right. Then we will go next to Dave Fisher from the New Jersey Builders Association.

D A V I D F I S H E R: Good morning, Chairwoman Ogden and Assemblyman Penn. My name is Dave Fisher. I am Staff Director of Environmental Affairs and Planning for the New Jersey Builders Association. We represent the interests of 1,200 home builder members and 1,400 associates involved in the construction industry. We appreciate the opportunity to testify before the Assembly Energy and Natural Resources Committee today.

Due to the direct impact of wetlands regulation on our members, the NJBA has followed closely the evolution of the freshwater wetlands legislative initiatives since their beginning in July, 1983.

For the past few years, the NJBA has been a leading proponent of a workable and balanced freshwater wetlands protection program for New Jersey. In enacting such a law, the Legislature must, first and foremost, however, set forth clear and specific State policies regarding freshwater wetlands protection. Only when the Legislature exercises its proper authority will we rectify the current wetlands regulatory scenario in New Jersey, which produces excessive delays, jurisdictional battles between State and Federal agencies, and unjustifiable regulatory restrictions that are based on the preferences of a few, with little or no statutory authority.

The current approach in New Jersey protects the State's wetlands in a most inefficient manner. To the extent it succeeds, it does so through an excess of process that ultimately increases the costs that our citizens, and especially our new homebuyers, are forced to pay. Let me briefly illustrate the sources of inefficiency, delay, and burdensome redundancy.

The New Jersey Department of Environmental Protection regulates freshwater wetlands under a variety of permit programs, such as stream encroachment, sewer extension, water quality consistency determinations, water quality certificates, and CAFRA. It is important to note that DEP has no clear definition of freshwater wetlands and has not published any regulatory guidelines with which the applicant must comply. Furthermore, DEP relies on a confused regulatory permit process that pits one DEP bureau against the other, and the entire Department against involved Federal agencies -- namely, the Army Corps, Fish and Wildlife, and EPA -- leaving the applicant stranded in-between.

ASSEMBLYWOMAN OGDEN: Excuse me. Dave, you have 10 pages here. Is it possible for you, in the interest of saving time for everyone else, to skip some sections or summarize some of the points? Everything that is submitted in writing will be made part of the record.

MR. FISHER: Okay, I'll summarize. What I would like to say before I get into a few of the reasons why we support the Penn legislation, however, is to indicate why we feel there should be legislation to protect freshwater wetlands.

As opposed to setting broad mandates, we support the Penn legislation because it would clearly define State policy. We feel it would set in legislation a state-of-the-art wetlands protection program that would recognize the differences in freshwater wetlands by creating a unique program to classify wetlands based on their environmental benefits.

There has been a lot of discussion about the role the wetlands play in protecting areas from flooding. We have submitted, attached to our testimony, copies of materials, one of which is an article from the Journal of Soil and Water Conservation. I would just like to read one or two quotes from that: "The literature is virtually unanimous in its rejection of the sponge hypothesis, that wetlands act to release water in storage during periods of low stream flow." Furthermore, the article challenges the popular belief that wetlands act as good water recharge areas and indicates that wetlands have little capacity to reduce stream flow peaks through absorption. In fact, the research reveals a probable link between the presence of wetlands and the severity of flood damage.

We do, however, recognize the need to protect wetlands for the following reasons: (1) to maintain the habitat of wildlife, waterfowl, and native flora; (2) to serve water quality benefits by filtering pollutants and absorbing nutrients; and (3), to preserve certain economic values and jobs associated with recreation and wildlife management, and by maintaining waterfowl habitat which produces food, etc.

One of the most important provisions in the wetland statute is the definition itself. We have also attached a copy of the Army Corps' Environmental Laboratory Bulletin for your review, which says: "Positive wetland indicators of all three

parameters must be present to identify an area as a wetland, and indicators of all three parameters can be found in almost all wetland situations." It does on to say: "Vegetation as an indicator of wetlands can sometimes be misleading."

We believe the Penn definition must be set forth in a statute which requires the identification of hydrophytic vegetation; number two, soils; and, number three, proper hydrology. We also believe that the classification system set forth in the Penn bill must be adopted. It would provide a system where DEP could much more objectively decide whether or not a proposed wetlands encroachment could be allowed subject to mitigation. There have been other examples throughout the country to develop such a classification system.

The Ogden proposal, on the other hand, would not allow DEP to make such distinctions, so we support that concept wholeheartedly.

Another bulletin which is attached is put out by the U.S. Congress Office of Technology Assessment. This bulletin also suggests that wetlands programs be tailored or adjusted to existing policy and programs, so that wetlands are regulated according to their relative value. This, I think, establishes the need for a classification system.

We are also strongly opposed to the concept of buffer zones. To date we have seen no clear scientific evidence that buffer zones are needed around freshwater wetlands to protect them. The Army Corps' program does not require them, nor do the wetlands programs of other states, such as Connecticut and Maine. Since the legislative intent of both bills indicates that wetlands themselves act as buffer zones between dry land and water courses, we must ask the question, "Why buffer the buffers?"

Again, Assemblyman Penn's bill mirrors the Army Corps' program in terms of regulated activities. It regulates the discharge of dredged or fill materials, whereas the Ogden bill,

we feel, would inundate DEP with thousands of permits per year, since it regulates not only the filling and draining of wetlands, but also the driving of pilings, the placing of obstructions, whether or not they interfere with the flow of water, and the destruction of plant life, including the cutting of trees.

With respect to encroachment into a wetlands area, the Penn/Zane bill establishes a clear process whereby the applicant must demonstrate to DEP that either the proposed activity is dependent upon being located in the wetland, or that a practical alternative does not exist. If the applicant cannot demonstrate compliance with one of these criteria, no encroachment can be permitted by DEP.

In contrast, the Ogden bill requires that all four tests must be met before issuing a permit, the first of which is to acquire water dependency in all cases, and three other very restricted conditions. In that regard, we don't feel that any, except for some very minor activities and work-related activities, would ever be issued a permit.

When wetlands disturbance is proposed, under the Penn legislation DEP is directed to accept certain mitigation measures. We've heard this. It would allow for the creation of new wetlands as a way in which to expand on wetland areas, and on State-owned property as well. I think the Army Corps' program and others have demonstrated that with proper monitoring by DEP, certain mitigation techniques can be used effectively, and that is done in today's CAFRA Program in New Jersey.

Much discussion has also taken place on the issue of DEP assuming the Corps' jurisdiction. The Penn legislation requires DEP to make application within six months of enactment to assume the Army Corps' jurisdiction. The State Wetlands Permit Program authorized by the Penn bill would then take effect immediately upon delegation. This would encourage

regulatory efficiency and encourage DEP to expedite its efforts to obtain delegation of the Federal program.

Regarding the subject of exemptions, the two legislative measures are largely similar, with a few notable exceptions. We support the fact that the Penn bill exempts minor maintenance, reconstruction, or repair of roads and other utilities so that they may proceed with little or no environmental harm without a permit. Another important feature of the Penn legislation is its provision to prepare a comprehensive mapping inventory, which we think is essential, rather than relying on National Wetlands Inventory maps, which have been recognized as highly inaccurate and only a general guide for locating potential wetland sites. We feel that maps must be prepared in accordance with the law, as has taken place in other states, such as the State of New York.

Last, but certainly not least, is the issue of adequate funding. Assemblyman Penn's bill would appropriate \$2 million in order to carry out its provisions. This appropriation amount was determined based on the current funding necessary to administer the Army Corps' 404 Program in both districts for New Jersey. The Ogden bill appropriates only \$500,000 and proposes to regulate many more types of activities than the Penn legislation, resulting in an estimated 39,000 to 40,000 DEP permit actions in the first year of the Ogden's bill implementation, according to a recent administrative analysis conducted by a land use regulatory consultant, which we have attached to our testimony. These figures are based on total DEP permit actions, not actual permits. Then, that would translate to more than 10,000 wetlands permits per year, we have estimated, and even the largest of DEP permit sections, the Stream Encroachment Section, processes only 800 permits per year with a staff of 35 persons. On that basis, we feel it is safe to estimate that the Ogden bill would require 400 or more staff, and we have to

question, at what cost? Certainly many times the \$500,000 called for in the Assemblywoman's bill.

We urge the Committee and Assemblywoman Ogden to examine closely the provisions of A-2499 in order to realize the benefits of such legislation, and we sincerely hope that your Committee will choose to embrace a balanced, technically justifiable wetlands protection program such as Assemblyman Penn's A-2499.

Thank you for the opportunity to testify. We are always available to respond to any additional concerns as they may arise.

ASSEMBLYWOMAN OGDEN: Thank you. Do you have any questions, Jack?

ASSEMBLYMAN PENN: No, I don't.

ASSEMBLYWOMAN OGDEN: There is just one thing I would like to point out in terms of the number of permits and people. In response to the 39,000 to 40,000 permits you stated here, the head of Water Resources for DEP has stated that there would be between 500 and 750, and feels that a staff of 12 to 15 would certainly be ample.

In terms of Michigan, which has three to five million acres of wetlands, in contrast to our 200,000, they had a maximum of 5,000 permits. So, we're talking, I think, about a greatly reduced number of permits from what has been stated here.

MR. FISHER: I must say that the Michigan legislation, however, does not regulate the breadth of activities that your bill proposes to do. I feel that based on the level of review in the Stream Encroachment Section, a wetlands permit would require at least that level of review, if not more. I find the Division's numbers very low.

ASSEMBLYWOMAN OGDEN: It depends upon what your perspective is. Thank you very much.

MR. FISHER: Thank you.

ASSEMBLYWOMAN OGDEN: At this time, representing the League of Women Voters, I would like to call Eleanor Gruber.

E L E A N O R G R U B E R: My name is Eleanor Gruber, and I am testifying on behalf of the Natural Resources Committee of the League of Women Voters of New Jersey. The League is a public interest organization, whose principle is the promotion of the active and informed participation of citizens in government. We have approximately 6,000 members. We thank the Committee for inviting us to give testimony on Assembly Bills 2342, hereafter referred to as the Ogden bill, and 2499, hereafter referred to as the Penn bill, both of which address the issue of freshwater wetlands protection.

We have testified several times as to the pressing need for protection of our freshwater wetlands. Each time we prepare this testimony we see that more of our dwindling and irreplaceable wetlands are being filled and developed. We hope that our State representatives will act as speedily as possible, so that we may have a few acres of wetlands left.

You will hear testimony from scientists who will give detailed explanations of wetlands values and definitions. We are testifying from a public protection point of view. The League of Women Voters believes in the wise management of natural resources. We recognize that the interests of private landholders and developers must be guaranteed and protected. But, as we have stated before, freedom of one person is not guaranteed when it impinges upon the freedom of others. It is the duty of government to balance the requests of the few with the needs of the many. This may be the greatest task of a government in a free society. We must balance not only economic costs and economic benefits, but also social costs and social benefits.

This attempt to balance is made quite clear in the effort to protect a natural flood retention and water quality protection area such as the freshwater wetlands.

We are looking at two bills which appear to protect our freshwater wetlands. While we support such protection, we would not be happy to see an incomplete bill become law. Although we are certain that Assemblyman Penn has the best interests of the State at heart, we believe he has left out some basic protections needed. We prefer the Ogden bill, although it is not as stringent as we would like.

Our opposition to several provisions of the Penn bill are listed below:

Section 7 deals with mitigation. The League has testified against this principle many times. We do not believe mitigation should ever be used as a condition of granting a permit. Wetlands cannot be completely mitigated, no matter how many drainage ditches, yards of filter fabric, or new earthen buffers are created. We do not believe, nor has it ever been proven, that man can successfully recreate a wetland area. These areas have been constantly changing and adding new vegetation as nature provides for wet and dry periods. None of us is competent enough to duplicate nature; we can imitate, but we cannot duplicate. We see proof of this in our shore communities, which have tried expensive and ultimately ineffective methods of preventing beach erosion, rather than taking the unpopular but correct step of prohibiting building at the shore line. It comes down to a matter of dollars; more homes at the beach means more tourist dollars for the community. But at what cost?

Similarly, more filling of flood retention areas inland also translates into economic gains for the landholder, builder, and community. What price for this? The recent floods in the Passaic Basin caused over \$50 million in damages and countless stories of misery. All of this because some mitigation was provided, assurances given, drainage ditches dug, and man--made retention basins built. We see what nature does to man's plans for mitigation.

Our second major objection to the Penn bill is in Section 8, the classification section. We object to the ranking of wetland areas into valuable, least valuable, or sort of valuable, with the theory that not all wetlands are of comparable value and can be utilized for other purposes without harm to the environment. We do see literature which supports the theory of different values, but why should it follow that even the least valuable wetland area become a target for development? Who of us can really measure the "least valuable" wetland? What measure is used? Does the value include water quality improvement by natural processes? Does it include aquatic productivity? Does it include the value of the "least valuable" wildlife habitat, or does it value recreation benefits and aesthetics? Does it take into account that wetlands rest at certain periods, only to emerge when called into action because of those natural phenomena known as floods?

We all agree that only 4% of the total State acreage is available freshwater wetlands; yet, this relatively small acreage is responsible for maintaining water and plant quality, biological life, and flood control. Who is to judge which wetlands are more or less valuable?

Third, Section 15 deals with a new wetlands inventory to be done by DEP. We are not convinced that the existing maps are not thorough enough, but if this provision does go through, we ask for a complete moratorium on all building and permitting until the mapping is complete. If the provision for inventory goes through, and we know that these things take time if they are to be done correctly, it makes no sense to allow any additional filling of areas until the inventory is complete. Otherwise, what is mapped on Tuesday may be filled in by Wednesday, and then it will add to the confusion.

Our final objection to the Penn bill is the absence of a buffer provision. We support protection of buffer areas to freshwater wetlands. If we allow development right up to a

"valuable" wetland area, the value of the area immediately disappears. There must be some provision for buffer zones.

We are pleased that both the Penn and Ogden bills provide for substantial fines for violation of the wetlands permit. We still believe there is a serious omission in both bills due to a lack of any on-site inspection of approved construction or fill. Someone other than an observant citizen must be responsible for constant on-site review. We suggest additional funds be added for this purpose. Without scrutiny by officials, mistakes are made.

In addition to the harm done to our State's dwindling wetlands, there is something else we believe you, as legislators, must consider; that is, the prospect of litigation by residents suffering extensive property damage from floods, who are mad enough to sue State, county, or local agencies for failure to protect them from overdevelopment in the flood plains and wetlands. This is a serious and potentially expensive proposition. Our State tries to protect its residents from auto accidents and toxic spills; that is the function of the State, to ensure the health, safety, and welfare of its residents. These are not nice things to do, merely a benevolence of a State agency towards its residents. Rather, these are the duties of the State. And, if by granting a permit to one corporation or individual does any harm to another by way of flooding or water quality impairment, then it is the duty of the State to say "No." Doing favors for large corporations, builders associations, or shopping mall developers, or a friend of a friend, is not in the best interests of our State. Our residents have the right to expect nothing less than full protection of their civil rights. New Jersey will not stop growing because a permit is denied. New Jersey will stop growing if the quality of life is ruined. When are our legislators going to be brave enough to say "No"?

We urge the Committee to release the Ogden bill as soon as possible for a vote in the Assembly. We cannot afford to delay protection of these irreplaceable areas.

ASSEMBLYWOMAN PENN: Thank you for your testimony. Have you any idea of the number of acres that are now regulated in New Jersey?

MS. GRUBER: I have the figures in a file at home. I don't have the exact figures with me; I'm sorry. Excluding the Meadowlands and the Pinelands, I have the figures--

ASSEMBLYMAN PENN: I mean including the Pinelands, the Hackensack Meadowlands, everything protected under CAFRA. Are you familiar with the number of acres that are now--

MS. GRUBER: I don't have those figures with me; I'm sorry.

ASSEMBLYMAN PENN: Okay.

MS. GRUBER: We have to exclude the Meadowlands and the Pinelands from the available because--

ASSEMBLYMAN PENN: Why? Actually, they are already regulated. What I am saying is the number of regulated freshwater wetlands we now have, or wetlands that are now regulated. The Pinelands are regulated.

MS. GRUBER: Yes, yes, I know that. I'm sorry, I thought you--

ASSEMBLYMAN PENN: I'm saying the number of acres that are now protected. We're saying there are approximately 200,000 acres right now, an inventory of freshwater wetlands. But, in addition to that 200,000 acres, there are many, many acres that are already regulated. I just wondered if you were aware--

MS. GRUBER: Oh, yes, I am aware of that. I'm sorry; I misunderstood your question. I am definitely aware of that.

ASSEMBLYMAN PENN: Okay, thank you.

MS. GRUBER: That was the point I made when I spoke of the areas not regulated; it is a very small number. Yet, that small number is very, very important to us.

ASSEMBLYMAN PENN: Yeah, I just didn't want to leave the impression that--

MS. GRUBER: No, I understand that completely.

ASSEMBLYMAN PENN: I have another question. You don't feel there is any value in the classification of wetlands, is that true?

MS. GRUBER: I don't believe that the classification system of wetlands should be used for granting a building permit. What I said was, I am aware of the literature saying there is a classification system, but I do not feel that it is up to anybody to say one area is a little less valuable than another; therefore, let's build on it. I don't believe that has anything to do with where we should build.

ASSEMBLYMAN PENN: A man-made lake on your own property -- how would you treat that?

MS. GRUBER: A man-made lake on my own property?

ASSEMBLYMAN PENN: Yes, on your own property. Say you have 100 acres and you build a 10-acre pond on your property, and then you sell the property. Is that a regulated wetlands?

MS. GRUBER: I can't answer that question.

ASSEMBLYMAN PENN: All right, thank you. I just-- In other words, that is why I am saying there should be a classification. There are some wetlands that are totally of such a sensitive nature and such value, as we have in the Great Swamp up here, that there shouldn't be anything built on them or around them. However, there are some other things without a classification system. There might be a duck pond in your yard, or something like that. In other words, they say any body of water that a migratory bird can land on is defined as a wetland. That is because it could involve interstate commerce. Therefore, it's under the Army Corps of Engineers and the EPA. That is how wide the definition goes, and that is why I think it is so important that we have a classification. I think there is a real different value in wetlands, and I

think that is a perspective you have to look at all the way across. That is why I think it is so important that we do have some sort of classification.

MS. GRUBER: I understand what you're saying, but in the definition of a wetland area, or a natural wetland area, I don't know if they would consider the pond that you dug three years ago a man-made lake. As I say, I am not a scientist. We are just testifying from a public participation point of view. But I don't know if they would consider that a true definition of a wetland that would be filled in..

ASSEMBLYMAN PENN: Well, unfortunately, it is today. That is one of the reasons I think classification is so necessary. But, I understand what you're saying, and your comments are very well-taken. Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you, Ellie. Is Patrick Witmer here from the New Jersey State Chamber of Commerce? (affirmative response)

P A T R I C K J. W I T M E R: Thank you very much, Assemblywoman Ogden and Assemblyman Penn. My name is Patrick Witmer. I am the Director of Legislative Affairs for the New Jersey State Chamber of Commerce. The State Chamber appreciates this opportunity to address legislation introduced by Assemblywoman Ogden -- A-2342 -- and Assemblyman Penn -- A-2499 -- concerning the protection of freshwater wetlands in our State.

The benefits to be derived for all New Jerseyans from protecting our State's large, contiguous wetlands cannot be understated. While our economy stands to benefit from the protection of wetlands, our economy and thousands of jobs can also be threatened, depending on how and what areas of our State are restricted from new growth.

The State Chamber believes certain key provisions of A-2499 are essential for implementing workable, reasonable regulations to secure the protection of freshwater wetlands in this area:

First of all, the mapping and clear identification of freshwater wetlands is necessary in order to avoid delay and confusion in determining what areas are to be designated as wetlands. We believe the definition of wetlands in A-2342 is too broad and allows too much discretion to the Department of Environmental Protection. Not only is a new mapping system needed, but a more concise definition of what constitutes a wetland -- as provided in the Penn bill -- we believe, is essential.

Secondly, A-2499 -- the Penn bill -- does not provide for buffer zones other than the wetland areas themselves. We believe this position is upheld by the language of the Ogden bill, which states that wetlands serve "as a buffer zone between dry land and water courses..." We believe there is no further need to restrict development in non-wetland areas because the wetland areas to be governed under both bills serve as a proper buffer.

Third, both bills allow the DEP to balance the benefit which may be expected to accrue from a proposal against the foreseeable detriments of the activity when determining whether an activity is in the public interest. We believe this evaluation of need is a critical provision. Under the Penn bill, however, in Section 5 c., the applicant is solely responsible for providing this information to DEP. This review, we believe, should fairly be undertaken by DEP in all circumstances, with assistance from the applicant.

Fourth, in a related area, under Section 8 of the Penn bill, DEP will develop a classification system to rank the value of wetland areas. This morning Commissioner Dewling confirmed in his testimony that various wetlands have various values to the environment. These values, as determined by DEP, should appropriately be considered under this legislation.

Fifth, the Penn bill allows the creation of new wetlands or the expansion of existing wetlands as possible

mitigation to be evaluated and considered by DEP in the permit process. The Ogden bill, on the other hand, allows DEP to require the creation of new wetlands, but not as an alternative proposal.

