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COMMITTEE MEETING

before

ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

on

CONSTRUCTION PERMIT PROCESS

under

COASTAL AREA FACILITIES REVIEW ACT

P.L.1973, C.185

(C.13:19-1 et seq.)

(HISTORIC SMITHVILLE DEVELOPMENT CORPORATION)

Held:

February 21, 1984

Room 313

State House Annex

Trenton, New Jersey

New Jersey State Library

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert P. Hollenbeck, Chairman
Assemblyman Stephen Adubato, Jr., Vice Chairman
Assemblyman C. William Haines

ALSO PRESENT:

Mark O. Smith, Research Associate
Office of Legislative Services
Aide, Assembly Agriculture and Environment Committee

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ASSEMBLYMAN ROBERT P. HOLLENBECK (Chairman): We are going to start this meeting. This is the Assembly Agriculture and Environment Committee. I am Assemblyman Hollenbeck, Chairman of the Committee. On my right is Assemblyman Stephen Adubato, Vice Chairman of the Committee. Mark Smith is our Committee Aide. Also with us is Karen Jezierny from the legislative partisan staff.

We are having this hearing in reference to the CAFRA Act and whether or not the CAFRA Act is being applied to the policies as set forth by the Legislature in C.13:19, and whether or not the Act itself requires some alterations or amendments, so that the intent of the Legislature is followed. We want to determine if it has to be amended to deal with the permit processing, to expedite, or to give it more hearing processes, and whether there has to be other steps involved in the Act and how it applies in dealing with the overall development of the environmentally sensitive areas -- primarily our coastal areas.

I would like to say that we have with us John Weingart, the Acting Director of the Division of Coastal Resources, and Bart Bennett, the Deputy Director from the Office of Regulatory Services. Both are here voluntarily; no one is here by subpoena. There was an action by the Legislature so that if a subpoena was needed, we could do it, but we don't want to do it. We have found that the Department in the past has been very cooperative with the Legislative Branch of government, and they normally appear voluntarily to develop the information that we are looking for.

I would like to start right away, John, to deal with the CAFRA Act. Could you possibly outline the whole procedure that is followed for a CAFRA permit -- what is looked for, timing elements that are involved, etc. -- so that we know what the whole permit procedure is, according to your rules? We read them, but we want to hear them, for the record -- how this whole process occurs.

JOHN WEINGART: I will be happy to do that. The CAFRA Act was passed in 1973. Since that time, the Department has developed increasingly specific coastal policies as a basis for decisions, leading up to the yellow booklet that you have had to review, which was adopted in 1982.

The CAFRA Act itself lists a number of findings that must be made by the Commissioner in order to issue a CAFRA permit. Several years after CAFRA was issued, the Commissioner -- I believe then it was David Bardin -- delegated the decision-making under CAFRA to the Director of the Division of Coastal Resources, the position I now occupy.

The policies we now have were adopted through both a State and a Federal process. Under the Federal Coastal Management Act, coastal states were given funds to prepare a Coastal Management Program. New Jersey did that, and the coastal policies we adopted were reviewed extensively with Federal agencies, and were adopted through a Federal rule-making process, which was approved by the Department of Commerce.

Substantively, the policies set up a process for making decisions. It is basically a four-step process. First, we define special areas throughout the coastal zone, which are areas that, in general, can be mapped or defined fairly specifically where we have specific standards or goals of what should happen. Some of the easiest examples to deal with are things like wetlands, dunes, and beach areas where we don't want development to take place. On the other hand, there are special urban areas that have been designated by the Legislature and where we would like to see development encouraged. There is a whole range of areas within that. The pinelands area is singled out as a special area, just as Hackensack and the Meadowlands are singled out.

Beyond that, when we have a permit application, it involves looking at a map of the site and screening out those special areas. We see what the policies tell us in terms of those areas. We then look at the land and water areas that are proposed at the development site, which do not include those special areas. We, again, have policies for those areas. I'll come back to them in a minute.

Once we get through the location -- looking at the site itself -- we then look at what is proposed. We have what are called "use policies" for housing, energy facilities, or transportation facilities, for example. These use policies say that "for a particular

use, certain policies are encouraged, or discouraged." If a bridge is proposed, for example, fishing piers attached to the bridge are encouraged, etc.

Finally, we have "resource policies", which to some extent, are the policies that didn't fit in any of the previous categories, but they include air quality, water quality, noise, and other environmental standards. Some public access, for example, is not traditionally considered an environmental standard, but it is also included in that area.

The debate about the policies of the Smithville project has regional growth categories included. In the policies, we divided the coastal zone into basically low, medium, and high-growth areas. We had a general site-specific description of where the boundaries would be for each of those regions. We then said that for high-growth areas, we encourage growth to take place there. In the limited-growth or moderate-growth regions, we encourage development that extends from existing development. For the low-growth regions, we said that, in general, development should not take place there -- with one exception, and we spelled out that exception explicitly. They were planned residential developments.

Our thinking throughout this process of putting together the policies was that we wanted to see development concentrated throughout the coastal zone in areas where development had already taken place -- generally urban areas. We wanted to avoid sprawl-types of development, and we primarily wanted to keep rural areas in that category.

The reason we had to limit a specific policy about planned residential developments was because we felt that those types of developments could offer certain kinds of advantages because of their size and the economies of scale that could come about, which would be beneficial to the State. A planned residential development could preserve open areas within a site. The developer building a large enough project -- and we defined those as 500 or more units -- would be able to incorporate environmental controls that a smaller developer might not be able to afford. He would be able to plan many of the amenities that would go with a development to be part of that project

and to resist the type of sprawl development that we were trying to avoid.

One of the crucial things to understand in our administration of CAFRA -- and it is something that has permeated our decision-making since it was passed -- is the way it is written. The Act allows us to regulate development of twenty-five or more units throughout the coast. We have no control over developments of twenty-four or less units, unless they are in a wetlands and are covered by the Wetlands Act. The result is that there is a significant amount of development that has taken place on the coast, and we have no control over it. Our estimate in Cape May County several years ago was that about half of the units being built were being built without a review by the DEP under CAFRA. The other half were being reviewed under CAFRA.

Part of our thinking throughout is based on some amount of predicting and guessing to some extent of what is going to happen with a development that we don't have control over, and what will be the effect of our decisions one way or the other on that.

To give you a graphic example, we have had developers come in to develop forty units on knocked down sand dunes, and we have said, "We don't want that." In one case, the developer then went ahead and built twenty-four units on the knocked down sand dunes. We are aware of that possibility in our decision-making.

Does that answer your question?

ASSEMBLYMAN HOLLENBECK: I'm trying to look into the rather simple-minded-- I'm looking for the one, two, three idea. In other words, if we have a developer who wants to develop an area that falls somewhere under the CAFRA, what is his first step? Does he come in with a set of plans before the Department to seek a permit for development? If he does that, he must file some type of application, I assume, for a permit. Is there a period of time that lapses from the application to the permit?

MR. WEINGART: We encourage developers to come in for a preapplication conference. This is not required, but most of them, particularly large developers, do. At that time, they submit a general plan of their site and their general intentions. The staff at the

Department of Environmental Protection sits down with them and informally discusses whether that project, as they propose it, is likely to be approved or not. We follow up that with a letter to them.

Once an application is submitted, it is required to be submitted in the form of an Environmental Impact Statement, with twenty copies. The copies are then distributed to agencies throughout State and local government that we feel would have an interest in the project. Some agencies, such as the Division of Water Resources in the Department of Environmental Protection, always receive a copy of the application. Other agencies, such as the Department of Transportation and the Department of Community Affairs, will receive a copy, depending on the subject of the application.

We then get comments back from all of those agencies. On the basis of those comments and our own analysis, we put together a preliminary analysis, which is a written preliminary decision. Then we hold a public hearing on every CAFRA permit application in or close to the municipality where the project is being proposed. We distribute that preliminary analysis a little before that time.

On the basis of what we hear at the public hearing, we sometimes ask the applicant for more information before declaring the application complete. Once we get that information, we have ninety days in which to make a decision. This is done under the Ninety-Day Act, and the decision is made by the Division of Coastal Resources. All of those agencies that get copies of our documents are advisories to us. We can and sometimes do disagree with them, but our decision is the binding decision. That whole process, from the time the applicant first submits an application and until we make a decision, can take as little as eighty or ninety days. It generally takes much more time -- sometimes six, eight, or ten months, depending on how long it takes us to review things and how long it takes the applicant to continue to respond to our requests for additional information.

ASSEMBLYMAN HOLLENBECK: In other words, we know that under the Ninety-Day Act, from the day they file the application until the day you take action on the application, it is ninety days. Is that right?

BART BENNETT: No, the Ninety-Day Rule does not take effect until the completion of the public hearing. The application is then declared complete.

ASSEMBLYMAN HOLLENBECK: And then, from that point on, ninety days--

MR. BENNETT: Yes, sir.

ASSEMBLYMAN HOLLENBECK: In the meantime, while you are doing that, can you ask for further information?

MR. WEINGART: Yes, what happens oftentimes is that at a public hearing, we will ask for additional information, and until we get it, that ninety-day clock doesn't start to run.

ASSEMBLYMAN HOLLENBECK: Why do you have the prefile conference? What is that for?

MR. WEINGART: That helps shorten the time, because at that time, we tell the applicant -- aside from telling them in what ways he can change the project to make it more acceptable -- what information he doesn't need to submit, or what information that he does need to submit.

ASSEMBLYMAN HOLLENBECK: Isn't that policy set forth in your rules and regulations in the Act? If they follow those policies, would there be any need for a prefile conference?

MR. WEINGART: There is no need. Again, it is not required. Most applicants find it helpful.

ASSEMBLYMAN HOLLENBECK: But, it generally occurs.

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: It is a common-type thing that developers will screen with reference to the prefile conferences. It then causes a need for information, and whether or not the information is needed, or it is just a delaying procedure because of the time constraints of the Department.

MR. WEINGART: Yes, sure. I think the applicants tend to like the preapplication conference. They do often feel that we ask for more information than we need and use that as a way to delay.

ASSEMBLYMAN HOLLENBECK: It is generally felt that the preapplication conference is just another means of delaying the procedure?

MR. WEINGART: No, I disagree with that. One of the things that the preapplication conference does is if-- For example, we had a number of permit applications in a given area recently. We can tell the applicant that he doesn't need to give us information describing that area because we have already got it. We can cut down on the amount of information they have to pay for and submit to us.

ASSEMBLYMAN HOLLENBECK: After the Director reaches a decision, the permit is issued?

MR. WEINGART: Right.

ASSEMBLYMAN HOLLENBECK: Is there an appeal process?

MR. WEINGART: Yes, anyone has a choice of appealing to the Coastal Area Review Board, which is set up by CAFRA -- the Board includes the Commissioner of Environmental Protection, Community Affairs, and Labor and Industry. It was Labor and Industry, but it is somewhat up in the air between Commerce and Labor as to who their representative is -- or to appeal directly to the Commissioner.

Following the decision made by either the Coastal Area Review Board or the Commissioner, the person can appeal through the courts.

