

**PUBLIC HEARING**

before

**ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE**

on

**CAFRA Permits**

Held:  
March 6, 1984  
Assembly Chamber  
State House  
Trenton, New Jersey

*New Jersey State Library*

**MEMBERS OF COMMITTEE PRESENT:**

Assemblyman Robert P. Hollenbeck (Chairman)  
Assemblyman Stephen Adubato, Jr.  
Assemblyman John O. Bennett

**ALSO PRESENT:**

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

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## TABLE OF CONTENTS

	<u>Page</u>
Robert Hughey Commissioner New Jersey Department of Environmental Protection	1
Bart Bennett New Jersey Department of Environmental Protection	6
John Weingart Director, Division of Coastal Resources New Jersey Department of Environmental Protection	9
Michael Gross Special Environmental Counsel Historic Smithville Development Corporation	26
Dr. Gary Sawhill Environmental Consultant Historic Smithville Development Corporation	27
Malcolm Gropper President Historic Smithville Development Corporation	53
David Fisher Director of Environmental Research & Planning New Jersey Builders Association	62
Dr. Philip Gieger Superintendent of Schools Galloway Township, New Jersey	66
Thomas Wells New Jersey Conservation Foundation	70
Paul Dritsas American Littoral Society	76
Derry Bennett American Littoral Society	88
Louis Scala Manager Smithville Homeowners Association	98

## TABLE OF CONTENTS - Continued

	<u>Page</u>
Gary Wallace Resident Trustee, Board of Trustees Smithville Homeowners Association	102
James Cooper, Esq. Resident Atlantic County, New Jersey	103
Robert Tatum First President Historic Town of Smithville	110
Karl Wessler Resident Galloway Township	111
 <b>APPENDIX</b>	
Copy of State of New Jersey Soil Erosion and Sediment Control Act	1x
Letter from William Asher U. S. Department of the Interior Fish and Wildlife Service	6x
Copy of Statement of Robin Burr Presented to the N.J. Department of Environmental Protection	7x
Letter to Ms. Amanda Kirkpatrick Bureau of Coastal Project Review N.J. Dept. of Environmental Protection From Charles J. Kulp, Field Supervisor U. S. Department of the Interior Fish and Wildlife Service	8x
Letter to Col. James G. Ton District Engineer, Philadelphia District U.S. Army Corps of Engineers From Charles J. Kulp, Field Supervisor U.S. Department of the Interior Fish and Wildlife Service	17x

APPENDIX (Continued)

	<u>Page</u>
Letter to David Kinsey, Director Division of Coastal Resources N.J. Department of Environmental Protection From Oliver T. Edstrom, Assistant Field Supervisor U.S. Dept. of the Interior Fish and Wildlife Service	19x
Letter to Karl Braun, Supervisor N.J. Division of Coastal Resources From Robert M. Burr, Acting Field Supervisor	24x
Letter to Karl Braun, Supervisor N.J. Division of Coastal Resources From Oliver T. Edstrom, Assistant Field Supervisor	29x
Letter to Karl Braun, Supervisor N.J. Division of Coastal Resources From Charles J. Kulp	35x
Statement from Carol Barrett, Chairman West Jersey Group//Sierra Club	
Statement from Janet S. Jackson New Jersey Audubon Society	41x
Letter to David Kinsey N.J. Department of Environmental Protection From Oliver T. Edstrom, Assistant Field Supervisor	45x
Statement and appended material From Paul C. Dritsas, Coordinator American Littoral Society	53x
Letter and Enclosures to John Weingart, Acting Director N.J. Department of Environmental Protection From D. W. Bennett, Executive Director American Littoral Society	68x
Letter and enclosure to John Weingart N.J. Department of Environmental Protection from Paul C. Dritsas, N.J. Coordinator American Littoral Society	69x

\* \* \* \* \*

p. 1 - 83:TDM  
p. 84 - 88:MJZ  
p. 89 - 113:TDM





**ASSEMBLYMAN ROBERT P. HOLLENBECK (Chairman):** This is a public hearing of the Assembly Agriculture and Environment Committee. Today's hearing will deal with the construction permit process under the Coastal Areas Facilities Review Act.

I am Assemblyman Hollenbeck, Chairman of the Committee. To my left is Assemblyman Stephen Adubato, Vice Chairman of the Committee. Karen Jezierny is the staff aide and Mark Smith is the Committee aide.

The first person we would like to hear from this morning is Robert E. Hughey, Commissioner of the Department of Environmental Protection. Good morning, Commissioner. Bart Bennett, also from the Department of Environmental Protection is with the Commissioner this morning.

**COMMISSIONER ROBERT E. HUGHEY:** I do not have a prepared statement, Mr. Chairman. I have looked at your letter of February 27, and I am prepared to address those questions, to the best of my ability.

Let me just begin with a caveat. I know that the Committee is wrestling with a series of issues. I appreciate your interest in these issues. I think, in turn, the Committee appreciates my need to be careful when I discuss these issues. Smithville is a contested case, in three ways. Smithville A & B have been remanded to the Department by the Appellate Division. They are presently undergoing review by John Weingart, who is also here today.

Smithville C is on a remand to me from the Administrative Law Judge, and I am in the midst of doing a review on that part of the project.

I should add, for your information, that as we began to close the file on the Administrative Law Judge's remand, I had a number of requests -- just as the Committee obviously had -- to discuss various components of the Smithville decision. I made a determination within my Department that the Administrative Law Judge sent me a case that I had to review, and the Appellate Division sent my Division a case that it had to review. And, to the groups that I have talked -- which I suspect are the same groups that have talked to you -- I made the comment that I would make my decision on the file; that I would ask my

Division to do the same; and, I would not have extraneous discussions about this matter, beyond what is in the written file.

I received a number of written pieces of correspondence. The 1C application, which I am currently reviewing, probably contains over 3,500 pages of testimony and submissions. And, I think if you add in the exhibits, it is probably closer to 5,000 pages.

I told them -- specifically the environmental groups -- that I was going to be working with the written file, since I thought that was the appropriate way to handle the remand from the Administrative Law Judge.

Subsequent to that, I received correspondence from them, and from this Committee. I want to be as helpful as possible to this Committee, but I also want you to understand that I am considering a case. The litigants involved in the case before me raised a number of points with the Administrative Law Judge, which she ruled on. This is a fundamental part of that case, and I am now considering these points. To the extent that the questions raised by this Committee and by the environmental community happen to coincide with those considered by the Administrative Law Judge, they are now a part of my decision-making responsibility; therefore, I do not feel I am as open to discuss them as I am open to discuss general and generic kinds of issues.

With that caveat, I will go through the questions, Mr. Chairman, that you raised in your letter of February 27.

The first range of questions had to do with the water quality analysis: the nature of the base data prepared as part of the water quality analysis; how it is used to compare water quality, pre- and post-construction; and, what interval is necessary between the various stages of construction in order to measure its impact on water quality?

Those questions happen to be a major part of the case that is now before me -- each one of those questions. The water quality data that you have questioned was developed through some water samplings taken during a study of the Pinelands' ambient water quality conditions -- on-site surface water samplings taken from two storm events.

An expert engaged by the applicant developed the water quality model by utilizing this data and other information to determine post-development pollutant levels, and by comparing these pollutant levels to known pre-development levels.

The evaluation of the model and water quality impacts are issues that are before me in the Phase 1C decision, and I think it is therefore inappropriate for me to discuss them in any detail, except to tell you what the positions of the two sides are in the case that has now been decided by the Administrative Law Judge and which is currently before me.

The litigants maintain that the water quality model was insufficient; that one cannot depend on water quality modeling; and, that we have to deal with more precise information. The applicant maintains that the water quality model was sufficient, and has further determined that modeling of this nature works with best management practices.

The Administrative Law Judge has made a determination based on that position. I will be happy to share this decision with the Committee. I think the Committee would also benefit from having the testimony of both sides. But, since I have to decide that issue, I would like to leave the discussion with that point.

ASSEMBLYMAN HOLLENBECK: Thank you very much. I think we fully understand your position Commissioner, and also the burden you have when dealing with this specific issue.

I think the Committee was questioning water quality base data because it was seeking general knowledge in the whole CAFRA area. The question is, of course, do we have base data on the whole of Galloway Township or Atlantic County, insofar as water quality standards are concerned?

COMMISSIONER HUGHEY: I think the answer to that is, depending on the kind of model you want to use, there is base data available for a series of models. Really, I think the more critical question is, what is the long-term water quality impact? And, to get the answer to that question you have to construct a model similar to, or as a substitute for, the one we used in this case, and then you have to monitor a basin.

ASSEMBLYMAN HOLLENBECK: I understand that. When you say model, we are having a little problem with that. Do we have base data right now, where we could say that the base data of water quality in the area of the Cohansey Aquifer is "such?" I could also pick out other locations within that area and ask the same question.

COMMISSIONER HUGHEY: Well, what I would prefer you to do is pick out another location, rather than zero in on this location precisely.

ASSEMBLYMAN HOLLENBECK: All right. Do we have base data on the water quality in Lanoka?

COMMISSIONER HUGHEY: I don't know about Lanoka Harbor, so let me give you one close to the project area, but not in the project area. We have considerable base data in the area surrounding Price's Pit, which is not too far from this project area. Yes. The answer is yes, because we have done a lot of studies as a result of a feasibility analysis of a cleanup. Do we have that same sophistication in all areas of the basin? No. One develops base data depending on the review the Department happens to be doing at the time. The Department did not, historically -- and has not to this date -- gone around the State and evaluated base data.

I should say that for the first time in the last 20 years, the Department has entered into contracts with the U.S. Geological Survey to begin to prepare base data statewide. It was a missing ingredient up until the last few years.

ASSEMBLYMAN HOLLENBECK: You see, the difficulty is that you don't know Lanoka Harbor. In other words, if we get an application, do we then gather base data in that area at that time?

COMMISSIONER HUGHEY: It obviously depends on the sophistication of the application, the nature of the application, the size of the application, and the information available through sources around that application, meaning the counties and the municipalities. Some counties have done a very good job, and some counties have not done a very good job.

ASSEMBLYMAN HOLLENBECK: Let's suppose we decide to do a large-scale development in Lanoka Harbor, and someone wants to put in

an application for that development. Does he have to secure all the base data that the Department has done, or does the Department have that data so that it knows, when one looks toward developing in that area, what happens as a result of that development?

COMMISSIONER HUGHEY: Yes. The answer to that is yes. But, the answer is yes, depending on who you are. In the case you just cited, we can request the preparation of base data. We can then request the construction of a model to determine the long-term implications. But, to get everyone who is involved in a project to agree that the model is constructed properly, and that the base data was assembled properly, I think depends on which side one happens to be on.

In this case, an Administrative Law Judge heard testimony that covered hundreds of pages, precisely on the question of the base data collection; how it was worked into the model; and, whether modeling is, in fact -- as one side in this case claimed -- an effective tool at all. And, on that basis, I would suggest to you that without modeling -- without any reference to this case at all -- you would have very great difficulty regulating anything in the State.

ASSEMBLYMAN HOLLENBECK: In the specific case you are referring to -- I am just talking generally -- the Appellate Division ruled that you did not develop that properly, is that right?

COMMISSIONER HUGHEY: The Appellate Division has remanded 1A and 1B, with a series of questions that have to be determined by going through the files; and, that is being done right now.

ASSEMBLYMAN HOLLENBECK: That dealt with the base data, didn't it -- and the water quality?

COMMISSIONER HUGHEY: That was one of the issues. That was not the only issue. And, to answer your question would prejudice that review, and I am not going to do that.

ASSEMBLYMAN HOLLENBECK: When dealing with a large-scale residential development, one thing we are concerned about, of course, is the quality. What about quantity?

COMMISSIONER HUGHEY: Quantity as it pertains to your question on sewage, or quantity in general?



ASSEMBLYMAN HOLLENBECK: The quantity of potable water for consumption by human beings.

COMMISSIONER HUGHEY: What is your question with regard to quantity? Are you questioning whether it is there?

ASSEMBLYMAN HOLLENBECK: Well, do we determine where the water is coming from?

COMMISSIONER HUGHEY: Do we question whether it is there in a sufficient capacity?

ASSEMBLYMAN HOLLENBECK: In sufficient capacity, yes.

COMMISSIONER HUGHEY: As part of this project review, there was data taken on water quantity and whether what was available was sufficient to serve a project.

ASSEMBLYMAN HOLLENBECK: In other words, we do know and we do have figures indicating the water quantity needed for a particular development?

COMMISSIONER HUGHEY: That's correct.

ASSEMBLYMAN HOLLENBECK: In that particular development, what was the figure?

COMMISSIONER HUGHEY: I don't happen to have it at the top of my head, Mr. Chairman.

BART BENNETT: Mr. Chairman, it was slightly over one million gallons per day, I believe. A permit was issued by the Water Policy and Supply Council which existed under previous legislation and was housed within the Division of Water Resources. It issued the necessary diversion permits for the Smithville project.

ASSEMBLYMAN HOLLENBECK: We have a figure here that is much higher than that. Concerning this specific development -- on this part of the application, which I am not familiar with -- how was the water being supplied, through a central system, or through local wells?

COMMISSIONER HUGHEY: No. It is going to be supplied through a central system.

ASSEMBLYMAN HOLLENBECK: Through a central system, by an individual water company?

COMMISSIONER HUGHEY: By a water company, yes.

ASSEMBLYMAN HOLLENBECK: Who owns the water company?

COMMISSIONER HUGHEY: Well, that is under the jurisdiction of the municipality, but I suspect that the company -- and I understand they are here to testify today -- can tell you who is going to have the ownership.

In Galloway Township, the community exercises a review of both private water companies and potential private utility companies.

ASSEMBLYMAN HOLLENBECK: I am familiar with the problems of small private water companies because we have heard about them at other hearings we have held regarding the water supply.

I will ask the developer any questions we have concerning that.

If you are in the construction stage, and you have an application to develop some type of base data for your model, how do you determine at the various stages if something is going wrong, if you are getting some type of endangerment to the water quality?

COMMISSIONER HUGHEY: Through an ongoing monitoring program which is a condition of the permit.

ASSEMBLYMAN HOLLENBECK: So, if you see that happening, you could stop the permit?

COMMISSIONER HUGHEY: That's right.

ASSEMBLYMAN HOLLENBECK: Have you ever stopped a permit?

COMMISSIONER HUGHEY: We have stopped permits for other reasons. I don't know that we have done it for water quality. We have done it for other reasons though. We have done it for infringement.

ASSEMBLYMAN HOLLENBECK: Water quality was not one of the main reasons why you stopped a permit, even if you found that you were starting to endanger the water quality?

COMMISSIONER HUGHEY: It certainly could be one of the reasons, Mr. Chairman. There are a number of conditions in every CAFRA permit. We have stopped permits for encroachment on Wetlands, and for building that was inconsistent with the pre-filed plans. I mean, there are a number of reasons why you could stop a permit.

In this case, we happen to have a stringent condition which says we can stop it for water quality.

ASSEMBLYMAN HOLLENBECK: But we don't?

COMMISSIONER HUGHEY: We haven't, because we haven't found any monitoring data that says we should stop it. I think the idea of a condition is to protect both sides. You don't capriciously stop a project if the monitoring data confirms what you expect to find as a part of the condition review.

ASSEMBLYMAN HOLLENBECK: On the specific application in Smithville, have there been any questions concerning the water quality during any of the stages of development?

COMMISSIONER HUGHEY: Well, it is an ongoing concern of the Department, or it would not be a condition in all three of the permits issued so far. Has the monitoring indicated to us that the project should be stopped? No.

ASSEMBLYMAN HOLLENBECK: No, that wasn't my question. My question concerned that particular development. Have any questions developed, indicating that the water quality has been endangered, or that there has been a change from the best management practices of the Department?

COMMISSIONER HUGHEY: Well, the litigants, in both cases before me, have maintained that our conditions are not severe enough to ensure water quality. Now, I have no indication that the monitoring data we are getting back shows that. It may not be the question you asked, but it is the only answer I can give. We have not seen a reason for concern.

ASSEMBLYMAN HOLLENBECK: There has been nothing brought before the Department questioning whether this particular development is violating the permit process right now, or the best management practice?

COMMISSIONER HUGHEY: There are a series of questions being brought up, Mr. Chairman. You know it is very--

ASSEMBLYMAN HOLLENBECK: (interrupting) I know. This one is in the stage of construction now, and I am trying to find out what we do during the various stages of construction if a problem develops.

COMMISSIONER HUGHEY: Mr. Chairman, there are some things in life one would prefer not to inherit. There are very few questions that haven't been raised about Smithville at one time or another. I

think today's hearing is a great example. We are sitting with two contested cases on remand. We have a series of arguments that have been made, in addition to those that were in the file when they were being made, and we are having a Committee hearing on it. I wouldn't be at all surprised to see a file filled with questions about water quality.

But, I have a condition which my Department has to review, and the monitoring data, to this point, has been sufficient for our needs.

The other question you had on your sheet concerned the capacity of the regional sewer facility, which happens to be a 40 million gallon facility.

ASSEMBLYMAN HOLLENBECK: Yes, I want to get to that, but I am not finished with this one point. This is very important.

The Atlantic County Soil Conservation group has brought some questions before Director Weingart, with reference to problems that have now developed. These problems relate to this particular complex, and they deal with areas that could impact upon the water quality. Are you familiar with that?

COMMISSIONER HUGHEY: No, I'm not. John Weingart is here; he is right behind me if you would like to ask him that question.

ASSEMBLYMAN HOLLENBECK: Is that correct, Director? Have there been questions that deal with the permit process and the potential danger to the water quality?

DIRECTOR JOHN WEINGART: I think what you are referring to is the public hearing we held the night after your last hearing, two weeks ago. Questions were raised at that time by Gary Bennett, who testified at the hearing concerning a quick survey he had done through the Soil Conservation Service's files that afternoon. He made statements at that public hearing. Since that time, we have received a letter from the Soil Conservation Service, disputing, to some extent, and qualifying, to a large extent, the comments that were made at that time. I haven't reviewed that data -- in terms of our files -- to any extent since that time.

ASSEMBLYMAN HOLLENBECK: The questions that came up dealt with simple permit violations, didn't they?

DIRECTOR WEINGART: Yes. What was alleged at the public hearing was that there were extensive violations of the permits. But, the data given to us by the Soil Conservation Service disputed those allegations. That is one of the things we are reviewing now, and we will be making our decision in response to the court.

COMMISSIONER HUGHEY: For my edification, are you reading a letter from the Soil Conservation District, or from somebody who interpreted their permit?

ASSEMBLYMAN HOLLENBECK: I am reading Mr. Frank Burns' letter. It was sent to Director Weingart.

COMMISSIONER HUGHEY: Is that the one that--

DIRECTOR WEINGART: (interrupting) Is Frank Burns from the Soil Conservation Service, sir?

ASSEMBLYMAN HOLLENBECK: Yes.

COMMISSIONER HUGHEY: Is that a follow-up?

DIRECTOR WEINGART: What is the date of the letter?

ASSEMBLYMAN HOLLENBECK: February 28, 1984.

DIRECTOR WEINGART: And, it refers to the public hearing?

ASSEMBLYMAN HOLLENBECK: It cites three major concerns that they have.

DIRECTOR WEINGART: Yes. Right.

ASSEMBLYMAN HOLLENBECK: It deals with exceeding the limit of the permit on grassed-in areas. It voices a concern that they are not to exceed 400 square feet for any home, and they have far exceeded that. They are worrying about the nitrate level and the absorption into the aquifer. That was a violation that was brought to your attention during construction.

COMMISSIONER HUGHEY: It was brought to our attention on February 28. I don't know that we are not reacting to it. I should add that the Soil Conservation District also has to issue a permit, and they have conditions in their permit that have enforcement rights as well. So, we are not the only arm that enforces soil conservation requirements.

DIRECTOR WEINGART: That is correct. We are reviewing it. You will also note that in the letter he goes on to compare the nature

of the violations found at Smithville with what is normally found in a project, and he says that in most of the cases this is not unusual.