Sixth, certain exemptions provided by the Penn bill include the maintenance or repair of existing roads, storm water management facilities, and emergency activities to protect the public health. These exemptions, we believe, are extremely important.

Finally, the State Chamber supports the grandfather clause in A-2499 which honors those developers currently in the process of obtaining permits.

Assemblywoman Ogden and Assemblyman Penn, the State Chamber believes the creation of jobs and balanced economic growth are vital concerns which should and must be considered under the proposed legislation.

Thank you very much for the opportunity to speak.

ASSEMBLYWOMAN OGDEN: Thank you. Do you have any questions, Assemblyman?

ASSEMBLYMAN PENN: No, I don't.

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. WITMER: You're welcome.

ASSEMBLYWOMAN OGDEN: The next person signed up to speak is Candy Ashmun representing the Freshwater Wetlands Campaign.

C A N D A C E M. A S H M U N: Members of the Committee: Thank you for providing the opportunity for this testimony.

I am Candace Ashmun. I reside in Somerset County and am a member of the Pinelands Commission and the State Planning Commission. Today, however, I am speaking as a member of the Freshwater Wetlands Campaign.

I believe in the free enterprise system, and I believe that government has a responsibility to protect the broadest public interest. The latter is particularly true in the case

of irreplaceable resources like the freshwater wetlands of New Jersey.

The free enterprise system is based on the entrepreneur's ability to take risks and make money in return. It is difficult for individuals competing in this system to take upon themselves the protection of natural resources. Whereas one person might forego some profit to act responsibly and protect a wetland, his competitor acting less responsibly could put him out of business.

People create governments to protect themselves from crime and destruction. They expect to have their resources protected and that all entrepreneurs will be able to operate under the same rules and compete fairly while acting in the public interest.

I need not make a long speech espousing the need for protecting our freshwater wetlands. It has been an acknowledged public priority for 20 years. I would like to note, however, that the notion that a natural freshwater wetland created over the millenium can be replaced with man-made wetlands has never been scientifically proven and, in fact, has recently been discarded as an appropriate response to the destruction of wetlands. A wetland is an ecologically unique spot on earth, not an engineered basin holding water and growing cattails.

Until the 1960s, wetlands were considered wastelands suitable only for filling and dumping. They were the "cheap" land where highways were routed and garbage was dumped.

The 1960s marked a period when the public and, therefore, the government began to realize that resources were being destroyed by pollution and general degradation. During the next 20 years of attempts to clean up the mess and generally salvage what was left, two things became abundantly clear. One, that the technology required to reverse years of damage would be immensely expensive, and two, that the natural

systems had an enormous capacity to perform that cleanup and control the degradation.

The wetlands, both coastal and freshwater, are perhaps the most active of these natural systems and, therefore, represent an economic, as well as an ecologically important public asset.

The Federal government took the initial step to protect these assets, recognizing that they offered opportunities to minimize future public costs and protect commercial and recreational opportunities. The Clean Water Act requires the Corps of Engineers, with EPA oversight, to protect certain wetlands areas.

The states, among them New Jersey, Rhode Island, Connecticut, New York, and Massachusetts, enacted strong coastal wetlands protection statutes. All of these but New Jersey followed with regulation of freshwater wetlands.

Whereas New Jersey took the lead in coastal wetlands protection, it has never taken steps to protect its freshwater wetlands.

The importance of inland wetlands to New Jersey has been acknowledged repeatedly by the Legislature. In enacting the Hackensack Meadowlands Development Act, Coastal Facilities Review Act, and the Pinelands Protection Act, all landmark pieces of legislation, the Legislature insisted that protection of wetlands should be a significant aspect of that planning and regulation.

Incidentally, the implementation of those planning efforts have not stopped growth and have not destroyed the economy of the State.

New Jersey needs to follow through and fill the gaps left by the above legislation. We need to make all land users equal in their drive for profit. We need strong protection for the public assets in all areas. We need strong, decisive, and implementable regulation, not just a perception of the same.

In conclusion, and to take this discussion out of the realm of theory and into the real world, I would like to point out to the Committee that the interstate highway system, which has destroyed the cities and changed the name of the State from the Garden State to the "Sprawling State" is, by and large, routed through wetlands. Development at the interchanges and side roads along these routes almost invariably involves wetlands. Builders in these areas have a vested interest in the delay of real wetlands protection by the State. I don't think this delay is either fair to the greater development community or in the public interest.

The bills before you -- A-2342 and A-2499 -- represent opposite strategies. The Ogden bill, A-2342, permits construction when it is absolutely necessary and in the larger public interest, while providing strict protection for the remainder. It is predictable, timely, and offers real wetlands protection. Assembly Bill 2499, on the other hand, emphasizes mitigation, delays any action until an unpredictable series of unlikely Federal actions take place, and only deals with dredge and fill operations, not the full range of activities as called for in the Ogden bill. Incidentally, the regulated activities ignored in the Penn bill, but regulated in the Ogden bill, are those already in place in coastal wetlands and in the Pinelands.

I urge you to move forward with the Ogden bill, A-2342, as the fairest and the most timely way to "fill the gap" in wetlands protection in New Jersey.

ASSEMBLYMAN PENN: I just want to thank Candy Ashmun. I have always been a fan of hers and she has done a great job on the Pinelands Commission. She is from my district in Somerset County and I am happy she took the time to come down here. We often don't agree on a lot of things, but I respect her point of view and I think that oftentimes she respects mine.

The only thing is, in your testimony you said states, among them New Jersey, Rhode Island, and Connecticut, enacted

strong coastal wetlands protection statutes, and all but New Jersey followed with regulation of freshwater wetlands. Didn't the State of Michigan also? I think they also have a coastal wetlands protection bill.

MS. ASHMUN: Yes, they have to some degree, but not like the Atlantic and the Pacific states.

ASSEMBLYMAN PENN: I see. Thank you.

ASSEMBLYWOMAN OGDEN: Let's see, is the spokesman here for K. Hovnanian and Company? (no response) I see that Lloyd Tubman is here for Vantage Properties. Do you want to speak, Lloyd, or do you want to wait for Jason Cortell?

L L O Y D T U B M A N (speaking from audience): Jason, it appears, is not going to arrive. If he doesn't, I will speak later.

ASSEMBLYWOMAN OGDEN: All right. Would you give us your name and your position, please? (addressed to a gentleman who walks to witness table)

P E T E R R E I N H A R D T: My name is Peter Reinhardt. I am Senior Vice President and General Counsel for the K. Hovnanian Companies. I do not have a prepared statement; however, I have followed the tracking of the several bills -- over the last three years approximately -- which have been introduced and discussed in the Legislature, and have some comments I would like to make both as to the history and some of the remarks that have been made this morning.

The Commissioner this morning, and the Assistant Commissioner, made some very interesting comments. Assistant Commissioner Fenske made the comment that freshwater wetlands would continue to be destroyed and at a more rapid rate if the Ogden bill were not passed. Frankly, as a responsible developer, I am offended by that remark. We do not try to flaunt the laws of the United States or of the State, and the laws right now indicate and require that freshwater wetlands are governed through existing programs under the Army Corps of

Engineers. I do not believe-- I know for a fact that our company would not undertake such action regardless of which bill was passed or which bill was not passed.

Secondly, I was surprised to hear Commissioner Dewling make the comment that his organization -- his Department -- is currently going beyond the laws as they presently exist in trying to regulate freshwater wetlands. While I can appreciate his frustration in trying to accommodate legislative policies that his Department desires to have implemented, we, too, are frustrated by the incredible delay in processing, not just DEP approvals, but throughout the entire application process for all development requirements.

For instance, our company, while it is one of the larger home-building companies in the country, and in the State, presently employs seven attorneys -- in-house as employees -- merely for the purpose of processing development applications. It is not uncommon to have well over 100 steps in permits in the application process merely to build a home.

As many of you are probably aware, our company is the leading builder of affordable housing in the State of New Jersey. We have tried to maintain that policy despite the incredibly strong housing market which would enable us to raise our prices significantly and still meet the demand at a much higher profit. However, that isn't our philosophy. We try to keep our prices as affordable as possible. However, if the bill, with its larger buffer zones and its definition of wetlands, which is much more expansive than we think is necessary to protect freshwater wetlands, is passed, inevitably, as Commissioner Horn testified, land prices will be driven up. The approval process would inevitably be delayed and, as a developer, I can tell you that delays are the things that cause a good portion of the extra dollars that make housing so much more expensive in this State than in some of the other states.

This combination will make housing less affordable and, frankly, we are very, very concerned that what we are going to end up with in this State is housing that is affordable for Mount Laurel buyers -- because that is the Fair Housing Act requirement -- and housing that is affordable to the upper income and the wealthy. The middle class, probably most of the people in this room, and most of the people in this State, will be without the availability of new housing.

We are very concerned about that. Frankly, it is one of our major reasons for concern about this particular legislation, and all legislation that affects housing and requires more regulatory process.

As the New Jersey Builders Association has shown in a recent study -- in combination with this very institution, Rutgers University -- 25% of the costs of a home today are due to overly excessive or duplicative regulatory processing. We are very concerned that another layer of bureaucracy -- the dual permit process that would be inevitable under Assemblywoman Ogden's bill -- would be here for some time. As Assistant Commissioner Fenske testified, we are not sure whether it would be three or four months, six months, five years, six years, or ten years. Who knows? But the point is, it is another layer of bureaucracy, another layer of approval that is not necessary. It does not fill a gap that is not presently regulated. The Army Corps presently regulates-- I can assure you that builders are not happy dealing with the Army Corps of Engineers. It is a difficult, time-consuming process.

The other thing I would like to point out is, developers like to have certainty. They like to know what they can do and what they cannot do. If they can't build in the wetlands, they are very happy not to build in the wetlands. Frankly, the most responsible developers are not interested in tackling such a difficult issue as trying to get a permit in a

wetland. However, we are looking for certainty, and the mapping provision in Assemblyman Penn's bill would provide a greater level of certainty as to what lands are developable and what lands are not developable.

Frankly, our company would not be interested in land that is not developable. We are not interested in crossing a lot of hurdles to provide affordable housing. We want to do it in the simplest, most economical fashion, and yet build a quality product that complies with all the laws. But, unnecessary laws and duplicative laws are not the solution.

I think those are all the comments I have.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Jack?

ASSEMBLYMAN PENN: No.

ASSEMBLYWOMAN OGDEN: Thank you very much, Mr. Reinhardt for testifying today. I would just like to state that the aim of both of these bills in seeking delegation is to cut down, to simplify, and to provide one-stop shopping. There would be no one more happy than I if EPA would say that the bill was suitable for delegation, and then turn it over the next day. I certainly am not in favor of having a long period-- I am not in favor of having any period of duplication, if that is possible. I feel, however, that the decision as far as that is concerned lies with the EPA, not with the State.

MR. REINHARDT: I am glad to hear your comments. I hope you would also support then the process of eliminating the dual process, the dual recurrence of going to the Federal government and to the State government at the same time trying to get different approvals. Mr. Ara, meaning our Executive Vice President, who by the way is a member of the Board of Directors of the Monmouth County Conservation Foundation, has testified before the New Jersey Coalition for Regulatory Efficiency, chaired, I think, by Assemblyman Franks, as to the incredible, as he called it, Ping-Pong process. You go through

the local municipality and get your approval, which takes a year or two or three for a sizable application, and then you go to the State agencies, and you have to start all over because of the different requirements or desires of the different people within the different State agencies. Then you go back to the local municipality because a State agency made such substantial changes that you have to go back since they now have a substantial change under the local process.

All we are looking for is a more streamlined process that doesn't require all these different labels. If we can achieve that end through Mr. Penn's bill, your bill, or anyone else's bill, we would be very thankful. And I think the people of this State would be very thankful because housing would be a little more affordable.

ASSEMBLYWOMAN OGDEN: Thank you very much.

ASSEMBLYMAN PENN: There was one comment you made which I think is significant. The last place a builder really wants to build is on wetlands. That is the most expensive building there is.

MR. REINHARDT: Absolutely.

ASSEMBLYMAN PENN: That is the last place a builder wants to build. I think people have an idea, or an impression, that they are going to be building right across the Raritan River or up the Delaware River. That is not the case. Again, I think you testified that; you brought up that point. I think it is a point that has to be reemphasized over and over.

MR. REINHARDT: Very good. Thank you.

ASSEMBLYWOMAN OGDEN: I would now like to call Bert Goldberg from the League of Conservation Voters.

B E R T G O L D B E R G: Thank you, Assemblywoman Ogden, Assemblyman Penn, for the opportunity to speak here today.

My name is Bert Goldberg; I am from the League of Conservation Voters. The League is the largest environmental political committee in the country. We work to get

conservation-minded officials elected to office, hold them accountable to those positions once they are in office, and educate voters on legislation such as that we are addressing today. We work out of the New Brunswick field office.

I would like to address my comments to two things today. First is the amount of wetlands that have already disappeared in the State of New Jersey, and then I would like to talk about what that means to the voters of the State.

This chart here is taken from a report aired by the Fish and Wildlife Service from the National Wetlands Inventory and compares that with the Soil Conservation Services surveys of hydric soils, which are soils capable of sustaining wetland vegetation. What the chart shows are areas that are capable of being wetlands and those that are remaining wetlands. Statewide it shows a loss of approximately 20%. By county the losses, however, are much more remarkable. In some counties there are over 50% losses. In Monmouth, Mercer, and especially in Passaic County, where flooding is such a great problem, there is a 66% loss. Here in Middlesex, this report indicates we have lost more than a third of the wetlands -- 37%. So you can see there have been extensive losses. If this trend continues, we won't have wetlands in the State.

I am going to let the other witnesses from the Freshwater Wetlands Campaign talk about what that means to the State's wildlife, our open spaces, and especially the flooding, and address my comments to how this affects the voters of the State.

At our New Brunswick office, we employ a staff of professional canvassers. We talk to thousands of voters each week about environmental issues to find out what their concerns are and let them know how their legislative officials vote on these kinds of issues. Two years ago when we first decided to get involved with this legislation, we knew that people were concerned about air, water quality, toxic waste; that was

fairly obvious. But we were very surprised at the extent of support we found out in the communities for wetland legislation. In places like Middletown and Aberdeen, we discovered that people were concerned that these areas were just going to be more places for development. In places like Dunellen they are concerned about protecting their open space. Right across the river in Highland Park, people are concerned about development right along the banks of the Raritan. In Middlesex County altogether, they are concerned about the kind of high jinks that are going on at the Raritan Center.

So, the voters of the State are concerned about these areas. They know they need protection, and they are discriminating enough to know that legislation like Mrs. Ogden's A-2342 is an effective, thorough approach to giving these areas protection. They also know that Mr. Penn's legislation, A-2499, does nothing more than serve up the wetlands on a silver platter for the development interests. Basically, what it is is a developer's wish list. It gives them the opportunity to develop anyplace they want, as long as they do mitigation, which is to create another wetland. It would allow them to build something like a shopping center right up against an area that is critical for wildlife habitat.

It's interesting, Assemblyman Penn, that you brought up Benjamin Franklin's comment about New Jersey being a keg that is tapped at both ends, because what your legislation would do-- It would provide the largest beerfest that the developers in the State could possibly want, all the beer they could drink. If the bill were passed, we would find some developers with some mighty intense hangovers afterwards.

As I was saying, we find that the voters of the State are discriminating enough to know that if you take as your advisers builders and developers who have nothing to gain but their personal profit, what you are going to get is weakened legislation. Whereas if you go, as Assemblywoman Ogden has, to

the environmental community, people who are concerned about these areas, who use them for other things than personal gain, you are going to get strong, effective legislation.

In coming months, we are going to continue to deliver that message to the voters of the State and continue bringing that message back to their legislators. We would like to mention a couple of things here. First, we would like to call on Assemblyman Penn to withdraw his bill and work with Assemblywoman Ogden to achieve effective wetlands protection through passage of A-2342. We also call on the legislators who have mistakenly signed on to A-2499, to withdraw their support, because that is not the pro environment position. It is not the position the voters want them to take. We want them to sign on to A-2342, get it out of Committee, and pass it as soon as possible.

As you can see from the numbers we have provided, we have lost too much here in New Jersey. The voters want action, and we need to see it now, for our open spaces -- in an already crowded State -- for our recreational areas, and for flood control. Especially for flood control, the Penn bill just doesn't hold water.

Those are all the comments I have. (applause)

ASSEMBLYMAN PENN: Mr. Goldberg is not only an environmentalist, he is also a comedian, so I don't know which you are applauding. But anyway, you have your diagram over here. You say losses. Losses of what? Let's take Sussex County. You say 57% of all the land in Sussex County -- wetland -- has been destroyed. How do you arrive at that?

MR. GOLDBERG: As I said, this is taken from comparing the Wetlands Inventory, which are areas we know are wetlands now -- comparing that to surveys of hydric soils, which are areas which are capable of sustaining wetland vegetation. It is not saying that these were wetlands and are no longer wetlands; it is saying that they were, at one point, possibly

wetlands, and are either paved over, or farms, or something other than wetlands at this point.

ASSEMBLYMAN PENN: In other words, you are also including all the farms in Sussex County?

MR. GOLDBERG: Correct.

ASSEMBLYMAN PENN: In other words, they haven't been built on? I think you imply here -- in my interpretation of this chart -- that 20% of all the wetlands in New Jersey have been built upon. Was that your intention?

MR. GOLDBERG: I did not say that. I did not mean to imply that.

ASSEMBLYMAN PENN: All right. Well, what did you say?

MR. GOLDBERG: Excuse me?

ASSEMBLYMAN PENN: What did you say then?

MR. GOLDBERG: As I said, 20% of areas in New Jersey which are capable of sustaining wetlands no longer do that.

ASSEMBLYMAN PENN: Then, in other words, in Sussex County, New Jersey-- You're saying 57% of all the land in Sussex County no longer can sustain wetlands. Is that right?

MR. GOLDBERG: Right.

ASSEMBLYMAN PENN: What I want to know is, how did you arrive at those figures, and what criteria did you use to establish the fact that 57% of the land in Sussex County -- which is about 80% undeveloped at this time -- no longer has applicable wetlands? I would like to know. I don't know how you arrived at that.

MR. GOLDBERG: Because there are hydric soils there capable of sustaining wetlands growth but, at this point in time, there are no wetlands there. The vegetation isn't there. There can be farms, as I said -- and we have spoken about this before -- it can be paved over, there could be shopping centers, whatever.

ASSEMBLYMAN PENN: Your 20% throughout the whole State, does that also include relative bridges, highways, and so forth?

MR. GOLDBERG: I can't answer that. I could get you that information later on.

ASSEMBLYMAN PENN: You have Hunterdon County here at 71%. You know, I know Hunterdon County pretty well. What you're saying is that 71% of all the land in Hunterdon County, again, is lost as far as wetlands go.

MR. GOLDBERG: Correct.

ASSEMBLYMAN PENN: And again, you're saying that is because of farms?

MR. GOLDBERG: I don't know Hunterdon County that well, but I would imagine that that is what has happened in Hunterdon County.

ASSEMBLYMAN PENN: In other words, when you have a farm, and you plant, and you continue to harvest, and you reseed, you replant, and so forth, what you're saying is that you are destroying the wetlands?

MR. GOLDBERG: What I'm saying is, there are no wetlands-- There is no wetland vegetation growing, using your example, on that farm site. That is not the case in Middlesex County. The areas lost there, obviously, are not farming areas. You know, they are paved over.

ASSEMBLYMAN PENN: Okay. So, let's take Middlesex County. Do you think that is because the Turnpike comes through Middlesex County? Would that be included?

MR. GOLDBERG: I would imagine that would be included.

ASSEMBLYMAN PENN: Through Route 287, Route 1?

MR. GOLDBERG: I would imagine so.

ASSEMBLYMAN PENN: All right. So, those are things that are lost for which you would say, "I think those roads should be looked at for the public good," wouldn't you?

MR. GOLDBERG: I would think so.

ASSEMBLYMAN PENN: Okay. So, there would be a certain amount of land in your chart here that would be for the good and welfare of the public. Is that correct?

MR. GOLDBERG: That is correct.

ASSEMBLYMAN PENN: Okay. One other item that we have talked about. You know, in Hunterdon County, we have two of the largest reservoirs in the State. Up there we have Round Valley Reservoir. These are man-created wetlands, you might say. So, I don't think-- You have probably taken those into consideration in what you show as lost in Hunterdon County. I would like to know how you arrived at those figures, in other words. That is a very difficult--

MR. GOLDBERG: As I said, it was taken from a National Wetlands Inventory compared with--

ASSEMBLYMAN PENN: Who prepared it?

MR. GOLDBERG: The Fish and Wildlife Service.

ASSEMBLYMAN PENN: Okay. So, you're saying Fish and Wildlife-- As far as their department is concerned-- In other words, obviously you can't fish on a farm, is what you are trying to say.

MR. GOLDBERG: Yeah, I think we both agree on that, Assemblyman. (laughter)

ASSEMBLYMAN PENN: Okay, fine. I just wanted clarification of your figures. Thank you.

MR. GOLDBERG: Surely.