ASSEMBLYMAN HOLLENBECK: Let's see now -- we go from the Director, who makes the decision, and it can be appealed to the Coastal Area Review Board. Where would you go then?

MR. WEINGART: You would appeal from them to the court.

ASSEMBLYMAN HOLLENBECK: Directly to the court? Not to the Commissioner?

MR. WEINGART: As the applicant, you have a choice to either go to the Commissioner or to the Review Board for an administrative appeal, but not to both.

ASSEMBLYMAN HOLLENBECK: What do you find is the preferred route?

MR. WEINGART: The preferred route at the moment seems to be going to the Commissioner.

MR. BENNETT: I would say the preferred route would be to go to the Office of Administrative Law, with the final decision made by the Commissioner. One of the main reasons for that is because of the rules and regulations of the Coastal Area Review Board and the way that

they have administered their responsibility. They focus primarily on reviewing whether the policies are proper and are properly applied in administrative decisions. If there are policy issues that are raised, the appellant is much more likely to request and get a hearing before the Coastal Area Review Board. If there are a lot of factual issues in dispute or a lot of legal issues in dispute, it is much more likely for it to go to the Office of Administrative Law.

ASSEMBLYMAN HOLLENBECK: You have no option of going to both?

MR. WEINGART: No, the Commissioner is a member of the Review Board, so in effect, you have gone to him when you go to the Review Board.

ASSEMBLYMAN HOLLENBECK: We have been joined by Assemblyman Haines.

ASSEMBLYMAN HAINES: I'm sorry I am late. I received word that the meeting had been called off, so I got my wires crossed. I'm very sorry.

ASSEMBLYMAN HOLLENBECK: What we are discussing is the CAFRA Act and the procedures involved.

(At this point, Assemblyman Hollenbeck introduces Mr. Weingart and Mr. Bennett to Assemblyman Haines.)

(continuing) So, we go to the Office of Administrative Law where we develop the factual information -- if someone thought that the facts weren't developed properly, if studies weren't made properly, if there was an opposite opinion. From that point, it goes--

MR. BENNETT: Well, subsequent to the Office of Administrative Law, any appeals that have been made, to the best of my knowledge, have gone directly to the Appellate Division in Superior Court. However, we have maintained that if a party is unhappy with an Office of Administrative Law decision, then he would have the right to request a hearing before the Coastal Area Review Board. All the parties to date have gone just to the Appellate Division.

ASSEMBLYMAN HOLLENBECK: The Commissioner, of course, makes the final decision on the findings of the Office of Administrative Law?

MR. BENNETT: That is correct. The Commissioner makes the final decision.

ASSEMBLYMAN HOLLENBECK: He makes that decision, so is it actually the Commissioner's decision that is appealed?

MR. BENNETT: That is correct.

ASSEMBLYMAN HOLLENBECK: And then it goes to the Appellate Division?

MR. BENNETT: That is correct.

ASSEMBLYMAN HOLLENBECK: Let's talk now in the area of some of the guidelines within your own policies -- of what you would look for. It would probably be in your basic concept of a project. You have areas that you designate for development -- fill-in areas -- where you think there should be some large-scale residential development. What determines those different areas that you would look at?

MR. WEINGART: Specifically what determines those policies -- the 150-odd pages you have in that yellow book -- are a number of years of looking into it. There are special areas that either have been designated as being special by legislation, by other agencies, by knowledge of State staff, or brought to our attention at public meetings or public hearings.

Specifically for the boundaries of those regions, they were determined in the late 1970's by the staff in the Division, based on our knowledge of the area, our consultation with other agencies, and the development patterns we had seen from the time CAFRA was first passed.

ASSEMBLYMAN HOLLENBECK: In other words, when I look at this map, it seems like a very reasonable progression of what you are doing as far as development at the shore area is concerned.

MR. WEINGART: We did pay some attention to the State Development Guide Plan, and we worked with the Department of Community Affairs' staff at the time, trying to get regions that seemed in their minds to make sense with their plans.

ASSEMBLYMAN HOLLENBECK: There is always the overlying principle, of course. There has got to be a need for development. What sets the need for development?

MR. WEINGART: In general, we assumed that if development is properly situated in terms of its environmental impacts, we don't

specifically look to see if there is a need for every project. We look to see that if a project can meet the environmental criteria we have set up under the policies, we leave it to the applicant to determine that there is a market for it.

The way that a need becomes an issue is if projects are in conflict with policies, projects can be encouraged under some policies and have problems with some of the other policies. In trying to balance those interests in a given project, we would look to see whether there is a regional housing demand and things like that.

ASSEMBLYMAN HOLLENBECK: All right. In the general area of CAFRA, is there a need for housing development?

MR. WEINGART: In New Jersey, there is certainly a need for housing.

ASSEMBLYMAN HOLLENBECK: No, no, in the general area--

MR. WEINGART: In the general area of CAFRA, there is certainly a demand for housing, and there is an assumption in CAFRA and the way that CAFRA was written by the Legislature that the legitimate economic aspirations of people would be accommodated, which we assume means development.

ASSEMBLYMAN HOLLENBECK: I'm saying, is there a need? In other words, do we find that we have more in the area of approved projects than have actually been developed?

MR. WEINGART: The answer to both of those questions is "yes." I think there is a need for housing, and there are definitely a number of approved projects that have not been developed.

ASSEMBLYMAN HOLLENBECK: So, if someone comes in, that need does not apply? You know, we've got a lot of other projects that we've gone through this whole procedure with, where we've found that they were environmentally safe, and they were a sound planning process for the State and for its development policy and need. Would it wise if we had a lot of approvals in that particular area, and they are not met? Do we keep giving approvals on top of approvals for more development of areas? To me, it seems that if I have an approval to build 250 units in an area, and I have built thirty or forty of them, then I would like to build it up to the 250 units if there is a need for them and I could

sell them. Why, as a policy of the State or of the Department, would we want to add more to it?

MR. WEINGART: Our assumption is that there is a large need for housing, and it is not a need that is being met by a 200-unit project. The reason that most approved developments, which are not built and which fall in that category, is because of the economic difficulties that that developer runs into. A developer sometimes gets a permit from us and the local government, and when he runs out of money, he is unable to build the project. We could then have another developer come in who wants to build the project, and it seems to me that that developer shouldn't be penalized because another developer didn't follow through.

ASSEMBLYMAN HOLLENBECK: Are we talking large-scale residential development?

MR. WEINGART: I was talking in general.

ASSEMBLYMAN HOLLENBECK: What about large-scale residential development?

MR. WEINGART: Regarding large-scale development, I think the fact that some of the developments have not been built does show something. I think there is something to be learned from that -- that the demand which was anticipated for housing, particularly in the area we are concerned about today, has not been as great as we expected it would be at the time that these projects were approved.

ASSEMBLYMAN HOLLENBECK: Then the general philosophy of the Department is that there are some areas of policy which should be changed.

MR. WEINGART: Will you say that again?

ASSEMBLYMAN HOLLENBECK: Within the Department, there must be some people who think that the policy of large-scale residential development within the area should be changed -- that there is no need.

MR. WEINGART: That is correct.

ASSEMBLYMAN HOLLENBECK: In other words, is this a policy change within the Department now?

MR. WEINGART: No, what we have is a policy that has been in effect in somewhat different wording since 1978. It allows large-scale

projects in limited-growth areas. We have had a discussion within the Division regarding whether or not that policy is still needed. Our discussion was based on a study of the regional pattern of development in Atlantic County that was done by staff within the Department. In an initial draft of that study, the staff who wrote it concluded that the policy had done its job, and it had allowed some large-scale developments on the assumption that they would be built. Because the demand was less than we thought it would be at the time we approved it, we felt that the policy should be changed for future applications.

ASSEMBLYMAN HOLLENBECK: You did have a draft of a policy change, and I am well aware of it. You are saying that this policy is no longer needed to allow development in limited-growth regions to meet the housing demands generated by the Atlantic City casino gaming industry.

Dealing with the number of existing permits, CAFRA permits those in other areas where those developments have not been filled. The question is, of course, whether or not the policy you proposed was a proper change.

MR. WEINGART: You are correct. The recommendation for that change was based, in part, on the fact that some of the large-scale projects had not been built. Had that change taken place, or if it does take place in the future, it would only apply to future projects. It would not apply, for instance, to the three parts of Smithville that have already been approved.

ASSEMBLYMAN HOLLENBECK: Although it is not an adopted change in the policy, is it a general feeling within the Department that that policy should go into effect?

MR. WEINGART: No, I would say that there isn't a general feeling in the Department. It was a change recommended by one bureau within the Division of Coastal Resources, and it was a draft that I circulated only to the executive staff within the Department of Environmental Protection. I was not ready to release it outside, but it became available outside.

ASSEMBLYMAN HOLLENBECK: Did you receive internal memorandums on that particular draft?

MR. WEINGART: I received internal memorandums on a number of issues, but not on that issue. I discussed that issue with a number of people, and I decided to change the recommendation so that the next draft would not recommend a change in that policy.

The reason I made that decision was because I felt, and it was pointed out to me, that having that policy provided us with some flexibility. What the conclusions of that study mean to me is that if we had additional planned residential projects proposed to us, we would look long and hard at them before we approved them. We might, on the basis of that study, not approve them, or we would be less likely to approve them as we did in the past.

The policy still gives us the flexibility to consider that, and the flexibility, if housing demands change radically during the next three years, to be able to respond to that without changing the policy again.

ASSEMBLYMAN HOLLENBECK: When you are talking about large-scale residential development in environmentally sensitive areas, or areas that you have listed as low-growth areas, would you think just along that particular concept -- that there should be a policy change?

MR. WEINGART: Well, because of land prices in New Jersey, to have a meaningful policy about large-scale projects, if you have to consider allowing them in what we designate as low-growth areas, in the coastal zone, there are just not going to be large enough tracts of land. The areas that we call moderate and high-growth areas are areas where there has been a lot of development. There aren't going to be large enough tracts of land to assemble for a planned residential development. For them to be anything viable, you have to think about them being in a low-growth area.

We do not use the words "environmentally sensitive." I would not allow them to come into an area where they were going to cause environmental harm or where there were sensitive resources that would be harmed.

They do come into an area that has a predominantly rural character, and they change that character. That is undeniable.

ASSEMBLYMAN HOLLENBECK: But, you wouldn't look for more development in areas that don't meet that criteria? Wouldn't it be reasonable to assume that land, of course, in those areas is much more reasonable in price than other areas until you get a permit?

MR. WEINGART: The land in the low-growth areas?

ASSEMBLYMAN HOLLENBECK: Yes.

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: Yes, if I could get it. It is like buying something in the middle of the pinelands right now. It is very reasonable. Once I got the permit to built 7,000 or 8,000 homes, the value of that land would go sky high, wouldn't it?

MR. WEINGART: Yes, sure.

ASSEMBLYMAN HOLLENBECK: It would make no difference if other land from the pinelands was available. It would just be that I had this land over here.