ASSEMBLYMAN HOLLENBECK: But, there are supposed to be simple little things done on a continuing basis, such as the removal of vegetation, isn't that so? That is not being done. Wasn't that one of his concerns?

COMMISSIONER HUGHEY: Mr. Chairman, you have me at a distinct disadvantage, you know.

ASSEMBLYMAN HOLLENBECK: I know. I was really talking to the Director, because he has knowledge of the letter.

COMMISSIONER HUGHEY: I think your question is whether it is being followed up, and the answer is yes. We just got the letter, probably last week.

ASSEMBLYMAN HOLLENBECK: These violations that are brought forth -- forgetting about this particular development -- wouldn't it take some action on the part of the Department dealing with the permit process?

DIRECTOR WEINGART: Certainly. One of the conditions of our permit is that the applicant has to comply with the soil conservation standards. And, if it was brought to our attention that they were not doing that, we would take steps to have that corrected, or to have the construction stopped.

ASSEMBLYMAN HOLLENBECK: What steps would you take, Director?

DIRECTOR WEINGART: First, we would call in the applicant and determine the facts in the matter, and then we would see if the applicant was willing to correct the violation on his own at that point. And, if that could not be done, we would then issue a "stop work" order, and the construction would halt.

ASSEMBLYMAN HOLLENBECK: In this particular case, you have not called in the developer since the matter has been brought forth?

DIRECTOR WEINGART: In this particular case, construction has stopped, as you know. Again, as the Commissioner said, we received this letter on Friday, and we are looking at the information. But, since construction has stopped, no harm is being done at this point.



ASSEMBLYMAN HOLLENBECK: But, under normal circumstances, something like this would have some impact upon you, as to whether there should be some action taken -- whether there should be a temporary stop order until they correct the condition, etc., is that right?

DIRECTOR WEINGART: Yes.

ASSEMBLYMAN HOLLENBECK: Let us talk about the water quality standards, and the best management practices. Let us talk about a completed development -- fully completed. Monitoring shows that there was an environmental impact from the development. Who takes care of that? What recourse do we have concerning something like that?

COMMISSIONER HUGHEY: Typically, the development has to take care of it, because they are living with the condition. Now, who does that pass-through, in terms of the best management practices at Smithville? It is the responsibility of the Homeowners Association, which is not a light one. This is a fairly expensive maintenance program. So, the owners of the Association become responsible, unless Smithville has made some other provision. I can't tell you that.

ASSEMBLYMAN HOLLENBECK: Is there a bond set up for that sort of thing?

COMMISSIONER HUGHEY: There is typically a bond at the local level for maintenance of all on-site facilities.

ASSEMBLYMAN HOLLENBECK: My understanding of that particular development is that it goes through the Local Planning Board. Approval is from the Local Planning Board. Do the roadways, storm drainage, etc., all become, over a period of time, the responsibility of the municipality?

COMMISSIONER HUGHEY: No. I think you misunderstand Galloway's position with regard to large-scale development. Galloway has split the responsibility between themselves and the on-site facilities in most typical cases that I am aware of. Now, I haven't been there actively for three or four years, but large-scale developments that have the wherewithal have built in a series of conditions that require on-site maintenance of facilities.

ASSEMBLYMAN HOLLENBECK: But, I am just talking about the roadways, etc.

COMMISSIONER HUGHEY: I am talking about the roadways.

ASSEMBLYMAN HOLLENBECK: All right. In other words, none of those are going to be turned over, or dedicated to, the community? The community is never going to maintain or take any responsibility for them?

COMMISSIONER HUGHEY: I can't say none. Again, that is a question you can ask the applicant. But, I think Galloway is very cautious about transferring back responsibilities.

ASSEMBLYMAN HOLLENBECK: What about the areas that do that? Obviously, that is a major subdivision for the community we are talking about. It would have to show roads, I assume, construction standards, drainage problems, and things that normally occur from such construction. Are the roads separated by a separate lot and block number?

COMMISSIONER HUGHEY: I can't really answer that. Typically a road is not separated by a separate block and lot number, but it is handled through a series of agreements that are structured as a part of the internal organization of a community. This is not a subdivision, Mr. Chairman. If we agree on anything, it is a planned unit development. It is treated a lot differently in Galloway's case than a typical subdivision of 24 or 25 units is treated.

But, I think Galloway people, who happen to have a very good planning operation, an exceptional engineer, and a good lawyer for the planning board, and who have probably structured more of these agreements than any other community in the State, would be very happy to testify. We can't answer those questions.

ASSEMBLYMAN HOLLENBECK: I will ask those questions of the developer.

Let us talk about the second area, dealing with the sanitary sewers.

COMMISSIONER HUGHEY: The sewer capacity in Atlantic County is 40 million gallons. I think the requested capacity for Smithville is 1.7, and the capacity of the lines being extended in that direction is approximately twice that amount.

ASSEMBLYMAN HOLLENBECK: What is the present excess capacity of the sewage facility?

COMMISSIONER HUGHEY: For Atlantic County?

DIRECTOR WEINGART: It is large, but I don't know what it is.

COMMISSIONER HUGHEY: It is very extensive. We don't have a number on it. We will be happy to get a number for you.

ASSEMBLYMAN HOLLENBECK: In other words, if you took this development to its fullest, it would not use up the capacity of that sewage plant?

COMMISSIONER HUGHEY: There is no question about it, it would not.

ASSEMBLYMAN HOLLENBECK: And, that includes all the other development that has been approved within the area that would tie into that sewer -- the other 4,900 or 5,000 units -- non-CAFRA and CAFRA permits?

COMMISSIONER HUGHEY: At this time, that is true. And, those are real purchases. There is no -- which has typically happened in other parts of the State -- paper ban on Atlantic County. All the growth that is projected, or that is in some stage of approval, has capacity.

ASSEMBLYMAN HOLLENBECK: Do you think, as part of a large-scale regional development, it would be proper to look into taking in other people who are not on the sanitary system -- to bring them in as a policy?

COMMISSIONER HUGHEY: It has typically been left up to the communities to make that judgment. As the line is extended, some communities do and some communities do not require a hookup.

A case in point -- which is not this case -- happened last year in Beachwood. We had to go in there for a water quality problem. There was a 10-year law that required hookup. The problem was, it was easy to have that law, but it was tough to enforce it when the cost of a hookup was \$500. There was a hesitancy on the part of the community in that case to require the hookup.

In Galloway's case, I think you will see a down-the-line, required hookup.

ASSEMBLYMAN HOLLENBECK: Let me get back to the subject of water. Of course, we are talking about water in both ways -- getting

it and disposing of it. When we draw upon ground water, what is the danger -- I know there is a general concern about this -- of salt water intrusion? What would happen if we had salt water intrusion developing because we had a heavy draw on the ground water supply of that aquifer?

COMMISSIONER HUGHEY: Theoretically, you would have a couple of choices. You could abandon the use of that well-field, or you could probably move that well-field. Those are the two options when salt water intrusion occurs.

ASSEMBLYMAN HOLLENBECK: How do you correct that?

COMMISSIONER HUGHEY: How do you correct salt water--

ASSEMBLYMAN HOLLENBECK: (interrupting) How do you correct it once it has happened? In other words, if we have salt water intrusion into some of the ground water supply, can we ever correct it?

COMMISSIONER HUGHEY: Well, it can be corrected. Theoretically, again, one of the techniques used is to put that well out of service and force fresh water back into the well.

ASSEMBLYMAN HOLLENBECK: But, the land that has now had the salt water intrusion, is that gone forever?

COMMISSIONER HUGHEY: There is a big difference there. Now you are talking about apples and oranges. You are not talking about ground water intrusion; you are talking about well intrusion. You can take care of the well intrusion, but it is not cheap to do so. The ground water is not likely to have had the same intrusion.

ASSEMBLYMAN HOLLENBECK: No, but when you have an aquifer -- you know, the question we are dealing with is the aquifer, not necessarily the surface water -- and you draw heavily on that aquifer, you have salt water intrusion. Yes, we can move to a different supply, but we now have salt water intrusion, that one is finished; we can never draw from that area again.

COMMISSIONER HUGHEY: No. I told you it can be reversed. It is expensive to reverse it. I don't think Atlantic County represents the best example of a salt water intrusion problem. I think you can find much better examples in other parts of the State, where you are drawing far in excess--

ASSEMBLYMAN HOLLENBECK: (interrupting) There are some concerns in Camden and off the Delaware; I am aware of that.

COMMISSIONER HUGHEY: Well, we are now sponsoring studies with the U. S. Geological Survey in northwest New Jersey, northeast New Jersey, Camden, and the Atlantic County area. So, we have ongoing studies in four areas of the State. It is by no means a southern New Jersey problem, or potential problem.

ASSEMBLYMAN HOLLENBECK: While we are dealing with the aquifer and the water supply, which are so important, the other concern that is brought forth when you do development such as this, is that if there is a change in the water quality, it impacts on the shellfish beds. If a problem develops with the shellfish beds because of ground water pollution from development, how would we correct that problem?

COMMISSIONER HUGHEY: Well, Mr. Chairman, you are right back into the case that is before me now. There was considerable testimony based on the impact on shellfish. One side produced expert testimony, and another side produced expert testimony, and I am reviewing that. When I come to a conclusion, I will give you an answer.

ASSEMBLYMAN HOLLENBECK: What we are trying to find out is, once we have a development, if a problem develops in the area, the developer is long gone -- they dissolve corporations, etc. -- and we are stuck with it. Who pays? Who is responsible? And, how do you clean up the problem that was caused by the developer?

COMMISSIONER HUGHEY: Well, if you want to talk in a non-project way, we have done a very good job in this State cleaning up shellfish beds that have been polluted by everybody in the State of New Jersey because of raw sewage. And, who pays for it? The public pays for it.

But, I don't think you can draw an analogy between that and this project, which has gone through the review it has gone through. I am not prepared to answer whether there is going to be an impact or not until I have reviewed all the information in the file and made a ruling on the Administrative Law Judge's ruling.

ASSEMBLYMAN HOLLENBECK: Do you think there is a need for a large-scale residential development in the Atlantic County area today?

COMMISSIONER HUGHEY: Do I?

ASSEMBLYMAN HOLLENBECK: Yes.

COMMISSIONER HUGHEY: I think there is a need for planned unit development everywhere today. And, I think maybe we will all think that, from a planning perspective, in the future.

You know, it is very hard for government to balance all the requests it has. It is very hard for a department like mine to balance all the requests it gets from the Legislature. If you are going to live with the guidelines of Mount Laurel, and if you are going to live within rigid environmental standards, then you are going to be looking for ways to cluster develop.

Now, I should tell you that the United States has known that since 1970, and almost every study that has come from a national planning group has supported planned unit development. I should also tell you that very few of them get built. I think there are a lot of reasons for that. The best reason is that they become the most convenient target in the world for people who would like to see more.

I will tell you that I think planned unit development is necessary in this State and in other states, particularly to balance all the interests that are being pressed on the environmental side, and on the developmental side of this State. I will also tell you that given the track record of planned unit developments, and the fire they draw, you will probably see very few in this State or in any other State. As a matter of fact, they do not have a good success record. I think one of the few planned unit developments developed in this country, and concluded by the same company, is in Columbia, Maryland.

ASSEMBLYMAN HOLLENBECK: Some of the questions, I guess, are repetitive. But concentrated development, and high density housing, are clustered in order to concentrate areas of development and maximize open space. That was said by David Kinsey, a former Director. When you start to deal with that, and then you deal with cluster housing, there seems to be a difference in what we are talking about.

COMMISSIONER HUGHEY: I don't really think there is a difference at all. There are two policies. One is the cluster policy, which applies to up to 500 units, and one is the large-scale residential development policy, which applies to over 500 units. All the conditions of the cluster development apply to large-scale



development. The large-scale conditions do not necessarily apply to the cluster. So, I think it is a matter of picking categories.

Since I wasn't here when that policy was developed, I can't tell you whether there was a way to pick categories or not. I can't say. But, I can tell you that clearly is what it seems to do; it gives you break-off points.

ASSEMBLYMAN HOLLENBECK: Then the only break-off is the amount of units -- over 500 or less than 500? That is the only difference in the policy of a large-scale residential development and a cluster development?

COMMISSIONER HUGHEY: That's right. And, in the first instance -- the large-scale development -- all of the policies apply. So, there is a more rigid policy application with over 500 units.

ASSEMBLYMAN HOLLENBECK: How does the Department document that a large-scale residential development would cause minimal interference with the natural functioning of plants, animals, fish, and human life processes, at the site and within the surrounding region?

COMMISSIONER HUGHEY: Well, I guess it depends on who you talk to as to how well it does it.

ASSEMBLYMAN HOLLENBECK: I have always thought you did it well.

COMMISSIONER HUGHEY: We have one case back from the Appellate Division that would seem to indicate that we didn't do it well enough, and that is why it is back. Again, the documentation is representative of an entire case that is now before me. The Administrative Law Judge went through every one of the arguments, with testimony on both sides, that we did or did not document properly the policies on large-scale residential development.

The fact is, neither side disputes that we did it, so there is a process for reviewing those policies. Whether we did it adequately or not is still a matter of dispute.

ASSEMBLYMAN HOLLENBECK: At a meeting on the 21st, Mr. Weingart indicated, in response to a question concerning the designation of the Mullica-Southern Ocean County region as a limited growth region, that it was more a question of character; that the

region was primarily an undeveloped, rural area. Yet, the Act concerning coastal growth ratings states that a limited growth region is one which contains a large environmentally-sensitive area, and generally only in-fill development is acceptable. We find there is a discrepancy in what we allow to be developed in a limited growth area.

COMMISSIONER HUGHEY: Well, again, I think there are probably two or three other Commissioners you might want to chat with about that issue, because they were here when that decision was made.

Let me tell you that I don't think the Department should be criticized for doing what every community does as they prepare master plans. You typically don't pick the most densely populated area and call it "limited growth." So, I don't think it is out of character to say that an area that is undeveloped -- or that is largely undeveloped -- is logically placed into a limited growth category.

I also don't think it is odd to see that kind of issue reviewed, depending on the policies at the time. The Master Plan Law, which this State provided for, calls for an automatic review every five years. I think that is an option that is open to the Department.

Currently, there is a limited growth region that has the capacity, not just in facilities but also in terms of the laws and the policies of the Department, to have a large-scale residential development.

Just like you, Mr. Chairman, when you came into this Chamber, you worked on some laws and you abided by some that preceded you. I work on some laws with you, and I abide by some that preceded me. I don't think there is a lack of logic to this policy. I think it makes some sense. I think it makes sense and it is consistent with what everybody else does in planning.

ASSEMBLYMAN HOLLENBECK: That is just the reason why, Commissioner, we are having hearings on this subject: To find out if there is a problem with the Act, and to see if any change is necessary for the operation of the Department. Whether conceptual approvals should be part of the Act, or a step within it, is another area of investigation. That is why we are having hearings.

COMMISSIONER HUGHEY: I understand that. But, I don't see that there is any basic inconsistency either.

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ASSEMBLYMAN HOLLENBECK: Well, you know, we take an area and we call it a low-density area, and then we put large-scale residential development in it and we say it is rural in nature. That just goes against my normal, ingrained feelings. The reason why we designate certain areas as low-density is because of the environmental sensitivity of those areas, rather than because they are rural in nature.

COMMISSIONER HUGHEY: Well, I think that while that may go against your grain -- and while it sometimes goes against mine -- it is very typical. As a matter of fact, I think if you come to my part of the State you will find there is an entire second plan, the Pinelands Plan. That Plan does things based on what happens to be there, and the character of the area, as opposed to just following strict environmental considerations. And, I don't think it is atypical to find that type of thing in any community master plan. So, from a planning standpoint, I don't find that to be rare.

ASSEMBLYMAN HOLLENBECK: So, being a rural area really doesn't have anything to do with it, or being an environmentally sensitive area doesn't have anything to do with it?

COMMISSIONER HUGHEY: No, I don't think that is the case. I think both of them could have something to do with it. But, I don't think that one precludes the other.

ASSEMBLYMAN HOLLENBECK: Well, if both do not have anything to do with it, then how does the large-scale rural residential development protect both?

COMMISSIONER HUGHEY: I don't understand the question.

ASSEMBLYMAN HOLLENBECK: In other words, we have an area of low density. We want to have low density. We assume that was done because of environmental sensitivity; yet, we go into a large-scale residential development in that area. How do we protect the rural character, if that is the reason why we do it, and also the environmental sensitivity of the area if you put a large-scale residential development there? How can you join the two together if you put a large-scale residential development in that area?

COMMISSIONER HUGHEY: Well, I don't think they are mutually exclusive at all. I think you can actually preserve, under some circumstances, far more property and far more land in its natural state with a planned unit development.

However, in addition to that comment, let me tell you that from a planning standpoint, I don't see the inconsistency. If you work with master planning as long as I have, it is not at all unusual for any community, from the size of Califon up in Hunterdon County to a community the size of Atlantic City, to have overlay districts that permit more than one unit within a designated area. Now, I don't think the State has to be precluded from taking the same approach to planning. That is not an unacceptable approach.

ASSEMBLYMAN HOLLENBECK: I just want to acknowledge that Assemblyman John Bennett has joined the Committee at this time.

Does the Department consider the different phases of Smithville as freestanding, or is the entire project a large-scale residential development?

COMMISSIONER HUGHEY: Well, Smithville is coming in in stages, as I think you know. Each one of those stages is being evaluated separately. You referred initially, in one of your comments, to conceptual approval. There was conceptual approval of the concept that each stage of the development has to come in for subsequent approval.

ASSEMBLYMAN HOLLENBECK: What does the Department consider that? Does each phase then stand as a large-scale residential development?

COMMISSIONER HUGHEY: No. Each phase consists of part of a whole, which probably, on its own face, would qualify for large-scale residential development policies, because it is over 500 units.

The one I am now reviewing on remand is 800 or 900 units. So, either separately, singly, or as part of a whole, they happen to hit that set of policies. And, are they being considered individually? Yes. As a matter of fact, they are also being remanded separately.

ASSEMBLYMAN HOLLENBECK: So, each individual phase in that particular development is going under large-scale residential development?

COMMISSIONER HUGHEY: I think the policies apply for a large-scale residential development. Do you have reason to believe that is not the case, Mr. Chairman?

ASSEMBLYMAN HOLLENBECK: No, the policies apply. Obviously, they should apply to all of them equally. I personally think that one can't stand without the other if it is using the facilities of one of the other permits. It would seem only reasonable that if you are using a water system or an access of one phase in order to supply another phase, if the first phase is gone, then another one down the line could not apply to it, because it is not there, technically. So, I would think that although each one might stand alone, they do stand together. They do tie together.

What analysis has the Department conducted, or what analysis has it required the Historic Smithville Development Corporation to conduct, to determine the commercial, retail, and service needs and demands created if the 5,770 CAFRA housing units approved in the Mullica-Southern Ocean County region are actually constructed?

COMMISSIONER HUGHEY: Mr. Chairman, let me apologize to you. First, let me correct the 1,500 to 1,700 units in the phase that is now back from the Administrative Law Judge. And, I missed your question.

ASSEMBLYMAN HOLLENBECK: All right. What analysis has the Department conducted, or required the developer to conduct, to determine the commercial, retail, and service needs and demands created if the 5,770 CAFRA housing units approved in the Mullica southern Ocean County region are actually constructed?

COMMISSIONER HUGHEY: I don't know that we have asked them to do any marketing studies. I think initially, as you begin to file an application, you would look at the requirements of the area with regard to both -- particularly with regard to housing. That is part of the CAFRA review process. Whether they update that as the market changes, or as applications come on line from other projects, I don't know. I would think that anybody building in the market would be doing that. Now, I question whether that is the State's responsibility or not.

ASSEMBLYMAN HOLLENBECK: But, we don't have any marketing studies in reference to that?

COMMISSIONER HUGHEY: We have had, as a part of the EIS.