ASSEMBLYWOMAN OGDEN: I think, Jack, just to put this in a better perspective, nationwide the greatest loss of wetlands is due to farming, where they do actually drain the land and cultivate it. But here in New Jersey, according to a Congressional study that was done in 1984, the greatest loss of wetlands in New Jersey is not to farmland, although you pointed Sussex County out here, but that's, you know--

ASSEMBLYMAN PENN: And Hunterdon.

ASSEMBLYWOMAN OGDEN: And Hunterdon. But those are just two of our 21 counties. The greatest loss is with filling for commercial and residential development. Possibly at this time it would be good to call Ella Filippone, who is from the

Passaic River Coalition, because this report that I just mentioned states that in the past two decades, 3% to 5% more wetlands are being lost in the Passaic Basin than in the rest of the country. The loss in the rest of the country is at the rate of half a percent a year, and in the Passaic Basin, which includes -- how many counties is it, Ella, eight? (inaudible response from audience) -- the loss is much greater. It is between three and five times greater.

Thank you very much, Mr. Goldberg. Ella Filippone.

E L L A F. F I L I P P O N E: Good morning. I'm Ella Filippone, Executive Administrator, Passaic River Coalition, and a resident of Somerset County.

The Passaic River Coalition is an urban watershed association, which has been working on the water resources issues of the region since 1969. We are headquartered in Basking Ridge. We include in our membership municipalities, as well as corporate and private citizens, totaling in the thousands. When the PRC was first established, its prime directive dealt with flood control, an element still very much a part of our directive.

No area in New Jersey experiences the flooding problems as does the Passaic River Basin. The legislative history to deal with this issue dates to 1870, when much of the inland wetlands of the Central Passaic River Basin were still in their original state, remnants of Glacial Lake Passaic. The record flood is the flood of 1903. Think for a moment of the changes which have occurred since that time in this region and try to imagine what would happen if that rainfall would come today.

In April, 1984, we experienced a storm which dropped eight inches of rain on the Basin over a period of four days. The ground was frozen and people were evacuated from their homes, some for more than six days. Millions of dollars of property were destroyed, and worst of all, four lives were

lost. Subsequently, in May, 1984, 11 inches of rain fell over a period of two days, but no major flood is recorded. Why? The massive inland wetlands of the Central Passaic River Basin absorbed all this water and only minor street flooding occurred.

Yet, daily new proposals to develop into these wetlands are presented. Just yesterday a proposal was presented to DEP for a garbage transfer station in our high quality Troy Meadows, which is protected by Green Acres and by private interests, and now we have an additional threat there. Therefore, in anticipation of having an opportunity to present testimony on this issue, we documented the destruction of wetlands along the Deepavaal Brook in Fairfield known as Long Meadow. Long Meadow is one of the eight major wetland systems of the Passaic River Basin and has been subjected to intensive industrial development. In 1894, the New Jersey Geological Survey recognized Long Meadow as "Wet Lands of the Deepavaal Brook," and mapped 378 acres of wetlands, as depicted on Map No. 1 (indicating map).

During the 85 years between 1894 and 1979, 96 acres of this wetland were lost as industrial development and the construction of Caldwell-Wright Airport encroached on all sides. Yet the pace of wetlands destruction has increased markedly since that time. In the seven years between 1979 and 1986, 56 acres of wetlands were lost and current proposals call for the development of another 25 acres. Despite all of the recent construction, not one permit for wetlands development in Long Meadow has been issued by the U.S. Army Corps of Engineers, which regulates wetlands throughout the country.

Long Meadow, once a single major wetland system, has been dissected into many fragmented pieces of wetlands. If present rates of development continue, Long Meadow will disappear within eight years. The destruction of Long Meadow is an illustration of the destruction of all wetlands throughout the Passaic River Basin. If wetlands such as Long

Meadow remain unprotected, society will lose forever the many benefits which they provide.

We have calculated that of the 36,000 acres that once were the Central Passaic River Basin, only 22,000 are left.

We in the Passaic Basin cannot afford to lose any wetlands for any purpose. In that regard, we at this point in our commentary address the issue of buffer zones. The buffer zones are actually part of the wetlands of New Jersey. Freshwater wetlands consist of areas with a prevalence of wetland vegetation. Buffer zones contain both wetlands and upland vegetation, and are important to many wildlife species for food, cover, resting, migration, and reproduction. Some wildlife species rely on both wetlands and uplands for their existence. The buffer zones are also known as "ecotones," areas which lie between wetland and upland ecosystems. The wetland buffer zones also protect the wetlands from intrusion by people, from soil erosion and sediment, from excessive stormwater flows, and from pollution -- an important factor in the stressed Passaic River Basin.

Buffer zones further keep development away from land with high water tables and floods; the delineations of such lines are continuously changing as more development occurs upstream. Allowing a wall of development around the edge of a wetland will destroy it as surely as direct filling. The States of New York, Massachusetts, Rhode Island, California, and New Hampshire all use buffers near freshwater wetlands, as does the Pinelands Commission in New Jersey. Thus, an equitable buffer zone, in addition to its ecological role, also provides the public with a zone of transition which allows the water table to fluctuate and not inflict damages to a development directly on the wetland's edge, and thereby increasing the public costs of flood control.

With regard to the enforcement of the provisions in the Ogden/Lynch bill, we support a clear and concise program

with a fully funded enforcement program. Since October, 1985, we have identified countless violations of the Clean Water Act where filling of the wetlands has occurred. Developers claim ignorance, that the sites were smaller than on the National Wetlands Inventory maps, that they did not exist at all, or that somebody else filled in the wetland several years ago. We at the Passaic River Coalition have been invited to participate before many planning and zoning boards on development involving these fragile lands. Time and money will be saved by the passage of the Ogden/Lynch bill, which addresses the true need to formulate a process for the protection of wetlands and, at the same time, guide development near these critical lands.

Time and again, we have found ourselves before municipal boards for lengthy periods of time -- 13 months recently in Bernards Township on a tract of land where 75% of a 257-acre tract was a wetland, part of the Great Swamp. In some cases such as this one, the zoning board turns down the applicant, only to find themselves in court on appeal. In this case we were fortunate, since other interests may acquire the land and preserve the wetlands. However, we are not always that fortunate, and so for us without a strong program in the Passaic River Valley, the public costs for flood control will only increase.

If the State chooses to look the other way or accommodate a special economic interest group in the regulation of development of wetlands, a high price will be paid. Already there is discussion of a \$250 million price tag for the State's share of the tunnel plan in the Passaic River Basin in 1984 dollars. In the parlance of politics, discussions regarding compromise arise. In percentages we have already lost 40% of Long Meadow as of today. If planned projects for 1987 continue to move forward, the percentage will climb to 47%.

This is the trend in our watershed. We cannot afford legislation which does not clearly regulate the destruction of

wetlands. Our support of the Ogden/Lynch bill goes far beyond our concern for the environment. Our support is a clear and definite support for the savings of taxpayer dollars for flood management alone. If clarity is needed to refine points in the Ogden/Lynch bill, we certainly support such efforts. We do, however, emphasize an absolute need for buffer zones and for a strong enforcement program. The time is long past, and we urge you to move the Ogden/Lynch bill forward in the public interest so that our wetlands and the many public benefits they represent are stringently protected. (applause)

ASSEMBLYMAN PENN: I applaud your concern, also. I have a couple of questions. You talked about the Caldwell-Wright Airport in Essex County. Do you know who owns that airport?

DR. FILIPPONE: No.

ASSEMBLYMAN PENN: What if I told you it is owned by Essex County?

DR. FILIPPONE: That's fine.

ASSEMBLYMAN PENN: Okay. It is part of the Essex County Development Authority -- I think that is what they call themselves -- which owns it. They are the largest landowner up there and around the airport.

DR. FILIPPONE: Well, if Essex County currently owns it, they did not develop the airport. They didn't put it there at its inception.

ASSEMBLYMAN PENN: No, it was put there originally in World War II.

DR. FILIPPONE: Yes. This is a destruction. There was a period of time, and our study points that out rather clearly, where there were developments between 1894 and 1979. No laws regulated Long Meadow at that time. However, if you take a look at the chart and you begin to look at the percentage of the destruction, the destruction and the rate of destruction -- in a short period of time, seven years -- as

compared to 80 years, the accelerated destruction is increasing. We are supposed to have some kind of regulation from the Corps of Engineers, yet we don't have any. That is what is wrong with the way the program is being administered.

So, we're losing faster now than we did in close to a hundred years. That doesn't make sense.

ASSEMBLYMAN PENN: When you talk about buffer zones -- and I agree with you that there are some times when buffer zones are desirable -- don't you think there should be a classification of wetlands? You are talking about one particular area of the State; however, we are talking about the entire State. I think we're talking about two different things. If you're talking about just--

DR. FILIPPONE: It's an example. It should give the Legislature a feeling of what is going on. I'm glad it's not correct because here we are losing 50%. If we were losing 50% throughout the Passiac River Basin, it would be over for our flood victims. So, it's good that it's not all that bad.

ASSEMBLYMAN PENN: What is your feeling on classification? Don't you think it should-- Even Commissioner Dewling said this morning that he felt there should be a classification. All of the wetlands do not have the same value. How do you feel about that?

DR. FILIPPONE: Well, Assemblyman Penn, I have to represent the Passaic River Basin, and I just--

ASSEMBLYMAN PENN: In other words, what you are talking about--

DR. FILIPPONE: I would also like to comment on other river basins. We are patterning-- I understand that both bills are looking toward Federal guidance on their decision-making. The prime directive in the Clean Water Act is to have fishable and swimable waters, and the wetlands are critical with regard to water pollution. Therefore, if you classify them just for information purposes, that is adequate,

but not for decision-making purposes because a low-grade wetland today should begin to improve, and as we are more successful in our cleanup program and in hazardous waste regulations, our wetlands should restore themselves. It would be our hope that the Legislature would join with the Congress and also place that as its goal, so that if you have a wetland categorized by some scientists today as low quality, the improvement cycle will go up. Therefore, you don't want to lose any wetlands because of the natural purposes that they provide the public.

I would fight just as hard against the destruction of what would be determined a low-quality wetland as I would against a high-quality wetland.

ASSEMBLYMAN PENN: We are certainly going to look for your support when we start talking about the toxic waste siting.

DR. FILIPPONE: You've got it.

ASSEMBLYMAN PENN: Okay. If you are going to talk about the impact on wetlands, let's talk about toxic waste siting and burning.

DR. FILIPPONE: I would like to say one other thing about the hearing thus far today. It is really always an education. When we heard the supporters for your bill who just preceded us, I was so glad to hear that they are protecting the wetlands in our Basin because we have a development in Bernards Township of some so-called affordable housing, and it is going to finally kill our Dead River. The Dead River used to die every summer before the sewerage treatment plant went in, but I think this development, with the siltation and everything that is going to go into our Dead River wetland, is going to do it in for good. I hope we can find some kind of bargaining ground with some of these good-will developers so they will work with us to protect the wetlands. I think it is very necessary. In our Basin, we can't compromise too much.

ASSEMBLYMAN PENN: Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much. Next I would like to call the spokesman for Vantage Properties, Lloyd Tubman.

MS. TUBMAN: Thank you, Assemblywoman Ogden. I am Lloyd Tubman from Pitney, Hardin, Kipp and Szuch. We represent Ferber Properties, a development concern, and Vantage Properties. I was asked when I came in earlier whether I was one of the bad guys or one of the good guys. I guess my reaction was, "In the wetlands issue, there shouldn't be any bad guys."

We have been involved in wetlands legislation over the past several years, with previous bills, with present bills. I don't want to duplicate previous testimony, but I would like to make a few brief points.

First, New Jersey needs its own wetland regulation. The previous speaker said the Corps of Engineers has not been successful. That is not because the EPA regs were not strong; it is because there has been an enforcement problem. That should be brought home.

I had hoped to have with me this afternoon Jason Cortell, our environmental consultant, because our very responsible developer, when we look at a piece of property, first brings in an environmental consultant to see which are the sensitive areas. But Jason would also have told you, there are wetlands and there are wetlands. There is the farmer's drainage swale and there is the drainage ditch. One of the concerns we have with Assemblywoman Ogden's bill is that it allows only water-dependent development. There aren't any water-dependent office buildings or housing developments, though there have been some attempts in other states to attach marinas or mandate ponds and tell the Corps that they are water-dependent.

There are also properties that are bounded by man-made drainage ditches created by highways. The properties might be

drylands; we're developing them now. Under one of the pending bills, driveways and utilities, too, for private development, are classified as non-linear, and you could not cross that drainage ditch even though your entire project were located on dry land. But these are details, I think, problems maybe, that weren't considered in great depth, but they could be addressed.

I think the main point that should be made is that the New Jersey wetlands bill has to strike a balance and it has to serve the public interest. In order to do that we have proposed, always, that first the developer should have the burden to look at his property and do an environmental evaluation, and, also, should have the burden to convince DEP that there is no practical alternative. A practical alternative might mean acquiring other lands, as one of our clients has done, to avoid wetlands or road. Sometimes you can't do that. Sometimes you have to hook up with the other link.

The other point that should be made is that DEP has to have the funding for enforcement. We are not asking for a right to develop; we are asking for a right to convince the DEP that a proposed development will not do irreparable damage, that perhaps a replicable drainage ditch could be replaced by mitigation, but we have to have access to our property. We also believe that DEP must have the staff and funding to go out to find abuses.

A previous speaker said, "How, without mapping, are we going to know where our wetlands are?" You can't depend on a vigilant citizenry to do DEP's job. For that reason, also, I think if we have a wetlands bill it should be a wetlands bill with teeth and enforcement.

Finally, I would like to say that I have become much more familiar than I ever expected to with other states' wetlands legislation. There was a period of three years for enactment in Michigan of their wetlands bill before their

environmental agency was able to take over the Corps' function. Right now, Assemblyman Penn's bill provides for a grandfather provision for people. Again, I will say for Paul Ferber that presently he has to go to the Corps of Engineers. I don't know of a Corps' permit, or more than two, that have been issued in the last two years. There is present regulation, but the duplication that would occur if the bill were to become immediately effective would unduly penalize people who may have invested two years and a quarter of a million dollars in a single project before they even get to the stage of filing a preliminary site plan.

Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you. Do you have any questions, Jack?

ASSEMBLYMAN PENN: No.

ASSEMBLYWOMAN OGDEN: Since you are speaking, Lloyd, on behalf of Vantage Properties-- I'm glad you're here, but it is unfortunate that Jason couldn't be here as well. One issue you have not addressed-- You have dealt with classification, mitigation, and your views on them, but the other issue that is a major difference between my bill and Jack Penn's, is the question of buffer zones.

MS. TUBMAN: Yes. I think if Jason were here he would say there are some very significant and sensitive wetlands that may deserve a buffer, and, on a site-specific basis, DEP should have the right to impose one. There are other areas, such as a drainage swale or a roadway ditch-- He'll tell you, too, that some of those are among the most productive, and they should have a buffer. But there are also others that have very little water quality value, vegetation, habitat value, where, with proper engineering, a buffer is not necessary. Again, it should be the applicant's burden to satisfy DEP, or DEP's prerogative, based upon a site evaluation, to make that determination.

I forgot to add earlier that Paul Ferber has certainly said that he would be perfectly willing to put our environmental consultant services at the disposal of you, Mrs. Ogden, and Assemblyman Penn, if information he might be able to provide or his services might be desired.

ASSEMBLYWOMAN OGDEN: For the record, I would just like to read a couple of sentences here from an analysis that Jason Cortell sent me. He said, "Wetland buffer zones constitute a valid concept." He went on to say that there were three areas in which he thinks there should be buffer zones. One would be protection of public/private water supplies; second would be flood control/storm damage prevention; and the third would be Federal- or State-listed endangered or threatened species.

So, while he wouldn't go as far as I would in my bill, on the other hand, as I said here, he said that the buffer zone, he believes, is a valid concept.

MS. TUBMAN: No question. He said that in all instances buffers are not necessary. It depends upon the value to be protected.

ASSEMBLYWOMAN OGDEN: Correct. Thank you.

MS. TUBMAN: Thank you.

ASSEMBLYWOMAN OGDEN: Assemblyman Penn has to leave by one o'clock. I think we will take three more witnesses, and then break for lunch.

In keeping with alternating, I would like to call at this time Tom Gilmore, who is head of the New Jersey Audubon Society.

T H O M A S G I L M O R E: My name is Thomas Gilmore. I am Executive Director of the New Jersey Audubon Society. The New Jersey Audubon Society is a statewide, nonprofit conservation organization which is supported by a membership of over 7,500. The Society was founded in the late 1800s, and is one of the nation's oldest conservation organizations. We are also

members of the Freshwater Wetlands Campaign, which now totals over 100 citizen groups in support of the Ogden/Lynch freshwater wetlands bill.

The Audubon Society is dedicated to preserving New Jersey's natural habitats and protecting its wildlife diversity. Of particular concern to our members are declining, threatened, and endangered species and the protection of critical wildlife habitats. A large portion of these species are dependent on freshwater wetlands.

You have before you today two bills -- the Ogden bill, A-2342, and the Penn bill, A-2499. We are pleased that both of these bills recognize that wetlands are not waste lands, and that wetland preservation is critical to preserving the quality of life in this, the most densely populated State in the nation.

While both bills document the critical importance of preserving wetlands now, only one bill provides any real measure of protection -- the Ogden bill.

To protect freshwater wetlands, we urge this Committee to pass legislation that will regulate all activities that are harmful to wetlands.

One of the major problems with Section 404 of the Federal Clean Water Act is that it regulates only the disposal of dredged and fill materials in a wetland. This is also one of the shortcomings of the Penn bill.

The Ogden legislation seeks to protect wetlands from all disruptive activities, in a fashion similar to the State's existing Coastal Wetlands Program.

We also urge this Committee to pass legislation that would issue permits for only unavoidable encroachment on wetlands. The Ogden bill recognizes the need to protect our wetland resources from destruction, and would not issue a permit where destruction was avoidable. We support this type of protection. The Penn bill, in contrast, would allow destruction of a wetland if a developer provided "mitigation."

New Jersey's threatened and endangered species are dependent on our existing natural wetlands, and they don't need bulldozers to enhance or create wetlands. We urge you not to let mitigation be an excuse for destruction.

We also want to stress the importance of buffer zones in wetland protection. These transition areas are an integral part of a wetland ecosystem, and especially critical to our wildlife resources. Many of our threatened and endangered species are wetland-dependent, but nest in transition or buffer areas.

Wetland buffer provisions are already in force in our Pinelands and in several other states, including Massachusetts, Rhode Island, New York, and New Hampshire. The Ogden bill recognizes the need to protect such areas. The Penn bill, on the other hand, would allow potentially harmful development right to the edge of a pristine wetland area.

Finally, if we are truly serious about protecting our wetlands, we must have legislation with strong enforcement and penalty provisions. We feel the provisions in the Ogden bill are sufficient to provide authority for New Jersey to assume the Federal 404 Program.

In 1970, New Jersey gained protection of our coastal marshes and thus saved thousands of acres of habitat from destruction each year. It is time to protect the freshwater wetlands of our State in a similar manner.

We urge you to pass the Ogden bill -- A-2342 -- without any weakening amendments. Every day this is delayed, destruction of critical wetlands occurs.

Thank you for the opportunity to comment.

ASSEMBLYWOMAN OGDEN: Do you have some questions?

ASSEMBLYMAN PENN: Yeah. I've always admired the Audubon Society and have helped to financially support it.

MR. GILMORE: And we thank you.

ASSEMBLYMAN PENN: I think we are all working for the same thing, but are possibly just going about it in different ways. Regarding the buffer, previous speakers have said there are times-- There are things you are going to need buffers against. This would get back into the classification system again. We're talking possibly about 200,000 acres of wetlands that need protection, which Maureen and I have both addressed. Do you know how many additional acres would be regulated under the buffer plan?

MR. GILMORE: No, I haven't calculated that. I would like to make a comment, though, on your classification system. One of our principal concerns is that one of the methods of ranking wetlands would be an existing threat to an endangered species. I'll just give you one example. As recently as the late '60s, we had 10 nesting pairs of bald eagles in the State. Today there is only one nesting pair. There is still valuable and viable habitat for nesting pairs to come back. We believe this will happen if those habitats are not destroyed. If you now survey those areas and find there are no eagles, you will assume it is not eagle habitat, and it could be destroyed. Therefore, there would be no opportunity for species that are endangered or threatened to come back. That is one of the major problems we have with a ranking system.

ASSEMBLYMAN PENN: The only thing is, the eagle-- From my understanding, they are not a wetlands bird. You would find them in a more mountainous area. They may feed--

MR. GILMORE: The eagle is now nesting in Bear Swamp in Cumberland County. They feed on wetlands, yes, very much so.

ASSEMBLYMAN PENN: Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much.

We'll have two more spokesmen before Assemblyman Penn has to leave. I understand Mort Goldfein is here from the National Association of Industrial and Office Parks.

M O R T O N G O L D F E I N: Good afternoon. Thank you, Madam Chairman. My name is Mort Goldfein. I am an officer of Hartz Mountain Industries in Secaucus and serve now as President of the Northern New Jersey Chapter of the National Association of Industrial and Office Parks. We welcome the opportunity to appear here before this Committee today on a subject which has drawn the attention of our members during the past 18 months.