MR. WEINGART: Well, no, in an ideal world, I would like to see large projects go into Atlantic City, for example, where development could be concentrated. I am saying that no one could assemble the quantity of land you would need for a 6000-unit project or a 3000-unit project in Atlantic City, given the cost of land there today, and assemble a project which would have the type of amenities that a project could have if it was located in a low-growth area where land prices are much less.

ASSEMBLYMAN HOLLENBECK: We designate areas within our development plan of low density, and we do it for a reason. I assume it is because they are environmentally sensitive. There are reasons why you designate areas such as that. In other words, there is a potential for impact upon the water resources, sewerage treatment plants, etc. -- the shell fisheries. We know the whole area of concern, and that is why you have a fairly good design area.

Most of us wonder how that particular area you referred to ever got out of the pinelands, but it is out. That is a reality, and it does fall under CAFRA.

We talk pinelands where the finger sticks up in there, and we could assume that has the same criteria of concern as the pinelands.

We had designated it as a low-growth area -- that particular one -- and we got a large scale residential development involved, one of the largest I've ever seen. The basic plan might have been a great plan. It is just that in the area of development, there are other areas that I'm sure you and your predecessors would rather have seen it developed. That particular type of planning might have found something in another area. At the time, however, of course, we were all wondering about the quarterbacking in dealing with this area of need and demand back when we were submitting plans. And of course, if you look at it five years later, you've got more experience to look at something as far as need is concerned.

I'm still trying to get around to the areas of large-scale residential development into a low-growth area, a low-density area.

MR. WEINGART: Let me try to answer it this way: There are two things. One is, from the first day that that was called a low-growth area, we've also had the large-scale policy. A low-growth area is where most development is discouraged. The types of development we would consider there are large-scale residential developments. So, it is not that we called this a limited-growth area, and then suddenly allowed some large projects to come in, or even suddenly then changed our policy to allow them to come in. They have developed simultaneously, and the thinking was this: that we deal with environmental sensitivity essentially in other parts of the policies. In the special area policies that occupy the first quarter or third of that book, we talk about not having a negative impact on sensitive environmental areas. In the last part of the book where we have resource policies, we again talk in different ways about not having a negative impact on water quality and so forth.

What these land-growth policies do, or what they address in general, is what is a rational pattern of development in the coastal zone, taking as a given that other parts of the policies are going to protect sensitive environmental areas. What we said was that a rational pattern of development would be to concentrate development where it has already occurred. That is not a particularly novel idea, but that is what we said.

The one exception to that was this idea of a large-scale plan of development that we thought could lead to a rational pattern of development, particularly given the way CAFRA is written. Large-scale development could take place in a low-growth area without having a negative impact on sensitive environmental areas. It could still lead to a generally rational pattern of development on the coast.

ASSEMBLYMAN HOLLENBECK: How do we develop this knowledge of little impact?

MR. WEINGART: Well, the same way we do on every project, regardless of whether or not it is a large-scale project, which is, again, having an environmental impact statement from an applicant and having that reviewed by the best experts we can find in State government.

ASSEMBLYMAN HOLLENBECK: Of course, this is all after the permit filing stage?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: All right. While you're trying to develop information, you might want further studies, etc.? Within that, in other words, do you have various areas within the Department then express concerns and comment on that particular plan?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: What happens if you have areas within your Department then that disagree on areas of the plan? What weight is given to that then? Does it require further study for their concerns?

MR. WEINGART: Yes, and we take very seriously the comments from other State agencies, both within and outside the Department. In general, I can't particularly speak to what my predecessor did, but what I do is, when another agency in the Department disagrees on an opinion, I meet with representatives of that Division or that Department and try to reach an agreement.

ASSEMBLYMAN HOLLENBECK: I agree with you. You can't answer for your predecessor, but I assume that the policies of the DEP and your Department are the same, from your predecessor to yourself.

MR. WEINGART: That is right.

ASSEMBLYMAN HOLLENBECK: So they haven't changed.

MR. WEINGART: No, I was just talking about procedurally.

ASSEMBLYMAN HOLLENBECK: So, if we have somebody within the Department -- Shell Fisheries -- disagree with the development because of concern, and he doesn't feel that proper weight has been given to the potential endangerment of his concerns, what would the Department do then?

MR. WEINGART: Certainly at staff level, the Project Review Officer for a project would discuss it with the person in Shell Fisheries. If they were not able to reach agreement, he would discuss it with me. I might discuss it with that person or with the Director of that division and either we would reach some agreement, or we would end up saying, "Well, thank you for your comments, but based on a number of other factors we've considered, we're going to issue the permit anyway, or we're going to issue a decision different from what you would like."

ASSEMBLYMAN HOLLENBECK: And, the same thing would fall true then dealing with water resources?

MR. WEINGART: The same thing would--

ASSEMBLYMAN HOLLENBECK: In other words, if they expressed concern that the proper information has not been developed by the Department, or actually by the developer who has to give you the information, which is his responsibility -- that it is inadequate, even after it was the information was adequate, but they felt that the results of it indicate that there should not be development because of their concerns. What would then happen -- the same type thing?

MR. WEINGART: The same type thing would happen. That is a rare instance. To take another example, when the Department of Commerce tells us that a project should have a certain outcome--

ASSEMBLYMAN HOLLENBECK: Would that normally occur even after you have developed information within your Department -- say Shell Fisheries or Water Resources? If they disagreed with it, and recommend no approval, I would assume that those are the two groups that would have fairly heavy impact within the decision, and that the opinions of those particular groups or concerns could be overridden by the Director. Would that be a normal procedure?

MR. WEINGART: It is an unusual procedure, but it happens. It can be overridden by two Directors. It can be that the Director of Water Resources or the Director of Fish and Game overrules that individual or groups of individuals on his staff, and says, "Based on my knowledge, I don't agree with that." Or, it could be overruled by me in making the decision.

ASSEMBLYMAN HOLLENBECK: What would be the three major divisions of concern that we would talk to?

MR. WEINGART: Well, Fish and Game and Water Resources are two -- the Division of Fish, Game and Wildlife and the Division of Water Resources in the Department of Environmental Protection.

ASSEMBLYMAN HOLLENBECK: What about Shell Fisheries?

MR. WEINGART: There is a Shell Fisheries unit that is part of each of those Divisions.

ASSEMBLYMAN HOLLENBECK: Is there an area for other agencies outside of the DEP jurisdiction that would have impact?

MR. WEINGART: Yes, the Departments of Community Affairs, Transportation, and Commerce regularly comment on applications, though not always. Local agencies often comment to us -- counties in particular. Those would be the major ones, I guess.

ASSEMBLYMAN HOLLENBECK: How about the Federal? Does the Federal have any say, any input within it, that they have concerns within the area?

MR. WEINGART: They sometimes make their opinions known to us, but they do not have any clout over the decision that the State makes. They sometimes have clout over the Federal permits issued.

ASSEMBLYMAN HOLLENBECK: But, their opinions have to be weighed, I assume? Their concerns are not ignored, are they?

MR. WEINGART: No, they are treated as knowledgeable commentators.

ASSEMBLYMAN HOLLENBECK: Regarding the project which you had mentioned before, I know that there was some comment or concern of the people from Brigantine Wildlife.

MR. WEINGART: That is correct.

ASSSEMBLYMAN HOLLENBECK: I assume their concerns went to the Director at the time, and I don't know whether they have been satisfied or not. They were given some weight, I assume, in those opinions, weren't they?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: All right, I'm going to stop now. I just want to ask if any other Committee member has a question, because we've gone through a great deal of background information dealing with the particular CAFRA process.

ASSEMBLYMAN HAINES: I have a few questions, but they may have been answered prior to this, so I apologize if they have been answered. When was the plan originally submitted?

MR. WEINGART: The coastal plan?

ASSEMBLYMAN HAINES: No, the Smithville plan.

MR. WEINGART: The first conversation with the Department took place in January of 1978. The permit applications -- I have dates here somewhere -- but they were actually submitted early in 1981, I believe, for the individual phases.

ASSEMBLYMAN HAINES: When was the original approval given -- the preliminary approval?

MR. WEINGART: The conceptual approval?

ASSEMBLYMAN HAINES: Yes.

MR. WEINGART: August of 1980.

ASSEMBLYMAN HAINES: I know it is very complicated, but what stage is the approval in at the present time? Are we in the final stage? I'm confused.

MR. WEINGART: There have been four decisions to date. There was a conceptual permit issued by the Division which said that the concept of a 6800-unit or a 6200-unit project in Galloway Township, as proposed by the Historic Smithville Development Corporation, is generally consistent with the coastal policies. That decision was issued, and that decision said, "But, each individual phase of the project will need a separate permit."

ASSEMBLYMAN HAINES: Okay.

MR. WEINGART: So then, Phase 1A--

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ASSEMBLYMAN HAINES: Phase 1A-- Okay, but was that issued in 1980?

MR. WEINGART: That was issued in 1980.

ASSEMBLYMAN HAINES: Okay, Phase 1A.

MR. WEINGART: Phase 1A was a project calling for 717 units, and that was approved in January of 1981. That allowed the construction of the first 717 units.

ASSEMBLYMAN HAINES: Is that under construction at this point?

MR. WEINGART: It was under construction, but it was stopped by the recent court decision in January.

ASSEMBLYMAN HAINES: I see.

MR. WEINGART: Phase one-- Let me do it this way: The conceptual permit was then overturned by the court, and they said--

ASSEMBLYMAN HAINES: The original conceptual approval was overturned?

MR. WEINGART: Yes, it was appealed and overturned. We had never issued a conceptual permit before, and the Supreme Court said that if we were going to issue a conceptual permit in the future, we should have some procedure in our rules establishing how we would do it and what it means to have a conceptual permit. Because we hadn't done that, the conceptual permit was void.

ASSEMBLYMAN HOLLENBECK: Is there a need for a conceptual permit?

MR. WEINGART: No, there was no written requirement. It was just a procedure that was worked out for this project. It was the only conceptual permit ever given.

ASSEMBLYMAN HOLLENBECK: What did that conceptual permit allow?

MR. WEINGART: It allowed nothing. It basically put the Department or the Division on record as saying, "We thought that the idea of a large-scale project in that area made sense." It was, in part, a recognition of the kinds of questions you have been asking me this morning -- that it was, at least on the surface, unusual to permit a large project in an area called a limited-growth area. The

conceptual permit was to clarify why the Department was doing that, and also to let the developer know that this was something that the Department looked favorably upon.

ASSEMBLYMAN HOLLENBECK: You didn't have the authority for a conceptual approval, but you did if you had adopted a rule allowing for it.

MR. WEINGART: Right. The court in two decisions dealt strictly with the process of the procedure of a conceptual permit.

ASSEMBLYMAN HOLLENBECK: Particularly dealing with the conceptual permit for large-scale residential development in a low-density area?

MR. WEINGART: No, just the issue of a conceptual permit. These were the only projects they were going to apply it to, so they just dealt with the issue of a conceptual permit.

ASSEMBLYMAN HOLLENBECK: I'm sorry, Bill.

ASSEMBLYMAN HAINES: Okay.