DIRECTOR WEINGART: Yes. Also, one of the permit conditions was the construction of a commercial center, and Smithville has submitted marketing data to us to determine whether a commercial center is warranted in that area -- whether there is sufficient demand for it at this time, or, if not, at what time there would be sufficient demand for one.

ASSEMBLYMAN HOLLENBECK: Well, what type of commercial/retail service outlet is proposed in Phase 1B's Lakeside commercial area?

DIRECTOR WEINGART: That is still a matter of discussion between the applicant and the Department. It has been discussed in terms of a convenience type store as an initial phase, but the marketing studies that Smithville has submitted to date have shown that there is not sufficient demand to make such a store viable.

ASSEMBLYMAN HOLLENBECK: But, there is approval for that type of development?

DIRECTOR WEINGART: Yes, there is.

ASSEMBLYMAN HOLLENBECK: What storm management, soil erosion and runoff control are, or will be, in place along the roads to and from Phase 1B commercial outlets, but outside Smithville's border, to assure ground and surface water quality?

DIRECTOR WEINGART: I am not familiar with that. I don't know the answer to that.

COMMISSIONER HUGHEY: I am not familiar with it either. I think that is probably a municipal question. We may have some information on that in the files, but I am sure the municipality has looked at that as part of the review process.

ASSEMBLYMAN HOLLENBECK: The Historic Smithville Development Corporation and the Department have maintained that the ecology of the surrounding area will not be adversely affected, in part because of the best management practices to control sources of pollution. We have testimony which indicates that the best management practices would have to be maintained at a one hundred percent level indefinitely.



We are also aware of the history of violations and some deficiencies with regard to storm water management and soil erosion control within that particular area. Do you think it is reasonable, given this record, to assume that the National Wildlife Refuge in the Great Bay Estuary will not suffer any adverse impact?

COMMISSIONER HUGHEY: Well, first of all, let me tell you that your information is not consistent with either side of the testimony that is on remand to me from the Administrative Law Judge. I have never, in either part of that testimony, seen that it has to operate at one hundred percent to be effective. I have seen a lot of discrepancy in the discussion about whether the model is a justifiable one or not, but I have not seen the one hundred percent factor.

So, you are getting your information from a different source than I am.

ASSEMBLYMAN HOLLENBECK: I thought that was testimony from the Director.

COMMISSIONER HUGHEY: It is not testimony that is in the documents I am reviewing.

ASSEMBLYMAN HOLLENBECK: No, I thought that was testimony from the Director at the last hearing.

DIRECTOR WEINGART: No. There were references made in the testimony about the extent to which the maintenance and operation of the facilities, as to best management practices, had to continue. And, there were numerous references and statements throughout the testimony as to either one hundred percent, or a total management or maintenance.

But, in order to properly evaluate that, rather than just taking the percentages, you have to look at the management and the maintenance program and plan as set forth in some of the other documentation that was submitted by the applicant, and reviewed by the Department, for those best management practices. Then it becomes a question of one hundred percent of what? I think you are really talking about conformance with the management and maintenance program that was included as part of that plan.

There was testimony that the plan should have to be adhered to by the Homeowners' Association, or by whatever entity would

maintain those facilities, in order to assure the total one hundred percent efficiency of the system.

Countervailing that as an issue was the question of whether there was a requirement, or a need, for one hundred percent efficiency of the system, which, again, is one of the issues that is before the Commissioner: The so-called "state of the art system;" the data available; and, the adequacy and accuracy of the modeling that went into the evaluation and review of that system.

ASSEMBLYMAN HOLLENBECK: So this is probably one of the problems with the Act itself when we talk about post-development. When these problems come up, what does the Department do? They can cancel the permit, which means nothing because all of the development has occurred. What action can the Department take? You know, you have a deficiency there within the Department, as to what it can do to correct a problem.

COMMISSIONER HUGHEY: Actually, Mr. Chairman, again -- you know, I made my living for a long time in front of planning boards. I would submit to you that there are a far greater set of conditions put on this kind of an applicant than there are on anybody who typically goes through a planning board, posts a performance bond, and at build-out gets the bond back.

I think there is a way to structure conditions which do much more than the typical local or county planning review process does, and I think the Department has attempted to do that.

With regard to your second question on the Brigantine Wildlife Refuge, again testimony has been offered by experts on both sides, as part of the 1C appeal. The Judge spent a lot of time talking about the impact or the non-impact on the Brigantine Wildlife Refuge. One side complained that the impact was going to come potentially from both a water quality standpoint and from the fact that more people would visit if there were more people in the area. The other side maintained a different stance, and the Judge made a ruling. I am reviewing that ruling.

ASSEMBLYMAN HOLLENBECK: Well, I think we have gone over the area of concern dealing with water. I think we are going to check the

base data on these questions: The impact of the water drawn on the diversion permit, and the question about the concern over studies done.

There was an article, written on January 20, in the Philadelphia Inquirer, dealing with the Cohansey Aquifer and the Kirkwood Aquifer, and the potential of salt water intrusion. Questions are being raised in those particular areas, and in areas where we anticipate development. That is where the questions come in concerning the salt water intrusion and the impact upon those aquifers.

The other questions I have I would like to direct to the developer, if he would like to testify.

I would like to thank you, Commissioner.

Does any other member of the Committee have any questions? (no response) I tried to cover most of the questions we had. I know we have put you in a very difficult position by having you here today. I know it has been very difficult for you to testify because of the pending actions you must take. These actions, of course, occurred before you were Commissioner, under different administrations and different directors. So, this becomes very difficult for you. You don't know what was in their minds at the time. We just hope it was always a consistent policy.

COMMISSIONER HUGHEY: Mr. Chairman, I appreciate the fact that we were walking a fine line. I think you have been most cordial in terms of letting me do that. Most of what I live with was there before I took the position of Commissioner, so I don't mind at all having to come here retrospectively.

ASSEMBLYMAN HOLLENBECK: Thank you very much.

Mr. Michael Gross, Attorney, Historic Smithville Development Corporation.

**MICHAEL GROSS:** Thank you, Mr. Chairman and members of the Committee. My name is Michael Gross. I am Special Environmental Counsel to the Historic Smithville Development Company. I am not going to testify. Instead, Doctor Gary Sawhill, who is the environmental consultant to the Historic Smithville Development Company, will testify on behalf of the company.

ASSEMBLYMAN HOLLENBECK: Dr. Sawhill?

**DOCTOR GARY SAWHILL:** Good morning. I will, just briefly, give you my qualifications. I am a licensed professional planner in the State of New Jersey, and I hold a doctorate in soil chemistry from Rutgers University. I have served as an environmental consultant to a development company for approximately five years.

I thank you for giving me the opportunity to speak before this Committee. Just as a prelude, and by way of introducing my comments, I would like to briefly summarize the posture of the CAFRA construction permits issued to Smithville, both for your purpose and for the purpose of the members of the audience.

As you already know, Smithville has received three construction permits to date, denoted by the first three phases, or sub-phases, of Smithville: 1A, 1B, and 1C.

Currently, the 1A and 1B permits are before the Department for reconsideration as a result of remand from the Appellate Division. It should be stated clearly at the outset that the Appellate Division did not find that the administrative record before DEP was insufficient. It only found that DEP did not make the requisite findings in order to issue a permit. In other words, based upon the current existing record, DEP could, under the Appellate Division ruling, make the findings required, and we believe that the administrative record conclusively demonstrates these findings can and should be made.

The 1C permit is also before the Commissioner as a result of a 22-day hearing before an Administrative Law Judge, in which the effects of Phases 1A, 1B, and 1C were meticulously examined. The results of that hearing were that the Administrative Law Judge found the project's opponents had not even come forward to make a prima-facie case that Smithville would be violating any applicable regulations.

To the contrary, this completely impartial fact-finder found that the overwhelming preponderance of evidence was that the development of all of Smithville would comply with all applicable statutes and regulations. It is in this context that these hearings are taking place.

All the court rulings to date have been solely procedural in nature. In fact, the only case in which facts regarding the environmental impacts of Smithville were ever determined by judicial forum was the 1C hearing before the Office of Administrative Law.

After hearing all the evidence regarding the accusations which have been made by the project's opponents, the Judge found that Smithville will meet all the applicable rules and regulations, and will not have any adverse impact on the environment of the area.

A word about the development of Smithville is in order. Smithville is one of the most carefully planned communities in this State, and perhaps in the nation. The Committee should take note of the fact that over one million visitors have visited Smithville for each of the last five years, and before that, before Smithville became a development, specifically because Smithville contains the Old Village, the Smithville Inn, and the Quail Hill Inn Restaurant as tourist attractions. Thus, Smithville has attracted millions of people, and it is not a wilderness site, as some opponents of the project would have you believe.

Further, the development has been planned with extensive buffers to wetlands, wildlife management corridors, wildlife management programs, and sophisticated storm water runoff controls to prevent pollution.

Most important, in 1974 a CAFRA permit was issued which allowed the construction of a sewer trunk line, in expressed contemplation of development at Smithville. Since the major cause of water pollution and adverse impacts on shellfish beds has historically been caused by septic systems, the introduction of sewers, and the fact that all of Smithville will be sewered, including the development that existed previously, minimizes any adverse impact on the environment. In fact, many of the facilities in Smithville that were previously served by septic systems have now been tied into the sewers; thus, actually improving water quality.

Finally, as mentioned previously, the second potential source of water pollution, storm water runoff, is controlled by an advanced state of the art, easily-maintained storm water management plan used

for residential construction. The effect of these techniques is to remove pollutants before they reach the surface or ground waters.

You will hear testimony today from opponents of the project, that there have been insufficient studies made by Smithville and DEP to allow a large-scale residential development. These claims frankly ignore reality. The Historic Smithville Development Company has spent approximately one million dollars for environmental studies, management plans, wildlife, water resources, water quality, ground water, estuarine and shellfish ecology, vegetation, wetlands, air quality, and other environmental studies. This figure does not include the cost of many other studies required by CAFRA, but relating to issues not raised by the opponents including, among other things, studies of energy conservation, historical and archeological resources, and traffic.

All of these issues have been studied and restudied. It has been shown that the concerns that have been raised have all been addressed, and that Smithville will not adversely affect the environment. These studies were also presented to the receiving community of Galloway Township, and were acted upon by a public board through public hearings, before approval was granted to all of Phase 1A, both in preliminary and final form, as well as Phase 1B, in preliminary and final form, and sections of 1C, to date, in preliminary and final form.

They also require that we submit, on an annual basis, environmental reports, depicting our findings of the previous year's results of traffic monitoring, air quality monitoring, water monitoring, and so forth.

We would also like to respond to some of the questions raised at the prior public hearing before this Committee on February 21. First, the Committee focused on the need for the Smithville development. No study thus far has shown that there is not a need, in terms of a market demand, for the Smithville development.

The draft study conducted by the Division of Coastal Resources only focused upon the need based on environmental constraints, and not the need based upon economic factors, such as the expansion and construction of nine more casinos in Atlantic City, and the secondary impacts resulting from this construction.

Additionally, the preliminary nature of that study has to be emphasized. As indicated, it was an initial staff draft, not yet finalized by the Division of Coastal Resources -- let alone by the Department -- and not yet released for public comment. Even at this early stage the draft has been revised for judicious reasons, already explained by Director Weingart, to delete the recommendation that the large-scale planned residential development rule be eliminated.

The second point that was raised was the suggestion that the construction of Smithville took away all the excess capacity from the Atlantic City Sewer Treatment Facility. This is simply untrue, as the Commissioner has already stated.

The third issue raised at the February 21 hearing was that other divisions within the Department of Environmental Protection raised some concerns about Smithville. It is true that in 1978 through 1980 other divisions raised concerns with respect to the conceptual 1A and 1B permits, particularly relating to impacts on wildlife and shellfish.

In 1982, however, a sophisticated water quality study was presented by Smithville to the Division of Water Resources, which showed that even using worst-case assumptions, and under worst-case conditions that included the exclusion of all our BMP's, the shellfish beds, particularly in the waters of the Mullica and Great Bay Estuary, would not be adversely impacted by Smithville.

After that report was submitted, the Division of Water Resources specifically found that Smithville would have no adverse impact on water quality, and no impact on shellfish.

At the hearing before the Administrative Law Judge, the Director of the Division of Fish, Game, and Wildlife, which contains the Bureau of Shellfisheries, indicated that he would defer to the Division of Water Resources with respect to the water quality related environmental impacts.

Moreover, both he and the official responsible for the State non-game and Endangered Species Program, also testified that their other concerns relating to wildlife had been addressed by the massive amounts of work and study done by HSDC since 1980.

In fact, the official in the Division of Fish, Game, and Wildlife who is responsible for reviewing and commenting on Smithville, has written that HSDC has gone far beyond that required of other developers in the area. Moreover, the Division has been satisfied that Smithville will not adversely affect endangered and threatened species nor the Brigantine National Wildlife Refuge.

Therefore, although initially there were concerns raised, and requests for additional information, once that information was submitted, the other divisions of DEP found that there would be no adverse environmental impacts caused by Smithville.

The other concern raised by the Committee was, who maintains the best management practices for storm water runoff? It should be pointed out that many constituents of the best management practices are turned over to the municipality to maintain. Galloway Township has its own public works department to properly maintain the best management practices. Moreover, testimony at the 1C hearing showed that the maintenance requirements for these systems were minimal and simple, so that the Township, as well as the Homeowners Association, should be readily able to handle their respective maintenance responsibilities without substantial expense.

The fifth issue raised was with respect to septic systems being tied into sewers. There was testimony from Mr. Weingart that several of the areas of Smithville previously on septic systems would be connected to sewers. In addition, there has been a proliferation of 24-unit developments around Smithville, and in close proximity to the Brigantine National Wildlife Refuge. These developments, which are not the subject of CAFRA jurisdiction, are all on septic systems and they have no controls on storm water runoff.

After Smithville started development, the construction of these 24-unit subdivisions virtually stopped because of the competition from Smithville.

One of the goals of the large-scale development rule is the elimination of widely-dispersed, sprawl-type, environmentally-harmful, development, through the encouragement of large-scale, strictly-controlled, and concentrated-planned residential development.



If Smithville does not continue development, these 24-unit subdivisions will again start developing and will create a substantial threat to the environment. Indeed, there are several of these still on the books of Galloway Township and Atlantic County that have approvals, but they have not yet started construction.

The sixth concern raised was whether Smithville would adversely affect the regenerative capacity of the waters. It is true that Smithville utilizes ground water for its potable water supply, as do many other developments. Prior to being able to utilize this ground water, Smithville received a water diversion permit from the Division of Water Resources. In order to receive this permit, Smithville had a study prepared on this very issue by the respected hydrological firm of Geraghty and Miller, which concluded -- and they restated this at the 1-C hearing -- that there would be no such adverse effect.

At several quasi-judicial hearings before the Division of Water Resources, these conclusions and issues of ground water withdrawal and regenerative capacity were explored and the Division of Water Resources satisfied that the diversion of potable water by the Smithville Water Company would not have an adverse impact on ground water supply.

The seventh concern raised was the steps that were being taken to minimize the impact on water quality. Mr. Weingart mentioned storm water management techniques, but he failed to mention the overriding fact that the Smithville development is totally serviced by central sewers. Extensive testimony at the 1C hearing indicated that shellfish beds had been reopened after areas that were previously serviced by septic systems began to be serviced by sewers -- a situation which presently exists at Smithville.

In addition, HSDC has implemented many other measures, such as minimization of lawn areas, maintenance of natural vegetation, and severe restrictions on all use of pesticides and fertilizers, which will protect water quality.

Finally, if the golf course proposed in Phase 1C is to be built, DEP has required that the greens have liners and leachate collection systems, to prevent fertilizers or pesticides from reaching

the ground water. There are many landfills in this State which do not have these types of controls.

We believe the opponents of the Smithville project have taken an ideological rather than a reasoned position on these issues. They have continually made charges, but they have failed to come forward with any proof that Smithville will have an adverse impact on the environment. By comparison, Smithville has come forward with studies that show Smithville will have, and has had, no adverse impact on the receiving community of Galloway Township and its environs. Thank you.

ASSEMBLYMAN HOLLENBECK: I would like to ask you a couple of questions. Are you going to speak or is Mr. Gropper going to speak to my questions?

MR. GROSS: I think we will speak to your questions, because Mr. Gropper has a separate statement to make that is really not related to these issues.

ASSEMBLYMAN HOLLENBECK: Dealing with the environmental studies made by the developer, you said there was no deficiency within them? The Department showed no deficiency in the issuance of the permits?

DR. SAWHILL: Your statement is rather general, sir, so I am going to have to give you a general answer. Throughout the years that environmental studies have been put forth to DEP, they have certainly had deficiencies, and we received requests for additional information and clarification. In some cases, studies we submitted would lead to requests for further studies.

So, the request for studies, and the response by the developer to DEP, and DEP review, has been an ongoing process since 1979.

ASSEMBLYMAN HOLLENBECK: The question was: Were there deficiencies in any of the reports, dealing with the secondary impacts that would be created by the development?

DR. SAWHILL: First of all, we have to recognize the fact that Smithville is itself a secondary impact of Atlantic City's economic growth.

ASSEMBLYMAN HOLLENBECK: No. We are talking about the actual permit process now. You said there were no deficiencies.

DR. SAWHILL: No. If you understood me to say that, I apologize. What was said in my response to your question was that throughout the years there has been a series of deficiencies, and additional information has been requested by DEP of the developer. At this stage, we have responded to all those requests.

ASSEMBLYMAN HOLLENBECK: In other words, you have submitted more studies dealing with the secondary impacts?

DR. SAWHILL: Yes.

ASSEMBLYMAN HOLLENBECK: Were they submitted originally?

DR. SAWHILL: They were submitted at the time of the 1C-- There was an original secondary impact statement; there was a request for clarification of that; and, during the 1C hearings those impacts were discussed.

ASSEMBLYMAN HOLLENBECK: What about 1A and 1B?

DR. SAWHILL: There was a statement of secondary impacts on 1A and 1B.

ASSEMBLYMAN HOLLENBECK: Was there a deficiency in that?

DR. SAWHILL: There was no deficiency to the extent that there was additional information requested.

ASSEMBLYMAN HOLLENBECK: There was a deficiency to the point that the Supreme Court ruled on it, weren't there? You said there was a deficiency in addressing the secondary impacts that were likely to be created by the development.

MR. GROSS: There is a distinction that has to be made here. The Supreme Court and the Appellate Division have had before them, basically, the decisions of DEP. They may have said there was a deficiency in DEP's decision, but they did not say there was a deficiency in the information that was submitted by the developer.

That is one very important distinction. You are asking if we submitted sufficient information. It has always been our position that we have submitted sufficient information.

ASSEMBLYMAN HOLLENBECK: I noted that the Department, in its defense of the action, didn't submit all the documents -- didn't submit all the hearings that went before them. One of the prime areas of concern by the litigants in the action was that the Department didn't answer one of their prime concerns.

MR. GROSS: I think you just hit the nail on the head. The Supreme Court criticized the Department; it did not criticize the developer for not supplying information. We cannot control what the Department does with the information we submit.

ASSEMBLYMAN HOLLENBECK: I do not want to give the impression that I am criticizing the developer. I am not in any way criticizing your whole concept. I have some concerns, and the court also has some concerns dealing with that particular area of deficiency. Also, there is a concern as to why a large-scale, regional development had to go into that particular area -- a low-growth area. That was part of the remand by the court, and that is why we are having additional hearings.

Now, none of this dealt with you. If the Department felt there was a deficiency in your application, then it should have found it. Apparently they reached a decision. They made the decision to grant an application, and the court said that was deficient.

DR. SAWHILL: One of the issues on the secondary impact statement is whether there was a separate and distinct analysis of secondary impacts for the 1A and 1B permits. There was a separate and distinct statement about secondary impacts. The analysis of those impacts was throughout the report. When we talked about impacts to off-tract resources, they were in fact discussed.