Developers tend to be entrepreneurs, but resist collective action in any form. They also resist regulation. In this instance, however, I have been most encouraged by the number of my colleagues who have involved themselves in the effort to understand New Jersey's need for a reasonable wetlands protection program.

They have studied the subject, analyzed its impact, and fostered discussions with their individual representatives in Trenton because they have come to believe that while New Jersey needs a wetlands preservation bill, the Legislature should only enact a wetlands preservation program that is consistent with our State's best interests. These are men and women of energy, intellect, and integrity, and they deserve your attention.

Our organization consists of more than 200 New Jersey development firms that employ thousands of construction, maintenance, management, and office workers, invest more than \$2 billion annually in our State, and create facilities that house the economic strength of New Jersey. We live here; we continually strive to improve the quality of life for all our citizens; and -- no more and no less than any of the other groups which are participating in these hearings -- we want to improve and protect New Jersey's environment.

To avoid repetition, let me simply recite the goals our members seek in wetlands legislation and comment briefly on the bills that are before the Legislature. There are some

simple principles which we think should be incorporated into any legislation designed to protect freshwater wetlands:

New Jersey should avoid costly duplication in application requirements. We think that is paramount, and that has drawn us into this. Wetlands are already regulated by the U.S. Army pursuant to Federal law. There is nothing this Legislature can do to change the Federal law, but we can take advantage of one of its provisions to have New Jersey take over the program in a manner that will remove the Army from the process and eliminate one level of bureaucracy.

There should be a firm commitment by the Legislature to having DEP assume the program and a commitment of the resources necessary to allow the Department to add the staff to manage it.

Wetlands delineation and evaluation are an inexact science. There is no definitive set of rules by which we can determine those wetland areas worthy of protection; but we do know that not all wetland areas are of equal value. This calls for administrative decisions to be made in individual cases. A-2342 would minimize the discretion of DEP staff and impose arbitrary limitations that have taken the form of buffer areas in the legislation, without any degree of certainty that environmental benefits would follow.

A-2499 gives the Department much more credit by substituting a management program for the restriction program that would be imposed by A-2342. Under A-2499, landowners who want to use wetland areas would have the clear, affirmative burden of demonstrating to the satisfaction of DEP that wetland values could be preserved, protected, or enhanced through a variety of techniques, all of which have taken on the buzzword "mitigation" under the Federal program. This is allowed under existing Federal law and the proponents of A-2342 have offered no reason to subject New Jersey landowners to a more restrictive standard than that which is imposed on property owners in the rest of our country.

We think the Department should be required to delineate areas which it believes to be wetlands worthy of protection. Not only will this alert landowners to their government's claims, but it will also focus the attention of regulators to areas that should be the subject of environmentally sensitive land use planning, something I will speak of in just a minute.

We believe landowners are entitled to tax relief and compensation for areas regulated out-of-use by these proposals. Proponents of wetlands preservation enunciate valid public goals. Individual property owners should not bear the economic burden of those public benefits; rather, we should find ways to compensate property owners, just as we do when lands are taken for park or highway purposes.

There should be an adequate budget allocated to the Department for the management of any wetlands regulating scheme. Too often, we have burdened the Department with additional duties without providing the necessary resources. A-2342 woefully neglects the real needs of the Department for administering such a program. Five hundred thousand dollars will not do very much. We think more than \$2 million is necessary, and the Legislature should be prepared to find that amount if it is to responsibly add another program to DEP's menu.

When compared to existing Federal law, A-2499 measures up and we think A-2342 does not. No good reason has been advanced by proponents of the latter to force New Jersey to adopt a higher standard in an area where the science is inexact, the economic impact would be significant, and the amount of acreage at issue is very significant.

At least one member of the Assembly has told us that he will vote for A-2342 because it is designed to stop development. We question whether that is not the motive of many of the proponents of A-2342. And, if so, we seriously

doubt that their objective can be accomplished through any wetlands regulation measure. Rather, development will just be redirected, not to the urban core areas that some of the proponents would prefer, but rather to even more exurban upland areas, with resulting additional strain on already overtaxed infrastructure.

I suggest that the debate on how much development we want in New Jersey should be left to the recently constituted State Planning Commission, and that those who would seek to bring New Jersey's growth to a halt should direct themselves to the discussions on growth management that are taking shape around our State. If you think a wetlands protection measure will reduce traffic in Millburn, you are wrong. If you think A-2342 will end gridlock on the Route 1 corridor, you are dreaming. The solutions to the problems posed by growth are not to be found in an overly restrictive and arbitrary freshwater wetlands bill. Rather, those solutions will only come if all of us who care about the future of our State involve ourselves in finding ways to modernize our tax structure, plan and fund our infrastructure base, and create a future for all of those who are to follow us.

Thank you very much.

ASSEMBLYWOMAN OGDEN: Just for the record, Mr. Goldfein, I would like to say that I was not that member of the Assembly.

MR. GOLDFEIN: I know that, and I appreciate your not saying it.

ASSEMBLYWOMAN OGDEN: I am a supporter of continued economic development in the State of New Jersey; however, I want to see it take place in the proper areas where it will do the least environmental damage, and not degrade sensitive areas.

Just one statement, though, that I would like to ask you about here in your testimony. You said, "There is no definitive set of rules by which we can determine those

wetlands areas worthy of protection." That sounds as though you think there are a lot of them that are not worthy of protection.

MR. GOLDFEIN: I couldn't characterize an amount, but I could certainly take you to areas that might be classified as wetlands under somebody's statutory or regulatory definition, that we could agree were not worthy of protection. The word "wetlands," to me, does not connote value. There are classes of wetlands in my mind. That is the kind of thing I would like to see the Department evaluating in making a decision, not by reason of a statutory definition, but rather by a qualitative definition. It is there where I think we would look to the Department for discretion.

ASSEMBLYWOMAN OGDEN: You don't feel that wetlands, as a previous spokesman stated, are in a very fluid state, that those that are currently what you might call "degraded," or not worthy of protection, can be upgraded, so to speak, and become top priority wetlands?

MR. GOLDFEIN: If you will agree with me that that is a generalization, I will agree with that statement. But I again say that the word "wetlands" does not connote to me sacred, cannot be violated. There are wetlands in all kinds of states of change. You used the word "fluid," and I thought that was a good pun. The word "wetlands" is not enough. What we need are qualitative analyses of sites-specific, which I believe can best be accomplished in the review of individual applications, rather than the imposition of a simple ban on any activity in wetland areas.

I do believe that under the Federal law, individual permit applications can be evaluated, and while the Army Corps of Engineers has not been issuing any permits, so to speak -- there have been just a few -- that the individual property owners should have the opportunity to come forward with a proposal that would yield greater wetland values, protect vast

areas of wetlands, perhaps, and be permitted, perhaps, to fill in a portion of something that may be defined as wetland, but the value of which would be substantially compensated for in another way.

ASSEMBLYWOMAN OGDEN: You and previous speakers have advocated more flexibility and reviewing on a case-by-case basis. Now, as you probably know, in the previous compromise we had, it was because the New Jersey Home Builders wanted more predictability, they wanted less flexibility for DEP, so to speak. The one thing is, with more flexibility, more individual attention to particular applications, the time process is liable to take longer, and the entire review process is possibly going to become more cumbersome, which is something that everyone in the building community opposes. So, it's a question of how to deal with these conflicting goals.

MR. GOLDFEIN: Well, I think we make a mistake if we talk of everyone in the building community. Obviously, there is no one who speaks for the entire building community. Just as you will find in other constituencies, some of us have different goals and different objectives.

I think expertise comes with experience. I think that just as the Department of Environmental Protection has gained a reputation around this country for expertise in fields with which it has worked where it has had adequate resources, where it has had a commitment from the Legislature to see to it that it had those resources on a continuing basis, I believe this Department of Environmental Protection can make timely decisions on individual wetlands applications, and that they do not have to have their hands tied by legislation.

ASSEMBLYMAN PENN: I'd like to get back again to what you said, Mr. Goldfein, regarding the classification of the wetlands, one of the things I called for in A-2499. Is that what you were referring to?

MR. GOLDFEIN: Classification, I think, is a two-step process. First, there has to be a set of criteria to determine what areas are to be subject to regulation. Then, I would like to see the regulator evaluating an application on the disposition of that area, protecting -- I would assume normally protecting -- the bulk of it, and allowing some regulated activity on the balance. I would expect the regulators to insist that the minimal activity occur in those areas defined as wetlands of greater value by the classification, and more activity, such as is allowed, to take place in areas determined to be of lesser value.

ASSEMBLYMAN PENN: Thank you. That's all, Madam Chairman.

ASSEMBLYWOMAN OGDEN: Thank you very much, Mr. Goldfein. The last spokesman we will have this afternoon -- or before we take a break -- will be Jim Lanard from the New Jersey Environmental Lobby.

J A M E S L A N A R D: Thank you, Assemblywoman Ogden. My name is Jim Lanard. I am with the New Jersey Environmental Lobby, which is a statewide environmental lobbying group. Assemblyman Penn, some of my comments will be directed to you this afternoon.

First let me state, however, that we are terribly unimpressed with the development blackmail that was offered in the testimony we just heard. We think it is really irresponsible to characterize the Ogden wetlands bill as an anti-development bill. It is a responsible development bill.

Assemblyman Penn, as you know, we met with you. We had a very cordial meeting, and I promised you that we would take off the gloves soon and try to get down to the bottom line here. I think today is our first opportunity to do that. In our meeting with you, you told us you supported freshwater protection legislation, and you argued very strongly that you did so. You also told us that you strongly support State

assumption of the 404 Program that the Army Corps of Engineers regulates.

We heard Commissioner Dewling testify this morning that your bill will not allow the 404 assumption that you are supporting and, therefore, we are forced to conclude that you have been sold down the river by the development interests that helped to develop your legislation. They promised you something that apparently is not the case.

As a result of the testimony we heard this morning and Commissioner Dewling's press conference, which we listened outside in the hall afterward, we are forced to conclude that your bill does not do what you want it to do, and, therefore, the only possible avenue we think left is to have you withdraw your bill from consideration by the Legislature and work with Assemblywoman Ogden, which bill Commissioner Dewling clearly states will allow for the 404 assumption with some minor modifications.

We think then that your interests and those of the Assemblywoman will be able to merge together, and we will work and push for the Ogden legislation. When we look at your bill the way it stands now, we can also see rather clearly that it is nothing more than a developers' dream bill. It encourages development in areas that we strongly think need to be protected.

We think that rather than calling it a protection bill, it should be referred to as a freshwater destruction act, which is really what it would do.

We also looked at the timing of your legislation and the history of freshwater protection legislation in this State, and decided that really what is happening here is that the developers decided to offer a diversionary tactic to satisfy their political need to divert attention away from the environmentally correct Ogden bill. We think it is an excellent political ploy by those who do not want to protect

freshwater wetlands. We think it is a terrible approach to take on such an important issue.

We understand that you have a lot of co-sponsors for this. We also understand that you presented your bill as being freshwater protection oriented and told some, maybe, that there would be a 404 assumption. We know that there cannot be a 404 assumption under your legislation. We also know that therefore certain sponsors of your legislation did not have the full information when they decided to join on. That is another reason we think you should graciously withdraw your bill and work with us, the Freshwater Wetlands Campaign, and Assemblywoman Ogden, who is pushing the correct legislation.

Thank you very much.

ASSEMBLYMAN PENN: Obviously, Mr. Lanard, you must be hard of hearing. I didn't hear Commissioner Dewling say my bill wouldn't meet your criteria. My bill does meet all of the criteria of the 404 Program. It was drafted after the Michigan bill, which is the only one that did. I did not hear such a remark.

MR. LANARD: Assemblyman Penn, in response to that, we will have witnesses this afternoon -- I'm sorry you won't be here, but we will provide their testimony to you -- who will delineate, in a very precise manner, how your bill will not allow for the 404 assumption. So, rather than get into a lengthy debate now, we will present that testimony to you. We will make sure you get it soon.

ASSEMBLYMAN PENN: I just wanted to make sure-- You think you know-- You sort of remind me, Jim-- I know you are a hired gun, and it's okay. I appreciate that. But you sort of remind me of when Lyndon Johnson was running for office. He was down in Texas and he got into a debate with one of his people, and he said, "You know, my opponent sleeps with pigs." And his aide turned to him and he said, "You know, Mr. Johnson, that's not true. You shouldn't have said that." He said, "No, I know it's not true, but I sure enjoy watching him deny it."

I think that is more or less what your approach here is. I don't think-- If you really want to take a look at the bill, my bill is a protection bill. My bill offers all the protection of the 404 Program. There are many parts of my bill. It is not a developer's dream. If my bill had been introduced three years ago, I would have every developer here trying to drum me out of the area.

My bill is the most comprehensive wetlands bill that has come along in ages. I worked with Maureen Ogden. There are many parts of her bill that are very good. There are many parts of my bill that are very good. I think if you sit here and you want to discuss the points of the bill one by one in a professional manner, I will be glad to do it. But I don't want to sit here and cast aspersions at you, and I don't think you should cast them at me.

MR. LANARD: Assemblyman Penn, I deeply regret if you understood my testimony as suggesting that you slept with pigs. I would never say something like that.

ASSEMBLYMAN PENN: I didn't think you did. I told a story that is a matter of history. If you want to turn around and twist it again, or if you want to get into personalities where we pick on each other, that I will be glad to do with you. However, if you want to discuss the issue here today, I will also be glad to do that with you.

MR. LANARD: Our witnesses will be addressing all of the points. Some of them have already, and they will be here this afternoon to continue that dialogue.

ASSEMBLYWOMAN OGDEN: Thank you.

MR. MILLER (Aide to Committee): The Assemblywoman would like to reconvene as close to two as possible, so we will have about a 45-minute break.

(RECESS)

AFTER RECESS:

ASSEMBLYWOMAN OGDEN: I' like to call the hearing back to order now. We are going to start off with a videotape. What organization is presenting this?

J O A N N E V E N I N O (speaking from audience): This is sponsored by the Builders Association.

ASSEMBLYWOMAN OGDEN: Is this Sean Reilly's Builders League of South Jersey?

MS. VENINO: The Builders League of South Jersey sponsored this video. It was produced by Sean Reilly, who is an Environmental Consultant from Toms River.

ASSEMBLYWOMAN OGDEN: Is this the same tape that was sent to all of the legislators?

MS. VENINO: Yes.

ASSEMBLYWOMAN OGDEN: Okay. I think it takes about 10 minutes.

MS. VENION: Yes, it is only about 10 minutes.

ASSEMBLYWOMAN OGDEN: All right. We'll start off with that then. Thank you. (At this point, video white paper on freshwater wetlands was viewed by the audience.)

Next I would like to call Abigail Fair. Is she here? (affirmative response from audience) Abigail is Coordinator of the Freshwater Wetlands Campaign.

A B I G A I L F A I R: My name is Abigail Fair. It has been my privilege to work with the many groups making up the Freshwater Wetlands Campaign as Coordinator. Frankly, I have been, and I continue to be, very surprised at the unanimous position that the 120 groups of the Campaign have reached. It is quite simple: Every single group wants strong, real protection for New Jersey's freshwater wetlands.

Since the Freshwater Wetlands Campaign was launched in March of this year, it has more than tripled in size. The Campaign is representative of a broad and diverse spectrum of

New Jersey voters, joined together to finish the job of wetlands protection in the State.

A number of the Campaign's organizations have been struggling for over 20 years to save these vital natural resources. However, the record shows that wetlands are continuing to be lost at an ever-increasing rate. Strong State legislation is absolutely essential to preserve New Jersey's remaining freshwater wetlands.

Assembly Bill 2342, introduced by Assemblywoman Ogden, represents the strong legislation this State must have in place to preserve this irreplaceable New Jersey resource.

The Campaign will continue until strong wetlands legislation is in place. Every day more groups join us. Every day we receive petitions asking Mr. Penn to withdraw his bill. We have received municipal resolutions in favor of the Ogden/Lynch bill.

The time is long past due for the New Jersey Legislature to put the public interest ahead of the special interests.

Thank you for this opportunity to testify.

ASSEMBLYWOMAN OGDEN: Next on the list of those who have signed up to speak is Vince Miller, General Contractors of New Jersey. Is he still here? (no response) How about Alan Kammerer of the South Jersey Chamber of Commerce? (no response) John Talerico of the New Jersey Alliance for Action? (affirmative response)

J O H N P. T A L E R I C O: My name is John P. Talerico. I am Chairman of the Wetlands Committee of the New Jersey Alliance for Action.

The New Jersey Alliance for Action is a statewide coalition of approximately 500 business, industry, labor, professional, and governmental organizations. It is committed to improving the quality of life for New Jersey residents by enhancing the economy and creating jobs. As such, the Alliance

feels compelled to comment on the pending freshwater wetlands legislation being considered by the Assembly Energy and Natural Resources Committee.

The Alliance supports Assemblyman Penn's bill, A-2499, since it addresses the regulatory problems currently encountered by the business community in our State, and because it would establish a clear and specific State policy regarding wetlands protection. In contrast to Assemblywoman Ogden's proposal, A-2342, the Penn bill would result in the implementation of: A technically accurate wetlands definition; a wetlands rating system that would differentiate between highly productive wetlands and degraded wetlands; reasonable permit requirements which ensure no duplication; exemptions for minor maintenance and repair activities, especially for roads and utilities; mapping of wetlands at a reasonable scale; and, an adequate appropriation to carry out the program once enacted.

We urge the Assembly Committee and the Legislature to support the concepts and provisions contained in the Penn legislation, A-2499, and to call upon the technical expertise of the Alliance's membership, i.e., engineers, consultants, land development specialists, etc., in order to respond to any requests on this issue.

Thank you for the opportunity to submit these comments.

ASSEMBLYWOMAN OGDEN: Thank you for coming to present your testimony. I would like to take next several individuals who are in this area as it would be difficult for them to go elsewhere to a hearing. First will be Jane Tousman, who is representing a citizens' group here in Edison. Jane, would you like to testify now? (affirmative response)

JANE TOUSMAN: My name is Jane Tousman. I am here today on behalf of the SOS group -- Save Our Swamp. We are endeavoring to save the Dismal Swamp from 2,000 units of development.

Someone once said that the environment is a trust for future generations. Well, today I am here to try to help keep that trust intact by supporting the Ogden bill. I have seen the great problems we have had in the past with flooding in such areas as Bound Brook, Wayne, and even in Plainfield. These flooding problems would not have happened with such magnitude if we had had bills such as the Ogden bill, for it offers many, many protections to inland wetlands.

From a local perspective, I have with me today a report on the 404 permitting which was done in August, 1984, by the U.S. Fish and Wildlife Service, with respect to fill-in wetlands. Edison is cited in here at least four times among the problems. There are townhouses in the Ashbrook Swamp which were the subject of many complaints about flooding before the Township Board. This project was built despite the fact that even a Union County engineer said that the project was in a 100-year flood plain.

Another project in Bound Brook called Woodbrook Corners was built on wetlands, but we didn't even know about it until after the units were in. DEP has fined the developer of Woodbrook Corners \$50,000 because he had the nerve to put 10 units on fill in the middle of a stream on that property.

I grant you some of these things are local problems that should have local solutions, but I am still concerned. Currently I am a member of the SOS Citizen Group. Our resources are limited, but we will do all we can to prevent abuses of this nature. We are having a very difficult time getting studies that delineate the wetlands for the 2,000 units in the Dismal Swamp. This means that we must use our own resources to obtain maps.

I feel that the Ogden bill would give us needed buffer zones for wetlands. This will apply not only to residential units, but solid waste facilities, which are the cause of so much controversy. There are strong provisions in the bill

about mapping. Citizens would have an easier time getting maps on delineations and, thus, could act as watchdogs over projects. This bill has a strong provision in it for citizen participation. The reward for making the citizen a bigger part of the process would be building which would be better in the long run for those who buy the units, as well as for those who sell them. A man has a piece of land and he has the right to develop it, but not to the detriment of others. This bill will give officials the power to protect the rights of citizens. They have a right to that obligation.

Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much. Is Sue Covais here from the New Jersey Association of Realtors? (affirmative response)

S U S A N C O V A I S: Thank you, Madam Chairman. My name is Sue Covais. I am representing the New Jersey Association of Realtors. I'll keep my comments very brief. A lot of people have already spoken on a lot of the ideas that were the reason why we support the Penn bill, A-2499, so I will just read our short letter that I have here.

The 34,000-member New Jersey Association of Realtors supports the concepts embodied in Assembly Bill 2499, which deals with the identification and protection of freshwater wetlands.

NJAR supports A-2499 because it presents a clear definition of what constitutes a freshwater wetland, classifies wetlands as to the environmental benefits they provide, does not require a buffer zone, allows for mitigation techniques to compensate for a loss of wetlands, provides for the mapping of wetlands, and does not duplicate the Army Corps of Engineers' permit program.

NJAR feels these provisions provide a practical approach to preserving our freshwater wetlands and allowing development to continue in this State.