MR. WEINGART: Let me just finish answering your question. After the conceptual permit, we issued permits for three different phases of Smithville -- 1A, 1B, and 1C. In each case, our permit -- including the conceptual permit -- was appealed, and the appellants asked for a Stay of Construction, which they were denied. The appeal was accepted, but the Stay of Construction was denied, so Smithville was able to go ahead and start construction while the appeal process went on.

ASSEMBLYMAN HAINES: Have they stopped construction at this point?

MR. WEINGART: As of January 4 or so, they had stopped construction.

ASSEMBLYMAN HAINES: Okay, but there was a period when it was denied them -- the permit was denied, but the construction was not denied. Why did they stop construction?

MR. WEINGART: The Appellate Division in early January said that construction had to come to a halt -- that the permits were suspended -- Phases 1A and 1B. Smithville then went into court and was allowed to continue to construct a limited number of those units that were already under construction.

ASSEMBLYMAN HOLLENBECK: At whose risk?

MR. WEINGART: I guess at their risk.

MR. BENNETT: The court issued an order at the request of the attorneys for the developer to authorize and permit the continued construction of those units that were, in fact, under construction or under contract for construction. I believe that amounted to approximately forty units, but I'm not certain of the specific number.

ASSEMBLYMAN HAINES: Just the units that were under construction at the time, is that correct?

MR. BENNETT: Yes, that is correct.

ASSEMBLYMAN HAINES: Okay.

ASSEMBLYMAN HOLLENBECK: Is that under CREMA II?

MR. WEINGART: Yes, that was in response to CREMA II -- right after the CREMA II.

ASSEMBLYMAN HOLLENBECK: Under CREMA II, wasn't it the court's opinion that the developer proceeds at his own risk?

MR. WEINGART: CREMA II suspended the permits and said that construction should come to a halt.

ASSEMBLYMAN HOLLENBECK: Right, but did they say that the developer had to proceed at his own risk?

MR. WEINGART: I don't believe so.

MR. BENNETT: I don't know if it went to that extent in their decision, but the court did subsequently, by order, authorize and permit the continued construction for those units that we've mentioned.

MR. WEINGART: This might help you: As of today, there are 560 units that have been completed in Phase 1A, and 216 units completed in Phase 1B, for a total of 766 units. There are a total of eighty-eight units that the court allowed Smithville to continue construction on in that January decision.

ASSEMBLYMAN HAINES: What is the total that has been completed?

MR. WEINGART: Seven hundred sixty-six. Eighty-eight are under construction.

ASSEMBLYMAN HAINES: Beyond the 766?

MR. WEINGART: Yes.

ASSEMBLYMAN HAINES: Okay. I don't want to take a lot of your time, but did the plan initially permit construction? How many years? What was the objective in terms of how long it was going to take them to develop the entire project? Do you have those figures?

MR. WEINGART: The conceptual permit that was overturned talked about a ten-year build-out. The terms of the three specific permits that the Department issued didn't have a time frame. It had standards or preconditions that Smithville had to meet before they could begin construction. They met all those for Phase 1A and Phase 1B, but they have not yet met them for Phase 1C.

ASSEMBLYMAN HAINES: I guess I could figure this out, but what percentage is already completed or under construction?

MR. WEINGART: I gave you the numbers. The units that are constructed are all within Phase 1A and Phase 1B, which is a total of 1650-odd units, so close to half of those units are completed.

ASSEMBLYMAN HAINES: How many phases do you have?

MR. WEINGART: There are three phases that have been approved. Smithville, in their conceptual plan, was going to be over 6000 units. The Department has approved about 3300 units under the three permits.

ASSEMBLYMAN HOLLENBECK: Why was there phasing?

MR. WEINGART: It was the Smithville company's decision, and I believe it was so that they could respond to changes in the market. It was a large project, and I believe they wanted to see how things proceeded as they went along. In the conceptual stage, we said that the Department needed specific information about each stage and that we would not issue a permit for 6000 units, knowing only in general where the units were going to built and what the impact was going to be on specific information.

ASSEMBLYMAN HOLLENBECK: Does each phase in that particular development stand alone? In other words, can you build Phase 1C without Phase 1A?

MR. WEINGART: Yes, I believe you could.

ASSEMBLYMAN HOLLENBECK: Do you have any overlapping of Phase 1C, using any of the streets, sanitary sewers, water supply, power

services, drainage systems, or anything? Could Phase 1B stand alone without Phase 1A or Phase 1C?

MR. WEINGART: I believe each of them could stand alone. The one thing they all share is a sewer system that was built in 1974, or approved in 1974, with enough capacity for the entire Smithville project.

ASSEMBLYMAN HOLLENBECK: That particular one, the one which goes to the Atlantic City sewer system and which had excess capacity -- as soon as you developed this, did that use up all the excess capacity of that system so that you couldn't develop in other areas?

MR. WEINGART: I'm not certain. I know that the sewer was designed partly with this project in mind.

ASSEMBLYMAN HOLLENBECK: I know that the treatment had some excess capacity, but with this one development, did it take up the excess capacity of that particular sewerage system?

MR. WEINGART: I'm not sure.

ASSEMBLYMAN HOLLENBECK: If you have that, then if anyone else came into an area of development where we allow for more reasonable development, would that cause a real problem in that area? Would we be putting an overburden on the system?

MR. WEINGART: I don't know. That is one of the issues we are looking at in our review.

ASSEMBLYMAN HOLLENBECK: Wouldn't that have been reviewed at the time of the issuance of permits?

MR. WEINGART: Yes, it was. That was one of the reasons for the project. One of the reasons for the approval was the understanding that there was a large amount of sewer capacity there, and the Division felt they would rather see that sewer capacity used by a planned development where it felt there were no negative environmental impacts, than by the State's standards of unplanned small developments in which they would lack control.

ASSEMBLYMAN HOLLENBECK: That was one of my questions. It seems to me that when you bring in a large development like this and it eats up the whole capacity of the sewerage system, it kind of blocks development in all the other areas where we kind of thought we would like to see development, doesn't it?

MR. WEINGART: No. It might, but again, this is a little speculative, but it might block development in the other parts of that low-growth region, that limited-growth region. We would, in effect, have a little more control over that area.

ASSEMBLYMAN HOLLENBECK: I'm not only talking about sewer; I'm talking about the treatment capacity. It would make no difference where it was. It would take it all, wouldn't it, if it had to ultimately go to that same treatment plant?

MR. WEINGART: I don't know.

ASSEMBLYMAN HOLLENBECK: If this plant was using up the excess capacity of the sewerage treatment plant, would that also deal with the other CAFRA approvals that are not yet constructed? Is that taking away from their approvals?

MR. WEINGART: No, one of the conditions--

ASSEMBLYMAN HOLLENBECK: (interrupting) -- or their capacity of that plant?

MR. WEINGART: One of the conditions, before we issue a CAFRA permit, is to be sure that there is adequate sewer capacity. There is adequate capacity for all of the projects that we've approved.

ASSEMBLYMAN HOLLENBECK: What happens if a developer comes in tomorrow to develop in a growth area where you think it is wise to develop, and he has to get into that system, but there is no capacity?

MR. WEINGART: I believe you would have to get into a different system.

ASSEMBLYMAN HOLLENBECK: How many systems are there?

MR. WEINGART: I don't know.

ASSEMBLYMAN HOLLENBECK: Brigantine is under a sewer moratorium now, isn't it?

MR. WEINGART: I believe so.

ASSEMBLYMAN HOLLENBECK: So, we're talking about an area right next door to this particular area. That could not go into the other system because the capacity is now used up. Where does that leave you then -- to go to another system?

MR. WEINGART: I don't believe so. I don't have enough information to answer your question, but I can get more information back to you.

ASSEMBLYMAN HOLLENBECK: It is very common in large developments to put in commercial and recreation facilities, which are good planning practices -- particularly the one you are talking about -- it has that-- Is that in Phase 1C?

MR. WEINGART: It was in an earlier phase, but it has not yet been built. That is a commercial center.

ASSEMBLYMAN HOLLENBECK: Generally then, if you do that, would you look into the economic impact of a commercial center -- a shopping center, for instance, -- on other shopping centers in the area?

MR. WEINGART: We would to some extent.

ASSEMBLYMAN HOLLENBECK: Would it have some bearing on the decision-making process when granting of the permit?

MR. WEINGART: It would. The extent that we would look at it would be largely in terms of-- For example, for someone building a shopping center, we might look at its effect on an existing shopping center in an urban area.

ASSEMBLYMAN HOLLENBECK: Would you look at recreational areas as far as need and impact on that particular area are concerned?

MR. WEINGART: Sure.

ASSEMBLYMAN HOLLENBECK: I know this one had a recreational area, a golf course, proposed and approved. Is this a private or public recreational area?

MR. WEINGART: I believe it is public. I think it is privately owned, but it has public membership.

ASSEMBLYMAN HOLLENBECK: It is a public access, rather than a country club?

MR. WEINGART: Yes, right.

ASSEMBLYMAN HOLLENBECK: You have a hospital planned in the area. Again, I assume the need for a hospital goes through the planning agencies of State government as far as the need is concerned.

MR. WEINGART: Yes. It is more of a life-care facility than a hospital.

ASSEMBLYMAN HOLLENBECK: What do you mean by that?

MR. WEINGART: My understanding is that it is a nursing home with high-level medical care.

ASSEMBLYMAN HOLLENBECK: So, it is not a hospital.

MR. WEINGART: Right.

ASSEMBLYMAN HOLLENBECK: (continuing) -- with emergency treatment or normal heavy medical treatment.

MR. WEINGART: That is correct.

ASSEMBLYMAN HOLLENBECK: That is different. When we look at that area, are there other vacant lands available where we could seek large development, if there was a need for the housing?

MR. WEINGART: My impression is that if it is outside of the limited-growth area, there is not. When we have reviewed coastal permit applications, we have looked at the impact of the project on its site, and we do not stipulate that "this is the best site for this development." We say, "It is an adequate site for development." We leave some of that up to the developer.

The Appellate Division, in its decision in January, asked us to do that for Smithville -- to say, "Is this the only site where Smithville could go?" That is one of the things we will be addressing in our response to the Appellate Division directive.

ASSEMBLYMAN HOLLENBECK: They had other concerns. One of them, of course, was the development in the low-growth area. Another was the developing of facts that they felt were not developed within the hearing process. Now, you have to go back to that one and hear it all over again. Knowing that you now have more time since the original approval, do you start at ground one? Do you start with the whole permit application procedure all over again as far as that particular development is concerned?

MR. WEINGART: I, as an individual, start with an open mind. I find this a very difficult project to think about, and a very difficult one on which to make a decision. We have an extensive record on this decision. We have records from not only when these applications were submitted, but we now have volumes of testimony that were generated by the Administrative Law Judge for the 1C application.

We have extensive data, and we know that there are a number of units in place. We can look at the impact of those units, at least

during their first year on the ground. We know that the applicant has gone ahead with the project up to that point, and we can look at the extent to which they have complied with the permit conditions.

All of that is something that we don't normally have when we review an application from scratch. If your question is, have we already made up our minds, and are we just rubber-stamping these decisions, the answer is "no."