ASSEMBLYMAN HOLLENBECK: The court erred?

MR. GROSS: I think, with all due respect, you misunderstand what the court did. The court did not say, "We have reviewed the record, and the record is insufficient. Smithville did not submit sufficient information." The court said that DEP did not address the issues. That is very different. What the court said is very different from what is being implied here.

We have submitted all of the information. I think you heard Dr. Sawhill say that with respect to secondary impacts, for instance, we have submitted secondary impact analyses throughout our submissions. The court didn't say those submissions were insufficient; it said that DEP didn't sufficiently address the issue. And, I really think that question would probably be more properly addressed to DEP.

ASSEMBLYMAN HOLLENBECK: As I said, the question is not with the developer. It is with the permit process we are dealing with. You just brought it into focus. We can deal specifically with that during the permit and during the construction process. You are following the conditions of the permit.

Have you seen the letter of February 28 that I cited to the Commissioner before.

DR. SAWHILL: From Frank Burns?

ASSEMBLYMAN HOLLENBECK: Yes.

DR. SAWHILL: Yes. Let me make one clarification on that. You stated it was from the Soil Conservation District. It was not. It was from Frank Burns, as a citizen of Galloway Township.

ASSEMBLYMAN HOLLENBECK: I see.

DR. SAWHILL: That was not permitted to go out on SCS stationery.

ASSEMBLYMAN HOLLENBECK: Do you disagree with what he is saying? In other words, in the grass areas, have you grassed-in, or sodded-in areas in excess of 400 feet?

DR. SAWHILL: There are areas in excess of 400 feet.

ASSEMBLYMAN HOLLENBECK: Is that in violation of the permit?

DR. SAWHILL: No.

ASSEMBLYMAN HOLLENBECK: In other words, the permit doesn't say in advance that you can only have 400 square feet of grass per unit?

DR. SAWHILL: The controls which were submitted initially, as part of the conceptual permit, contained a statement that the developers of a section within Smithville could not put more than 400 square feet within single and duplex units.

ASSEMBLYMAN HOLLENBECK: Forget about the conceptual permit. It wasn't allowed. Is there any condition on your permit that allows you to do this, or that limits you to 400 square feet? Are there any conditions that were put forth by DEP, as far as the development is concerned, during the various stages of development?

DR. SAWHILL: Certainly.

ASSEMBLYMAN HOLLENBECK: Dealing with the covering, the ground covering -- the sodding of areas that are more than 400 square feet -- that is not one of the conditions?

DR. SAWHILL: No.

ASSEMBLYMAN HOLLENBECK: Is there anything that deals with the nitrate levels that come off the land and become a potential danger to the ground water?

DR. SAWHILL: Yes.

ASSEMBLYMAN HOLLENBECK: How is that addressed?

DR. SAWHILL: How is it addressed by the developer?

ASSEMBLYMAN HOLLENBECK: How it is addressed by the developer during the various stages of development?

DR. SAWHILL: Well, we have ground water monitoring wells, as well as surface water monitoring wells. We have a whole monitoring program, as approved by the Division of Water Resources.

ASSEMBLYMAN HOLLENBECK: Is the question of shrubbery and stuff lying around on the ground preventing the absorption of ground water runoff -- as charged by Mr. Burns -- valid?

DR. SAWHILL: I think in isolated cases it would be valid, but, speaking as a professional in planning, Smithville has done a good job of maintaining the soil at this point.

ASSEMBLYMAN HOLLENBECK: Is that a violation of any condition put forth by DEP?

DR. SAWHILL: No, it is not.

ASSEMBLYMAN HOLLENBECK: Is it a condition put forth by the Soil Conservation group of Atlantic County?

DR. SAWHILL: No, it is not.

ASSEMBLYMAN HOLLENBECK: Is it anybody's condition?

DR. SAWHILL: It is our condition. It is a condition of Smithville's plan.

ASSEMBLYMAN HOLLENBECK: As presented? In other words, you put forth that these were the conditions you would follow, and the Department accepted that. So, if you didn't bother to do it, then you violated one of your own conditions?

DR. SAWHILL: I would say that, in its rudest form, is accurate.

ASSEMBLYMAN HOLLENBECK: What about the welling around trees, as expressed by Mr. Burns? Is that being done during the construction stages?

DR. SAWHILL: In the areas where that is a condition, yes -- a condition of the controls, not a condition of DEP.

ASSEMBLYMAN HOLLENBECK: Again, there is no case where this has not been done to protect those areas?

DR. SAWHILL: There are cases where it has been done in the past. And, there are cases where violation notices have been issued to the Homeowners Association.

ASSEMBLYMAN HOLLENBECK: Let me speak to you with reference to the water system. You are going to form a new, separate water company, is that correct?

DR. SAWHILL: That water company has already been formed.

ASSEMBLYMAN HOLLENBECK: It has been formed?

DR. SAWHILL: Yes.

ASSEMBLYMAN HOLLENBECK: How many customers does it have altogether?

DR. SAWHILL: I would say over 700 at this point.

ASSEMBLYMAN HOLLENBECK: At the completion of the project, how many customers will it have?

DR. SAWHILL: I wouldn't know.

ASSEMBLYMAN HOLLENBECK: It depends on the extent of the development, I would assume.

DR. SAWHILL: Yes. You would have 5,700, plus or minus, residential units -- to the extent they are developed -- plus whatever the commercial demands might be.

ASSEMBLYMAN HOLLENBECK: And, was that separate water company formed as a corporation?

DR. SAWHILL: Yes.

ASSEMBLYMAN HOLLENBECK: Who owns that corporation?

DR. SAWHILL: It is the Smithville Water Company and I think Mr. Gropper can best address its future.

ASSEMBLYMAN HOLLENBECK: Oh. I understood it was a--

DR. SAWHILL: An MUA type thing?

ASSEMBLYMAN HOLLENBECK: Yes.

DR. SAWHILL: No. It is set up as the Smithville Water Company.

ASSEMBLYMAN HOLLENBECK: Would the Smithville Water Company be responsible for all repairs?

DR. SAWHILL: Yes.

ASSEMBLYMAN HOLLENBECK: If an endangerment to the ground water showed up, and there was an order by DEP that they could not draw ground water from that well, the water utility itself would have to relocate and seek its water from other sources?

DR. SAWHILL: They have done that.

ASSEMBLYMAN HOLLENBECK: They would have to do that?

DR. SAWHILL: They have done that, yes.

ASSEMBLYMAN HOLLENBECK: Now, we are talking about post-development -- the completion of an operating system.

DR. SAWHILL: Okay. Yes. But, I think these questions-- The Smithville Water Company is being transferred to the New Jersey Water Company. I am not familiar with the details of that, so I think Mr. Gropper could better address it. I will be happy to answer your questions to the best of my ability.

ASSEMBLYMAN HOLLENBECK: I thought Mr. Gropper was going to to talk about other matters, rather than this particular development.

MR. GROSS: Well, the formation of the Smithville Water Company is not really an environmental issue. It is a corporate structure type of issue.

ASSEMBLYMAN HOLLENBECK: It deals with another area that I am fairly familiar with, small water companies. We form them and we have a nice corporation serving them, until we need maintenance and then, of course, nothing is done. We bankrupt them and 700 homes are left without a water supply. That has happened throughout the State. Just recently, it happened in Morris County.

MR. GROSS: I think, Assemblyman Hollenbeck, that this particular water company was formed at a time when DEP was acutely aware of that particular type of problem, number one.

Number two, as Dr. Sawhill indicated, there is a pending sale to the New Jersey Water Company, which, of course, is not a small water company.



ASSEMBLYMAN HOLLENBECK: Who is the owner of the Smithville Water Company?

MR. GROSS: I believe it is a wholly owned subsidiary of the Historic Smithville Development Company.

ASSEMBLYMAN HOLLENBECK: The sewerage -- the connection to the sanitary sewer is obviously being installed by the developer, because that is a requirement for the developer.

DR. SAWHILL: The force main to serve Smithville was installed prior to the Historic Smithville Development Company's existence. The force main and the pump station, which exist in the center of Smithville, were constructed in 1976.

ASSEMBLYMAN HOLLENBECK: They were not constructed by Smithville?

DR. SAWHILL: No.

ASSEMBLYMAN HOLLENBECK: They are owned by someone else?

DR. SAWHILL: The Atlantic County Sewerage Authority.

ASSEMBLYMAN HOLLENBECK: Who pays the use rates on the sewage?

DR. SAWHILL: The customers.

ASSEMBLYMAN HOLLENBECK: Are they individually charged, or is there going to be a surcharge?

DR. SAWHILL: There is an individual hookup charge.

ASSEMBLYMAN HOLLENBECK: Individual hookup charges; connection charges; use charges against the individual owners, based on water consumption; the meter flow; or, just a flat rate, based upon normal discharge?

DR. SAWHILL: I am not sure.

ASSEMBLYMAN HOLLENBECK: What was the design criteria for the sewage collection system on a per acre basis -- gallons per acre?

DR. SAWHILL: I am not sure. I can get those answers for you, but I do not know off the top of my head.

ASSEMBLYMAN HOLLENBECK: They would have all been submitted as part of the documentation?

DR. SAWHILL: Oh, yes, it is definitely part of the submission.

ASSEMBLYMAN HOLLENBECK: You didn't do that particular portion of it?

DR. SAWHILL: I administered the collaboration of it, but I didn't do the calculations. I am not an engineer. We have letters from the Atlantic County Sewerage Authority granting us capacity.

ASSEMBLYMAN HOLLENBECK: When we deal with the Historic Smithville Development Corporation or the Homeowners Association, does somebody have-- What is the Homeowners Association?

MR. GROSS: It is an incorporated Homeowners Association, which is subject to certain bylaws. It is operated by a manager. A Board of Trustees governs the Association.

ASSEMBLYMAN HOLLENBECK: Can they be abolished?

MR. GROSS: Can they be abolished? No, sir.

ASSEMBLYMAN HOLLENBECK: After development is concluded in the area and a problem develops with the ground water system, say from the development itself, who is responsible for that?

MR. GROSS: It depends on who has responsibility for whatever is causing the problem.

ASSEMBLYMAN HOLLENBECK: Let's say there is runoff from the parking lot of a large commercial development, such as a shopping center, and we find we are getting some oil and some normal problems resulting from the runoff from the parking lot. Who would take care of that?

MR. GROSS: If there was a large shopping center at Smithville, I would assume the owner of the shopping center would take care of that.

ASSEMBLYMAN HOLLENBECK: Not the Homeowners Association?

MR. GROSS: It depends on who owns that facility.

ASSEMBLYMAN HOLLENBECK: How do we get him to do it?

MR. GROSS: Well, since there hasn't been a large shopping center approved at Smithville on the local level, I am somewhat at a loss to answer your question. I would assume that at the local level, both performance and maintenance bonds would be required, number one.

Number two, the statutes of this State, which I am sure this Committee had a great deal to do with, protect both ground and surface

water, and for a long time they have prohibited any discharge of water defined as "deleterious substances" into the surface and ground water. Therefore, DEP certainly has enforcement powers to force the property owner of that particular entity to rectify the situation -- just as in any other development, anywhere in the State.

ASSEMBLYMAN HOLLENBECK: Except that in this partiucular area I was concerned because of what I felt was environmental sensitivity.

MR. GROSS: There is no question about the fact that this area is an area of environmental sensitivity. But, as Doctor Sawhill testified, the primary contributor to the degradation of that environment would be septic systems. And, I point out that there are uncontrolled septic systems very close to Smithville, and closer to the waterways than Smithville is. Smithville is entirely sewered.

There was testimony at the 1C hearing that this is what causes degredation, septic systems. And, the sewer systems actually serve to cleanse the system.

DR. SAWHILL: Let me add to that. The existing shopping center at Smithville that existed prior to any development proposals, has a parking lot, such as you are referring to. The runoff from the existing parking lot flows directly into the lake. There is absolutely nothing to stop it. It flows into one of the open surface water bodies within Smithville, which discharges -- and has discharged for 20 or 30 years -- into the estuary.

ASSEMBLYMAN HOLLENBECK: Is there any degradation of that lake?

DR. SAWHILL: Sure, there is tremendous degradation of that lake.

ASSEMBLYMAN HOLLENBECK: From the surface runoff?

DR. SAWHILL: Right. Is there a plan to correct that? Yes. Is there a condition in the CAFRA permit to do that? Yes.

ASSEMBLYMAN HOLLENBECK: Now, after you have fully developed-- I would assume that when it is all developed, the developer is gone. He is not going to build any more units. He has completed his development in the area, and that is what I was looking at. I was trying to find out if a problem arises, who is going to fix it? Who is responsible?

Now, DEP sits here and says, "Stop the permit." There is no permit. You don't need it. The development is there now. How do you stop it, and who pays for it? Does the municipality pay for it? Is that understood? Are the roads going to be dedicated to the municipality?

DR. SAWHILL: In some cases the roads and the trade elements are dedicated to the municipality.

ASSEMBLYMAN HOLLENBECK: And then, of course, I assume you put up a bond during the construction in order to make sure the development is completed as you said you would construct it?

DR. SAWHILL: That's correct.

ASSEMBLYMAN HOLLENBECK: Is there a permanent maintenance bond given to the municipality?

DR. SAWHILL: No. There is an acceptance by the municipality.

ASSEMBLYMAN HOLLENBECK: But, once they accept it, you get a refund of your bond, don't you?

DR. SAWHILL: Yes.

ASSEMBLYMAN HOLLENBECK: So, there is no more bond.

DR. SAWHILL: But, is there a positive fiscal impact from the Smithville development to allow the municipality to maintain those? Yes. And, has the municipality accepted the maintenance schedule as part of our site plan approval on those improvements? Yes.

ASSEMBLYMAN HOLLENBECK: You said before that if we didn't allow the large-scale development, and we allowed all 24-unit developments, there would be great environmental danger from that. Yet, that same 24-unit development has to go through the local planning board also. If there is protection one way, then there has to be protection the other way.

MR. GROSS: The difference there is that those 24-unit subdivisions don't have to connect to that sewer system because they may not be adjacent to the sewer system. The 24-unit subdivisions we are talking about, adjacent to the Brigantine National Wildlife Refuge, are not connected to sewer systems. They are all on septic systems. There are no restrictions as to lawn area, etc.

To answer your question, the second group that would be responsible for continuing maintenance is the Homeowners Association. Some of the best management practices are turned over to them. There are two representatives from the Smithville Homeowners Association on your witness list. I think they can very ably address what steps they have taken to ensure they will continue with the management program at Smithville.

ASSEMBLYMAN HOLLENBECK: Did they put up a bond guaranteeing this?

MR. GROSS: I don't think you will find a perpetual bond in any area of the State. There are enforcement powers if, in fact, someone allows the maintenance to become shoddy for some reason, which we do not think will happen. These best management practices -- these storm-water control systems -- are easily maintained. If that happens, there are enforcement powers within the State to correct it. The municipality has enforcement powers, the Soil Conservation Service has enforcement powers--

ASSEMBLYMAN HOLLENBECK: (interrupting) But, we know that the Homeowners' Association can be dissolved with a stroke of a pen.

MR. GROSS: I disagree, Assemblyman.

ASSEMBLYMAN HOLLENBECK: I thought you said they could be dissolved.

MR. GROSS: I said "no." The answer to your question was, "no, it could not be dissolved."

ASSEMBLYMAN HOLLENBECK: In other words, are they permanent?

MR. GROSS: That is correct.

ASSEMBLYMAN HOLLENBECK: Does it become a permanent lien on the maintenance or on the property, on the mortgages or on the titles on the property?

MR. GROSS: If the Homeowners Association wants to take action against an individual homeowner, it can.

ASSEMBLYMAN HOLLENBECK: If there was a class action because of someone doing too much fertilizing of grass, and we found the nitrate level rising, would the Homeowners Association be responsible?

MR. GROSS: Let me address that in three ways. Number one, the seed that is available for purchase by the homeowners is a specially manufactured seed that does not need a high degree of fertilization.

Number two, the fertilizer that is sold and must be used by the homeowners contains certain substances, so there is no danger of the fertilizers causing degradation to the water quality.

Number three, and most important, the testimony from our experts has been that even if these best management practices don't work, there will be no danger to the waters of the Mullica River and the Great Bay. That is where the shellfish are located.

To concentrate on the best management practices, and whether or not they will work, our experts tell us that even assuming they will not work, because of the other things that are done at Smithville and in other environmentally protected areas, there will be no adverse impact on either the water quality or the shellfish.

MR. SAWHILL: Let me add to that. In terms of the design of these systems, they are very liberally designed. There isn't one mechanism within each sub-neighborhood of Smithville which is designed to remove the pollutant load for others. In other words, typically what one would do in a development is, he would discharge everything into a single pond and allow that pond to serve as a removal for sediment and pollutants. We have at least three or four steps before any water reaches a detention pond.

ASSEMBLYMAN HOLLENBECK: You made reference in your testimony to appellants who have asked various questions and have mentioned concerns, and you said that no one has shown that there will be an adverse impact. That is not normally the requirement, is it?

MR. SAWHILL: No, I wouldn't say it is.

ASSEMBLYMAN HOLLENBECK: The requirement is that the developers must show that there is not an impact, rather than the appellants.

MR. SAWHILL: Yes.

ASSEMBLYMAN HOLLENBECK: All right, I've seen that a couple of times.

MR. GROSS: Every time we say that the appellants have not shown any impact, we follow up by saying that all of our studies have shown there will not be an adverse impact.

ASSEMBLYMAN HOLLENBECK: But, there was never a burden upon them to show that.

MR. GROSS: Well, yes, there was. In the hearing before the Administrative Law Judge, since the permit was issued and they attacked it, the Administrative Law Judge correctly ruled that they had the burden of showing that DEP acted improperly when they issued the permit. Therefore, they had the burden in that particular proceeding of showing that DEP acted improperly, and in fact, that there would be adverse impacts.

ASSEMBLYMAN HOLLENBECK: By the way, is it your position that each of the phases stands alone as a large-scale residential development?

MR. GROSS: Based upon the definition in the Coastal Resource and Development policies of a development of 500 units or greater, yes, each phase does stand alone. However, you would have to put blinders on in order not to recognize that each phase is part of a large development that has been master-planned. It obviously would be very unwieldy if we were to come in with 6,800 units at one time for a permit; therefore, they are phased.

But, yes, according to the rules, the large-scale residential development rule, each phase -- 1A, 1B, and 1C -- contains over 500 units, and therefore, stands alone. Again, it is part of an overall plan.

ASSEMBLYMAN HOLLENBECK: Could Phase 1C be considered without Phase 1A or 1B?

MR. GROSS: No, I didn't say that. All of those phases stand alone, and they can all continue to stand alone. For instance, let's assume that 1C was built, and for some reason, 1B wasn't built. There is room in 1C for some of the facilities that were supposed to go into 1B. There is flexibility in the plan, but I don't know of any basis to say that if one section was not built, that the whole development--

ASSEMBLYMAN HOLLENBECK: (interrupting) Would you then have to revise the whole phase?

MR. GROSS: Excuse me?

ASSEMBLYMAN HOLLENBECK: Would you have to put in a revision for the one phase?

MR. GROSS: Depending on what occurred-- If for some reason, the units remaining in 1A could not be built, we probably wouldn't have to do anything to the other phases.

ASSEMBLYMAN HOLLENBECK: In other words, if Phase 1B or 1C used nothing that was going to happen in 1A-- Did the local planning board use it as a single unit, or as three separate units?

MR. SAWHILL: They approved Phase 1A, 1B, and 1C separately.

ASSEMBLYMAN HOLLENBECK: If any of the ingress or egress from 1A or 1B was being used by 1C, and neither 1A nor 1B were constructed, then couldn't you do it because you had gotten local approval?

MR. SAWHILL: No, that is not true. The preliminary approval for all of Smithville -- 5,700 units -- was granted as one approval by Galloway Township. Then, on subsequent applications, they granted what we refer to as a "prefinal approval" on all of 1C. They couldn't, in fact, stand alone.