I would like to make a few comments. One of the problems our members are having -- as the previous speaker just mentioned -- is getting a hold of maps. I think this points out a clear need to have some kind of mapping. I realize it would be time-consuming, but I think there should be more clear information as to where a wetland is. There should be a definite effort made in that direction.

I get a lot of calls from my members who ask me, "How do I find out if I am in a wetland?" Well, you know, I have a hard time trying to figure out where I should send them first. I think that is something that points to the need for mapping.

Another comment was made earlier about mitigation. A lot of the groups testified against allowing mitigation techniques. One speaker made a very good point that a low-grade wetland could become a more productive wetland at some point in the future. I think that is a good point, but I think along the same line, if we are talking about a man-made wetland, I think that certainly increased technology could improve on a man-made wetland. In other words, you could replace the man-made wetland with a new man-made wetland if there was a development going on in that man-made wetland area. I think that is something to be considered as a compromise idea.

I just want to thank the Committee for allowing me to testify. I will be happy to answer any questions.

ASSEMBLYWOMAN OGDEN: I really don't have any questions, just a couple of comments. In terms of new man-made wetlands, I attended a conference down in Charleston in March, and after listening for several days to people testifying from all over the country, really, the jury is still out on that. They just don't know whether or not it works. I think when you realize it took centuries to make the natural wetlands, and then think that we can make man-made wetlands in a couple of years, you can appreciate the fact that people just don't know

if it is going to work or not. I think the most telling point that was made recently was made in the decision by EPA to overturn the Army Corps in Sweden Swamp. They said they really did not have confidence in the ability of man-made wetlands to act in the same way and provide the same public benefits as the natural wetlands.

One other point I would like to make, and I should have made it while Assemblyman Penn was still here, is that it specifically says in his bill, in terms of the mapping, that it would not hold up the enactment of the bill or the starting up of the process. So, what you are really going to have is maybe partially working with mapping that would be done at the scale of one to 200, and in many other cases, working at the scale of one to 1,600, which would be the Soil Conservation Service maps. Because otherwise, to fully map the entire State-- It is estimated that would take somewhere between 10 and 15 years. Clearly, anyone who is saying the mapping should be done before a bill takes effect is saying, "We don't want any bill."

MS. COVAIS: I see your point, but I still think that maybe somewhere along the way there could be some kind of coordination of mapping, or a central place where maps could be gotten a hold of, if legislation like wetlands is going to pass, so that the public can get a hold of it, not necessarily a group.

ASSEMBLYWOMAN OGDEN: Well, what my bill does provide is that copies of the quadrants would be sent to all of the municipalities. The Fish and Wildlife maps have been found to be 95% accurate, even though they are at the scale of one to 2,000. They, combined with Soil Conservation Service maps, were to be used together, the two of them, really as a guide.

I personally feel that one has to almost go to the site to see what actually is going on there, because some changes could even have occurred there since those maps were

done. I think that regardless of what kind of mapping you do, or what scale, there always needs to be an on-site investigation to either verify or dispute the map itself.

Thank you.

I believe there is a representative here from the Holmdel Environmental Commission.

C A R O L E B A L M E R: Hi. My name is Carole Balmer. I am from the Holmdel Environmental Commission. I don't have a prepared statement, but I wish to congratulate Maureen Ogden on the foresight and long-range planning of Assembly Bill 2342.

I support and endorse this bill over the Penn bill. Holmdel is in a State-designated critical water supply area. Monmouth County has recently purchased in our town a 400-acre buffer surrounding the reservoir. This buffer was under severe pressure to be developed and the price artificially escalated by a development group monopolizing ownership of the surrounding area. Without the protection of the Ogden bill, A-2342, I fear extravagant expenditures from public tax moneys will be necessitated to protect the ecological balance of our quality of life,

The Holmdel Environmental Commission made a statement to the Township Committee last Monday, and I would like to read it to you:

"The Holmdel Environmental Commission, at the July 9 monthly meeting, voted in favor of researching the proposal for a building moratorium concerning all unapproved developments, buildings, and subdivisions in Holmdel Township.

"In the July 14, 1986 edition of The Register, Mayor Tricarico, our Mayor of Holmdel, stated the importance of each homeowner to act responsibly and to follow the guidelines set by Monmouth Consolidated Water and Shoreland Water Companies to conserve water. The Planning Board has on its agenda from January to September, 1986, approximately 60 items to be covered, and approximately 1,500 new dwelling units to be

considered by the end of September. An estimate of 750 gallons per day, per unit, based on information from Monmouth Consolidated Water Company, will equal 1,152,750 gallons per day for new units in Holmdel. This does not even include consumption by the proposed large commercial and office developments.

"With serious concerns and questions concerning and surrounding our present allocations of water for today's residents, the Holmdel Environmental Commission believes the only alternative is a respite in building until further analysis and review, and time, are granted for a review of our current resources.

"We strongly recommend that the Township Committee give a development moratorium serious consideration now."

The only other thing I would like to say is, with the regulations that Monmouth County is going through right now with water, without sufficient protection of our wetlands by the Ogden bill, inclusive of flood plains, grounds, surface water systems, streams and ponds, and especially buffers, restrictions of water use by our present residents could only evolve into a curtailed potable water source for future populations, regardless of low-, moderate-, or high-income capability.

Tomorrow will be too late to implement this bill. This bill should be implemented immediately, or at least as soon as possible.

Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Next on the list is Mr. John Vitale of the New Jersey Society of Municipal Engineers.

J O H N A. V I T A L E: Before I read my statement, I would just like to clarify something. I was not given the total correct information, and this statement is entirely in relation to Assembly Bill 2342, which is Assemblywoman Ogden's

bill. I will make a verbal statement about Assemblyman Penn's bill after reading this statement.

I am John A. Vitale, Vice President of the New Jersey Society of Municipal Engineers. I am representing the Society today on this most important bill. Our current membership is about 280, about 170 of whom are either municipal engineers or assistant municipal engineers.

I am a 1962 graduate of the Newark College of Engineering, which is now known as the New Jersey Institute of Technology, and am a professional engineer in the States of New Jersey and New York. I have been Township Engineer for the Township of Montville in Morris County for more than 10 years.

Although the New Jersey Society of Municipal Engineers has always supported regulations to preserve and protect the State's valuable freshwater wetlands, we cannot support Assembly Bill 2342 as introduced by the Honorable Maureen Ogden. This bill cannot be supported by us because it would not regulate freshwater wetlands in a technically sound manner. Our prime technical concerns are: (1) vague definition of freshwater wetland -- that has been gone over many times, so I will not read the next paragraph; and (2), the lack of new mapping which would delineate freshwater wetlands in Assembly Bill 2342.

The definition of freshwater wetland must be more accurate. The current U.S. Army Corps of Engineers' method of defining freshwater wetlands requires three conditions to be present: (1) hydrophitic vegetation; (2) hydric soils; and (3), proper hydrology. A definition which would include these three conditions would certainly be more accurate. As a side point, I would like to add this: A small acreage of wetlands in developed areas of a municipality should be exempted from the regulations because they do not serve as useful wetlands. As an example of this, we just recently had an application before the Montville Planning Board where we had, I would say,

about 1,000 single-family residential units in an area of our Pinebrook section of Montville where we have about 20 acres left in this residential area. The applicant came in with a plan that DEP asked him to provide to the Township. Out of this last 20 acres, five acres were wetlands. In this five acres, DEP, along with the Corps, asked that the developer create three ponds, I believe, three or four feet in depth.

I don't believe, as an engineer, and I don't think that anyone who is an environmentalist would agree, that this small, little bit of wetlands that currently exists here will serve any practical purpose after this area is developed.

Thank you for allowing me to present the prime technical concerns of the New Jersey Society of Municipal Engineers. Again, I would like to reiterate that we cannot support Assembly Bill 2342.

As far as Assemblyman Penn's bill is concerned, we believe we can support that bill at the present time.

If you have any questions, I will try to answer them.

ASSEMBLYWOMAN OGDEN: I don't know, Mr. Vitale, if you are familiar with the compromise bill we worked out before. We did have an exemption in there of three acres of isolated wetlands that did not contain any rare or endangered species. The reason we took that out and put it in a general permanent category in this current bill is because we have been trying, with due diligence, to tailor our legislation to the Federal bill, so that it will be suitable for delegation by the EPA.

As you probably know, with the Army Corps, their exemption is only an acre or less. So, our feeling was that to go back to that three acres of isolated wetlands would be something that would not be in harmony with the Federal bill.

MR. VITALE: Well, do we have to put an acreage figure on it? That is the point I would like to make. What makes three acres a sacred number, for instance? Suppose a developer hires an individual who is qualified to determine whether it is

valuable wetlands remaining there. If he determines it is, then we will leave it there. But, if it isn't, I don't see the need to burden the people who are going to be moving into the area because, realistically, what is going to happen is, these people are only going to come to the governing body after they move into the house, and say, "I've got a wet area in back of my house," and, you know, with political pressures, it is very difficult to say, "Well, you bought a piece of property that was the last three acres or five acres of wetland in this immediate area."

I think it has to be done on a case-by-case basis with field investigations -- site-specific field investigations.

ASSEMBLYWOMAN OGDEN: To go back to the mapping here, currently the Army Corps has been administering the 404 Program. They have been doing that since 1977, and they haven't had any maps with which to do it. How has it been possible for them to carry out their program?

MR. VITALE: Well, the Corps of Engineers, at the present time, uses the National Wetlands Inventory maps.

ASSEMBLYWOMAN OGDEN: I know they do; that's right.

MR. VITALE: Okay. So, they carry out their program-- You attempt to find your property in relationship to that wetland area that may be associated with your property, and then they-- Recently they have been getting technical reports from someone who is qualified to determine whether wetlands actually exist on that particular piece of property when they review it for a permit. But, the maps that they do have are very inaccurate, and I can only relate them to Montville Township because there has been a lot of development in the last 10 years in that Township. They are too conservative. These National Wetlands Inventory maps were done by aerial photography, you know, with very little site-specific work.

Now, I'm not saying here that we should hold off this legislation until new mapping is done. We should use the National Wetlands Inventory maps until better mapping becomes available. I think it would save a lot of time.

ASSEMBLYWOMAN OGDEN: When you say they are too conservative, do you mean they are missing a lot of the wetlands?

MR. VITALE: No. I thought you would say something in that direction. It's just the opposite. (laughter) No, I would say it is about half and half, to be truthful.

ASSEMBLYWOMAN OGDEN: Thank you very much. Is Dave Hall here, from the Bergen County Chapter of the Audubon Society?

D A V I D H. H A L L: My name is David Hall. I am President of the Bergen County Audubon Society. We are a Chapter of the National Audubon Society. We are speaking here today on behalf of 1,700 members of our group in support of the Ogden/Lynch bill, which we believe would offer a true measure of new protection to New Jersey's vanishing wetlands. We strongly oppose the Penn/Zane bill, which we assert would lead to an escalated war against our wetlands, so that none would remain in need of protection within the foreseeable future.

Our organization was founded 45 years ago in Hackensack. We have learned a lot over the years, and our efforts in the field have helped to measure the decline of many of our favorite species of wild birds here in New Jersey. Our most threatened species have disappeared primarily due to loss of wild habitats. Most of our field trips these days involve visits to wetland habitats, because these are by far the most productive environments in all of nature. You will hear from other speakers today about the value of wetlands in filtering impurities out of our water supply and in absorbing the brunt of periodic flood waters. Our members visit wetland habitats every day of the year to marvel in their biological

productivity and, indeed, their beauty, but also to watch for new signs of human encroachment.

We've seen northern New Jersey fill in almost all of its wetlands, so we've developed our County lot by lot to the hilt. We've seen the entire Jersey shore disappear, with hardly an open lot left over its entire length and with massive losses in wildlife habitat. Now it's the farms and the inland wetlands in central New Jersey which are being plundered. Somewhere we have to recognize that more land developed does not make us better off.

If you look back at what we've already constructed, you can see thousands of acres of urban areas being abandoned. These are properties that already have the infrastructure, the roads, the sewers, the water supply, etc. New Jersey's construction industry is currently in the biggest boom ever. The headlines tell of the inordinate delays in processing the paperwork to arrange the financing, so its hard to believe there is a serious bottleneck in finding new sites to develop.

I would suggest that we could make New Jersey and you more perfect together by regulating new development to preserve and protect our remaining wetlands, as well as our farmlands and our open spaces, and to redirect our builders to renovate and redevelop those areas which were first developed so long ago. Our cities were built on high ground for a reason, and they still make the perfect location for businesses, homes, and townhouses, if you will.

The Bergen County Audubon Society is active in the permit process which the Army Corps operates to regulate wetlands development for downstream wetlands. We have not always been happy with its administration, but we see steady improvements in the procedures of the Army Corps. Perhaps this is one of the motivations for the builders to put this process in abeyance so quickly. We fear that the Penn/Zane bill declares a limited time offer, a new open season on wetlands

development. In our view, no more wetlands should be developed without stringent environmental reviews, without exception, without interim periods, without phasing in regulations at a later date.

In our view, there is no such thing as a "low quality wetland," as presented in the Penn/Zane bill. This concept invites further wetlands destruction. In fact, these areas are exactly those which are highly sought after at present for mitigation projects to upgrade their biological productivity and their flood bearing capacity. To allow these wetlands to be destroyed at will is completely assinine. The Penn/Zane bill would encourage their destruction, when these are the lands which might be brought back into productive use as wildlife habitat and open space, and they would give us better flood protection and cleaner water in the bargain. There do arise rare circumstances in which a fine wetland must disappear for some greater public good, but how are we to mitigate their loss if the Penn/Zane bill has erased the available mitigation lands as "low quality" lots suitable for building?

I should add that with no buffer zones, our remaining wetlands will decline in productivity, and presumably this would open those lots for later construction, as well.

Finally, I would like to point out that these regulations will do more harm than good unless they are painfully specific in terms of what activities are forbidden in wetlands areas. The regulations need to be very explicit in the numbers governing buffer zones. They have to have strong penalties for noncompliance, and so forth. Our experience with the Army Corps is that given the slightest bit of latitude, the regulators will opt to satisfy their builder clients, and give wetlands the short shrift.

Exactly the same rules will apply to the New Jersey DEP. They, too, have carried out some horrendous blunders against the environment in granting permits to destroy wetlands

in the past, and they continue to do so. They even issued, this past year, a new set of permits to build industrial parks, a golf course, and homes on the very perimeter of the Brigantine National Wildlife Refuge, which is our finest wetland in the State. This decision defies all reason from a "protector of the environment."

I also heard today several references to Michigan as a glorious state for wetlands regulation. I would like to remind you that it took a U.S. Supreme Court decision in 1985 to tell Michigan that it, too, had to tow the line and obey the Clean Water Act. So, their behavior has not always been so exemplary either.

Thus, if we are to put responsibility into the hands of any agency to protect wetlands, experience dictates that those wetlands will require a very strong suit of clothes to fend against the vagaries of the agency. If we are to dismantle the Army Corps Program just as it is beginning to show the first signs of integrity, let's not botch the job with another set of weakly written provisions. It has taken some 15 years for the Army Corps to get its permit process up to speed. Builders in New Jersey have already enjoyed 15 extra years of open season on wetlands since the Clean Water Act of 1972 put them under Federal protection. We can't afford any more honeymoon periods while waiting for a new set of regulations to take effect, or while waiting for another agency to learn how to assess permit applications. We have lost too many wetland acres already.

Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much, Mr. Hall. Is there a Dr. Leonard DiVito? (no response) We have about 15 more minutes. Is there anyone here in the audience now who would like to speak who is not able to come to the hearing on the 30th? (affirmative response from audience) All right, if you would like to come up to the witness table. Marlen Dooley from the New Jersey Public Interest Research Group.

MARLEN DOOLEY: My name is Marlen Dooley, and I am an advocate and an attorney for the New Jersey Public Interest Research Group. New Jersey PIRG is a nonprofit, nonpartisan public interest organization with 65,000 members statewide.

New Jersey PIRG has testified at previous hearings before the New Jersey Legislature on the need for strong, effective wetlands legislation. We are here today to endorse A-2342, which will yield the much needed protection for the State's freshwater wetlands.

New Jersey PIRG supports a comprehensive approach to the regulation of freshwater wetlands. Wetlands are not only destroyed by the discharge of dredged or fill material. Assembly Bill 2342 recognizes this fact, and takes a broader approach in the regulation of activities on the wetlands. The bill regulates the driving of pilings activities that disturb the water level or destroy plant life. Many of the important environmental benefits derived from wetlands, such as their function as an enclave for the breeding, spawning, and nesting of wildlife, would be affected by these additional activities.

Wetlands can also be harmed by activities that do not occur directly on the wetland. Buffer zones are an important means of protecting wetlands from potentially adverse impacts from adjacent activities. Again, it seems probable that allowing development of, say, an industrial facility handling hazardous chemicals, or a shopping mall to be erected on the border of an environmentally sensitive wetland, would result in damage.

In New Jersey, as mentioned earlier, the coastal areas and Pinelands have buffer zone provisions, and other states -- Rhode Island, Massachusetts, and New York -- have also recognized the need for buffer zone provisions. Assembly Bill 2342 is the result of years of extensive research, study, and negotiation. The sponsors have conferred with members of the EPA to assure that the permit process in the bill would provide

sufficient authority for the State to assume the permit jurisdiction exercised by the Army Corps of Engineers pursuant to the Federal Water Pollution Control Act.

New Jersey PIRG urges the Committee to act quickly and favorably on A-2342. In the three years during which wetlands protection and regulation were discussed, we witnessed the destruction of many valuable and irreplaceable wetlands. We cannot afford three more years of debate. We urge the Committee to pass A-2342 out of Committee as soon as possible.

Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Todd Bryan from the Stony Brook Watershed Association. Todd, I understand there is just one point you would like to make.

T O D D B R Y A N: Yes. My name is Todd Bryan from the Stony Brook Watershed Association in Pennington.

I would like to come back to the next hearing and address some of the points that have been raised in previous testimony, specifically by Mr. Fisher from the Builders Association, Mr. Goldfein from the National Association of Industrial and Office Parks, and the video that Mr. Reilly has made available to us.

I feel that much of the information in that testimony is highly misleading, and I would like to address it at another time. However, just briefly, I would like to comment on something that kept coming back up with Mr. Penn which dealt with Mrs. Ogden's bill and the fact that it appeared to him that there would be up to possibly months or years of duplicated effort before the Corps of Engineers granted the State permission to take over the program.

I have, possibly, a unique situation here because I used to be the Director of the Wetlands Regulatory Program in the State of Rhode Island. Rhode Island was one of the states that was wrestling over several years to take over the 404 Permit Program under the Clean Water Act. At the time the

state applied to take over the program, the Army Corps of Engineers, EPA, and the State Department of Environmental Management in Rhode Island, entered into a consent agreement that allowed the state to take over the program immediately under what was called a "pilot program." This was actually before the state law had even been reviewed extensively to determine if the 404 Program qualified.

My feeling is that under either of these bills the 404 Program could be given to New Jersey on a pilot program basis almost immediately, and it could be applied for on the day the bill passed. I think that would eliminate this duplication of effort and put to rest Mr. Penn's claim that this could go on for years and years.

Thank you.

ASSEMBLYWOMAN OGEDN: Thank you very much. I believe there were two other people who raised their hands and said that they could not come on the 30th -- two or three. So, each person can have about five minutes.

PAULINE SHEEHAN: My name is Pauline Sheehan. I am a Little Falls resident with a middle income. I am the former Chairperson of the Little Falls Flood Prevention Board, and I would like to read a statement:

In 1984, we were devastated by a flood which I feel was created, in part, by indiscriminate development in the flood plains and wetlands by developers.

The flood of 1984 flooded areas that were never flooded before. We were devastated in Little Falls by the flood. We were forced out of our homes for five days. My daughter was crying hysterically, not knowing what was going to happen next. My son, an infant at the time, was crying, too. The trauma I went through will never be forgotten.

The flood waters that rose out of the rivers were contaminated with raw sewage and came into our homes. The homes had been there for 30 years, and never in those 30 years

had the people been forced to leave their homes and not been allowed back in until the water receded.

The developing of wetlands and blacktopping with macadam is causing downstream disasters. The water cannot soak into the ground as nature intended. The water must drain directly into the rivers, and it backs up into flood waters, causing the effects of development of wetlands to be worse. We need a strong freshwater wetlands bill now, not a developers' bill. I support Assemblywoman Maureen Ogden's bill.

Individual people are trying to save a few dollars by purchasing property and building one home on the fringe areas of wetlands, which is almost impossible. But a developer can destroy as much wetlands as he pleases. People are dying in flood waters. Homes and lives are being destroyed. Why must we worry when it rains that our homes will float away or someone will die in the flood waters because the developers want to make a profit without regard to the downstream communities and the disastrous effects they are causing?

Please hear our plea and consider all the individual families that are being harmed downstream. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. The lady in the back there?

H E L E N S I N G E R: My name is Helen Singer. I am a long-time resident of Warren, New Jersey, which is in Somerset County. This is an area contained within the Passaic River Basin. A vast amount of the remaining wetlands in our State are located there.