ASSEMBLYMAN HOLLENBECK: With the benefit of hindsight, my next question is, if you look back and find that the concerns expressed by divisions within your Department are more valid now than they were at the time-- Of course, you can criticize because you have more facts today.

In other words, if we wanted to develop an impact on water resources today, did we develop enough information from those hearings?

MR. WEINGART: That is one of the things I'm looking at in the 1A and 1B decision now.

ASSEMBLYMAN HOLLENBECK: Did the courts feel that--

MR. WEINGART: The courts, at least the Appellate Division-- It may be helpful to clarify that. There have been four court decisions involving Smithville. Three of them have dealt strictly with procedural issues. Two of them dealt with the conceptual permit and said, "Regardless of Smithville, we shouldn't have issued a conceptual permit for anything without first proposing some rules."

One of them dealt with a conceptual issue where a man appealed the permit decision late, and the Department said that his appeal was too late. The court said it wasn't.

The fourth decision is the 1A and 1B decision in which the court said that we had to clarify and provide more information as to whether or not the projects met our policies. The court suspended the permits until we did that. They didn't reverse them, but they, in effect, asked questions. Some of those are hard questions, but they did ask them. Part of the basis of that, I think, was because at the time the 1A and 1B permits were issued, the conceptual permit was already in effect. It was still in effect, so those 1A and 1B permits referred back to the conceptual permit record.

Since those permits were issued, the conceptual permit was overturned, and I think part of the court's concern was, would we think differently if we took out those references of the conceptual permit.

ASSEMBLYMAN HOLLENBECK: But you have to also come up with a basic decision of the development in this area, rather than elsewhere, don't you?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: Did the Division analyze the extensive impact of water quality on the development of this location? How do you do that, by the way? I'm very curious how you develop an impact of potential endangerment to the water resources in the area, or the shell fisheries? How do you do that?

MR. WEINGART: I am far from an expert on this. I can only tell you that my understanding is this: One of the ways it is done is by modeling, which is to, in a limited area, simulate the situation you would expect to happen from the development, and to generate data from that to anticipate what happened from the development. This is done with and without various kinds of controls. Then you would be able to conclude that either the development should not take place, or it should only take place with certain controls, or it should not take place without those controls.

ASSEMBLYMAN HOLLENBECK: Do you monitor?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: Do you monitor after development and during stages of development?

MR. WEINGART: Both, and it depends on our level of concern. With this project, we monitored during development, as well as after development.

ASSEMBLYMAN HOLLENBECK: During that development, if you found that there was an impact on the water resources, what recourse do you have to stop the development?

MR. WEINGART: The recourse we have is to stop the development -- either to have the applicant voluntarily stop, or to go to court and get a stop-work order. We have done that on other developments.

ASSEMBLYMAN HOLLENBECK: You have done it that way?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: How do you know he is doing it? How do you know that he is changing the water resources or the shell fisheries beds?

MR. WEINGART: Just our Division of Coastal Resources has an enforcement staff. One of our offices happens to be just a mile from the boundaries of Smithville. It is on the Stockton State College campus.

We have an enforcement staff who goes out and looks at every project. We do aerial flights to see what is happening from the air, we do ground surveys, and we also rely on citizens who tell us that something is going on which looks improper. We go out and follow up on those reports.

ASSEMBLYMAN HOLLENBECK: It is hard to see a contamination of ground water supply, so are there actual ground water testings?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: Do you compare ground water testings against past base readings so that you know there is a change, and so that you already have data of base readings within the Department?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: In other words, if you wanted to find base readings of the quality of the water standards, etc. within that low-growth area, you already have them developed and it is a continuing type thing? If there was a change, would you know there was a change?

MR. WEINGART: I believe that is the way it is done.

ASSEMBLYMAN HOLLENBECK: Who does that monitoring, Water Resources?

MR. WEINGART: The evaluation is done by Water Resources. In some projects such as this one, we require the data be generated by the developer.

ASSEMBLYMAN HOLLENBECK: But, he wouldn't have the base data though.

MR. WEINGART: No, the base data would be--

ASSEMBLYMAN HOLLENBECK: That would be Water Resources. Then we could see if there was a change.

MR. WEINGART: Right.

ASSEMBLYMAN HOLLENBECK: Water Resources goes through the specific area, takes borings, I assume, and sampling of ground water supplies to see what the base data is. Then from that, of course, you would evaluate, as projected by the developer, whether there would a change for your model.

Let's go to a development. After you have come up with a plan, what are your best management practices' concept?

MR. WEINGART: That again -- at least the phrase -- is used primarily in Water Resources -- to use what is agreed upon in the scientific community to be the best known ways of treating the problem or of limiting the impacts of the development.

ASSEMBLYMAN HOLLENBECK: When you go into a development, you have CAFRA approval obviously. You must have that. Do you have to go to a local planning board?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: Are they allowed to change anything?

MR. WEINGART: It is a double-veto kind of situation. You need State approval and local approval on the terms that each of those gives. If they conflict, that somehow has to be straightened out. The answer to your question is "no."

ASSEMBLYMAN HOLLENBECK: After development is completed, and they have fulfilled their full meeting of the requirements of the CAFRA permit and the local planning board, who maintains it?

MR. WEINGART: It depends on the project -- sometimes the Homeowner's Association, sometimes the developer himself, if he stays in the area.

ASSEMBLYMAN HOLLENBECK: What happens if the developer is gone and the streets were assumed by the community under the planning board? What happens to guarantee and ensure that the drainage system is proper? Homeowner systems usually aren't the best. That is why I am questioning that.

MR. WEINGART: What we would rely on is that the permit and the permit conditions run with the land, and that whomever is legally responsible for the land would continue to be legally responsible for enforcing the permit conditions.

ASSEMBLYMAN HOLLENBECK: What happens if it is in the street? Is the town then responsible?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: So, the town puts itself in a heavy liability position? What happens if we found out that all of a sudden you get a great deal of runoff from a road -- that is, tire wear, oil, gasoline, or spilled antifreeze -- and it was getting into the ground water supply? Where is the recourse?

MR. WEINGART: If it is happening because someone is violating a condition of his CAFRA permit, then the recourse is done through legal recourse. If it happens because of either unanticipated development, and that no one violated the CAFRA permit, there wouldn't be any legal recourse.

ASSEMBLYMAN HOLLENBECK: But, the CAFRA wouldn't apply there, because a developer would be gone, and he would be finished with his permit.

MR. WEINGART: What I am saying is, it runs with the land. The conditions of the permit stay with whomever is legally responsible for the land.

ASSEMBLYMAN HOLLENBECK: If there was a problem with a drainage system-- Let's take a shopping center. The shopping center, which is owned by someone, has a drainage system in the parking lot, and you find out that there are areas of the parking lot which were causing the problem of a runoff into the ground water supply. Through the monitoring system, you know that you have a change from base data, and there is an endangerment of the water resources. Who would physically take care of that, and how would it be taken care of?

MR. WEINGART: If it happens because someone is violating the conditions of his permit, then the Department would go in and say, "You're violating the permit that your predecessor had, and you have to correct this problem. If you don't do it, we're going to go to court."

If it is not part of the condition of the permit, then it is a problem that would be referred to the Division of Water Resources and the local government in order to find a solution. It would not necessarily be that someone is violating the law, but it would be a problem that would have to be addressed.

ASSEMBLYMAN HOLLENBECK: Do you have any questions, Steve?

ASSEMBLYMAN ADUBATO: I have a follow up question to the Chairman's question regarding the process and how separate divisions within the Department of Environmental Protection and their advice is either heeded or ignored, as the case may be -- specifically related to the issue that Assemblyman Hollenbeck raised. Several times you referred to the Division of Water Resources within the Department.

Would it be standard procedure to accept the recommendations based on the testing and data that have already been compiled by the Division of Water Resources as it has to do with water quality and its changes?

MR. WEINGART: Yes, I would say that that would be the general pattern.

ASSEMBLYMAN ADUBATO: To accept?

MR. WEINGART: Yes.

ASSEMBLYMAN ADUBATO: However, as it has to do with the question of the conceptual approval that was given, it was not heeded, along with the other division and the bureau within that division.

MR. WEINGART: I'm not sure of that. Part of what happened, and I'm not sure about the conceptual process, is that individuals within the Division of Water Resources had one opinion, and the Director of that Division had another opinion. There are oftentimes differences of opinion. Reasonable people disagree.

ASSEMBLYMAN ADUBATO: Staying along the lines of the process and who has input into the process, when you originally talked about the history of CAFRA and how it came about, you talked about the input that the Federal government has in putting this package of guidelines together that the Department adheres to in looking at planned developments. Would you say that the U.S. Fish and Wildlife Service is a Federal entity that would have some legitimate concern and could be helpful in reviewing the process?

MR. WEINGART: Sure. The most active Federal agencies when we went through this Federal approval process were the Fish and Wildlife Service, the National Marine Fishery Service, and the Defense Department Agency. They commented extensively on a variety of drafts

from 1975 until 1980, both at public hearings and in writing. They met at their Washington level with the Department of Commerce, which was the agency that ultimately approved this program under the Federal process.

ASSEMBLYMAN ADUBATO: Correct me if I'm wrong. During the hearings on the 1C permit, was the Office of Administrative Law barred from testifying?

MR. BENNETT: They weren't barred. There was a procedural issue that arose between the parties as to whose witnesses they were going to be, who was going to call them, and who had the right to call them. That is one of the issues that is before us right now for the Commissioner to resolve as far as the 1C permit is concerned. I can't really direct myself to that anymore because we haven't yet made that determination. But, there was a procedural issue as to how to deal with that situation.

ASSEMBLYMAN ADUBATO: Okay. I have one final question, which addresses itself to the geographic make-up of the area that is being developed right now, and whether it is or is not being included in the pinelands. Is there any provision in CAFRA or anywhere else for a consistency document between the type of development that takes place and falls within the coastal areas and the type of development that would take place in the pinelands area. Is there any cross-checking of the developments that would take in both areas and the potential impact on one or the other, regardless of where they fall in any governmental mapping that is done which puts a finger into the pinelands area and says that Smithville doesn't belong there?

MR. BENNETT: Yes, there are several various levels of formality. Our coastal policies have adopted rules which single out the pinelands area as an area that we are concerned about. We say that all of our decisions are going to be consistent with the pinelands plan.

The Federal act establishing the pinelands calls for the Pinelands Commission to have some kind of agreement with the State Coastal Agency on just what you are asking about. We have had numerous drafts of that, but we do not have a signed agreement between the two agencies.

The least formal, but probably the most helpful is that the two agencies talk to each other quite a bit. When we have an application that is near their area, or when they have one that is either in or near our area, we talk to each other about those projects.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN HOLLENBECK: Bill, do you have a question?

ASSEMBLYMAN HAINES: Yes, during the 1970's, I was responsible for financing most of the low to moderate-income housing that was produced in all of South Jersey, Delaware, and Maryland for the Federal government. We were involved in many areas similar to these kinds of areas.