The improvements that you were referring to-- First of all, the water supply and the road supply-- The road supply was there. The water supply is now really within the boundaries of 1C, and the sewage pumping station is within the boundaries of 1C.

ASSEMBLYMAN HOLLENBECK: If Phase 1C wasn't approved, and if the Commissioner ruled against 1C, what would you do?

MR. SAWHILL: That is not an issue. Phases 1A and 1B can stand alone.

ASSEMBLYMAN HOLLENBECK: How do you account for the other stuff in the other phase?

MR. SAWHILL: They have already had approval to run those lines to service 1A and 1B. Those lines are already in.

MR. GROSS: Those physical improvements are already in 1C.

ASSEMBLYMAN HOLLENBECK: Even though they are without a permit?

MR. SAWHILL: They started in 1C. Prior to the--

ASSEMBLYMAN HOLLENBECK: (interrupting) You haven't had approval on 1C, have you?



MR. SAWHILL: The pump station was put in in 1976. That was before we were even here.

ASSEMBLYMAN HOLLENBECK: Do you have a question, Assemblyman?

ASSEMBLYMAN ADUBATO: I just want to follow-up on some of the Chairman's points regarding the question of environmental impact.

Have you done any analysis? You said that the people who questioned the negative environmental impact of the Smithville development have not proved anything in that area. What analysis do you have in terms of the impact of pesticides, herbicides, or hydrocarbons?

MR. GROSS: First of all, the water quality monitoring monitors hydrocarbons. Secondly, the constituents of the pesticides, herbicides, and those types of pollutants, are controlled through the Homeowners' Association in terms of what is allowed to be applied to the soil or to the plants. So, the individual homeowners are restricted as to what they can purchase.

With respect to the golf course, which is really the place that the pesticides and herbicides would primarily come into play, the restrictions, as Dr. Sawhill indicated in his testimony, are probably state of the art for landfills. We have not made a determination yet as to whether or not to construct that golf course. Because of the environmental constraints, and the condition of the DEP permit which says that if there are any adverse impacts that the golf course must revert to its natural state, we have to question whether that golf course should be constructed, based upon the level of environmental knowledge at this point in time.

ASSEMBLYMAN ADUBATO: So, you haven't done any analysis at this time?

MR. SAWHILL: Oh, yes, we have. Our water quality analysis-- The water quality monitoring that was performed on our behalf considered what would occur if the pesticides and herbicides that were allowed by Smithville would somehow leach into the ground water. What they did was, they tested for some primary heavy metals that might be associated with stormwater runoff. Those were the primary constituents they felt could contribute to adverse water quality.

ASSEMBLYMAN ADUBATO: Is the information from those models before the Commissioner?

MR. SAWHILL: Yes.

ASSEMBLYMAN ADUBATO: Okay. There are a couple of other points, which the Chairman raised, that I want to follow-up on. Regarding the issue of the impact on shellfish, you said that the Division originally questioned the negative impact on shellfish. You said there have been studies done that prove there wouldn't be an adverse impact on shellfish.

Isn't it correct to say that those studies have been done only with regard to adult shellfish? Don't those studies basically focus on just the question of whether any impact on the shellfish would cause them to die?

MR. SAWHILL: No, you start out with the premise that if there is no impact on water quality, there won't be any impact on shellfish. This is what the modeling has proven. There will not be any impact on the water quality of the Mullica River; therefore, there will not be any impact on the shellfish.

MR. GROSS: At one of the hearings, we went to the expense of retaining a noted authority on shellfish, who has done various studies on other systems throughout the country. He testified that as far as he was concerned, because of the conclusions with respect to the impacts on water quality, Smithville would have no adverse impacts on water quality. In his opinion, Smithville would also have no adverse impacts on shellfish.

I should note that the opponents at that hearing did not come forward with an expert in the field of shellfish. It would seem to me to be more appropriate to use the judicial forum to explore that issue, than to use this forum -- not by you, but by those people who are interested in that issue.

ASSEMBLYMAN HOLLENBECK: By the way, originally the Shell Fisheries Council stated some concerns with reference to this development. Have you submitted that information?

MR. GROSS: That is correct. There are two Councils of Shell Fisheries: One is in the Division of Water Resources, and one is in the Division of Fish, Game, and Wildlife.

The Director of the Division of Fish, Game, and Wildlife testified at the 1C hearing, and a representative of the Division of Water Resources also testified. Both of them indicated that their early concerns were relieved and overcome by the studies that Smithville had subsequently performed and had submitted to DEP.

ASSEMBLYMAN HOLLENBECK: That they had concerns with their original application, and that you submitted further information to alleviate their concerns?

MR. GROSS: As part of the 1B permit conditions, we had to submit additional information, and we did so.

ASSEMBLYMAN ADUBATO: If I may, Mr. Chairman, I want to follow-up on something.

You said before that the water quality work you did on the report, which has been submitted to the Commissioner, specifically addresses the issue of the potential adverse environmental impact of pesticides, herbicides, and hydrocarbons.

MR. GROSS: I'm not sure it addressed hydrocarbons specifically.

ASSEMBLYMAN ADUBATO: You said that was in the model.

MR. GROSS: Well, let me tell you what the model did. There are two reports. One was done by Dr. Kirk Brown who developed the standards for the Pinelands' septic system. Obviously, he is a noted authority. He performed the study on the golf course, and he recommended that only certain constituent fertilizers, herbicides, etc. be utilized.

With respect to the rest of the development, the person who performed the modeling felt that because of the restrictions on the amount of pesticides and herbicides that could be utilized and the constituents of those pesticides and herbicides, it would be so minute -- what would come off the lawns and the foliage -- that it did not have to be considered. That was his testimony.

ASSEMBLYMAN HOLLENBECK: As far as hydrocarbons are concerned?

MR. GROSS: Hydrocarbons are monitored. In terms of water quality, the things that affect shellfish are things like heavy metals -- mercury, zinc, lead -- and those types of things.

ASSEMBLYMAN HOLLENBECK: They affect humans too.

MR. GROSS: They affect humans too. They don't affect shellfish as much as they affect humans. As a matter of fact, to determine what shellfish you can eat, the way DEP does it is by a fecal coliform count. Shellfish love fecal coliform, but humans don't. Those are the things that are monitored -- things that would cause the Mullica/Great Bay Estuary to change. Those pollutants -- mercury, lead, hydrocarbons -- are monitored for.

The result of the model was that there would be such an infinitesimal increase in any pollution that it would have absolutely no effect on the water quality, from any source.

ASSEMBLYMAN HOLLENBECK: Was it because of the coliform that the shellfish groups were concerned?

MR. GROSS: No. The shellfish groups had initial concerns because they did not understand the storm water management controls. They did not have the benefit of the modeling that was performed -- those types of issues. There are valuable shellfish beds in those areas, and we would expect the Division of Water Resources and the Division of Fish, Game, and Wildlife to be concerned about the protection of those shellfish beds. Once we submitted the information they requested, those concerns were alleviated.

ASSEMBLYMAN ADUBATO: And, now they are satisfied?

MR. GROSS: According to the testimony at the 1C hearing, they are satisfied.

ASSEMBLYMAN HOLLENBECK: They are also satisfied with the 1A and 1B applications?

MR. GROSS: The 1C hearing covered, to a large degree, the impact of not only 1C, but 1A, 1B, and all of Smithville. The water quality modeling that we did assumed that all 1,600 units would be built. It said that even if all the units were built, and even if the storm water management plan didn't work, there still wouldn't be an adverse impact on the Mullica/Great Bay Estuary and the shellfish, because we were totally sewered.

ASSEMBLYMAN HOLLENBECK: And, that would take care of the concerns about the storm water runoff and the normal problems with parking areas -- or a commercial development, such as a dry cleaner?

MR. GROSS: There were two assumptions made. One was, "What happens if none of these controls are used?" And, the second one was, "What happens if the controls are used?"

However, when the consultant said "controls," all he meant were detention basins -- the ponds that you might see on the site.

As Dr. Sawhill indicated, before the water even gets to those basins, there are numerous other steps it has to go through which are part of the storm water management controls.

So, the consultant was also very conservative when he said that even with no storm water management control, you are not going to have an adverse impact on this delicate estuary and the shellfish. But, if you include the storm water controls -- only the detention basins -- it will be even less of an impact.

ASSEMBLYMAN HOLLENBECK: How do we take care of it before it reaches a detaining basin?

DR. SAWHILL: Through a series of swales, oil, and grid chambers.

ASSEMBLYMAN HOLLENBECK: But, that only takes care of the physical aspect of it -- how you remove it. It doesn't take care of what is within that water runoff, does it?

DR. SAWHILL: Sure it does. First of all, you are removing sediment, because you are concerned about the physical part of it -- what is in it.

ASSEMBLYMAN HOLLENBECK: Let's say we have salt on the roads and we have a runoff.

MR. GROSS: We do not use -- as you will hear from the Homeowners Association -- salt on our roads.

DR. SAWHILL: Let's just use that for an example. That is going to break down into sodium and chloride, which is going to react with the soil in a certain way as it travels through that system.

We have devised a series of swales. They are specifically devised to uptake those kinds of nutrient elements. That is why we have the grass-cutting program; that is why we have the removal of grass; that is why we have grass swales as well as stone swales, and oil and grid chambers within the same system.

A standard residential development's concept is getting rid of the water. Our concept in drainage was not just to get rid of the water, but to get rid of the constituents, or to maintain the constituents within that water on the site, and deal with it on the site in a proper manner.

ASSEMBLYMAN HOLLENBECK: I want to thank you, Dr. Sawhill and Mr. Gross. Our questions do not imply anything against the developer in any way. The Committee knows it is very difficult for a large development to meet all the requirements of the environmental standards, and the standards of the DEP. We know the process is long, very difficult, and very expensive.

We want to thank you for appearing before the Committee.

DR. SAWHILL: Well, we all hope it improves. Thank you.

MR. GROSS: Thank you, Mr. Chairman.

ASSEMBLYMAN HOLLENBECK: Malcolm Gropper, President, Historic Smithville Development Corporation. Good morning, sir.

**MALCOLM GROPPER:** Good morning, and thank you for the opportunity to speak to you today. I am Malcolm Gropper, President of the Historic Smithville Development Corporation, the developer of the Town of Historic Smithville Planned Residential Development.

Since the initiation of planning for Smithville, in 1979, the development has been the target of a variety of unfounded criticism concerning its environmental impacts. My purpose today is to give you the history concerning the development of Smithville in order to give you a general sense for how carefully the development of the Town has been planned to avoid adverse environmental impacts, and to show how important a contribution Smithville is making to the regional housing needs generated by the casino development boom in Atlantic City.

In 1975 and 1976, this Legislature viewed Atlantic City as probably an area of the worst urban blight in the State. Drastic measures were required to resuscitate what was once the number one recreational center on the East Coast. The State weighed a number of potential alternatives, and finally concluded that the legalization of casino gambling and the related enormous inflow of capital that the industry would create, would serve to resuscitate this region of the

State and the recreation industry, without the necessity of committing State or Federal funds to urban renewal. To accomplish this goal, the Legislature enacted the Casino Control Act in 1977. The inevitable result of this decision by the Legislature was the development of not only the Casino industry, but also the development of a new and substantial demand for housing and related commercial establishments in the surrounding region.

In 1979, our Company, a division of Cadillac Fairview, was attracted by the housing demand that would be generated in the Atlantic County region as a result of casino development. As a result, the company committed in excess of \$50 million to the acquisition, planning, development, construction, and marketing of the Smithville Planned Residential Development, which is located just twelve miles north of Atlantic City. The entire project has been funded by private capital. There have been no local, county, State, or Federal assistance programs utilized in the development of this project. This represents a substantial private commitment by one major corporation, without any casino interest whatsoever, to the State's plan for the rejuvenation of this region.

By comparison, not one of the casinos, other than Resorts International, has thus far committed one cent of their earnings or capital to the development of housing in Atlantic County. In fact, none of the casinos have even offered to assist our company in the marketing and development of housing in the Town. Clearly, the State mandate for casino involvement in the redevelopment of Atlantic City has not been realized.

Thus, Smithville has been an integral participant in the revitalization of Atlantic City by providing housing that was not being provided by other sources in close proximity to the City's center. Without such housing, the legislative goals envisioned by the Casino Control Act cannot and will not be achieved. Further, uninformed acceptance of the unfounded, unproven allegations concerning the environmental effects of the development made by a select group of well-meaning, environmentally-motivated citizens would be a clear signal to industry in general that their investment in the State of New

Jersey is not prudent, wise, or otherwise safe, and will simply thwart the achievement of the legislative goals.

There have been numerous statements made by the environmental objectors to the Town, that perhaps there was a better place for a development of this magnitude to be located. Perhaps they would suggest that a development, such as Smithville, be located elsewhere in Atlantic County or Cape May County. Yet, large portions of the total land area of those counties are within the Pinelands area, or are otherwise restricted to development. Moreover, much of the supposed other areas in which housing comparable to Smithville could have been located have no available sewage facilities.

By comparison, at the time that our company acquired the Smithville tract, there was an existing sewer line at the perimeter of the site, installed by the Atlantic County Sewer Authority, pursuant to Federal EPA and State DEP permits, and utilizing funds generated from county, State, and Federal sources. This sewer line was constructed in 1976, in expressed contemplation of development at Smithville.

Perhaps the environmental opponents would suggest that the project be built in the more built-up areas of Brigantine, Margate, Ventnor, Northfield, Linwood, or perhaps even Somers Point; however, these areas are already significantly developed and land costs are appreciably higher than the land that was acquired by our Company.

Land acquisition costs typically represent a substantial percentage of the finished cost of a housing unit. If we acquired more expensive land in those areas I just articulated, the cost of the finished housing product available to the consumers of Atlantic County would have been appreciably higher. This could not possibly be the objective of the State when they talked about the rejuvenation of Atlantic City and Atlantic County. Nor is it consistent with the goal of providing affordable housing, as mandated by the Supreme Court in the Mount Laurel decision. Clearly, the objective had to be to provide affordable, attractive, easily-maintained housing for the existing and new residents of Atlantic County, in an environmentally sound manner. This is exactly what is being done in Smithville. In fact, the affordable housing stock produced in the Town could not possibly be



produced anywhere else in Atlantic County, except in a region already serviced by central sewage facilities, and yet substantially undeveloped.

The objectors also raise questions as to the need for such major developments as the Town in Atlantic County. Currently, 41,000 new jobs have been created by the development of legalized gambling in casino city -- that is, Atlantic City. These new casino employees need to be housed. Also, the non-casino employees residing in Atlantic County are entitled to improved housing stock. As of the current date, in excess of 55 percent of all Smithville residents are employees of the Atlantic City casinos, and they reside and raise families in Smithville. Not one of these employees received any special subsidy, grant, or special funding to acquire or own their home in Smithville. Rather, we have been able to offer affordable housing without such programs.

We further project that the four new casinos scheduled for opening in 1984 and 1985 will create in excess of 12,000 new jobs, a grand total of 53,000. These 12,000 new employees will also require new housing. We fully hope and expect that they will choose to live in Smithville because of its attractive, well-planned, affordably-priced housing.

It is also time, in our opinion, to say to the environmental groups objecting to Smithville, that if they can prove that there are, or will be, adverse environmental impacts by virtue of the development of Smithville, please do so. Otherwise, you are wasting valuable taxpayer dollars by forcing the State to repeatedly respond to unfounded allegations. As of the current date, not one -- and I repeat, not one -- of the allegations made by the objectors to Smithville has ever been proven. In fact, Smithville has consistently and overwhelmingly demonstrated to every agency reviewing Smithville, through many pages of detailed studies and expert testimony, that it will not cause any adverse environmental impacts. We have demonstrated that we will not pollute the Mullica River Basin or harm the shellfish beds. We have demonstrated that wildlife will be able to feed and propagate. We have demonstrated that endangered plant and animal

species will not be adversely affected. We have demonstrated that the streams and water courses traversing the Smithville PUD will not be contaminated by development.

In addition to the cost to the taxpayers, it should also be recognized that the cost to our Company of constantly defending the allegations made by the objectors has to affect the cost of affordable housing offered at Smithville. In 1983, our Company spent in excess of \$300 thousand in legal and expert fees to defend the environmental protective systems that were developed at Smithville. This interprets into an additional cost of \$1,000 per house produced in 1983, which in turn must result in a higher cost of housing to the residents of Atlantic County.

If the Legislature, if this Committee, if the Department of Environmental Protection, and if the Department of Community Affairs are all truly committed to the development of affordable housing in Atlantic County, it is time to get on with the job of building such housing, which is an absolute necessity to the rejuvenation of Atlantic City.

Finally, we feel that we would like to invite this select Committee to visit Smithville and observe, firsthand, why Smithville has been recognized nationally as a model of good planning in environmental protection. Thank you.

ASSEMBLYMAN HOLLENBECK: Thank you, Mr. Gropper. We want to thank you very much for your testimony.

We do have some questions we would like to ask you. We are well aware that your corporation has had to go through a great deal of expense during the permit process, in order to develop in this area. One of the reasons why we are having hearings is because we get very concerned when a developer has to go through a great deal of money only to find, as Dr. Sawhill said, that presentations and studies done by the developer did not have deficiencies, but that the Department itself had some deficiencies with what they were doing, and some of their permit processes were wrong.

I am sure if you had your druthers right now, from the initial conceptual approval on down, you would wish you had never heard

those words, because they become very expensive. And, because of this, four cases have gone into litigation. We are not necessarily dealing with the developer, but we are dealing with DEP, the whole permit process, and then, of course, the overall plan regarding the siting, which you addressed in your presentation -- why a large-scale regional development occurs in a low-density zone. We are trying to find out whether this was really intended, and whether we really need this large-scale residential development in light of what we have going on: The CAFRA permit, the non-CAFRA permit, approvals for units that are not constructed, and sales.

Now, I am sure you have marketing people who can show what has happened over the last five years. We understand we went through a period of recession. We are aware of that. I am sure your corporation has had to go heavily into marketing studies.

I don't think anybody would say that the overall plan by the developer was bad or that it was a planners dream, so it was brilliant. We know what planners do to us sometimes.

So, I do not want to give any implication that is detrimental to the Development Corporation. You happen to be some fairly good guys who have been caught in the middle of this. You are the fellows who are between the rock and the hard place, I guess, and everything that happens is costing you dollars; yet, there are people who are concerned. This is what this is all about.

This is why we are holding these hearings. We always know, and of course Mr. Gross knows, that the burden is on the developer.

I just have a couple of questions about the water company, Mr. Gropper. It is a subsidiary of the Smithville Development Corporation. You are now allegedly negotiating with a larger water company for the takeover of that water company?

MR. GROPPER: Well, let me go back and respond as directly as I can to the questions you also posed to Dr. Sawhill.

ASSEMBLYMAN HOLLENBECK: I don't want you to respond to every one of them.

MR. GROPPER: The water company is a wholly-owned subsidiary of the Historic Smithville Development Company. It was permitted,

pursuant to a water diversion permit issued by the Division of Water Resources. And, it levies its charges, based upon the tariff approved by the BPU -- the Board of Public Utilities.

The water company has been sold, pursuant to a binding agreement with the New Jersey Water Company. Approximately one week ago, the Board of Public Utilities authorized the transfer of ownership from Smithville to the New Jersey Water Company, and it either has been, or it is, in the process of approving the transfer of the water diversion permit. So, on approximately March 30, the New Jersey Water Company will be the purveyor of water services at Smithville.

ASSEMBLYMAN HOLLENBECK: That took care of a whole mess of problems we had with that one question. Other than that, we have to worry about New Jersey Water Company.

MR. GROSS: Can we do anything else?

ASSEMBLYMAN HOLLENBECK: Do you have any questions for Mr. Gropper, Steve?