The Passaic River Basin is also recognized by the United States Army Corps of Engineers as one of the most severely impacted flood hazard areas in the United States. I am well aware of the increased pace of frantic commercial and residential development in my area, along I-287 and along the I-78 route, which runs throughout Somerset and Morris Counties.

Major wetland areas, as well as contiguous wetlands throughout the Basin, are giving way to unconstrained development. That destruction makes natural flooding problems, and removes natural groundwater recharge zones on which the majority of our residents depend.

There is another point to wetlands which no one seems to have considered; that is, wetlands act as a filter. We use carbon filters on our faucets to purify our water. The wetlands act as filters. Water should be put onto them because it is a natural way of purifying our water.

Assemblywoman Ogden's bill deserves support from the entire Legislature. The Governor has already pledged his support. Assembly Bill 2342 would at least give New Jersey the specific legal designation to protect these wetlands from direct encroachment; not only encroachment, complete destruction. It would also establish the need for buffer zones to prevent indirect filling and contamination, thus preserving the ecological integrity and the specific use of the wetlands.

With regard to Mr. Penn's claim that Mrs. Ogden's bill would create duplication of regulation between the State and Federal governments, it should be pointed out that under Penn's bill, the State could not assume regulatory authority of the wetlands until it is delegated by the Corps. However, under Federal EPA regulations, the Corps cannot, and will not, delegate such authority until a suitable program is in place on the State level to assume that authority. I think we have already discussed that and Mr. Penn has discussed it.

It is clear that Mr. Penn's bill is a real "Catch-22" situation. It does not intend to permit the actual delegation of Federal authority.

In closing, I would like to say that the environmental community, along with scores and scores of concerned citizens and concerned citizens' groups who supported the Ogden bill through the Freshwater Wetlands Campaign, will benefit

personally only by the knowledge that a significant step in protecting freshwater wetlands in the public interest has been achieved.

The New Jersey Builders Association, which played a leading role in drafting Mr. Penn's legislation, would have great monetary gain from filling in the freshwater wetlands, and I think we are all conscious of this. We who are really volunteers have nothing to gain; the other people do.

I urge all concerned to support A-2342 for real freshwater wetlands protection.

ASSEMBLYWOMAN OGDEN: Thank you very much. Mrs. Lamb, did you wish to speak, too? (affirmative response)

J U L I A L A M B: My name is Julia Lamb. I live in Englewood, County of Bergen. This is a condensed statement for the Assembly Committee on Energy and Natural Resources in support of A-2343 and S-2003, sponsored by Assemblywoman Maureen Ogden and Senator John Lynch, from the Secretary of the Palisades Preservation Coalition and the Consultant on Environment and Natural Resources for Church Women United in New Jersey Since 1970:

Thank you sincerely for this opportunity to speak in favor of a strong, legitimate wetlands protection bill. We have learned over the years of the vital necessity of preserving both the quality and supply of potable water. To those of us who have been involved and have studied the situation, it is generally agreed that wetlands protection is for everyone. Years ago people did not realize the essential balance that must be preserved and maintained in order for plants and wildlife to exist, as well as for the needs of the people.

We on the Palisades have seen the unfortunate result of over-building on the steep slopes and flooding the valleys. "Developers" -- in quotations -- tend to look at city maps on the flat to capture a few acres in this overcrowded section of

New Jersey in the New Jersey/New York metropolitan region. In fact, there is little title wetlands left along the Hudson River, and freshwater wetlands on the Palisades are, indeed, a rarity.

Water knows no geographical boundaries, and once stream beds and swamps are destroyed, unlike buildings which can be replaced, water quality, flood control, and wildlife habitat are gone forever. We would like to see checks and balances so that the State of New Jersey and Federal agencies work together.

We oppose the Penn/Zane bill, as we feel it doesn't recognize the State's obligation to protect the citizens and natural resources from those whose goals are primarily money and personal profit.

Briefly, we would like to go on record to show a case in point, and would be glad to supply further information or to discuss it with those who could, or would, help us. Because it involves the western shoulder of the world-famous Palisades of the Hudson River, destruction or preservation of the wetlands there is truly history in the making.

As stated in court by the qualified naturalist who administers the only true sanctuary in the Palisades, about one-third of the 151-acred Norwood section of the Greater New York Boy Scout Forest is wetlands. There are eight streams cascading down the steep, sunny slopes of the Palisades in Norwood. The Boy Scouts have Green Acre status on this land and other adjacent lands, yet have a contract to sell what Governor Kean describes as a magnificent preservation site. Streams would be piped into retention basins, totally upsetting the find ecological balance of the 151 acres.

Planning board members refuse to accept the testimony of Fish and Wildlife on wetlands and the relative special values of the Norwood Palisades. In fact, no thorough environmental study has been made, although some 25 illustrious

organizations have supported preservation. Norwood has broken dozens of zoning ordinances at the request of the developer, and has allowed this plan for luxury housing on a hillside to be linked with plans for low- and moderate-income housing elsewhere. The other site is on a former dump site, which is in a flood plain and active wetlands.

New Jersey has seen fit to put the Norwood Palisades on the State Register of Natural Areas, and the Department of the Interior has proposed this forest for inclusion as a national natural landmark. Since the Norwood Palisades seem a perfect example of why the Ogden/Lynch bill is needed, and soon, we would hope that an investigation could take place right away so that the bill won't be passed after the fact.

What we strongly urge is that sponsors of A-2342 work with the legislators in our district so that a spotlight can be put on the Boy Scouts and their neglect and disregard of this magnificent and unique section of the Palisades of New Jersey. We hope it is simple ignorance on their part, for across the nation Scouts are known for their conservation. Here, years of stewardship of pristine forest, streams, and wetlands will go for naught, unless they consider the many alternatives to selling out both land and principles. This could be wetlands publicity at its best

Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you very much, Mrs. Lamb. Since it is now a quarter to four, unless there is someone who still wants to speak who can't come on the 30th--

UNIDENTIFIED WOMAN FROM AUDIENCE: I would like to come on the 30th. Could I be put on at the beginning, though. May I speak more toward the beginning instead of toward the end?

ASSEMBLYWOMAN OGDEN: Surely, or if you want to--

UNIDENTIFIED WOMAN FROM AUDIENCE: I will be coming a long way.

ASSEMBLYWOMAN OGDEN: If you want to speak right now, if it is not too long, we can--

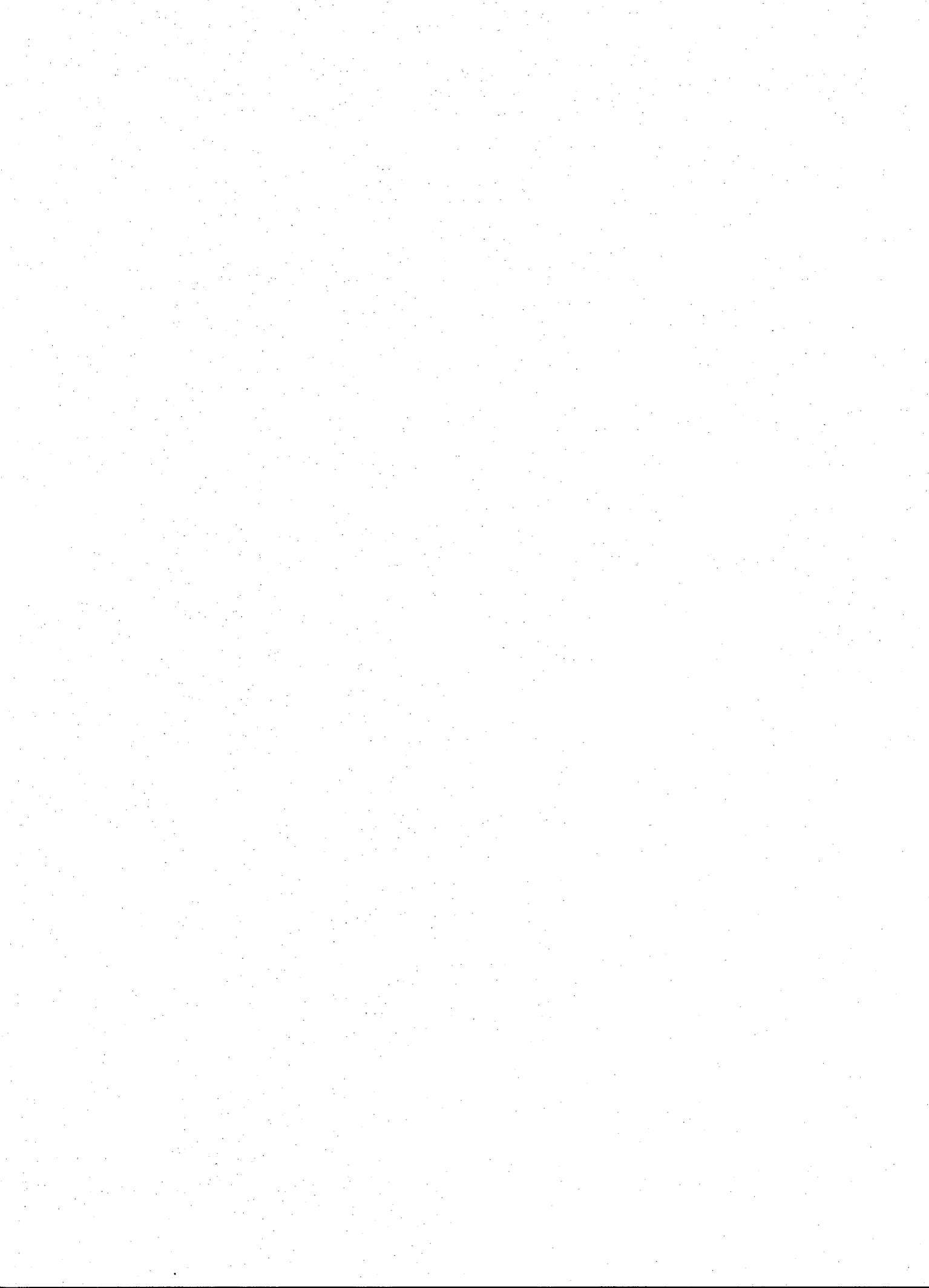
UNIDENTIFIED WOMAN FROM AUDIENCE: No, I'll wait.

ASSEMBLYWOMAN OGDEN: All right. If you will just come up afterward and give us your name, we'll make sure that you are put on at the beginning.

I would like to thank everyone for coming to participate in the discussion today, either listening or making presentations. I believe, as you all know, that this is an extremely important subject. It is part of the process -- a very important part of the process -- to have as full and complete a public discussion of the issue as we can, so I thank you all for participating.

(HEARING CONCLUDED)

APPENDIX



Wetlands Act is good news for breeding mosquitoes

By TED SERRILL
Home News staff writer

If the proposed Freshwater Wetland Act becomes state law, it would be so restrictive that mosquito control commissions would not be able to eliminate stagnant waters where mosquitoes breed, according to a Middlesex County critic.

The result would be more mosquitoes and the use of more pesticides, said Robert B. Dreyer, superintendent of the Middlesex County Mosquito Control Commission.

The legislation, in the works for about four years in various versions, has been re-amended, released from committee and is being geared for a floor vote in the Assembly. Its chief sponsor is Assemblywoman Maureen Ogden, R-Union-Essex. The upper house sponsor of the same bill is Sen. John A. Lynch, D-Middlesex, Union.

Dreyer said he prefers the Freshwater Wetlands Preservation Act, competing legislation that was introduced nearly five weeks ago by Assemblyman John Penn, R-Somerset, Morris, Hunterdon.

Penn bill ignores the puddles

"The Penn bill throws out insignificant small wetlands," said Dreyer. Under the Ogden bill, he said, any backyard puddle that has typical wetland vegetation would be considered wetlands under the law, and subject to a full array of restrictive regulations.

A previous version of the Ogden-Lynch bill passed the Senate last December.

To Dreyer, the state Department of Environmental Protection gives the impression it cannot wait until the Ogden bill becomes law. "DEP's Division of Water Resources is subjecting its present permit and review pro-

Any backyard puddle with wetland vegetation could be considered wetlands under the law.

cedures to new standards in anticipation of the criteria in the Ogden bill," Dreyer said.

For this reason, he added, "our water management program over the past two months has been virtually shut down."

DEP is not "jumping the gun" on the Ogden bill, said Helen C. Fenske, assistant commissioner for natural resources. The bill was worked out with DEP, she said, although it does not provide "all the inland protection we would like to see."

She said mosquito commissions are not charged by law or policy to deal with other values, such as aquifer protection, wild life and water quality. "They can't simply go in and drain to remove mosquitoes when there are other public benefits that would accrue by leaving them there," said Fenske.

The assistant commissioner anticipated less water management by mosquito commissions in the future. Some such projects, she said, have been "very damaging" to stream corridors, water quality and other considerations.

Another possible example of DEP's quick start on

the Ogden bill, in Dreyer's opinion, was a directive to the county Planning Board, telling it to amend a water quality management document to prohibit any kind of wetlands construction, except in public parks.

The planners approved the amended document and sent to the Board of Freeholders, which returned it several weeks ago. The freeholders decided the document, if adopted, would be so restrictive that not even a sewer or water line could be built in a county park if the line is connected with private development outside the park.

Dreyer provided an example of the problem now faced by the mosquito commission:

"We had one project in Middlesex Borough, a small, but very wet, swampy and inaccessible area where we wanted to put a swail — a very gradually graded ditch — so that rain water would run eventually into the Bound Brook. It would have taken about four days to perform the work. We spent six months submitting permit applications.

"DEP approved the project with the proviso that we remove the spoil (the dredged muck). To do this, we would have had to cut down trees, construct a road into the so-called environmentally sensitive area — that's what DEP called it — bring a dump truck in, haul the

spoil away, and then dig out the road to remove it.

"To do all this would have increased our time and costs tenfold. So we refused to do it. We will continue to treat the area with pesticides."

Dreyer continued, "I consider myself an environmentalist, but DEP is throwing out a reasonable degree of practicality. It appears in certain cases that it is putting ducks as priorities in front of people."

Unsophisticated, extreme arguments

"That remark," answered Fenske, "represents a very narrow, parochial and unsophisticated attitude." And to talk of backyard puddles being impacted by DEP regulations, she added, is an extreme argument "that destroys any logical discussion of the issues."

Dreyer and his staff for years have counted an about 11,000 mosquito breeding areas. The number of breeding areas is not increasing, but building development is moving into areas once considered low priority by the mosquito commission, he said.

If, because of cost or the inability to obtain permits, no more pools of stagnant water can be eliminated, Dreyer said his staff would have to inspect all 11,000 breeding areas every 10 to 15 days during the seven-month mosquito breeding season ending in mid-October. All these areas would have to be treated with larvacides after severe rainfalls.

Because more areas would have to be treated, more would accidentally be missed, he said. "On the average, we'd be missing more larvae and therefore many more adult mosquitoes would be a greater nuisance. Then we would have to apply more aerial sprays for the adults, and that is the least desirable thing to do."

TESTIMONY
OF THE
NEW JERSEY BUILDERS ASSOCIATION

PRESENTED BEFORE
THE

ASSEMBLY ENERGY AND NATURAL RESOURCES COMMITTEE

ON
FRESHWATER WETLANDS LEGISLATION

A-2499 (PENN)

A-2342 (OGDEN)

AT THE
LABOR EDUCATION CENTER
RUTGERS UNIVERSITY
NEW BRUNSWICK, NJ

JULY 16, 1986

The New Jersey Builders Association, representing the interests of 1200 home builder members and 1400 associates involved in the construction industry, appreciates the opportunity to testify before the Assembly Energy and Natural Resources Committee. Due to the direct impact of wetlands regulation on our members, the NJBA has followed closely the evolution of the freshwater wetlands legislative initiatives since their beginning in July, 1983.

For the past few years, the NJBA has been a leading proponent of a workable and balanced freshwater wetlands protection program for New Jersey. In enacting such a law, the legislature must, first and foremost, set forth clear and specific state policies regarding freshwater wetlands protection. Only when the legislature exercises its proper authority will we rectify the current wetlands regulatory scenario in New Jersey which produces excessive delays, jurisdictional battles between state and federal agencies, and unjustifiable regulatory restrictions that are based on the preferences of a few with little or no statutory authority.

The current approach protects the State's wetlands in a most inefficient manner. To the extent it succeeds, it does so through an excess of process that ultimately increases the costs that our citizens and especially new homebuyers -- are forced to pay. Let me briefly illustrate the sources of inefficiency, delay and burdensome redundancy.

The New Jersey Department of Environmental Protection (DEP) regulates freshwater wetlands under a variety of permit programs such as stream encroachment, sewer extension, water quality consistency determinations, water quality certificates, and CAFRA. It is important to note that DEP has no clear definition of freshwater wetlands and has not published any regulatory guidelines with which the applicant must comply. Furthermore, the DEP relies on a confused regulatory permit process that pits one DEP bureau against the other, and the entire department against involved federal agencies, leaving the applicant stranded in between. In addition to the State's system, existing federal regulatory powers, administered by the U.S. Army Corp of Engineers under the 404 Program, result in delays of typically 18 months to 2 years to process a single permit.

For these reasons, the NJBA supports legislation that will protect freshwater wetlands in a meaningful way by establishing a program of balanced wetlands protection instead of one that relies on an excessive bureaucracy and policy improvisation. To this end, the NJBA supports "The Freshwater Wetlands Preservation Act" (A-2499/S-2121 Penn/Zane) which would establish a balanced, technically justifiable wetlands program for New Jersey. As opposed to setting broad mandates, the Penn legislation clearly defines state policy and standards by which the DEP would administer a state-of-the-art wetlands protection program that recognizes the differences in freshwater wetlands by creating a unique program to classify wetlands based on their environmental benefits rather than assuming all are of equal value.

At this time, we would like to detail some of the important provisions of Assemblyman Penn's legislation (A-2499) in order to make clear the compelling arguments that support the basic provisions of this wetlands legislative initiative. (Please refer to the attached "brief comparison" and "comparative fact sheet" that we have prepared on this subject.)

When discussing the need for freshwater wetlands protection, we need to understand the rationale for protecting this resource. Some proponents of wetlands preservation have mistakenly cited the role that wetlands presumably play in acting as recharge areas and providing a natural means of flood storage and storm damage protection thereby protecting against the loss of life and property. The attached article from the Journal of Soil and Water Conservation, entitled "What Value Wetlands?", sets that theory aside. The article summarizes current reference materials and documentation regarding wetlands hydrology and soils, and concludes that "the literature is virtually unanimous in its rejection of the sponge hypothesis - that wetlands act to release water in storage during periods of low stream flow". Furthermore, the article challenges the popular belief that wetlands act as good water recharge areas and indicates that wetlands have little capacity to reduce stream flow peaks through absorption. In fact, the research reveals a probable link between the presence of wetlands and the severity of flood damage.

The NJBA recognizes the need to protect freshwater wetlands for the following reasons: (1) to maintain the habitat of wildlife, waterfowl

and to protect native flora; (2) to serve water quality benefits by filtering pollutants and absorbing nutrients; and (3) to preserve economic values by providing for timber production, jobs associated with recreation/wildlife management/conservation and research institutions, and by maintaining waterfowl habitat which produces food. For these reasons, we support a program for the protection of freshwater wetlands.

One of the most important provisions in a freshwater wetlands statute is the definition of wetlands itself. The Penn bill relies on a three part definition which requires the presence of: (1) hydrophytic vegetation, (2) hydric soils; and (3) proper hydrology in order to be deemed a freshwater wetlands area. As indicated in the attached U.S. Army Corp of Engineers, Environmental Laboratory Bulletin, "positive wetland indicators of all three parameters must be present to identify an area as a wetland, and indicators of all three parameters can be found in almost all wetland situations." With respect to the approach in Assemblywoman Ogden's bill, the Bulletin goes on to indicate that "vegetation as an indicator of wetlands can sometimes be misleading", and that "the additional presence of both wetland (hydric) soil and wetland hydrology indicators provides a logical, easily defensible, technical basis for the presence of hydrophytic vegetation."

Another important benefit of the Penn wetlands legislation is its wetlands classification system. Such a classification system, which is absent in the Ogden legislation, will have the DEP assess the wetlands' values so that the areas will be regulated consistent with

the benefits they provide. With such a system, the DEP could much more objectively decide whether a proposed wetlands encroachment could be allowed subject to mitigation, or should absolutely be prohibited due to the environmental sensitivity or productivity of a particular wetland. Based on such a classification system, there may even be many instances where the DEP would want to encourage wetlands encroachment subject to enhancement or restoration of the area (or creation of new wetlands) thereby improving the overall value of the State's freshwater wetlands.

The Ogden proposal, on the other hand, would not allow the DEP to make such distinctions. We bring your attention to the attached December, 1985 Water Resources Bulletin of the American Water Resources Association entitled "Establishing Priorities for Wetland Management". This Bulletin was written by staff of the United States Congress Office of Technology Assessment. It analyzes the status of Federal Wetland Management efforts by describing the hydrological and ecological values of wetlands, the trends in wetlands use, and the effect of federal and state programs on wetlands protection. In discussing the range of ecological services that wetlands provide, the research concludes that "whether a wetlands actually provides some or all of these services will depend greatly on the wetland type and site - specific characteristics."