On-site sewerage disposal was the thing that seemed to have a major impact on coastal areas, especially the areas with high water tables. In this whole regional concept, it seems to me that in just looking at it objectively from what we did in our agency, that sanitary sewer is very, very important in trying to maintain the water quality in a coastal area. It is far more important there, for instance, than on high land where you are quite a distance from the water table.

I know that in this development you have provided for sewerage tying in, etc. What have you done in the area? Is there much on-site disposal in the Absecon area at the present time? Have you provided for tying in some of the existing on-site homes to the regional system through the impact of the Smithville development? Has there been an effort in this direction, or isn't it a problem?

MR. WEINGART: I don't know the answer to your question, but I can find out. As you said, the Smithville project does tie in, obviously. The Division of Coastal Resources has not been involved in doing that.

MR. BENNETT: There are some units, structures, and dwellings in the area that are presently on septic that will hook up to the sewer system.

ASSEMBLYMAN HAINES: You will tying in some of them--

MR. BENNETT: Yes.

ASSEMBLYMAN HAINES: That was basically my question.

ASSEMBLYMAN HOLLENBECK: In 1A and 1B?

MR. WEINGART: Well, they are tied into the system.

ASSEMBLYMAN HOLLENBECK: In other words, there other ones around the area.

MR. WEINGART: Not in Smithville.

ASSEMBLYMAN HAINES: What I am talking about are existing units where you have houses that are scattered, and they are on septic systems. One of the problems is that many septic systems that were designed twenty years ago are really inadequate if you are additional units in the area. This is the thing that we found out -- that these things were designed for families who didn't have washing machines, for example. They were designed for small families, and then when you move big families in--

One house with an on-site system that is not designed properly can cause twenty times the pollution than a house that would be tied in with a central system. So, you are working in this direction?

MR. BENNETT: There will be some elimination of units, and there was some discussion of that in some of the water quality studies, which were refuted somewhat by the two respective sides during the course of the Administrative Law proceeding in terms of how much that would constitute -- how much elimination of contribution that would amount to. Everyone acknowledged that there was going to be an elimination of certain units from on-site septic systems.

ASSEMBLYMAN HAINES: In a way, this would theoretically improve the water quality in the area if it is done right.

ASSEMBLYMAN HOLLENBECK: The general philosophy occurs when the whole area seems to be zeroing on that one project. The 1C, which is with the Commissioner now, and he has recived an extension. I just read in the paper that has asked for extension of that, I assume, because of a court decision. The Phase 1C permit has not been challenged at this point through the Appellate Division, has it?

MR. BENNETT: No, it has not yet reached the courts.

ASSEMBLYMAN HOLLENBECK: So, that has not happened, other than the fact that it is up to the Commissioner to make his decision, and he has asked for an extension. What about 1A and 1B? What is the position of those as of this date?

MR. WEINGART: They are before me, as the Director of the Division of Coastal Resources, to make a new decision to either -- I don't know what the right term is -- unsuspend the permits or to cancel the permits based on the analysis we are doing.

ASSEMBLYMAN HOLLENBECK: When they were suspended, did they become null and void?

MR. WEINGART: It is like null and void, but it means something other than to cancel or revoke.

ASSEMBLYMAN HOLLENBECK: In other words, it is in limbo somewhere?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: I am aware that you are having a hearing this evening on this particular subject, and I am glad you are having it. I assume it is being held to develop information which is required by the court so that you can make your decision.

How long will that process take?

MR. WEINGART: My hope is that it will be quick. I would like to be able to make that decision on 1A and 1B somewhere near the deadline that the Commissioner now has for 1C. I believe that is March 14 or March 15.

ASSEMBLYMAN HOLLENBECK: In addition to the specific information that you had to develop in order to satisfy the court, are you going to also have general public participation at those hearings?

MR. WEINGART: Well, the public hearing is public, and I understand that there are nine people who have signed up to speak.

ASSEMBLYMAN HOLLENBECK: This is a public hearing, of course, but the public isn't participating.

MR. WEINGART: At the hearing tonight, I plan to say much less than I've said this morning. Anyone who wants to speak will be able to speak, and we will have an open hearing record, so if anyone wants to submit something in writing, he will be able to do that. I hope to make a decision within two weeks after that.

While this has been going on -- since January 4 or so, when the court issued its decision -- we've have been going back and reviewing the records for both 1A and 1B.

ASSEMBLYMAN HOLLENBECK: That particular project, of course, is a concern because it has gone through litigation four times, which no one likes to see. It has been turned back four times to the Department for not developing enough information. That has a tendency, in my opinion, to impact upon the public's opinion of the Department. It is the first time the someone has really said that the Department didn't develop full information. It is usually the other way around. The Department has been very meticulous and super-careful in what it does, and that has been my opinion for ten years in dealing with them.

To find four court opinions-- If a mistake was made in the original one, to continue going as it is, is only compounding the mistake.

MR. WEINGART: I don't disagree with what you said, but I think it important to distinguish. One of the court decisions said what you just said. Three of them said other very procedural things.

ASSEMBLYMAN HOLLENBECK: It only took one.

MR. WEINGART: Okay, but to say that four decisions said that, it is not--

ASSEMBLYMAN HOLLENBECK: It only took one. One or two said, "You can't use a conceptual permit," and three, "That you can't let so and so testify because he was late in filing." The fourth one, of course, was the final one.

MR. BENNETT: I would also note that the Office of Administrative Law has, at least so far, upheld the Department. They have said that the permit was valid for 1C. I want to also point out that that doesn't mean that we're not also completely reviewing that record, as well.

ASSEMBLYMAN HOLLENBECK: The Office of Administrative Law has to be criticized too. They approved it without the information of the court. The court has the final decision.

MR. WEINGART: No, they approved 1C, and the court was talking about 1A and 1B.

MR. BENNETT: Actually, if you look at the record, I think most of the environmental record in terms of alleged deficiencies and what the environmental issues were between the policies and the uses, the 1C record is probably the most complete in developing all of that.

ASSEMBLYMAN HOLLENBECK: I approached that earlier when I asked if one phase stood alone. I would think that if you find any connection between 1A and 1B, which is used by 1C, then 1C has got some problems in explaining it. I can see why the Commissioner couldn't make a decision. How can you approved 1C, when 1A and 1B are--

MR. BENNETT: Well, that was exactly one of the primary bases for the request -- that we wanted ensure, regardless of what happens with these two matters, that the bases for the decisions be consistent so that they would either be affirmed, modified, or reversed.

John's process, going through 1A and 1B, also has the luxury of utilizing the 1C record, whereas the Commissioner, in terms of reviewing 1C, just has that record itself that was developed in front the OAL. We wanted to ensure that we were consistent with the conclusions and findings that were being made. There are a number of issues in all three of the permits that are not the same.

ASSEMBLYMAN HOLLENBECK: But, 1A and 1B were approved by the Commissioner, weren't they?

MR. BENNETT: No, they were approved by the Division Director.

ASSEMBLYMAN HOLLENBECK: It wasn't appealed, and then--

MR. BENNETT: 1A and 1B were appealed to the Coastal Area Review Board, if I recall that correctly.

ASSEMBLYMAN HOLLENBECK: It didn't go to the Office of Administrative Law?

MR. BENNETT: No, I don't believe so, not 1A and 1B. There apparently was an application to go before the Office of Administrative Law on Phase 1A, but that was subsequently withdrawn, so that just went in front of the Coastal Area Review Board.

SOMEONE FROM AUDIENCE: Only the conceptual did.

MR. BENNETT: Oh, only the conceptual, okay.

ASSEMBLYMAN HOLLENBECK: In other words, the Commissioner never had anything to do with 1A or 1B -- never had to sign a paper granting the approval?

MR. BENNETT: That is correct.

ASSEMBLYMAN HOLLENBECK: The only one that is following that route is 1C?

MR. BENNETT: The Commissioner will be approving whatever action is taken on 1A and 1B.

ASSEMBLYMAN HOLLENBECK: He will be considering the actions of--

MR. BENNETT: We have had discussions with--

ASSEMBLYMAN HOLLENBECK: He will be approving or disapproving. I'm not accusing you of a Freudian slip.

MR. BENNETT: No, we've had discussions with the Commissioner. Whatever action is taken on 1A and 1B will be approved by the Commissioner, which means he will be approving the action taken by the Division Director. It was not a Freudian slip. The Commissioner will be approving the action taken by the Division Director, whatever that action may be.

ASSEMBLYMAN HOLLENBECK: What happens if the Commissioner disagrees with the action taken by the Division Director?

MR. BENNETT: I can trust that the Commissioner, in his discussions with the Division Director--

ASSEMBLYMAN HOLLENBECK: If we have divisions within the Department that have disagreed, and the Director overrules them, why wouldn't the Commissioner now overrule the Director?

MR. BENNETT: That could very well be the case if, in fact, the Commissioner did disagree with what the Division Director developed. You are correct.

ASSEMBLYMAN HOLLENBECK: I have some prepared questions that I would like to get the answers to, all right?

How did we get on to the designated areas of limited growth regions?

MR. WEINGART: Do you mean, how did we designate them?

ASSEMBLYMAN HOLLENBECK: Yes, how did you reach what is called a limited-growth region? How did you ever reach that conclusion that some area should be a limited-growth region?

MR. WEINGART: I think it was an extension of our thinking. For a number of years, we had a basis coastal policy, saying that the pattern of regional development should be concentrated. Through the public hearing process during the late 1970's, we had suggestions from

a number of people who thought we ought to have a map. Out of those thoughts, we came up with this regional growth categorization.

ASSEMBLYMAN HOLLENBECK: Is it a correct characterization of the intent expressed in that regulation -- that the development should occur in a step-wise process? Should it show development in development regions first, before permitting development in the extension regions?

In other words, if you have three areas which are so-so for building or bad for building, wouldn't you try to stay in the area that is designated as good? Wouldn't you encourage that type of construction?

MR. WEINGART: No, again, we do not play God with this, developers do not come to us, and we do not issue a list of the sites they are allowed to develop for the coming year. We say in the policies that development areas are the areas where we would most like to see development. We say limited-growth areas are the areas where we would least like to see development, with the exception of planned residential developments.

ASSEMBLYMAN HOLLENBECK: I would think that as a Department, you would think-- In some areas you have your plan and your policy set, and what we always have are the deviations from the policy. This particular development that we were discussing before, in my opinion, was a change from the normal policy that would be considered by the Department.

MR. WEINGART: Why do you say that?

ASSEMBLYMAN HOLLENBECK: What we have done is to take a large-scale development and put it in a low-density area.

MR. WEINGART: Part of the problem may have been just calling that a low-density area. Maybe we should have called it Fred or something else. The problem is perhaps with the term, but what we defined as a low-density area, from the moment we first defined it, included the concept of large-scale projects being permitted in there. I acknowledge that those phrases are a little contradictory. What we meant was that we thought large-scale development might be appropriate there, but other types of development would not be appropriate.

ASSEMBLYMAN HOLLENBECK: In other words, you wouldn't think that low-density development should be developed there -- single-family homes on large-acreage lots. Wouldn't that be a better use environmentally? I not talking from a developer's viewpoint.