ASSEMBLYMAN ADUBATO: In the context, Mr. Gropper, of owning your company, or citing the fact that your company is nationally recognized in terms of both your planning practices and your concern for the environmental impact of your development, has your company in any way done an analysis of the off-site impact on the on-site activities you are now involved in, and hopefully will be more involved in if the Commissioner approves the current situation before him in your favor?

MR. GROPPER: I really think we should defer to Dr. Sawhill on that. That is a question that he is prepared to answer.

DR. SAWHILL: Again, Smithville is planned to be self-contained in the following ways: One, we provide the homeowners with internal recreation. There is a recreation building that is approximately 10,000 square feet. There is a genuine olympic pool. There are tennis courts, basketball courts, miles of jogging trails, and bicycle paths -- all of which are aimed at, shall we say, containing the residents of Smithville, in their search for recreational activities, to Smithville.

In addition, to lessen the dependence on automobiles, we have developed, in conjunction with the requirements of Galloway Township, an entire bicycle system that will integrate Smithville with the Township's bicycle path system.

Further, we have a Homeowners Association owned and operated tram, which circulates through the Town on a daily or weekend basis, depending upon the time of year, for the purpose of taking residents to the commuter bus stop, to shopping in the Town's center, to recreation, or just to visit friends and relatives.

In addition, within our Town's center, which is that part of the Town that is at the intersection of Route 9 and what is known as Mossville Road, we currently have 32 specialty shops, three restaurants, and a convention center. Future and current plans call for the development of a 6,000 square foot convenience center for drugs and pharmaceutical needs, a beautician, a barber shop, and convenience foods -- such as a Seven-Eleven or a Cumberland Farm store.

We are also working on a filling station. The lake commercial property, to which reference was made earlier, will be an expansion of the specialty shops and other shops that are needed to serve the needs of the residents of Smithville.

We have our own internal water system. Sewerage is controlled through the Atlantic County Sewer Authority. So, the summation of all of these activities is that the intention is to assist residents of Smithville to find everything they need within the Town.

MR. GROSS: The other answer to your question concerns secondary impacts. As we understand the CAFRA rule, it says: "Will the development of Smithville cause other developments, or other growth in the area -- commercial facilities, etc.?" The answer to your question is yes. We have done a study on that.

ASSEMBLYMAN ADUBATO: And, that study is where?

MR. GROSS: That study is -- I am not sure if it is in the 1C permanent record or not. If it is not in the 1C permanent record, then I am not sure it is in the 1C hearing record.

MR. GROPPER: Mr. Chairman, if I may, I would like to apprise the Committee of something else. There seems to be a substantial

concern about the water quality of the grass that the homeowners use. I am not sure whether it was in 1982 or 1983, but we worked with the Loft's Grass Research Facility, in or near New Brunswick, and they developed an environmentally safe grass seed for Smithville. Subsequent to the development of that grass, the Homeowners Association passed a resolution which basically states that if you want to have a lawn in Smithville, you must use this grass, and you must follow the fertilization program as articulated by the agronomics with Loft's grass. The Homeowners Association buys this grass in substantial quantities and then packages it for sale to the homeowners. So, if there is grass growing in Smithville, it is going to be grass of this environmentally-safe formula.

I am trying to impress you with the lengths we went to in order to protect this environment. For instance, to protect wildlife, we have a 60-acre food patch area for the wildlife within Smithville, forever set aside. It can never be developed. It is in the center of Town, so to speak. It is an area that is indigenous and suited for wildlife feeding and breeding.

Our waterways and existing ponds, are all subject to enormous protective measures.

ASSEMBLYMAN HOLLENBECK: I have just one other question, and it deals with the Township. It is bad enough that you have to go through the State without going through the township. I have served on a few planning boards and I know how they work. The roads themselves, of course, were built to township standards?

MR. GROSS: There are actually two jurisdictions over the roads, county and State. The township dedicated roads will be to township specifications. County roads are to county specifications. The township engineer, as you can well imagine, and the county engineer thoroughly reviewed not only the plans and specifications of these roads, but the subsequent installation.

ASSEMBLYMAN HOLLENBECK: I am only concerned about when your whole development is finished and the developer is out -- which you would love to see, I am sure -- that if something goes wrong with what is left behind, who pays?

MR. GROSS: It is my understanding that the publicly-maintained roads, which are the main collect roads throughout the PUD, will be maintained by Galloway Township. Concerning the secondary roads, which are roads within the condominiums, they will be maintained by the Homeowner's Association, which has not only levying power to produce assessments, but also levying power for special assessments, should the need arise.

ASSEMBLYMAN HOLLENBECK: I understand we have somebody from the Homeowners Association here. We can question him.

I want to thank you very much, Mr. Gropper and Mr. Gross.

MR. GROPPER: Thank you.

ASSEMBLYMAN HOLLENBECK: David Fisher, New Jersey Builders Association.

Ladies and gentlemen, we plan to stop after Mr. Fisher's testimony for a lunch break.

DAVID FISHER: Good afternoon, members of the Committee. My name is David Fisher, and I am Director of Environmental Research and Planning for the New Jersey Builders Association, a non-profit, statewide trade association of builders, developers, and affiliated industries. I would also like to note that in a previous position with a South Jersey environmental consulting engineering firm, I processed and prepared more than ten CAFRA environmental impact statements. So, I have some experience in the process of CAFRA permits.

Since many of our builders and associate members are directly affected by the CAFRA process, I would like to make the following comments. And, although our comments are directed more toward the CAFRA review process in general, they have some very significant implications about the Smithville project, which has experienced some of those same types of complications.

First, I would like to briefly highlight a recent achievement by the Division of Coastal Resources. I refer to their proposed consolidated Coastal Regulations, which should be adopted by April.

We have long awaited this set of procedures and we worked hard with the division. In a sense, they will standardize the permit application process for not only CAFRA permits, but also Waterfront

Development and Coastal Wetland permits. The problem, however, that we see lies in the question of how these rules will be carried out, in terms of the CAFRA policy compliance. This is a real concern to us.

The CAFRA review process can be broken down into two basic components: Procedural review, and policy compliance.

With regard to procedural review, a CAFRA pre-application conference is held prior to the submission of a formal CAFRA application. This process is intended to inform the applicant of the status of the proposed development, or the feasibility of his project, relative to its location and design, and also the specific CAFRA policies that will be most important to address when preparing the Environmental Impact Statement. In many instances, however, the policy requirements which cause applicants delay are not those mentioned in the pre-application conference as being critical for the project's approval.

Another major problem with the review process is attributable to the understaffed Bureau of Coastal Project Review. Furthermore, most of the review staff personnel are generalists, and they have limited expertise in some of the policy requirements that normally require certain professional engineering knowledge, or other technical knowledge. Therefore, what you have are twenty copies of the Environmental Impact being required, and set to a variety of other agencies and departments for comment.

The difficulty here is that the other agencies tend to see CAFRA's unique policy requirements as an opportunity to take advantage of a situation where they normally do not have jurisdiction, or even the ability to provide input. So, further delays occur when comments from these agencies begin to trickle-in, and are applied to the project by way of "deficiency letters." Many of these requests for additional information go beyond the types of policies mentioned in the pre-application comments. Then, once the application is finally submitted, the Bureau has thirty days in which to declare the application complete for filing. And, they typically take all of those thirty days.



Following this milestone, a public hearing is scheduled within forty-five days. And, again, hearings are most often scheduled toward the end of this month and a half time period.

Also, a problem is the fact that a preliminary analysis, which is prepared by the Bureau, is rarely sent to the applicant prior to the hearing. Satisfying the informational requests in this analysis will result in a "complete for review" status, and finally trigger the 90-day approval law issuance deadline.

Because the applicant does not receive the preliminary analysis prior to the hearing, he is not able to respond, and, therefore, an additional 15 days is added to the review process. It is important to note here that if the applicant can satisfy the Bureau's request by the public hearing date, the review process is shortened to 60 days; but, this rarely occurs.

Invariably, the Bureau takes the full 90 days, in most cases, to make a decision on whether to issue the permit.

Another procedural problem, amplified by the understaffed condition of the Bureau, is the seldom, if ever, used "expedited review process." This process is intended for those non-controversial projects receiving an "encouraged" status by the Bureau. Unfortunately, applicants have been unable to get certain projects expedited. This process is also one which is being formalized under the "Consolidated Coastal Permit Regulations," which I mentioned earlier.

It is our fear that once these regulations are promulgated, this process will be no more useful to applicants than it is now.

The other component of the CAFRA review process is the compliance with specific CAFRA policies. Many policies, such as Energy Conservation, should not be a part of the Division's responsibilities in administering the CAFRA permit program. Why is saving energy any more important in the Coastal Zone, as opposed to the remainder of the State of New Jersey? One request made of an applicant, for example, under this policy was to address the feasibility of electrical generation by constructing a windmill for a nursing home facility. To further frustrate the applicant in this

case, the request for information was made after the comment period was closed. Examples of other policy requirements that bear no particular significance to the coastal ecosystem, include "affordable housing," and "solid waste." Why, for example, should developers in the Coastal Zone be required to address the need for low and moderate income housing - clearly a statewide issue -- any differently than the balance of the State's builders? Furthermore, why should the Department of Energy's Office of Recycling require mandatory recycling facilities for Coastal Zone residents, when the local municipality may not even consider it appropriate?

I guess my question is: Were these types of policy requirements intended to be enforced under the CAFRA program by the Legislature? We don't think so.

Many of the proceeding comments also hold true for the Smithville project, in that they were continually asked by the Bureau for additional information and studies. And, many of these requests represent legitimate concerns, but many of them were also very untimely.

Another issue is well demonstrated by the Smithville case, namely the fact that opposition groups are seldom required to submit any documentation as to why a project should not be allowed, but the builder is always required to prepare lengthy and costly studies to show how the project complies with all the policy requirements. On many projects, people who are simply opponents to growth in New Jersey do not submit evidence to support their claims. This continues to be a problem for builders attempting to secure a CAFRA permit by meeting the necessary regulations.

In our opinion, the fact that this hearing is taking place on the Smithville case, is rather unusual. Many other builders are treated by the Bureau and objectors in the same manner as Smithville has. Does this mean that builders should request a legislative hearing when they feel their application has not been treated fairly? We don't think that is the case either.

The result of all these problems is what concerns us most. Builders must carry the land costs, pay for expensive studies and the

Environment Impact Statement, all of which result in a less affordable product. Builders are simply not prepared to absorb the additional costs imposed on them due to project delays and onerous requirements. Therefore the CAFRA review process itself runs contrary to the Division's "affordable housing" policy. We believe that the administration of the CAFRA program is a clear example of a current process that has expanded beyond its legislative intent, and one which is underfunded from a "review staff" perspective. There must be a way in which to minimize the adverse impacts relative to the cost of housing by streamlining the compliance requirements of our coastal ecosystem. The New Jersey Builders Association hope that this will help in this regard.

We appreciate the opportunity to testify, and I will be happy to answer any questions.

ASSEMBLYMAN HOLLENBECK: Thank you very much, Mr. Fisher.

We have heard many of these stories before, in reference to the application process. Just to enlighten you on something, you made a bad assumption about Smithville. I would like to inform you that these hearings are based upon the construction permit process of the Coastal Areas Facilities Review Act. This is what we are looking at. Even if the one issue brought it to a head, it is the general way in which is it being used that we are looking at.

Any act, where the Department takes an action of this sort, and it goes to court four times, and four times the court says, "You have done wrong, Department, in your permit application," I think we have to look into that.

MR. FISHER: I agree, that is why we wanted to submit this testimony.

ASSEMBLYMAN HOLLENBECK: I have no further questions. Thank you very much, Mr. Fisher.

I understand we have a Doctor Philip Gieger with us today.

DOCTOR PHILIP GIEGER: I appreciate your willingness to take us before lunch.

ASSEMBLYMAN HOLLENBECK: We understand you have to leave.

DR. GIEGER: The taxpayers should get their money's worth out of you today.

My name is Dr. Philip Gieger. I am a Superintendent of Schools in Galloway Township. I know very little about environmental conditions, but I do know about the quality life that various developments have produced in our community. I also understand the effect this has had on our educational system.

I have been Superintendent of Schools since 1977, so I know what it was like before and after Smithville. I would like to give you some of my impressions. I will be very brief, so that you can get to some of the other issues today.

Over the course of the past few years that Smithville has been involved in our community, I have seen a definite change for community improvements. Galloway Township is a 93 square mile area that, prior to 1979 -- or 1977, actually -- and casino gaming, was a very sleepy town whose aspiration levels regarding education, and even regarding the quality of life, were not as high as they should have been, perhaps -- they were certainly not as high as they are in other parts of the State of New Jersey. Since that time, it has changed.

Second, I believe the Smithville project has caused the community to become more eager to improve the quality of life. In fact the residents of Smithville have helped to make that happen.

Third, recreation is available in a part of our community that never had recreational sites before -- parks and playground areas. In our community, except for Smithville, this is centralized in one section of the community.

Fourth, Smithville has provided a number of governmental participants, including the distinguished Councilman who is here today, Mr. Wessel, and two members of our School Board, including the President of the Board are all from the Smithville development. Therefore, they have become very much involved, which is part of my understanding the theme and the approach Smithville is taking to involve their community residents in government.

The educational impact has been interesting. When Smithville was first being developed, we appeared before the Planning Board and were asked to discuss the educational impact. In fact, Smithville did attend to that.

In our communities, educational impacts are given to the Planning Board, as are environmental impact statements. So, we had something to go on in terms of what they were going to do to us, either positively or adversely, educationally.

Smithville has, since the time of their construction, donated over \$60 thousand to the Galloway Township Education Foundation, and it has constructed two relocatable classrooms in our district.

We are 120 percent over capacity, and we told Smithville that our circumstances were such that we couldn't take any more students. In fact, we could not take the kids that were there to begin with. Smithville provided us with relocatable classrooms, which are used for the general population of our community.

The also contribute, on a regular basis, \$200 per student. We receive \$200 for every student that enrolls and has a residence in Smithville as an additional way of compensating for the impact that development has had.

Mind you, there have been other developments, particularly 24-unit developments in our community that contribute nothing, outside of the property tax, which is assessed anyway.

Smithville has also contributed three parcels of land, which amount to approximately 35 acres, for our community's schools, and they have agreed to contribute one-quarter of a million dollars when the school is built on the site of Smithville, which obviously will have to happen someday, with the potential of 7,000 units being developed.

I would like to go on to tell you that besides those things which are more formal and which are actually set down in writing, we have an agreement with Smithville to contribute these things, and they amount of approximately \$1.9 million in contributions to the school district. That is nothing to sneeze at today, knowing the funding that exists for public schools. We were very pleased to get that kind of cooperation.

Smithville is going beyond the norm. The Governor, Thomas Kean, has written to the Commissioner of Education saying that he believes the Galloway Township business partnership program should be a model for the State of New Jersey.

Smithville, in 1983, was cited by the Board of Education as an outstanding business advocate for education in our community, and it was awarded a distinguished honor by the School Board, by unanimous acclaim.

The Smithville project, including the shops in Smithville, contribute about \$10 thousand every year on a regular basis, for the operating cost of the school district, either in in-kind services or in actual cash.

Smithville has adopted the Oceanville School, which is on Route #9, near the land they own and where most of their students attend school. They have landscaped the building. They have built the two relocatable classrooms, and they have provided a variety of other kinds of opportunities for students, educationally.

Last month the National School Boards Association cited the fact that the Galloway Township program was a model in terms of business partnerships, and Smithville was the most active contributor to that program.

Yesterday we received a letter from the White House, asking us to present our program to the President's Private Sector Initiative, as a model of small school districts for the entire country.

Mr. Chairman, in my 17 years of being a school person and a public servant, I can tell you I have never found a business that has been more actively involved and socially concerned about schools and the educational process. I would just like to indicate that we are pleased that Smithville has had a positive impact on our community.

Thank you.

ASSEMBLYMAN HOLLENBECK: Thank you very much. Ladies and gentlemen, we are going to recess now for lunch. We will resume the hearing at two o'clock.

(Lunch Recess)

(AFTER RECESS)

ASSEMBLYMAN HOLLENBECK: We are now going to reconvene this Committee hearing. Our next witness represents the New Jersey Conservation Foundation. Are you going to synopsise your statement, sir?

THOMAS WELLS: I will try to, although I do not think it is that long; it is double spaced.

My name is Thomas Wells, and I am here today representing the New Jersey Conservation Foundation. We are a statewide, nonprofit organization concerned with open space preservation and natural resource protection throughout the State.

We welcome the opportunity to comment on the Phase 1A and 1B construction permits granted by the Division of Coastal Resources to Historic Smithville Development Corporation. The approval of these and other major developments has been a major concern to the Foundation over the last few years.

In 1980, when the Coastal Plan was being revised, we and many other groups commented against the designation of this area to an area of higher growth in the Coastal Plan. We felt the designation shouldn't be changed because of the environmental fragility of the area, and the Division of Coastal Resources agreed with that and they did not change the rating -- although by using the large-scale rule, in substance what has happened is, the rating has been changed by allowing major developments in this area. We feel this has turned coastal planning upside down by providing the greatest amount of development in the areas which had been identified by the Division as those areas which are least appropriate to support that kind of development.

We have seen no evidence to support the contention by the Division that the large-scale developments, approved by it, will be effective in reducing the demand for scattered 24-unit, and less, developments in this area.

On the contrary, the extension of roads and other infrastructure necessary to accommodate these large-scale developments will undoubtedly lead to a profusion of both isolated and infill smaller scale developments.

We also feel that the population projections have been overstated in the past. It is on this basis that the large-scale rule was put into effect, in spite of the fact that the Division has recently completed a growth impact study for the Atlantic County area which identified those impacts and the population projections as being higher than originally anticipated. The Division is not going to change their rules to delete the large-scale rule, as they had originally planned.

We feel that the use of the large-scale rule has set up a process whereby limited growth regions will eventually be chipped away by major developments, and related secondary growth, to a point where it will cease to exist. We find this to be a truly novel approach to decision-making, where the State agency charged specifically with protecting a resource has set up a framework for the gradual obliteration of that resource.

Although we object on a conceptual basis to the use of the large-scale rule, we recognize that it was, at the time of the decisions on 1A and 1B, and it continues to be, an adopted rule of the Division. Therefore, the balance of my comments will address what we consider to be the misapplication of that rule in regard to the 1A and 1B permits.

These permits, taken together with 1C, and other large-scale permits in the area, including Pinnacle, Reeds Bay Village, and Club at Galloway, all provide for a new growth center in the middle of sparsely populated, limited grown region. Both the sprawling dimensions of these developments and their lack of connection to existing urban areas preclude a determination by the Division that any of these developments, including Smithville, phases 1A and 1B, serve to concentrate the regional patterns of development, as required by the large-scale rule. On the contrary, the approval of phases 1A and 1B, together with other large-scale developments, has promoted the creation



of a new, major population center in the very area in which major development should be discouraged under the coastal plan.

We feel there are many more appropriate areas to accommodate housing, such as the Route 9, Garden State Parkway corridor, and in other older towns in the area. There are also major areas that are undeveloped in the Pinelands that have been designated for regional growth, which can accommodate significant development of the kinds, proportions, and dimensions that are anticipated in the Smithville development. Those Pinelands growth areas are in close proximity to both Ocean and Atlantic Counties, and they can certainly absorb significant large-scale development.

As one of only three limited growth areas in the State's entire coastal zone, the Mullica-Southern Ocean region should not be forced to accommodate major development when alternative and less environmentally sensitive locations for residential development abound.

One aspect of the Mullica-Southern Ocean region is it abuts directly with the Pinelands Preservation area, not the protection area. It is one of only a few, and it is certainly the largest border on the Pinelands Preservation area that is unbuffered by other Pinelands designated lands. It is also not part of the national reserve. So, it is very important that this area be preserved in connection with upholding the Pinelands Protection Act as well.