The Bulletin also suggests "tailoring or adjusting existing policy and programs to wetlands according to their relative value," which the Penn

legislation recognizes by way of a classification system. One other notable statistic contained in this research reflects the fact that nationwide, agricultural conversion involving drainage, clearing, land leveling, ground water pumping and surface water diversions were responsible for 80% of wetland conversions.

The NJBA is strongly opposed to the concept of wetlands buffer zones. There is no clear scientific justification for buffer zones around freshwater wetlands. The Army Corps' 404 Wetlands Permit Program does not require buffers, nor do the wetlands programs of other states (e.g., Connecticut and Maine). Many freshwater wetlands, in fact, are dry for many months of the year and, as indicated by the legislative findings in both the Penn and Ogden bills, wetlands themselves act as a "buffer zone" between dry land and water courses. So why buffer the buffers?

Again, Assemblyman Penn's A-2499 mirrors the Army Corps' program in terms of regulated activities. As such, the discharge of dredged or fill materials into a wetland are to be regulated under this legislation. Conversely, the Ogden bill would inundate the DEP with tens of thousands permits per year since it regulates not only the filling and draining of wetlands but also the driving of pilings, the placing of obstructions whether or not they interfere with the flow of water, and the destruction of plant life including the cutting of trees. For such minor activities, to require the DEP to visit the site, delineate the wetlands, delineate the buffer area, and finally

render a permit decision on such minor activities, is clearly excessive and unreasonable.

With respect to proposed encroachment into a wetland area, the Penn/Zane bill establishes a clear process whereby the applicant must demonstrate to the DEP that either the proposed activity is dependent upon being located in the wetland, or that a practical alternative does not exist. If the applicant cannot demonstrate compliance with one of these criteria, no encroachment can be permitted by the DEP.

In contrast, the Ogden bill not only ignores the fact that wetlands come in different types and exhibit varying environmental benefits, it makes it virtually impossible to encroach upon wetlands irrespective of other significant considerations. That legislation prohibits all encroachment unless it can meet all four of the following criteria:

(1) requires access to water or is water dependent; (2) has no feasible alternative site; (3) does not result in an unacceptable disruption to the wetlands resources; and (4) is in the public interest. Not only is this an overly broad restriction, the ambiguity of such terms as "unacceptable disruption" give broad latitude to those charged with its administration and will result in substantial, protracted litigation as to its interpretations.

When wetlands disturbance is proposed under the Penn legislation, the DEP is directed to accept certain mitigation measures such as the creation of new wetlands, or the enhancement or restoration of existing wetlands (on or off the project site), provided that its ecological

value is equivalent to or greater than that of the predeveloped wetlands in question. Such mitigation techniques, utilized presently throughout the country under the Army Corps' program as well as various state wetlands statutes, would provide a unique program for wetlands restoration and expansion.

Much discussion has taken place on the issue of the DEP assuming the jurisdiction currently exercised by the Army Corps via their 404 Wetlands Permit Program. The Penn legislation requires the DEP to make application within six months of enactment, to assume the Army Corps' permit jurisdiction. The state wetlands permit program (authorized by the Penn bill) would take effect immediately upon delegation of the Army Corps permit jurisdiction to the DEP. This will encourage regulatory efficiency and encourage the DEP to expedite its efforts to obtain delegation of the Federal program.

On the other hand, the Ogden legislation directs the DEP to secure the permit jurisdiction of the Army Corps, however, it would allow the state DEP to regulate wetlands under the act while a delagation agreement is being negotiated. Under this approach, for several years, the DEP would administer a duplicative and conflicting wetlands program with the existing Army Corps 404 Permit Program.

Regarding the subject of exemptions, the two legislative measures are largely similar, with a few notable exceptions. The Penn legislation exempts minor maintenance, reconstruction or repair of roads, utilities, drainage ditches, stormwater management facilities and

existing buildings or structures. These harmless activities, however, are required to obtain a general permit under the Ogden proposal.

Another important feature of the Penn legislation, is its provision to prepare a comprehensive mapping inventory of all freshwater wetlands, at a scale of 1 inch to 200 feet. Similar to a mapping effort conducted by the State of New York, it would require the DEP to conduct public hearings and notify interested parties so that they may comment on the map inventories as they are developed. This mapping will curtail the problems currently associated with development in and around freshwater wetlands, since it would provide applicants and developers with a complete and accurate description of the locations of freshwater wetlands. By contrast, the Ogden legislation provides for no such mapping, and relies on existing National Wetlands Inventory Maps (prepared at a scale of 1 inch to 2,000 feet) that have been recognized as highly inaccurate and only a general guide for locating potential wetlands sites.

Last, but certainly not least, is the issue of an adequate funding appropriation to carry out the program. Assemblyman Penn's A-2499 would appropriate \$2,000,000 in order to carry out its provisions. This appropriation amount was determined based upon the current funding necessary to administer the Army Corps 404 Permit Program in New Jersey. The Ogden legislation appropriates only \$500,000, and proposes to regulate many more types of activities than the Penn legislation, resulting in an estimated 39,000 to 40,000 DEP permit actions in the first year of the Ogden bill's implementation (according to a recent

administrative analysis conducted by a land use regulatory consultant). These figures, based upon total DEP permit actions (not actual permits) would translate to more than 10,000 wetlands permits per year. Even the largest of DEP permit sections (viz., - stream encroachment) process only 800 permits per year with a staff of approximately 35 persons. On that basis, it is safe to estimate that the Ogden bill will require 400 or more staff. At what cost? Certainly many times the \$500,000 called for in Assemblywoman Ogden's bill.

The NJBA urges this Committee and Assemblywoman Ogden to examine closely the provisions of A-2499 (Penn) in order to realize the benefits of such legislation. We sincerely hope that your Committee will choose to embrace a balanced, technically justifiable wetlands protection program such as Assemblyman Penn's A-2499.

The NJBA thanks you for the opportunity to testify and is always available to respond to any additional concerns as they may arise. Thank you.

BRIEF COMPARISON
OF
PROPOSED FRESHWATER WETLANDS
LEGISLATION

Ogden Bill (A-2342)

- Sets forth a broad and subjective definition which would identify wetlands based only upon hydrophytic vegetation.
- Also prohibits any development in buffer zones which range from 100 to 300 feet around the freshwater wetlands. In addition, a 400 foot buffer can be required around wetlands when endangered species are present.
- Fails to establish a classification or rating system whereby wetlands could be regulated consistent with the benefits they provide.
- Does not provide for any mapping of freshwater wetland areas.
- Contains no grandfather clause to honor those developers currently in the process of obtaining local and state permits under existing law and regulation.
- Would create a dual permit process that conflicts with the existing Army Corps of Engineers 404 Permit Program, until such time as the federal government decides to delegate the Corps permit jurisdiction to the state.
- Provides for a nominal \$500,000 appropriation, which would fall far short of the amount of funds necessary to administer the program.

Penn Bill (A-2499)

- Sets forth a straightforward and accurate definition based upon the presence of hydrophytic vegetation, hydric soils and proper hydrologic conditions which must all be present in order to have freshwater wetlands. This approach would provide clear direction to the NJDEP for mapping and identifying wetlands in the field, and is consistent with the way in which the Army Corps presently identifies wetlands.
- Contains no requirements for a buffer zone around wetlands.
- Sets forth a clear and concise requirement for the NJDEP to develop a wetlands classification system whereby freshwater wetlands would be regulated consistent with the environmental benefits they provide.
- Allows for appropriate mitigation techniques such as creation, enhancement or restoration of existing wetlands in order to compensate for wetlands that are encroached upon under the permit process.
- Should an applicant be denied a permit, and following a court's determination of a "taking of property without just compensation", the court is directed to order the NJDEP to either compensate the property owner, purchase the land, or modify its permit action to minimize the detrimental affect of the property's value.

(Over)

- Unlike the Ogden bill, exempts minor maintenance, reconstruction or repair activities for roads, buildings, and other land uses that would have a negligible (if any) impact on wetlands.
- Provides for a grandfather clause which allows applicants that have applied for preliminary approval under the Municipal Land Use Law to proceed provided that final approval is obtained within six years of enactment of the act.
- Requires the NJDEP to map all freshwater wetlands at a scale of 1"=200 feet prior to regulating such areas.
- Would not duplicate any existing federal Army Corps Permit Program since the proposed freshwater wetlands program to be administered by the NJDEP would not be able to take effect until such time as the federal government agreed to delegate the Army Corps responsibilities to the state.
- Provides for a \$2 million appropriation for the mapping of freshwater wetlands and administration of the program.

NJBA, 4/23/86

COMPARATIVE "FACT SHEET"
ON
PROPOSED FRESHWATER WETLANDS LEGISLATION

PROVISION	OGDEN BILL (A-2342)	PENN BILL (A-2499)	COMMENTARY
<p>Duplication of Review/ Assumption of Army Corps Regulatory Program by NJDEP</p>	<p>Directs the NJDEP to secure the permit jurisdiction of the US Army Corps of Engineers, however, it would allow the state to regulate wetlands in accordance with the Act while a delegation agreement is being worked out. Therefore, for several years the NJDEP will be administering a duplicative and conflicting wetlands program with the Army Corps existing 404 Permit Program.</p>	<p>Requires the NJDEP to make application (within six months of enactment) to assume the Army Corps permit jurisdiction. The Act, however, would not take effect until such time as the Army Corps permit jurisdiction is delegated to the NJDEP.</p>	<p>The Penn bill allows the existing Army Corps program to continue to regulate wetlands in accordance with federal requirements while not duplicating that existing authority, as opposed to the Ogden bill which would create a dual jurisdiction that is conflicting, costly and an unproductive regulatory approach.</p>
<p>Wetlands Definition</p>	<p>Quotes an overly broad and nondescript wetlands definition that relies upon the identification of only wetlands vegetation.</p>	<p>Specifies an accurate definition that requires the presence of three criteria (hydrophitic vegetation, hydric soils and proper hydrology) which are currently used by the Army Corps as the way in which wetlands are delineated in the field under the federal program. The definition also allows for isolated wetlands of five acres or less to be exempted from regulation provided that the NJDEP Commissioner determines that their protection is not essential to the preservation of the natural resources of the State from pollution, impairment or destruction.</p>	<p>The Penn bill provides sufficient direction and guidance to the NJDEP so that they can properly identify (map) and define wetlands in an objective manner, as opposed to the Ogden bill which contains a definition that is subject to abuse and broad discretion by the agency.</p>

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PROVISION	OGDEN BILL (A-2342)	PENN BILL (A-2499)	COMMENTARY
Wetlands Buffer Zone	Contains a set of buffer zone distances ranging from an average of 300 feet to 100 feet, within which distance no activities could occur. Also sets forth a buffer zone "waiver" whereby the NJDEP may permit a reduction of the buffer zone distance under certain circumstances. A buffer of up to 400 feet can be imposed when NJDEP determines that critical wildlife habitat are present.	No buffer zone distance is required.	There has been no clear scientific justification for buffer zones around freshwater wetlands. In fact, the legislative findings in both bills indicate that wetlands themselves act as a "buffer zone" between dry land and water courses; so why buffer the buffers.
Regulated Activities (Who Needs a Permit?)	Sets forth an exhaustive list of activities which would alter a freshwater wetlands through such things as: the removal, disturbance or dredging of materials; drainage or disturbance of the water level; dumping or filling of materials; driving of pilings, or the erection of buildings; placing of obstructions whether or not they interfere with the flow of water; and destruction of plant life including the cutting of trees.	Requires that the discharge of dredged or fill materials into a wetland be regulated.	Penn's bill regulates the identical types of activities that are regulated under the federal (Army Corps) program, as opposed to the Ogden bill which would inundate the NJDEP with tens of thousands of permits per year if everyone were to file for such activities. (Ogden's bill would go so far as to regulate the placing of a duck stand in a wetlands area, or a garden shed in your backyard that you never knew was defined as wetlands under her bill).
Permit Requirements (Criteria to be Satisfied for Obtaining a Permit)	<p>Allows the NJDEP to issue a permit only if it finds that the activity meets all four of the following: requires access to water or is water dependent; has no feasible alternative site; does not result in an unacceptable disruption to the wetlands resources; and is in the public interest.</p> <p>Somewhat less stringent criteria are listed for the issuance of a permit for "linear development".</p>	<p>The DEP cannot issue a permit unless the applicant demonstrates one of the following: that the proposed activity is primarily dependent on being located in the wetlands; or a practicable alternative does not exist. The NJDEP is also directed to determine whether or not the proposed activity is in the public interest before issuing a wetlands permit.</p> <p>The NJDEP is also directed to develop a general permit process for the issuance of permits for "linear development" provided that it would not have a significant adverse effect on five acres or more of high quality wetlands.</p>	The Penn bill provides the NJDEP with two basic criteria (water dependency or no practicable alternative) for the issuance of permits and further directs the NJDEP to determine whether or not the project is in the public interest (in accordance with federal criteria), as opposed to the Ogden bill which mandates compliance with four stringent tests, compliance with any one of which would eliminate virtually any type of activity.

X97

PROVISION	OGDEN BILL (A-2342)	PENN BILL (A-2499)	COMMENTARY
Ranking Wetlands Values (Classification System)	No provision is included to classify wetlands consistent with their importance to the environment.	The NJDEP is directed to develop a classification system which would rank or prioritize wetlands values so that they are regulated consistently with the benefits they provide.	The Penn bill recognizes the state-of-the-art wetlands technology and research that supports the ranking of wetlands values which allows for the regulation of such areas consistent with the benefits they provide. Conversely, the Ogden bill provides for no such opportunity.
Mitigation and Alternatives to Wetlands Disturbance	Since there is virtually no opportunity for wetlands encroachment under the bill, mitigation alternatives or the option to create new wetlands would rarely be needed. The bill, however, does provide the NJDEP with discretion as to requirements for the creation or restoration of wetlands that are disturbed, while mandating certain mitigation measures as a condition of all freshwater wetlands permits.	Directs the NJDEP to accept mitigation measures such as the creation of new wetlands or the enhancement or expansion of existing wetlands (on or off site) provided that its ecological value is equivalent to or greater than that of the predeveloped wetlands.	The Penn bill encourages creation, enhancement or expansion as mitigation measures in order to compensate for the loss of wetlands that are encroached upon, as opposed to the Ogden bill which would rarely if ever allow for wetlands encroachment in the first place.
Exemptions; Grandfather	Exempts certain agricultural activities, areas already regulated as coastal wetlands, lands under the jurisdiction of the Pinelands Commission and Hackensack Meadowlands Development Commission, and state or federally funded roads provided that they are planned in accordance with several federal statutes and Executive Orders.	Exempts certain agricultural practices; emergency activities; maintenance, reconstruction or repair of roads, utilities, irrigation or drainage ditches, stormwater management facilities and existing buildings or structures; state or federally funded roads which are consistent with certain federal statutes; and site plans and subdivisions for which preliminary approval has been applied for or received under the Municipal Land Use Law provided that final approval is received within six years of enactment of the act.	The Penn bill provides reasonable and logical exemptions for existing activities and land uses that would cause little or no damage to the wetlands resource. It also allows development that is in progress to continue under the current regulations (ie- Army Corps, DEP). Conversely, the Ogden bill provides for minimal exemptions, and chooses to regulate even existing activities and land uses under a general permit (see next provision).

17X

PROVISION	OGDEN BILL (A-2342)	PENN BILL (A-2499)	COMMENTARY
General Permits	Provides an option for the NJDEP to develop a general permit program for numerous maintenance, reconstruction and repair activities for existing roads, utilities, drainage ditches, stormwater management facilities and existing buildings or structures.	Directs the NJDEP to develop a general permit process for the issuance of permits for "linear development", which would allow utilities and roads to be constructed under certain conditions.	The Penn bill provides for a streamlined permit process for linear development, as opposed to the Ogden bill which unnecessarily regulates a multitude of maintenance and repair activities that should be exempted from the act. (The Ogden bill would go so far as to require an individual who wishes to perform routine maintenance on a detention pond to apply to the state for a permit).
Mapping of Wetlands	Requires no mapping of freshwater wetlands, but rather directs the NJDEP to send large scale, inaccurate (national wetlands inventory) maps to local municipalities for their reference.	Requires the NJDEP to prepare a comprehensive inventory of all freshwater wetlands to be mapped at a scale of 1"=200 feet. Also requires the NJDEP to conduct public hearings and notify interested parties so that they may comment on the mapped inventories.	The Penn bill requires that all freshwater wetlands be mapped at an appropriate scale prior to the act taking effect; this eliminates the need for the letter of interpretation provided for in the Ogden bill. Conversely, the Ogden bill provides for no such mapping. Instead, the Ogden bill relies upon inaccurate and outdated national wetlands inventories and would therefore regulate areas on a case by case basis utilizing the bill's broad and subjective definition.
Inter-Departmental Coordination	Requires the NJDEP to consolidate the wetlands-related aspects of other regulatory programs within the freshwater wetlands permit process established by the act, in accordance with four statutes.	Requires the same type of consolidation as provided for in the Ogden bill but also includes the Safe Drinking Water Act.	The Penn bill provides for a comprehensive consolidation of department programs, as opposed to the Ogden bill which omits an important environmental statute under which the NJDEP operates.

X81

PROVISION	OGDEN BILL (A-2342)	PENN BILL (A-2499)	COMMENTARY
Tax Assessment Status/ Compensation	Allows a property owner affected by a permit denial to request that this fact be taken into account when the property is valued, assessed and taxed for property tax purposes.	Specifies the process by which an applicant can file an action in court for a wetlands permit denial that has caused a taking of property without just compensation. If the court determines that the NJDEP has caused a taking, options are detailed such as compensating the property owner, purchasing the property or modifying the NJDEP action.	The Penn bill provides for direct relief should a court determine that there has been a taking without just compensation, as opposed to the Ogden bill which indicates that a property owner may request the permit denial to be taken into consideration when the property is valued or assessed.
Appropriation of Funds	Provides for the appropriation of \$500,000 to the NJDEP for administration of the program.	Provides for an appropriation of \$2 million so that freshwater wetlands can be accurately mapped and to provide for sufficient funds to administer the program.	The Penn bill would provide an amount that is consistent with the present annual cost of federal regulation of wetlands in New Jersey (by the Army Corps) and to provide for mapping of these wetlands as opposed to the Ogden bill which would barely cover the start-up costs of the program.

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COASTAL SOUTH CAROLINA HYDRIC SOILS LIST
for use with Soil Conservation Service
Soil Surveys for the counties indicated

SOIL NAME	TYPE (see note at end)	CTD	BERE	CHAS	COL	BEAU/ JASP	MOBBY (not comp.)
Argent	2				I	I	
Darotari	2					I	
Dayboro	1		I	I			
Dothens	1		I				
Glades	2	I			I	I	
Gulches	1	I	I		I	I	
Duncombe	2					I	
Dyers	1		I				
Cape Fear	1	I		I	I	I	
Capers	1	I		I	I	I	
Chaetain	1	I	I	I		I	
Conville	2		I		I	I	
Croavess	2			I			
Darboe	1			I			
Deloco	1					I	
Dumber	2			I	I		
Grifton	2	I					
Hansboro	1					I	
Hobcaw	1	I			I		
Hobsony	1	I				I	
Johnston	1	I					
Klawah	2			I			
Lowels	2		I				

SOIL NAME	TYPE (see note at end)	CTD	BERE	CHAS	COL	BEAU/ JASP	MOBBY (not comp.)
Lees	2	I	I	I	I		
Lovy	1	I			I	I	
Lynchburg	2		I		I	I	
Lynn Haven	2	I			I	I	
Meggott	2		I	I			
Myatt	1			I			
Ogeechoo	2				I		
Onctee	2				I	I	
Oolar	1			I	I	I	
Pamlico	1		I	I			
Pantego	1		I				
Panville	1				I	I	
Polban	2				I	I	
Pickney	1		I		I	I	
Plummer	1				I		
Polovana	1					I	
Portsmouth	1			I			
Pungo	1				I		
Rains	2		I	I	I	I	
Redgeand	2					I	
Rowethu	2					I	
Sutlege	1	I	I	I			
St. Johns	2			I			
Santee	1		I	I	I	I	

SOIL NAME	TYPE (see note at end)	CTD	BERE	CHAS	COL	BEAU/ JASP	MOBBY (not comp.)
Scranton	2			I	I		
Stono	1			I			
Tautow	1		I				I
Tomatley	2						I
Torbusta	1					I	
Wadswell	1			I	I		
Wahoe	2	I	I	I	I	I	
Williamson	2				I	I	
Witchabee	2	I	I				
Yamacraw	2	I			I	I	
Yongee	2			I		I	

NOTE: This list compiled from SCS Soil Surveys of the respective counties and the SCS "Hydric Soils List" (SCS Bulletin No. 430-3-10), dated June 1, 1983.

The column in this list referring to "TYPE" carries the following meaning, adapted from the above ref. SCS Bulletin:

TYPE "1" soils consistently display hydric conditions, unless drained or otherwise altered.

TYPE "2" soils have one or more features associated with hydric conditions, but always require field investigation.

This list should not be used to delineate jurisdictional wetlands on the basis of soil mapping. It is intended to aid in assessing the potential of an area for such a determination by providing insight into one of the physical parameters of an area.