MR. WEINGART: Given the way CAFRA is written, at the time, we didn't think so. We felt that the single-family houses being built either individually or in groups of twenty-four, over which we had no control over the runoff, or the extent to which they saved trees on the site, or any other environmental aspects, could have more of a negative environmental impact than a large project over which we had control.

Again, if CAFRA was worded differently, we might well have looked at the project differently.

ASSEMBLYMAN HOLLENBECK: How would you suggest that it be worded differently?

MR. WEINGART: I would suggest that the issue of the threshold -- that only twenty-five or more units be regulated by the Department.

ASSEMBLYMAN HOLLENBECK: Do you think the threshold should be decreased?

MR. WEINGART: I'm just saying that that might lead us to make some different decisions. I don't know if there is a way that the Department could have some review authority over small projects.

ASSEMBLYMAN HOLLENBECK: I can see allies developing through your theories, and I can also see enemies developing.

MR. WEINGART: That is a reality of our decision-making, and to ignore that -- to act like we have complete control over all development -- would lead us to make decisions which might not be wise.

ASSEMBLYMAN HOLLENBECK: In your limited-growth regions, wasn't it mostly because of the environmental sensitivity of areas? Isn't it because it was an environmentally sensitive area? If you had your druthers, wouldn't you rather see a small amount of development that would have a potential impact on the environmental quality of the area?

MR. WEINGART: I would certainly agree with the second part of your statement. I think the environmentally sensitive features are

protected by other policies, and the large-scale policy only comes into play and allows a project to be approved if the project is protecting environmentally sensitive areas.

I think what the region was talking about more than environmental sensitivity was character -- undeveloped or rural character. The environmental sensitivity is addressed in other policies.

ASSEMBLYMAN HOLLENBECK: What was the characteristic then that contributed to the designation of the Mullica, Ocean County region as a limited-growth area?

MR. WEINGART: It is primarily a rural, undeveloped area.

ASSEMBLYMAN HOLLENBECK: It wasn't because of the concerns of the quality of water resources?

MR. WEINGART: Well, I guess part of that was because the water resources are relatively pristine. That was one of the features that we wanted to see protected.

ASSEMBLYMAN HOLLENBECK: What would be the development potential of the Mullica Southern Ocean Region?

MR. WEINGART: The way that we define development potential is in terms of the existence of roads, sewers and other development which can allow a project to be considered in fill. There were roads and sewers in the part of the area where this project was located. The one part of the policy that Smithville did not meet was that it was an in-fill development. The large-scale residential policy overcame that problem.

ASSEMBLYMAN HOLLENBECK: What is the difference between the cluster-development policy and the large-scale residential development policy?

MR. WEINGART: The cluster-development policy applies to projects of any size, and says that "regardless of the size of the project, we would like to see the units clustered together to preserve open space on the site and to preserve environmentally sensitive areas." We would like to see the units clustered away from environmentally sensitive areas into areas where there will be less harm. The large-scale policy talks in terms of projects of 500 or more

units, and it talks in terms of where those types of projects would be acceptable.

ASSEMBLYMAN HOLLENBECK: Could you have a cluster policy in a large residential development?

MR. WEINGART: Yes, there is a little overlap there.

ASSEMBLYMAN HOLLENBECK: There is overlap, so are they really two different animals, or are they the same animal?

MR. WEINGART: You could have a large-scale project that is not a clustered development. Then you would look at the cluster policy and say, "This ought to be a cluster development." You could have a clustered project that was not a large-scale project, and you would ignore the large-scale policy in that case.

ASSEMBLYMAN HOLLENBECK: Isn't clustering a policy that is usually more site specific in dealing with environmental concerns, rather than the concentration of the regional pattern of development?

MR. WEINGART: I think they are all going in the same direction. If a project has more than 500 units, it has to comply with both of those policies. If it is less than 500 units, the project only has to comply with the cluster policy.

ASSEMBLYMAN HOLLENBECK: Is Smithville a large-scale policy and a cluster policy?

MR. WEINGART: Yes, it complies with both of those policies. Part of what Smithville does in answering cluster policy is that at least in the whole project, it would preserve about 1,000 acres of open space. They do that by clustering the development on other parts of the site.

ASSEMBLYMAN HOLLENBECK: How does the Department determine that a particular large-scale residential development would result in minimal impairment of the regenerative capacities of water aquifers or other ground and surface water supplies?

MR. WEINGART: That is done through the professional judgment of the Department. It is done through collecting the information from the applicant and the public and evaluating it. It is just a professional judgment.

ASSEMBLYMAN HOLLENBECK: This sentence I read to you is a very specific sentence, and I'm sure you recognized it.

In other words, you develop proper information. You have base data, you do a model to try to project if there is going to be an impact, and you monitor that during all stages of construction to see if there is a change. I presume that after the development is finished, there is still a review by Water Resources?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: So, you already have the information dealing with that specific site as far as base and water quality is concerned.

MR. WEINGART: I don't know the extent to which that information is available, but I believe it is for many sites.

ASSEMBLYMAN HOLLENBECK: Well, you had to have the base somewhere in order to determine that the project is not going to be impacted. So, you have to have base somewhere.

MR. BENNETT: The adequacy of that base information is one of the issues in the 1C appeal.

ASSEMBLYMAN HOLLENBECK: Not in 1A and 1B?

MR. BENNETT: Not specifically, no.

ASSEMBLYMAN HOLLENBECK: If we assume it is only 1C, then 1A and 1B might have had the same problem.

MR. BENNETT: That is correct. Given the basis for the decisions, that is one that is needed to ensure consistency in the Department's decisions.

ASSEMBLYMAN HOLLENBECK: I assume the Director would have that information, of course, when he makes his decision.

MR. BENNETT: That is correct.

ASSEMBLYMAN HOLLENBECK: What is the nature of a typical control strategy that minimizes impact on the water quality?

MR. WEINGART: Part of it would include drainage in terms of keeping as much of the runoff as possible on the site. Part of it would include leaving large amounts of pervious area through which ground water could seep, and monitoring. There are probably others, but those are the ones that come to mind.

ASSEMBLYMAN HOLLENBECK: I assume that this particular development has a drainage system within it -- storm drainages. Where does it discharge?

MR. WEINGART: I believe it keeps running off on the site, but I'm not certain.

MR. BENNETT: Virtually all the runoff remains on site through detention and retention basins. There is a small percentage that runs off into surface waters.

ASSEMBLYMAN HOLLENBECK: And absorption?

MR. BENNETT: Correct.

ASSEMBLYMAN HOLLENBECK: I think you answered this, but I'm going to ask again. Do you have the authority to halt the construction of future stages if the remedial measures fail to mitigate adverse water quality?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: You have that. I thought you did. How does the Department document that a large-scale residential development would cause minimal feasible interference with the natural functions of plants, animals, fish, and human life processes at the site and within the surrounding regions?

MR. WEINGART: We do it through our own inspections, through reports that are submitted by the applicant, and through information that other people submit to us. For example, if we learn that there are negative impacts being felt -- wildlife refuge -- that would be something that we would look into. We also rely on the expertise of the Division of Fish, Game and Wildlife in terms of changes they are aware of.

ASSEMBLYMAN HOLLENBECK: The large-scale residential development rule has been used to approve three large developments in the Atlantic City area. They are Smithville, Wrangleboro, and Reeds Bay. Presumably, to accommodate development pressures created by the casino industry in Atlantic City, it appears that, at least in one case, the large-scale residential development rule had the effect of allowing for the approval of a new regional growth center in the limited-growth area. Of course, we're talking about the Smithville project.

In getting back to this area of approvals and whether the need is there, doesn't a large-scale residential development contribute

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to its own in-fill development, which may or may not be subject to CAFRA regulations?

MR. WEINGART: I don't know. That is one of the questions that I'm looking into now with 1A and 1B. Your earlier question about the sewer capacity would have suggested that that is not the case. If, in fact, Smithville used up all the sewer capacity, then it would be harder for that to happen.

I don't know. That argument has been raised, and that is one of the things we are looking at.

ASSEMBLYMAN HOLLENBECK: Yes, they used up the capacity of the sewer system, and now we can get a nice development, if there was a need, in an area that we thought should be developed, but lo and behold, we can't because we don't have the sewer capacity.

How many non-CAFRA development applications have been approved in Atlantic City?

MR. WEINGART: How many non-CAFRA or CAFRA?

ASSEMBLYMAN HOLLENBECK: How many non-CAFRA?

MR. WEINGART: I don't know. There are probably very few in Atlantic City itself.

ASSEMBLYMAN HOLLENBECK: All right. How many CAFRA have been approved?

MR. WEINGART: A total of 5,900 housing units in about fifteen or sixteen different projects have been approved. This is since 1974.

ASSEMBLYMAN HOLLENBECK: Would 187 CAFRA permits sound reasonable since 1980?

MR. WEINGART: No, that sounds high. There have been 279 CAFRA permits since 1973, and there has been a relatively even flow of them over the years.

ASSEMBLYMAN HOLLENBECK: In other words--

MR. WEINGART: There have been about thirty decisions per year that we've made under CAFRA.

ASSEMBLYMAN HOLLENBECK: We have 5,900 units approved under CAFRA? That doesn't include this last one under Smithville.

MR. WEINGART: Well, you just asked about Atlantic City.

ASSEMBLYMAN HOLLENBECK: Yes -- well, the region. Let's talk about the region -- Mullica, Absecon, Somers Point.

MR. WEINGART: We have approved 8,000 units in Galloway Township where Smithville is located. We have approved 5,900 units in Atlantic City. I guess the other big towns would be Brigantine with 1,100, Egg Harbor with 2,500, and Pleasantville with 2,500.

ASSEMBLYMAN HOLLENBECK: What is the status of those developments now?

MR. WEINGART: I don't know specifically. Some of them are under construction. In Galloway itself -- the three projects you mentioned: in the Reeds Bay project, no construction has taken place; in the Wrangleboro project, some construction has taken place; and Smithville, you already know.

ASSEMBLYMAN HOLLENBECK: They were in low-growth regions though, were they?

MR. WEINGART: Those three were in a low-growth region, yes. One other project in that area was called the Club at Galloway, and that project is essentially completed. It was approved around the same time -- 1982.

ASSEMBLYMAN HOLLENBECK: We looked into some of the planning of the agencies, and they predicted that about 4,200 non-CAFRA units would be built in Atlantic City, or the Atlantic County region. Considering the present usage of how they are developing, we find that that alone was about-- If you saw about fifty units per year, you would be talking about eighty-two years in order to use up that many. That isn't even counting Smithville as far as need is concerned.

In other words, if we see a lot of CAFRA approvals for development, and they are not being done, and we approve more, then that is more than the need.

MR. WEINGART: Well, again, that is something we're looking at. At the time the Smithville 1A and 1B decisions were made, the wisdom of the prevailing regional planning agencies at the State and local levels was that there would be a large amount of residential demand generated by the development of casinos in Atlantic City.

Obviously, one of the things we are questioning now is the extent to which that perception has changed.