With respect to the other proposed uses, including office, commercial, and hotel, alternative locations within the region for these uses are obvious. Non-casino hotels are currently in the process of being built in Atlantic City. Other towns in the region, including Ocean City, Somers Point, Pleasantville, Egg Harbor, Hammonton, New Gretna, and Tuckerton can certainly support additional office and commercial facilities. There are numerous alternative locations for virtually every use proposed in the 1A and 1B permits which are more appropriate from an environmental and regional perspective than the Smithville site.

The court decisions in the Smithville case have been emphatic in their determination that the Division has failed to meet the other major requirement of the large-scale rule: That the development will

not "cause significant adverse secondary impacts." DEP experts, in their comments to the Division on the Smithville project in general, and in testimony on the appeal of the 1C permit, have not been able to make the positive findings required by CAFRA about the project's effect on shellfisheries and endangered species. On the contrary, many experts both in and out of the DEP have objected to the project, based upon their numerous concerns about the project's potential secondary impacts.

As an example of those continuing concerns, as recently as the hearings held on a permit for 1C, Director Cookingham of Fish and Game continues to have concerns that the secondary impacts on shell fisheries have not been adequately addressed by the studies done by the applicant.

The Division's own decision documents on the Smithville permits describe the need for vastly enlarged road and sewer collection systems to support this and the other nearby large-scale developments, including a future need for a new interchange with the Garden State Parkway.

It doesn't require special planning expertise to realize that this type of major infrastructure expansion will promote smaller, scattered, non-CAFRA regulated developments throughout this limited growth region, which the Division has consistently said it is seeking to avoid. Thus, not only will the development resulting from the 1A and 1B permits cause major secondary impacts, but these impacts are precisely what the Division's coastal planning effort was created to avoid.

We submit that in the case of 1A and 1B permits, the large-scale rule was misapplied, based on every criteria governing its use. In fact, we believe that for all the reasons previously mentioned, no large-scale development, as defined by the Division's rules can meet the three criteria contained in the rule: Concentration of the regional pattern of development, contribution to the regional housing need, and prevention of adverse secondary impacts.

Regarding the secondary impacts issue, it is no surprise that the courts found glaring deficiencies in the Division's factfinding.

Considering the size of Smithville and other major developments approved in this environmentally fragile region, the current level of scientific understanding is simply inadequate to predict conclusively that resources such as shellfisheries, ground water, and endangered species will not be harmed 10 or 15 years in the future, due to the cumulative impacts of these massive projects, and not just the Smithville permits. Thus, the large-scale rule is critically flawed, and so too are all the Smithville construction permits.

We are grateful to the members of this Committee for providing us with the opportunity to present our concerns. The past three and one-half years have been extremely frustrating to the members of the Smithville Coalition. We and other members of the Coalition have opposed the Division's decision-making process on this project in the courts and won. In spite of significant public opposition and the admonition of the courts, the Division has continued to issue permits for this project. We urge the Legislature to work with the Administration in rectifying this situation.

As a beginning point, the use of the large-scale rule should be prohibited in limited growth regions, permits for phases 1A and 1B in Smithville should not be reissued, and the 1C permit should be rescinded immediately. In addition, we would be supportive of amendments to strengthen CAFRA and make its administration more predictable, including closing the so-called "24 unit loophole."

Thank you very much, Chairman Hollenbeck, for the opportunity to present our comments.

ASSEMBLYMAN HOLLENBECK: I would just like to ask you a couple of questions. You said that the Director of the Division of Fish and Game, Russell Cookingham, still expresses concern. Is that what you said?

MR. WELLS: Yes.

ASSEMBLYMAN HOLLENBECK: When was this?

MR. WELLS: It was during the hearings on the 1C permit before the administrative law judge.

ASSEMBLYMAN HOLLENBECK: Last week, or two weeks ago?

MR. WELLS: No, this was last summer.

ASSEMBLYMAN HOLLENBECK: We heard earlier testimony that the Division of Wildlife has taken back that position and their concerns.

MR. WELLS: To the best of my knowledge, they have not taken back their concern insofar as shell fisheries are concerned. But, I would be wrong. I don't know if there is more current information that I am unaware of.

ASSEMBLYMAN HOLLENBECK: I think it might be very current, that their opposition has been removed.

MR. WELLS: Well, if there is more recent information, then I withdraw my comment.

ASSEMBLYMAN HOLLENBECK: One area that the Committee is concerned with is the large-scale residential development in a low-growth area. As you said, there are other areas where that would probably be applicable. Unfortunately for this particular developer, he didn't own that particular land, so I don't know if he had much of a choice.

MR. WELLS: Well, I am certainly not here to take issue with the developer, as a land owner, and as a private corporation. I am taking issue with the Department's decision-making process.

ASSEMBLYMAN HOLLENBECK: Unfortunately for the developer, the poor fellow ends up paying in this particular case. He is trying very hard and I know it has been very frustrating and expensive for him.

The 24-unit rule, which we all know, probably should be abolished, but we don't think that is legislatively attainable. I would foresee tremendous opposition to that. Do you think we should at least have a reduced rule on low growth areas? In other words, the 24-unit rule would not apply in the low growth areas?

MR. WELLS: I certainly think that is an option, and I don't know that you have to go down to one unit.

ASSEMBLYMAN HOLLENBECK: No, I don't think so either, but it should be a more realistic number. There are a couple of low growth areas along the coastline, as we said, and at least in that particular area, we should look for an exemption.

MR. WELLS: Either that, or in some way provide the Division with the opportunity to coordinate the activities of local planning

boards in their decision, so that it wouldn't be strictly a Division decision, but they could have input into the design of projects that are less than the 24-unit threshold.

ASSEMBLYMAN HOLLENBECK: Thank you very much.

We will now hear from Paul Dritsas and Derry Bennett, from the American Littoral Society.

**PAUL DRITSAS:** Thank you for having us here, and giving us the opportunity to again express our lingering concerns with regard to the DEP's action on the Town of Smithville, and the actions of the developers themselves.

I would like to basically respond to what has been said today, rather than go through the testimony we have provided to you. I will refer to it. I will mention some things from it. And, I may read a little bit from what we have there. That has been in the record for a number of years now. You have it, and I won't go into reading it all.

Initially, there are a couple of things I would like to respond to. First of all, the Commissioner sat here a little while ago and said that 1C was in litigation. Phase 1C is not in litigation. Phase 1C is an administrative process, which is a completely different thing. We are quite afraid that the Division and DEP is using the term "litigation" as a cloud over the issues that have to come out before you and before their body. We are quite concerned with that.

All the issues that were talked of and brought about in the Crema 1 decision in the Superior Court and in the Supreme Court are open with regard to alternatives, with regard to secondary impact, and with regard to the deficiency of DEP's and HSDC's review. Those issues are open. They are not under litigation.

Phase 1C is an administrative process; it is not a litigative process. Those issues are open. The fact that Historic Smithville has a petition for certification before the Supreme Court with regard to Phase 1A and Phase 1B is beside the point, because, one, DEP is not a party to that action. They have stated in their brief, one, they are not going to appeal that decision; two, they are going to go through their own administrative process and try to meet the needs put forth to them in the remand from the Superior Court.

So, those areas-- We are afraid they can say it is under a cloud of litigation so that we don't get to the heart of the issues. We have been working on this for two long. It has been up in the air for too many years for us to avoid those issues now by saying it is under litigation. That is just not fact.

Second, one thing I would like to say from the beginning is that HSDC has been proceeding at their own risk from the very beginning of this process. The court has put them on record of that. You have heard a lot about how much money they have spent, what the burden is on them with regard to the conditions they have to meet, the amount of money they have spent to meet those conditions, and all the information and paper they have put together to go to these concerns.

We have also been successful in court on three separate occasions, where DEP's and HSDC's information has been taken to task. It has been found to be very deficient, and that goes to the heart of this. You can spend a lot of money on information, but if it doesn't go to the heart of the issue, it is not worthwhile. So, just because one spends a certain amount of money, it doesn't mean he is going to be able to answer the questions that have to be answered, and that DEP needs to know in order to make a decision on a permit.

HSDC knows from the court decisions that their information is deficient, yet they are proceeding on it. That is the risk they take.

I would like to respond to some of the things that have been said, and I "get going", so if you would like to halt me for some reason, or if you would like to ask a question, please do so. Don't be afraid to jump at me, and I will stop.

You asked the question about base line data. Where is it? What is the DEP proceeding on with regard to looking at the system as it is before Smithville? What impact will Smithville have, based on the existing conditions?

The answer is, the baseline data is a storm water model. That is not baseline data. Frankly, there is very little that has been collected. Most of the data collected by Smithville was done while 1A was being built -- while construction was proceeding. That is not the proper way to collect baseline data. Models and BNP's are not baseline

data. So, that is an answer to your question. There is very critical knowledge of the Mullica River/Great Bay Estuary and its functioning that is still not known by HSDC or by DEP.

For example, the rate of stabilization of the Estuary -- how will the Estuary react when pollutants are put into it from Smithville, and from other PUD's that have been approved by CAFRA -- Wrangleboro, Reed's Bay, Mattis Forge, and other developments as well -- if, in fact, they are built? How will the Estuary react to that? What time will it take for that system to stabilize itself so that we can get proper readings as to the impact of those pollutant inputs? DEP doesn't have that data, yet they are proceeding at this point.

What is the impact of nutrients on a very low nutrient system? What impact will it have on the inhibition or the excess of phytoplankton growth? What impact will that have on fisheries, on shellfish, on crustaceans, and benthos organisms? DEP doesn't know and HSDC doesn't know, and these are critical questions involving the impact on the Estuary.

Third, what about the synergistic impact? In other words, you may introduce a heavy metal into that system which by itself is in a low enough concentration not to have a lethal impact. However, what about when it combines with other heavy metals in the system that are at those lower concentrations? The combination of those pollutants can have an impact when combined; when individually they may not have an impact. That hasn't been analyzed by either DEP or HSDC.

With regard to BMP's, best management practices -- swales, detention basins, oil and grease chambers, the state of the art portions of the Smithville development -- a lot has been said about this. I have heard that the DEP and HSDC have said: "It doesn't matter if they are maintained. They don't have to be maintained at 100 percent efficiency. We will be okay even if they are not taken care of." Well, I say that the efficiency and the maintenance of BMP's is critical, and I don't only say it, but experts at the DEP and the Division of Water Resources say it, and Smithville's own experts said it in their testimony.

We would like to show you, from the record, where it says that they have to be maintained at 100 percent efficiency, and work 100 percent in order for water quality not to be degraded. That is in the record, and to say differently is not proper.

DWR themselves have said: "Unless these BMP's work efficiently and are maintained, and they remove all they are supposed to remove, we fear for the water quality, both ground and surface water quality in the region." That has been stated on the record, clearly, and it can't be misrepresented.

With regard to shellfish, the Commissioner said, "Well, in other parts of the State, we have cleaned up shellfish beds." That is not the case. The Great Bay-Mullica River Estuary receives over one million hard clams a year from polluted water bodies throughout the rest of the State of New Jersey to be purified, so that they can be consumed and the resource can be used by people.

Shellfish beds that are polluted-- The water quality may change, it may improve, but the fact is that hard clams harbor enough pollutants so that they can't be consumed from those waters, and they are moved down to Great Bay. That water body right now is the last high quality water body on the Atlantic Coast of New Jersey where these hard clams can be taken. It is a very, very valuable resource. It is not only supporting its own resources, but it making the resources of other beds useable, and that is very important. So, we are not cleaning up shellfish beds, we are moving the beds from dirty water into the cleaner water of Great Bay, and that is important to note.

There was talk about the limited growth region designation, and why this area was designated as such -- the Mullica-Southern Ocean region. Certainly, it was not only because it has had rural character, because there was very limited growth there to begin with. More importantly, it was because of the environmental sensitivity of the area, and that seems to have been glossed over somewhat.

DEP undertook a review of this Mullica-Southern Ocean region, and all of their growth designations, to find out whether or not they should change that area into something other than a limited growth



region. And, their answer was, "No, we can't change it, and the reason why we can't change is because of the environmental sensitivity of the area." So, that is a very important reason why it was given the designation of limited growth, and that should not be glossed over.

Very early on, the Deputy Attorney General wrote a memo to DEP and said that if the Mullica-Southern Ocean region designation is wrong, it should be changed through rulemaking. It should not be changed, in essence, by administrative use of policies within the Division. That is exactly what has happened with the use of the large-scale residential rule in a limited growth region, and how it has been applied by DEP.

The large-scale residential rule has three conditions attached to it. We don't believe that it is properly cited in a limited growth region, but beyond that -- putting that aside -- just because it is a limited growth region, the policy says that they can go there. The developments have to meet three conditions, and those conditions are: They have to concentrate the regional pattern of development. The Supreme Court -- and I direct your attention to it -- in the Crema I brief, goes into that specifically with regard to the misapplication and misuse by DEP of that very thing, concentrating the regional pattern of development and what it means.

What DEP has said -- or at least earlier on in their reports they said that Smithville meets that criteria of concentrating the regional pattern of development because of internal clustering. In other words, it is concentrated within itself and it has everything it needs in this little pocket, so all development is concentrated. If you look at the Supreme Court brief, natural logic would tell you that is not what that policy means. That is not what that condition means; but rather, that Smithville, as a PUD, should be appropriately sited alongside, and adjacent to, existing development of similar density, with an ability to be absorbed -- not that it is concentrated within itself. That is circular reasoning; it is not right; and, the Supreme Court takes the DEP to task for that -- and I direct your attention to this.

Smithville will be a new growth center, as will other CAFRA projects that have been approved in Galloway Township. There is very limited growth in that region right now. Even with the construction of Smithville, to date there is very limited growth in that area, and I will get into that as well. So, it is a new growth center, and it not concentrating the regional pattern of development. That is crucial. So, that is one condition down.

Two, with regard to secondary impacts, we don't hold that secondary impact only means development that may be induced by the construction in Smithville -- although that is part of it. We believe the definition goes beyond that, and the policy goes beyond that. It also includes things like the off-site impacts from on-site activity at Smithville, or any other PUD in the region.

Smithville is planning to build a hotel. Certainly, the hotel is not just for the residents of Smithville; they are not going to walk out of their home and check into the hotel -- at least not that often. It will be for people from outside the region to come in and use. People from outside Smithville's population will use it. That will mean transportation to and from the site, increased use of the recreation areas outside of the site, and the impacts associated with those activities. Those secondary impacts have not been assessed.

The increased use of the Brigantine National Wildlife Refuge by people within Smithville has not been addressed by HSDC. Traffic will be generated to and from the commercial areas of Smithville, 1B -- and that is the only place they are going to build commercial, retail, and service facilities in that region at this time, if, in fact, it is built. There is a paucity of commercial, retail, and service facilities in that region. With it being built in 1B, it is going to draw not only from the residents of Smithville, but also from the residents of the 5,700 other units that have been approved by CAFRA and the surrounding region, to come and use those facilities. That will create an impact, and, those cars and the pollutants they drop on the road are off-site; they are not on Smithville's site; and, they are not even subject to the limited protection that the BMP's of Smithville will provide. That has not been assessed, and it is an important part of this entire project.

In addition, there is nothing there -- even if Smithville is providing commercial, retail, and service facilities -- to keep other developers from perceiving a need from the 5,700 housing units being approved in that region, and saying: "Hey, a lot of those other developments don't have commercial facilities. They are being approved. They are going to have people with needs. Smithville certainly cannot provide the breadth and the variety of services that are going to be demanded. That is going to create additional development, and that just hasn't been done." The Commissioner said that there is a marketing study which goes to that, and I think HSDC said there was a marketing study that goes to that, possibly in the 1C record. We don't believe it is there. We haven't seen it, and frankly I have been through the record; it is not there, especially in light of the total development that is going to be there and the needs projected as to how they are going to use Smithville.

The definition of a PUD is that the development must be freestanding, and we have heard the Department and Smithville say, "Yes, each one is freestanding; but, "No, they tie in to each other;" but, "Yes, in most cases." Okay? You can't have it both ways. Either they are freestanding, separate, and can stand on their own as PUD's -- and we will talk about what a PUD is -- or they are connected. They share aspects, and they stand or fall with each other. That is precisely what happens to Smithville: Phases 1A, 1B, and 1C do stand and fall with each other.

A PUD is self-contained. The whole practical theory that DEP has been expounding about PUD's is that if you build them, they are going to have everything included -- recreation, commercial, retail, and "such and such" infrastructure, so that it is going to be serviced within itself and it is not going to need additional services and additional infrastructure in order to make it viable.

Phase 1A is a purely residential project -- purely residential. Phase 1C, at this point, for the most part, is purely residential. There is a sports facility. There is no commercial work planned in Phase 1C. Each of those are going to be drawing -- as one example -- on the commercial aspects of 1B. Without 1B's commercial

element, those two phases are not freestanding. They are not self-contained. They have needs which can only be accommodated by Phase 1B, so they are tied in together; they are not freestanding. To say they are separate is wrong, and the Division, through the Commissioner's testimony, is planning to do that, and that is not the case.

I would like to mention a couple of other things. There were questions asked with regard to whether HSDC has done any analysis with regard to the impact of pesticides, herbicides, or hydrocarbons on the water quality of both ground and surface water, and shellfish resources. The answer was, "It is in the model done by HSDC." Then there was a specific question, "Is it in the model?" -- Well, maybe it is not in the model, but let's talk about all the other water quality things we have done." It is not in Najarian's model, his storm model. He did not analyze the impact of pesticides, herbicides, or hydrocarbons on water quality. It is just not there, and it hasn't been done. It has been done on a very limited basis, for pesticides and herbicides for the golf course only. But, we are talking about a much larger area than the golf course.

From the Phase 1C hearings this summer, we found that none of Smithville's experts, or DEP's experts for that matter, know the level of pollutants -- pesticides, herbicides, or hydrocarbons -- which will have an adverse impact on adult and sub-adult populations, both lethal and sub-lethal impacts on shellfish. They don't know. They stated emphatically, "We don't know."

When it comes to shellfish, HSDC has stated throughout that there would be no impact on shellfish. They had a Dr. John Vernberg come to the hearings and say there would be no impact on the adult populations of shellfish, based on Najarian's work -- Najarian's work being the model with didn't test for pesticides, herbicides, or hydrocarbons. Yet, he is basing it on Najarian's work. That is why Najarian's work is so important. It is where this project stands or falls, and there are holes in it. They just say there will be no impact on shellfish.

But, when it came to questions about sub-lethal impacts, retardation of shell growth, prolonging the plankton stages of shellfish, the sub-adult populations, from plankton to juvenile stages, and those impacts, Dr. Vernberg backed way off from his stance and said, "I don't know; I have to be neutral. I don't know what impact it is going to have. I don't know what levels are going to affect these populations in Great Bay, based on Najarian's report." If HSDC can't show that the project is not going to have an impact on adult populations and sub-adult populations, both lethally and sub-lethally, they have not met the burden they have to meet.

There is one other thing with regard to shellfish. HSDC mentioned that the Division of Fish, Game and Wildlife has given up their concern with regard to shellfish. I have seen nothing in the record to indicate that. The testimony this summer was based on a 1981 memo written by the Director, and I would like to read you a portion of it. It says, under the heading of shellfish: "In the previous applications, the applicant" -- meaning HSDC -- "has failed to consider the potential adverse impacts on the shellfish resources of the Mullica River-Great Bay Estuary." Then it goes on: "Just what are the potential impacts on shellfish resources should the mitigating measures proposed by the applicant for minimizing water quality degradation not be effective? The potential consequences should at least be considered. It will be too late to discuss it after the damage has been done."

Director Cookingham sat on the stand in July, 1983. When he was asked, "Did you write that, or did you at least sign the memo that said that?" he answered, "Yes." "Is it still a concern of yours?" He again answered, "Yes." "Is it still a concern of yours based on the record presented by HSDC and all that you have seen? Are you still concerned, and are you still saying there has been no analysis of the impact of Smithville on shellfish?" His answer was, "Yes, it is still our concern, and it is a major concern." The Bureau of Shellfish Control has not given up that concern either.