TAKE CAREFUL NOTE OF THIS CONDITION !

This list was prepared by the Charleston District of the Corps of Engineers for use as a planning tool, in conjunction with a Soil Conservation Service Soil Survey from the counties indicated.

Also note that some of the older Soil Surveys indicate wetland areas as "Swamp" or "Tidal Marsh" (Charleston County, for example).

For additional information, contact the Corps of Engineers at

(803) 724-4330.

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COMMON FRESHWATER WETLAND PLANTS OF THE SOUTH CAROLINA COASTAL PLAIN

The purpose of this list is to provide information for landowners, developers, etc., to assist them in considerations of whether or not they may need to contact the Corps of Engineers concerning permit requirements. Plants are the most immediately recognizable factor in evaluating the presence of wetland situations, but consideration must also be given to soil conditions and hydrology as described in other parts of this handout. This list is not comprehensive and should only be used as a preliminary guide.

It is also important to note that the plant life of a given area should be looked at as a COMMUNITY and that a PREVALENCE of the listed species must be present in order to qualify an area as exhibiting wetland vegetation. In other words, just because a few of these species exist in a given area does not make it a wetland.

The attached lists for TREES, SHRUBS, FERNS, HERBACEOUS PLANTS and VINES contain a column called "STATUS", where a value of 1, 2 or 3 is given. The definition for this status is as follows:

- 1 - A plant that is generally found only in wetlands under natural conditions.
- 2 - A plant that is usually (greater than 2/3 of the time) found in wetlands, but which may be occasionally found in non-wetland areas under natural conditions.
- 3 - A plant that sometimes (1/3 to 2/3 of the time) occurs in wetlands, but is also commonly found in uplands.

For additional information, contact the Charleston District Corps of Engineers - Regulatory Branch, at (803) 724-4330.

TREES

STATUS	COMMON NAME	SCIENTIFIC NAME
1	Bald Cypress	<u>Taxodium distichum</u>
1	Swamp Tupelo	<u>Nyssa aquatica</u>
1	Carolina Ash	<u>Fraxinus caroliniana</u>
1	Planer Tree	<u>Planera aquatica</u>
1	Black Willow	<u>Salix nigra</u>
1	Hazel Alder	<u>Alnus serrulata</u>
1	Pond Pine	<u>Pinus serotina</u>
1	Sweet Bay	<u>Magnolia virginiana</u>
1	River Birch	<u>Betula nigra</u>
1	Water Hickory	<u>Carya aquatica</u>
2	Laurel Oak	<u>Quercus laurifolia</u>
2	Swamp Chestnut Oak	<u>Quercus michauxii</u>
2	American Elm	<u>Ulmus americana</u>
2	Black Gum	<u>Nyssa sylvatica (biflora)</u>
2	Red Bay	<u>Persea borbonia</u>
2	Loblolly Bay	<u>Gordonia lasianthus</u>
2	Sweet Gum	<u>Liquidambar styraciflua</u>
2	Lowland Hackberry	<u>Celtis laevigata</u>
2	Box Elder	<u>Acer negundo</u>
2	Bitternut Hickory	<u>Carya cordiformis</u>
3	Red Maple	<u>Acer rubrum</u>
3	Ironwood	<u>Carpinus caroliniana</u>
3	Cottonwood	<u>Populus deltoides</u>
3	Loblolly Pine	<u>Pinus taeda</u>
3	Longleaf Pine	<u>Pinus palustris</u>

SHRUBS

STATUS	COMMON NAME	SCIENTIFIC NAME
1	Buttonbush	<u>Cephalanthus occidentalis</u>
1	Sweetspire	<u>Itea virginica</u>
2	Fetterbush	<u>Leucothoe racemosa</u>
2	Titi	<u>Cyrilla racemiflora</u>
2	Swamp Dogwood	<u>Cornus foemina</u>
2	Gallberry	<u>Ilex coriacea</u>
2	Inkberry	<u>Ilex glabra</u>
2	Fetterbush	<u>Lyonia lucida</u>
2	Sweet Pepperbush	<u>Clethra alnifolia</u>
2	Silverling	<u>Baccharis halimifolia</u>
2	Swamp Azalea	<u>Rhododendron canescens</u>
2	Elderberry	<u>Sambucus canadensis</u>
2	Dwarf Palmetto	<u>Sabal minor</u>
3	Arrow Wood	<u>Viburnum dentatum</u>
3	Wax Myrtle	<u>Myrica cerifera</u>

FERNS

1	Royal Fern	<u>Osmunda regalis</u>
1	Netted Chain Fern	<u>Woodwardia areolata</u>
1	Virginia Chain Fern	<u>Woodwardia virginica</u>
2	Cinnamon Fern	<u>Osmunda cinnamomea</u>
2	Sensitive Fern	<u>Onoclea sensibilis</u>
3	Southern Lady Fern	<u>Athyrium asplenoides</u>

HERBACEOUS PLANTS

STATUS	COMMON NAME	SCIENTIFIC NAME
1	Bulrushes	<u>Scirpus</u> spp.*
1	Bur-reeds	<u>Sparganium</u> spp.
1	Lizard's Tail	<u>Saururus cernuus</u>
1	False Nettle	<u>Boehmeria cylindrica</u>
1	Arrowheads	<u>Sagittaria</u> spp.
1	Pitcher Plants	<u>Sarracenia</u> spp.
1-2	Sedges	<u>Carex</u> spp.
1-2	Rushes	<u>Juncus</u> spp.
1-2	Spike Rushes	<u>Eleocharis</u> spp.
1-2	Umbrella Sedges	<u>Cyperus</u> spp.
1-2	Smart Weeds	<u>Polygonum</u> spp.
1-2	Yellow-eyed Grass	<u>Xyris</u> spp.
2	Jack-in-the-pulpit	<u>Arisaema triphyllum</u>

VINES

2	Pepper Vine	<u>Ampelopsis arborea</u>
2-3	Cat Brier, Green Brier	<u>Smilax</u> spp.
2-3	Grape Vine	<u>Vitis</u> spp.

*("spp." indicates numerous species)

ADMINISTRATIVE MANAGEMENT FLAWS
& EXCESSES IN THE OGDEN* WETLANDS BILL

NOTE: Managing fill in wetlands by the US Army Corps of Engineers costs \$2 million per year to administer. All of the other proposed regulated uses and buffer decisions will be in addition to this.

I. THE APPLICATION PROCESS - Every proposed use of a parcel of land of any size for other than a single-family dwelling must (A-2342, Section 6):

- A. Get a wetlands mapping by experts, on site and off site within 100 to 300 feet of the property line (or risk prosecution for an error in judgement as to where the wetlands line is, since there is usually never any standing water at the upland edge of wetlands which would clearly define the line).
- B. Secure permission of the land owners to send biologists and soil scientists on their property.
- C. Secure permission for surveyors to enter others' lands to plot and map the line.
- D. Meet with NJDEP to confirm the wetlands line.
- E. Meet with NJDEP to determine the buffer distance based on use.
- F. Apply to NJDEP for a permit or wetlands buffer reduction.
- G. Wait for permit 90 to 180 days.

} 2 or more
houses and
commercial
and
industrial

CONCLUSION

- A. The bill overlooks the fact that the buffers from wetlands may be virtually impossible to comply with if the wetlands are not on your property.
- B. Given the requirements in the bill, every developer/builder of two or more homes must file with NJDEP to determine the buffers. This requires an application to NJDEP and a meeting. This means that even if developers/builders define the wetlands line and agree to stay out of it, they still need to apply to NJDEP or a buffer determination and reduction request. This means that every minor and major planning board action in the state's 567 municipalities must apply to NJDEP for a decision.

II. The Number of Regulatory Actions Generated for Wetlands Permits and/or Buffer Determinations and Waivers.

- A. Every existing job which is being built in phases and needs sewer extensions and other incremental NJDEP permits, i.e. phased PUDs, housing, industrial and commercial parks, etc. will need a NJDEP review and response.

Estimated Actions - Three to five developments per town X 567 towns = 1,701 to 2,835. This is a one-time rush of applications which would, in essence, stop the building projects (a moratorium of sorts) until they complied with all the surveying, buffering and approvals, etc., etc.

- B. Every application now in NJDEP - 1,000 to 2,000.
- C. Every local agency, county agency and state agency action must at least undergo Phase I (wetlands line), Phase II buffer determination, and some Phase II regulated activity permits.

Estimated Actions -

Assumption 1: Each municipal and county government will have at least a highway department and a parks department which will be required to comply.

Two actions by each of two agencies per township X 567 towns = 2,268 per year municipal-county agency actions.

Assumption 2: Each agency of state government will conduct 21 actions per year per agency which will need review, i.e. one for each of the 21 counties. These agencies would be DOT, NJDEP (parks), institutions and agencies, etc. This number may range from 100 to 500 state agency actions.

- D. Every local, county and regional land use approval agency action will be conditioned on a wetlands review at NJDEP. This encompasses every single use under the land use law and every other physical disturbance from wood cutting and mowing to building a duck blind - literally.

TOTAL: 5 actions per town per month = 60 actions per town per year = (60 X 567) = 34,020 actions per year in the state.

TOTALS:

- 1. Existing jobs - 1,701 to 2,835.
- 2. Pending NJDEP applications - 1,000 to 2,000.
- 3. Government agency actions:
 - Municipal - 2,268.
 - State - 100 to 500.
- 4. Government approval agency actions - 34,020+.

TOTAL: Wetlands Reviews - 39,089 to 44,424 first year.

III. CONCLUSION

NJDEP will receive 1,701 to 2,835 applications for existing jobs under construction upon the effective date of this bill, or shortly thereafter, upon which it must act within 90 days. Since the bill makes no provision for treating them otherwise, the NJDEP will have to deny or send back all of the applications it has in-house (1,000 to 2,000) so that applicants can comply with the NJDEP's wetlands and buffer requirements (in addition to the US Army Corps' application they must file). If the applicant has to change his plans due to wetlands or buffers, he will have to return to local planning boards to change his approval. He may lose his approval.

NJDEP will then receive approximately 3,115 to 3,465 apps. per month for the first year or 39,089 to 44,424 total applications. This vast glut of probable applications is directly due to the bills overkill provisions.

If the bill is limited to fill and other "major disruptions" to wetlands and buffers are eliminated as a requirement, then the paper flow would approximate the annual work load of the two US Army Corps offices which handle the program presently.

STATEMENT OF
THE
ASSOCIATED GENERAL CONTRACTORS
OF NEW JERSEY

JULY 16, 1986

RUTGERS LABOR CENTER
NEW BRUNSWICK, NEW JERSEY

FRESHWATER WETLANDS LEGISLATION

A-2499 (Penn)

A-2342 (Ogden)

ASSOCIATED GENERAL CONTRACTORS

of New Jersey



Richard L. Forman, Executive Director

The Associated General Contractors of New Jersey is a trade organization of general contractors in the State's heavy and highway construction industry. As such, we would be affected by whatever bill is ultimately enacted as New Jersey's Freshwater Wetlands Act.

The AGC favors Assemblyman Penn's Bill No. 2499 because it is a more realistic and practical approach to the problem of balancing environmental concerns with those of the business community. It would, for example:

- * Direct the N.J. Department of Environmental Protection to develop a classification system which would prioritize wetlands values so that they are regulated consistently with the benefits they provide.

- * Preclude duplication of the permit process, since the State administered program could not take effect until the federal government agrees to delegate the Army Corps of Engineers' responsibilities to the State.

- * Require no buffer zone distance. Legislative findings in both the Penn and Ogden bills indicate that the wetlands themselves act as buffer zones between dry land and water courses.

- * Would exempt minor maintenance, reconstruction or repair activities for roads and other land uses that would have little or no impact on wetlands.

- * Provide a grandfather clause which allows applicants who have applied for preliminary approval under the Municipal Land Use Law to proceed provided that final approval is obtained within six years of enactment of the act.

For these and other reasons, the AGC of NJ respectfully asks the Committee's favorable consideration of A-2499 as the better alternative to Wetlands Legislation and thanks the Committee for giving me the opportunity to present our views. Thank you.



Mail: 7 Centre Drive, Suite 8, Jamesburg, NJ 08831 (609) 655-2997

45X

Freshwater Wetlands Campaign

c/o NJCF, 300 Mendham Road, Morristown, NJ 07960 (201) 539-7540

FRESHWATER WETLANDS CAMPAIGN STEERING COMMITTEE

Abigail Fair
Great Swamp Watershed Association
461 Green Village Road
Green Village, NJ 07935
201-377-8299

Bert Goldberg
League of Conservation Voters
46 Bayard Street, #315
New Brunswick, NJ 08901

Thomas Gilmore
New Jersey Audubon Society
790 Ewing Avenue
Franklin Lakes, NJ 07401
201-891-1211

Thomas Wells
New Jersey Conservation Foundation
300 Mendham Road
Morristown, NJ 07960
201-539-7540

James Lanard
New Jersey Environmental Lobby
102 Marvin Lane
Piscataway, NJ 08854
201-246-6832

Ella Filippone
Passaic River Coalition
246 Madisonville Road
Basking Ridge, NJ 07920
201-766-7550

Todd Bryan
Stony Brook-Millstone Watersheds Association
Box 171-263A Titus Mill Road
Pennington, NJ 08534
609-737-3735

David Peiffer
Upper Raritan Watershed Association
Box 30W, R.D. #1
Larger Cross Road
Gladstone, NJ 07934
201-234-1852

Barbara Evans
Watershed Association of the Delaware River
27 Little Wolf Road
Summit, NJ 07901
201-522-1258

FRESHWATER WETLANDS CAMPAIGN
Groups Supporting Strong Wetlands Legislation
As of July 15, 1986

Adirondack Mt. Club, North Jersey Chapter
Alliance for N. J. Environmental Education
American Littoral Society
Appalachian Mt. Club, New Jersey Chapter
Assoc. of N. J. Environmental Commissions
Atlantic Audubon Society
Audubon Wildlife Society
Bergen County Audubon Society
Bethlehem Environmental Commission
Bordentown Waterfront Preservation Society
Cape May County Environmental Council
Cape May Geographic Society
Cedar Run Wildlife Refuge
Center for Environmental Studies
Chatham Township Environmental Commission
Citizens' Conservation Council of Ocean County
Closter Nature Association
Colt's Neck Environmental Commission
Committee to Save the Pyramid Mt. Natural & Historical Area
Concerned Citizens of Morris Township, Inc.
Cornucopia Network of New Jersey
Cranford Rod and Gun Club
Cumberland Conservation League
CWA Local 1034
Delaware Raritan Canal Coalition
Delaware Township Environmental Commission
Del-AWARE Unlimited
Delaware Valley Ornithological Club
Ducks Unlimited
Eatontown Environmental Commission
Edison Environmental Commission
Environmental Defense Fund
Flat Rock Brook Nature Association
Floodplain Watch Committee
Franklin Corners Neighborhood Association
Frelinghuysen Twp. Environmental Commission
Friends of Princeton Open Space
The Fund for Animals
Fyke Nature Association
Garden Club of Madison
Garden Club of Morristown
Great Swamp Watershed Association
Greenbrook Sanctuary
Greenwich Twp. Environmental Commission
Greenwood Lake Bass Casters

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Groups Supporting (cont'd)
July 15, 1986

Hackensack River Coalition
Highlands Audubon Society
Hillsborough Twp. Environmental Commission
Hopewell Environmental Commission
Hudson-Essex-Passaic Soil Conservation District
Hunterdon County Federation of Sportsmen's Clubs
Lake Hopatcong Protective Association
League of Conservation Voters
League of Women Voters of Chatham Borough
League of Women Voters of Chatham Township
League of Women Voters of Morris County
League of Women Voters of the Morristown Area
League of Women Voters of New Jersey
League of Women Voters of Summit
Madison Environmental Commission
Monmouth County Audubon Society
Montclair Organization for Conservation
Morris County Farmer-Sportsmen Federation
Morris County Parks and Recreation Foundation
Mt. Lakes Environmental Commission
National Audubon Society
National Wildlife Federation
Natural Resources Defense Council
New Jersey Audubon Society
New Jersey Bass Chapter Federation
New Jersey Bass Angler's Sportman Society
New Jersey Conservation Foundation
New Jersey Environmental Federation
New Jersey Environmental Lobby
New Jersey Public Interest Research Group
New Jersey Raptor Association
New Jersey Science Supervisors Association
New Jersey Science Teachers Association
New Jersey State Federation of Sportman's Clubs
New York/New Jersey Trail Conference
North Jersey Coalition of Lake Associations
Ocean County Coastal Zone Environmental Coalition
Old Bridge Environmental Commission
Palisades Nature Association
The Park Project, Inc.
Passaic River Coalition
Passaic Valley Groundwater Protection Committee
Pohatcong Environmental Commission
Raptor Trust
Raritan Twp. Environmental Commission

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Groups Supporting (cont'd)

July 15, 1986

Red's Surf Devils
Ringwood Environmental Commission
Rockaway Township Environmental Commission
Roxbury Twp. Environmental Commission
Save Our Swamp
Shongum Sportsmen's Association
South Branch Watershed Association
South Plainfield Environmental Commission
South Plainfield Historical Society
Sierra Club of New Jersey
State Council, Trout Unlimited
Stonybrook Millstone Watershed Association
Summit Nature Club
Sussex County Bird Club
Sussex County Soil Conservation District
Teaneck Environmental Commission
Terra Nova Garden Club
Trails for New Jersey
Triton Rowing Club
Trust for Public Land
Union County Federation of of Sportmen's Clubs
Upper Raritan Watershed Association
Upper Rockaway River Watershed Association
Watchung Nature Club
Watershed Associations of the Delaware River
Watershed Watch
West Deptford Environmental Commission
West Windsor Environmental Commission
The Wildlife Society, New Jersey Chapter
Wounded Knee Wildlife Refuge

Prepared by the Freshwaters Wetlands Campaign
(coordinator, Abigail Fair: 201-377-8299)

WATERS, MCPHERSON, MCNEILL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SECAUCUS - JERSEY CITY - TRENTON

MEADOWLANDS OFFICE

400 PLAZA DRIVE

SECAUCUS, NEW JERSEY 07094

201-863-4400

TELEX 129162

TELECOPIER

(201) 863-2866

FRANK G. CAPECE

July 16, 1986

Norman Miller
Supervising Senior Research Associate
Assembly Energy and Natural Resources Committee
State House Annex
Trenton, New Jersey 08625

RE: Cavendish - Wetlands Legislation
Our File No. 5267-2

Dear Norman:

As discussed, our firm represents Cavendish Development Company Inc. the developers of 3.1 million square feet of space in South Brunswick Township (Greenlands). The project will consist of 34 buildings of office/research space, a major hotel and 180,000 square feet retail center on a 318 acre parcel. It is estimated that 12,860 permanent new jobs will be created.

We wish to express to the Assembly Energy and Natural Resources Committee our concern that A-2342 (Ogden) would by its enactment eliminate over a 1/3 of the commenced project with no appreciable gain to the environment. Additionally, this bill would prevent the development of a planned recreational area within the project as well as impacting adversely on the ratable benefit which would accrue to South Brunswick and Middlesex County. The planned connecting link of roads 522 and 92 through the Greenlands project, serving as parallel road system to overburdened U.S. I would also be eliminated.

It is especially troublesome that the proposed Greenlands project which commenced in 1984 is forced to develop in a situation where future undefined legislation can impact adversely on the project. The retroactive approach of A-2342

will result in a severe economic hardship. As such, we propose that Section 11 of the Act be amended to include the following exemption:

"Staged development projects on more than 100 acres of land, which projects have received preliminary site plan approval for at least one stage and which preliminary approval requires development to be linked to a comprehensive municipal off-site improvement plan for the entire tract."

The enactment of any prohibition as envisioned by A-2342 must reflect that reality that substantial projects such as Greenlands are beyond the drawing board.

The subject of wetlands protection requires the comprehensive review which the committee is partaking. We urge the inclusion of the aforementioned amendment which reflects the reality that major projects are continuing during the deliberation of this legislation.

Very truly yours,

WATERS, MCPHERSON, MCNEILL, P.A.

BY:


FRANK G. CAPECE

FGC:dfb



association of new jersey
environmental commissions

16 July 1986

TO: THE ASSEMBLY ENERGY AND NATURAL RESOURCES COMMITTEE
MAUREEN OGDEN, CHAIRWOMAN

FROM: THE ASSOCIATION OF NEW JERSEY ENVIRONMENTAL COMMISSIONS

SUBJECT: FRESHWATER WETLANDS BILL (A-2342)

My name is Anne F. Morris. I am Executive Director of The Association of New Jersey Environmental Commissions. The Association is a private, non-profit membership organization representing municipal environmental commissions and citizens throughout the state.

The Association of New Jersey Environmental Commissions wholeheartedly supports A-2342 for the protection of freshwater wetlands. Strong protective measures, as found in this bill, are essential for the state's continued water supply, flood control, habitat and species diversity, and effective wastewater dilution.

Thus, we urgently encourage this committee's release of A-2342 as soon as possible, and that the committee then encourage its passage by the Assembly.

Thank you.



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