ASSEMBLYMAN HOLLENBECK: So, actually, between non-CAFRA, what was projected by the DEP, and CAFRA, which has been approved by the DEP, you have 5,900 units and 4,200 units, so, you are talking about 13,000 units that have been planned for the area. Apparently you haven't actually gone into the construction, and (inaudible) is very low, isn't it, as compared to what is approved?

MR. WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: Why would we want to approve more large-scale residential development when we haven't improved the need for what we've already approved?

MR. WEINGART: Again, this is something under review, but if a large-scale project can prove that it is not going to have negative impacts, and if it is going to provide a large amount of housing at prices that are affordable by the large parts of the population that lack housing, and if that is going to be in a region that is expecting a lot of growth, then the question is, should that development be allowed to go ahead? Does the State have the responsibility to allow a private developer who wants to build that kind of housing to build it? Although there are things we are exploring now with the Smithville project, that is one of the central parts of that.

ASSEMBLYMAN HOLLENBECK: I realize we've asked you an awful lot of questions. Assemblyman, do you have any other questions?

ASSEMBLYMAN ADUBATO: One small one, to follow up on the question of enforcement. You may not have the answer now, but if you can bring it to the Chairman and the rest of the Committee, I would appreciate it.

How many people are currently on the Department's staff, or in your Division?

MR. WEINGART: For enforcement?

ASSEMBLYMAN ADUBATO: Regarding enforcement, and in relationship to the current figure that exists right now, how many were there two, three, and four years ago? I'm specifically looking for potential staff reduction, and I would also like to know what their general responsibilities are? How is that geographically broken up within the Department and within the State? What areas do they cover?

MR. WEINGART: I'll get you the specific numbers, but there are roughly twenty to twenty-five people on our enforcement staff for the Division of Coastal Resources. That Bureau was only established in 1979 -- to have a coastal enforcement staff -- and that number has been fairly constant since then.

We have three offices for enforcement -- one in Trenton, one in Toms River, and one in Pomona on the Stockton State campus. There are about ten people in the Pomona office who are responsible for enforcement in Atlantic, Cape May, Cumberland and Salem Counties. I'll get you more specific numbers.

ASSEMBLYMAN HOLLENBECK: I would like to say to you, Director, that you have been very cooperative, and you answered a lot more than I anticipated you would. I would like to thank you for that.

I have a copy of a letter that was sent to the Commissioner, which deals with this particular project, and it asks thirty-six questions -- very tough questions. I admit they are.

I know there are some areas of sensitivity, and you wouldn't want to answer them at this time, because of varying conditions. I understand the Department's position very well.

I would like to submit some questions in writing to you on the basis of confidence. I see some areas of concern within the CAFRA Act itself, and I would like to have those answered. I don't want to do it at a public session though. I don't think that would be fair.

I had one other question I wanted to ask you, and I forgot what it was.

Bill, do you have anymore questions?

ASSEMBLYMAN HAINES: I have just a couple of simple questions. One, I assume you control all of the barrier islands.

MR. WEINGART: We control the development of twenty-five or more units on the barrier islands.

ASSEMBLYMAN HAINES: Above twenty-five or more units.

MR. WEINGART: Yes.

ASSEMBLYMAN HAINES: Okay. Secondly, what is the total number of acres in the Smithville project?

MR. WEINGART: The whole project they proposed was 2,300 acres. The parts where we have approved development contain about 1,000 acres.

ASSEMBLYMAN HAINES: So, you're going to put 6,000 units on 1,300 acres.

MR. WEINGART: On 2,300 acres.

ASSEMBLYMAN HAINES: One thousand acres are open space.

MR. WEINGART: Right. That is correct.

ASSEMBLYMAN HOLLENBECK: I thought of the question.

MR. WEINGART: Good, I hope I have the answer.

ASSEMBLYMAN HOLLENBECK: Regarding the draft policy that was put out by the Department, which dealt with changing the large-scale residential development, what is the intent of the Department? Does it intend to proceed with holding hearings and going through the normal procedures for this change of rule?

MR. WEINGART: No, let me tell you the status of that.

ASSEMBLYMAN HOLLENBECK: It is one I happen to agree with for a change.

MR. WEINGART: The draft you have there was-- Again, I circulated it to the executive staff of the Department. I thought they were the only people I was circulating it to, but I was wrong. We got comments back from a number of divisions about a number of policies, and we made some changes. We have now circulated a draft informally to various interest groups which we work with -- environmental groups and builders groups -- seeking their comments. We will be meeting with each of them to discuss that.

We are also circulating it to some local governments that have been particularly interested in the State process. Once we get those comments, we will put together a new set of revisions, and we will ask the Commissioner to formally propose policy changes in the New Jersey Register, which will be followed by formal public hearings. There are many steps in the process.

ASSEMBLYMAN HOLLENBECK: What about comments from your creator?

MR. WEINGART: We certainly welcome them. Do you mean the Legislature?

COMMITTEE AND AUDIENCE: (laughter)

MR. WEINGART: (continuing) any of our creators.

ASSEMBLYMAN ADUBATO: Is there more than one?

COMMITTEE AND AUDIENCE: (laughter)

MR. WEINGART: We would welcome them. I would also, at another time, be happy to discuss the specific changes we are talking about, if you would like to do that.

ASSEMBLYMAN HOLLENBECK: It is a policy change that, I think, if the Department does do, it might be a legislative change.

MR. WEINGART: I should make clear that the draft that is now being circulated -- the draft before builders groups and environmental groups, etc. -- does not change that large-scale policy in the way that the earlier draft did. It can certainly change back and forth several times before we formally propose it, much less adopt it.

ASSEMBLYMAN HOLLENBECK: Obviously, as you said, this draft is under discussion. That is why it is a draft. It is up for discussion purposes.

This is contrary to some of the statements made within some of the court proceedings -- about the policy. It is because it is a complete change of policy in the Department in dealing with that particular development. Isn't it?

MR. WEINGART: Again, it was a proposal that we are no longer proposing. It wasn't saying that the policy was wrong to apply to the projects that it applied it to. It was saying that regardless of that issue, the policy was no longer necessary. But now, with the proposal we have before people, it is saying that we still think it is useful to have that policy around.

ASSEMBLYMAN HOLLENBECK: It is a difficult one to tip-toe through when you have this draft out in August, and then in December, you're taking testimony with the old position in it.

MR. WEINGART: That is the perils of having an open agency, and that is life. There are people with differing opinions, and there were people who felt that that policy ought to be removed. I was unsure myself, but I changed my mind. I could conceivably change my mind again.

ASSEMBLYMAN HOLLENBECK: The internal policy of dealing with the reports -- I don't know whether it was a memorandum or what from the various divisions within the Department -- concerning the Smithville development -- are those internal documents available?

MR. WEINGART: What internal documents do you mean?

ASSEMBLYMAN HOLLENBECK: In other words, there was some type of report done by Shell Fisheries, I assume, or Fish and Game, or Water Resources which we know disagreed with this particular development, and the Director overruled.

MR. BENNETT: Yes, I believe all of those documents have been entered in as exhibits, at least the 1C proceeding.

MR. WEINGART: Most of the people sitting behind me probably know our files better than we do at this point.

ASSEMBLYMAN HOLLENBECK: Were there any other documents that disagreed with it -- internal documents that were not part of the proceedings?

MR. BENNETT: No, not that I'm aware of.

ASSEMBLYMAN HOLLENBECK: So, we will find the dissenting opinion within the evidence of the proceedings.

MR. WEINGART: I believe so, yes. I am not aware of anything else.

MR. BENNETT: It really isn't necessary to go through the whole record, both for what the people individually put on paper at some point in terms of the timing of the process, as well as going through their testimony.

ASSEMBLYMAN HOLLENBECK: Well, you know, there is sometimes a difference between testimony and internal documents -- there is a huge difference. That is why I am questioning whether there are other documents that we should be looking at.

MR. WEINGART: All the documents we have are in our files, which are open. If there are specific things you would like to see, we can try to find them.

MR. BENNETT: Anything that was relative, I believe, was introduced, or we sought to introduce, during the proceedings.

MR. WEINGART: For 1C.

MR. BENNETT: Correct.

ASSEMBLYMAN HOLLENBECK: For 1A and 1B?

MR. WEINGART: No, for the 1C proceedings before the Administrative Law Judge.

ASSEMBLYMAN HOLLENBECK: What about 1A and 1B?

MR. WEINGART: There was not as extensive a record developed for 1A and 1B.

ASSEMBLYMAN HOLLENBECK: We won't find those documents that I specifically said -- in reference to Shell Fisheries, Fish and Game, and Water Resources. That is not in any testimony.

MR. BENNETT: Some of the documents would be, and some would not be, by virtue of the fact that some of the documents referred to and referenced in 1C were documents that pertained to 1A and 1B. Some were also generated as a result of the review on the Phase 1C project. There is a little bit of both actually.

ASSEMBLYMAN HOLLENBECK: Is that getting back to the area where 1C is a tie-in to 1A and 1B?

MR. WEINGART: I think it raises some of the same questions.

ASSEMBLYMAN HOLLENBECK: Yes, that it can't stand alone? If you have 1C, does 1C require 1A and 1B approval?

MR. BENNETT: I think they dealt primarily with environmental resource issues and the accumulative impact as opposed to the necessity to have either all or a single phase considered as an integral part of the development. The documents that I think you are referring to -- there was one or two documents from Shell Fisheries and from Water Resources, which reference that there should not be an approval of 1C until 1A and 1B have been completely monitored and evaluated. There were those types of references.

There were specific references for 1A and 1B, and then there were other documents -- all of these both pro and con -- that just dealt with 1C and made no reference to 1A and 1B.

ASSEMBLYMAN HOLLENBECK: Internally they felt that there was a tie-in between the three?

MR. BENNETT: It depended upon, I believe, the discipline of the unit that was involved, probably for certain aspects of the Water Resources review, and only certain aspects. They were reviewed in

toto. I don't know if that was necessarily the case for some of the wildlife-- Certain features of the site only exist on the 1C phase and were not uncommon with Phase 1A and 1B. It really varied depending upon the issue that you were discussing.

ASSEMBLYMAN HOLLENBECK: We want to look at the particular area a little bit closer.

I want to thank the Director and Mr. Bennett for coming and testifying. You were very open, and you answered as much as you could. We've tried to keep it within some reasonable limits for you. We understand you are in a difficult position.

I think I am going to ask that we have another hearing. Hopefully by then, I'll have some background, and I will develop some further questions that I would like to submit in writing. Also, I would like to hear from the various divisions involved with those particular projects concerning their base data on how it was developed, and how the developer submits proofs to counteract any claims of it.

It bothered me in one of the pieces of testimony to see the developer saying that no environmentalists have shown that this is going to harm the environment. That is not the proof. The proof is the other. It is supposed to be on him -- that he is not going to harm it, not that they don't have to prove that he is. That kind of attitude is wrong.

Again, I want to thank you. Does any member of the Committee have anything further to add? (no response) Thank you very much, gentlemen, for appearing. I know you have a very busy and tough day.

MR. WEINGART: Thank you.

MR. BENNETT: Thank you.

ASSEMBLYMAN HOLLENBECK: Thank you, ladies and gentlemen.

(Hearing concluded)