So, those two bodies are still very concerned about shellfish impacts. I would like to see where it says they are not, because it is

on the record, the one sitting here before the Commissioner right now. The Division of Fish, Game and Wildlife is still very concerned, and their concerns have not been addressed with regard to shellfish.

ASSEMBLYMAN HOLLENBECK: We had very explicit testimony with reference to this. We asked if there was a change of position. You have no knowledge of a change since last summer?

MR. DRITSAS: That is correct, but I do have knowledge, at least from within the Bureau of Shellfish Control within the last month, that they have not given up their concern for shellfish. That knowledge I do have.

ASSEMBLYMAN HOLLENBECK: We'll check that out.

MR. DRITSAS: Please do. Now, with regard to the housing need, there was mention here today that there is a great demand for housing in the Atlantic County region because of the casinos. There are 41,000 casino workers in the area. CAFRA has approved over 12,000 housing units in Atlantic County since about 1975. To date, 83% of those units have not been built. So, my question is, where is the housing need? Where is that need we have been talking about? The initial population projections for Atlantic County were very high; now the population projections that are being used are a good 40% lower than the ones originally used when Phase 1A and Phase 1B were approved. DEP must be paying strict attention to that, because if they're saying, "Well, because of the great housing demand we have to build these things," my question is, where is the demand? They should reassess their position based on what seems to be a lack of demand, since so many units are not being constructed. If the demand was there, they would be constructed.

If there is a demand, and I suspect that there will be to a certain degree, that demand, in our opinion -- the accommodation of that housing demand -- is more appropriate for Atlantic City, for the growth corridors outside of Atlantic City along the major roadways, and for the Pinelands regional growth areas, if it is going to be in Atlantic County, rather than in environmentally sensitive, limited-growth Galloway Township, where the potential for environmental degradation is so great. In fact, without extreme caution at all

times, it will not be preserved. We have information as to what has happened already, in terms of maintaining and even building Smithville's BMP's, where they haven't followed the law, and where they haven't complied with requirements. And that is happening in the early stages, when we're all standing over them and looking at them.

ASSEMBLYMAN HOLLENBECK: Whose requirements?

MR. DRITSAS: Soil Conservation Services' requirements, which were adopted as requirements of DEP. They are a part of the permit. Also, DEP standards are on things that have happened already. Degradation has occurred. So, these types of things are happening while the courts are looking at them, while we are watching their every move, while DEP is watching them, and while they are trying to be extra careful; yet, human nature and theory cannot always come up with the same thing. Frankly, that is what is happening here, and the potential for destruction is too great.

The only other thing I would like to mention -- you asked some questions about water supply. I think the critical issue with regard to water supply has to do with the aquifer itself, and the structure of that aquifer. HSCD's information with regard to the Cohancy Aquifer, and with regard to how it is structured, doesn't go far enough, and I'll tell you why. There is historical data which shows, or which indicates that there is a potential for lenses, for holes between the upper confining layers of the Cohancy Acquifer and the lower confining layer of the Cohancy Acquifer, to the northeast and to the southwest of the Smithville site. That is historical data. It is well referenced; it is there. The U.S. Geological Service is aware of it. They are concerned about it.

ASSEMBLYMAN HOLLENBECK: You don't think that was considered one of the issues of diversion for the--

MR. DRITSAS: (interrupting) No, I don't. I don't think there was adequate concern at all.

ASSEMBLYMAN HOLLENBECK: Do you think it was just a pro forma that they issued a diversion from it?

MR. DRITSAS: Excuse me?

ASSEMBLYMAN HOLLENBECK: Do you think it was just a pro forma that they issued a diversion from it?

MR. DRITSAS: I do not think it was carefully studied. It wasn't studied carefully enough. They did not know enough about the aquifer to issue those permits. Frankly, just because the Water Supply Council issued a permit, DEP, in their remand, and in looking at LC, still had its own policies with regard to ground water use. That involved salt water intrusion and drawdown. We believe there is historical data which has not been analyzed by HSDC in their reports. Frankly, they went the opposite way, in terms of the profile of their well field. They did not explore that historical data to see if, in fact, there were confining layers in the area. If there weren't confining layers to the extent they were claiming in the northeast, then that is an area of extensive salt marsh. Extensive salt marsh means salt water entering in from the upper confining layers to the lower, and salt water intrusion, a major concern of DEP's. If they do not have enough information about the aquifer, they ought to get it before they reissue the permits. That is important.

ASSEMBLYMAN HOLLENBECK: There have been other CAFRA permits for development in the area, haven't there?

MR. DRITSAS: Yes.

ASSEMBLYMAN HOLLENBECK: Over 25 homes?

MR. DRITSAS: Yes.

ASSEMBLYMAN HOLLENBECK: Did they go through the kinds of studies you wanted satisfactorily?

MR. DRITSAS: I don't know.

ASSEMBLYMAN HOLLENBECK: Were there other non-CAFRA permits issued in the area?

MR. DRITSAS: Certainly.

ASSEMBLYMAN HOLLENBECK: Did they have to go through all the studies?

MR. DRITSAS: I don't know, but I know that Galloway Township, in the four years during which Smithville has approved close to 6,000 housing units in eastern Galloway Township-- That same planning board has approved, with regard to non-CAFRA development, a total of 187 units and subdivisions. So, the 24-unit development which DEP was so concerned with has not come about.



ASSEMBLYMAN HOLLENBECK: I am just concerned with reference to what you are bringing forth. We are aware of areas where testimony does not seem to jibe right; we are fairly well aware of them. But, I'm thinking just generally of the Act. Obviously, with all the conditions you feel should be in it, and with all the studies on it, when it goes into litigation stages continually on the same thing, I don't know how-- Say a developer wants to build 50 homes. How would it be feasible for him to ever get those kinds of studies, and sell 50 homes?

MR. DRITSAS: We are not talking about 50 homes; we're talking about large-scale planned developments in Galloway Township.

ASSEMBLYMAN HOLLENBECK: Yes, but the same thing applies. If a potential is there for 5,000 homes, there is still going to be a potential for 50 homes. If it is 50 homes not on the sanitary sewer system, isn't the potential there?

MR. DRITSAS: Whether it is 50 homes, or whether it is 5,000 homes, there are still CAFRA requirements and policies where affirmative findings have to be made in any case, whether it is Smithville or another development. So, my answer is, even with those small ones--

ASSEMBLYMAN HOLLENBECK: (interrupting) I'm not so sure. Would you say the small ones meet all those requirements that you set forth? If there was an adjacent development and a CAFRA permit was issued -- just adjacent to Smithville -- would all those requirements be met?

MR. DRITSAS: Are you talking about a specific development, or are you talking about a hypothetical development?

ASSEMBLYMAN HOLLENBECK: There must be a development right around Smithville, or within close proximity to the area, that is CAFRA approved. Of course, not the size of this one, but with a smaller amount of homes. Did they have to go through all the studies you set forth, and go into the detail you set forth?

MR. DRITSAS: I think I have answered that.

**DERRY BENNETT:** May I try that? In this area of high environmental sensitivity and low-growth region, the only other CAFRA applications

are for large numbers. In other areas, where you would not have low-growth regions, or high environmental sensitivity, there are other categories of thoroughness on the application one must go through.

ASSEMBLYMAN HOLLENBECK: Let's just talk about the specific area of low growth. Has there been a CAFRA permit issued in the specific area of a low-growth region, for a small amount of homes?

MR. DRITSAS: Yes.

ASSEMBLYMAN HOLLENBECK: Did they go through the detail required to show the impact upon the aquifer, the shellfisheries, and the wildlife? Did they go through all the requirements you are setting forth, which you feel the Act requires? Did they have to go through the whole procedure?

MR. DRITSAS: Yes, they did.

ASSEMBLYMAN HOLLENBECK: Did the Department then develop -- what was developed for them? What was the base data on that? Did they have base data?

MR. DRITSAS: I don't know specifically how much base data they had. I don't think they had much base data for the Mullica River-Great Bay Estuary drainage basin. I don't believe they have it for any of those--

ASSEMBLYMAN HOLLENBECK: (interrupting) I'm wondering whether we're getting duplicative reports dealing with impact. That is all I'm questioning here. You're talking about a specific development, but we would like to talk generally with reference to the Act -- the departments dealing with the Act, the faults of the Act, and the permitting process, which we think is atrocious, since it is something that has to go through this amount of litigation, and the State has to go to the expense of it. Everyone has to go through the expense of it; nobody gains. Is it duplicate information? Did someone previously have to come up with impacts and things dealing with them? Did someone also come up with the base data of the water quality and the drawdowns?

MR. DRITSAS: I don't think, and I don't believe that the other large-scale developments, or the smaller ones in this limited growth region, have behind them and holding them up, the adequate base line information, in terms of how the estuary is going to react or what

the impact on shellfish will be. DEP has stated that they have real trouble making analyses of accumulative impacts. No, I do not believe -- you can take Smithville out of it, and we can talk about the other ones -- that in this region, DEP has the proper information to make positive findings on large PUD's.

ASSEMBLYMAN HOLLENBECK: I am just questioning whether you know if a developer has to go through this type of reporting on a small-scale development. Obviously, on a large-scale development, you have that. But, does a developer who wants to develop 50 homes, residential homes--

MR. DRITSAS: (interrupting) I think DEP tailors their review somewhat to the size of the development, and to the perceived impact. A 40-unit development is certainly not going to have to go through the degree of environmental analysis that Smithville would be required to, just based on size and density alone. It is nowhere near the size and density that Smithville is, and with great size comes great responsibility.

ASSEMBLYMAN HOLLENBECK: Yes, but a small-sized development has responsibility also, for the same reasons.

MR. DRITSAS: That's true; I agree. I am not saying it should be absent CAFRA review, and I am not saying that their policies should be applied one way or the other depending on CAFRA development. That is not my position at all. But, with a smaller development, it is just natural that a developer is not going to have to go through the expense and the amount of work, just because it is a lot smaller development. You do not have the same degree of detail that is required when you have a larger project.

ASSEMBLYMAN HOLLENBECK: What would be the difference if I took the same area and took 100 permits for 50 units, or one for 5,000?

MR. DRITSAS: Well, there is cumulative impact. I would say that with 100 developments at 50, and one at 5,000, DEP is going to say, "Well, what is the cumulative impact going to be on all these small ones?" The concerns are the same concerns.

ASSEMBLYMAN HOLLENBECK: See, my concern here is that the criteria as set forth will become so onerous, that if it is applied on

a smaller scale, nobody will meet it. You know, if we had something, a minor development -- not CAFRA even -- you would start putting burdens on it, and you would virtually block all development. I don't think that is the intent of the Act.

MR. DRITSAS: I do not think that would be the practical effect either.

ASSEMBLYMAN HOLLENBECK: I know, but what happens when we do that is we keep laying the groundwork for any interested party to delay for an extended period of time and, also, it would make a very large burden of legal costs.

MR. DRITSAS: Well, let me say this. Obviously, there is going to be growth in the coastal zone. It is happening now; it is happening to a great extent. The American Littoral Society reviews almost all the developments which come through CAFRA. We comment on a great many of them; we comment heavily on a few of them; and, we litigate hardly any. In other words, we are not "no growthists." We are not obstructionists. With Smithville and with PUD growth in the Galloway Township region, we have great concerns for the resource. Because of the soils, and because of the water, the potential for damage is very extreme. We have spent a lot of time on this issue, not because it gives us something to do, but because we have great concerns, and there is a public process we are allowed to get into. We do not want to spend our money on litigation.

ASSEMBLYMAN HOLLENBECK: I am not necessarily referring to the Littoral Society; I am referring to the fact that-- Supposing you had someone who wanted to build a development, and a local group had a little ax to grind. They could call themselves "Concerned Citizens Against So and So." Suppose one of them is an attorney -- this drives them up the wall, as far as cost is concerned. There is always an ulterior motive.

MR. DRITSAS: It keeps lawyers in business. I think Michael Gross would say, "I'm glad for it."

ASSEMBLYMAN HOLLENBECK: Yes, but it doesn't keep builders in business, and developers.

MR. DRITSAS: Well, okay, but I'm saying there is a public process. Persons who are aggrieved by a decision, are allowed to go through that process. We have gone on four years now, not because we are obstinate, but because we have been successful in court. DEP has not backed down; Smithville has not backed down. I am just using that as an example though.

ASSEMBLYMAN HOLLENBECK: I am not referring to this specific case.

MR. DRITSAS: Okay, but you're talking about being tied up in litigation, and so on.

ASSEMBLYMAN HOLLENBECK: Yes, that's right. I just can't see if a small developer wants to come in on a very small scale-- Why should we develop criteria which becomes so difficult that anyone who has an attorney can stop it? We only have one for every 290 people now in this State. Then, we turn around -- a lot of them are looking for work -- and we can have a ball here. Now, on this particular one, I do not disagree that the large-scale residential development should have occurred in this area. But, I am starting to think of the smaller ones, with the criteria you're talking about now, and whether it can be criteria that is going to hold for someone in the future. It could cause a lot of pain and a lot of money. That is the only question I have. I'm sure there have been other developments, and I am sure you know too that they did not have to go through this type of study we are asking for now. You are entitled to it through the courts; the courts said you were right, and that they were deficient. The courts were not satisfied in this specific area, and the reason why they allowed it was, they said right from the original points of Phase I with the conceptual approval that it was wrong, and most people agree that it was wrong. I don't think the developer liked conceptual approval in this particular case.

It just seems to me that we keep going in circles, but I am afraid of the impact of the other areas. When we start writing criteria for anyone to stop any kind of development anywhere within the sensitive areas of the shore, we can say anywhere where there is an aquifer, and those are concerns.

MR. DRITSAS: Okay. They are concerns, but I think the case has to have merits. It may hold something up for awhile, but it is not going to be successful unless it has merits. I mean, that is what the courts decide. I don't know. I look at the number of decisions CAFRA makes, and I find when I look through the DEP weekly bulletin that a lot of the appeals are from the developers themselves. Even when they get the permit, they are not happy with the permit decision. So, number one, it is not only the public interest groups who may be appealing and, number two, given the volume of CAFRA permits, most of them, I would suspect -- or a great majority of them -- go uncontested. So, I don't know if there really is that much litigation going on. There has been a real focus on Smithville, and that is in front of you right now.

ASSEMBLYMAN HOLLENBECK: That is because it is a large one.

MR. DRITSAS: Sure, and it raises some very large issues. However, I don't believe, given the volume of CAFRA permits issued every year, that there is a lot of litigation going on.

ASSEMBLYMAN HOLLENBECK: I think there is a lot of heartache going on dealing with the whole permit process, and the delay. Everyone knows that a developer never comes up with the initial money himself; he has to borrow the money. He is paying interest on it. In the meantime, if he is delayed, it is just stringing him along. I think that is why we don't see any development where they already have permits. They get strung out, and they cannot afford it.

You know, I do not think that is the goal of your Society, the goal of anyone else's organization, or the goal of the Legislature. I think we believe there should be development -- environmentally safe development though.

Do you want to add anything more, Mr. Bennett?

MR. BENNETT: Yes, very briefly.

ASSEMBLYMAN HOLLENBECK: You are not going to go through the whole litany, are you?

MR. BENNETT: No, I am not. Just briefly, I want to kind of

draft the CAFRA legislation. We sat down and went through that process, and we sit down to go through the process of updating and amending it, and changing the rules, the regulations, and the procedures. We get all of the applications. The public's right to participate in the process is provided in that law, because CAFRA is, in part, protecting that large public interest in natural resources, which consist of the fish and the wildlife, and the productivity of the estuaries and salt marshes.

As Paul mentioned, most of the applications we see are essentially waved through. I think we've appealed about seven over the past 10 or 12 years, most of those to the CAFRA Review Board for minor adjustments. The last couple have had to do with the public's right of access to waterfront land which was being developed. So, some cases can be very minor issues. In some cases, DEP settles a lot of this in the pre-op conferences. These can be settled a lot short of litigation.

Smithville is very different. I would like to spend time on that one, because working on the Smithville permit process is like going through the looking glass with Alice, into a land I don't think any one of us expected when we supported CAFRA. You mentioned, for example, that you didn't think the developer liked conceptual approval. Throughout the litigation, and throughout the argument, they have consistently gone back and tried to hang the other permits on that conceptual approval.

ASSEMBLYMAN HOLLENBECK: Except what we are looking at now, after the January 4 opinion, and I don't think that the developer likes that.

MR. BENNETT: Well, that is what happens if you read the conceptual approval about shellfish. The applicant will say, "That concern about shellfish will be dealt with in the phased permits, because conceptual approval is not a building permit."

If you look at the Phase 1A permit, it says, "Go back to the conceptual approval." That's where we went after the shellfish issue. And, it is ping pong. We entered a never-never land. One of the problems with this CAFRA permit is that predictability went out the window.

ASSEMBLYMAN HOLLENBECK: Speaking of shellfish again, in dealing with the two departments, we had testimony earlier with reference to the fact that they had removed their earlier objections.

MR. BENNETT: Well, the last I know of is the fact--

ASSEMBLYMAN HOLLENBECK: (interrupting) I mean, that could have come in letter form last week.

MR. BENNETT: Yes.

ASSEMBLYMAN HOLLENBECK: We are well aware of that.

MR. BENNETT: From the very beginning, when they changed the designation of the Mullica area, we raised a warning flag that we disagreed with that designation. We went to a meeting in Trenton late in 1980, before the application was even through processing, in order to alert everybody to the fact that they were going to run into a buzz saw with this one. So, they knew at the very beginning that this one was going to create some problems. We have been consistent on the issues we have raised since then.

Let me react to a few of the points that were mentioned this morning. I was the one who brought up the list of what I call violations at the public hearing down in Stockton, and I find that I still a long list of places where the developer had failed to follow what he was legally supposed to do. This had to do with the fact that those BMP's were going to be put in; that they were going to operate at super efficiency; that they were going to be maintained forever; and that they were going to protect the system.

Some of those deficiencies -- some of those violations -- that I turned in were such things as stone swales, which had been plugged up with silt because of later construction. The developer was then told to replace the stone swales with new stone that had air spaces in-between them, and he simply went in and laid new stone on top of them. That one little swail, that one little filling of silt, and the covering of stone over it -- there would have been no measurable impact on the Mullica system by that one swale. I don't think there is any question about that. No biologist would say, "We see an increase in phytoplanktons caused by that swail."



The problem we ran into with this one was, there are lots of those, there are lots of lawns, there are lots of wild life corridors, and lots of conditions -- 39 conditions on the conceptual approval. When you get into that many conditions and that many problems on how to design and run BMP's, swails, and things, it leads us to believe that in a fragile area it is better to err on the side of realizing that this system, with that many designs in it, is sooner or later going to fail. At least we cannot say that it is not going to fail, and that is where we feel the burden is on their side.

You heard testimony this morning from HSDC that they have proven their case for the past three years. Again, we disagree, and the courts have disagreed three times.

We would request specifically that you ask where in their analysis of this issue is the secondary impact analysis. We have not yet-- It was not in 1A and it was not in 1B, and we heard this morning that it may or may not be in 1C. If there was no secondary impact analysis in 1A and 1B, why were they approved? You can't say to us and the others, "Don't worry, we are going to get that in 1C, wait a while, because 1A and 1B are freestanding." Oh, no. Not if this happens down the line.

You talked about shellfish impacts. There are two other general things I would like to mention. I tried to figure out and answer the question, "Why has it gone on so long, and why are we here?" And, I don't know the answer. I don't know why, given the amount of time that we and the courts have put in on this, the decisions that come down are still saying: "We ought to come in and talk to some other people, because the DEP is probably going to reissue those permits," or, "It is trying to figure out a way to reissue those permits when it seems to us that there is something seriously out of whack."

In conclusion, this has to do with the original CAFRA Act, and it is a concern we have always had. CAFRA is not a planning act. It is an act that never produced a master plan, or any idea of what the DEP expects the coast to look like. It is an act which reacts to applicants. One of the things you may want to do is to look back into

the original CAFRA Act and see about a plan. Now, I am not talking, obviously, about a plan that can't be changed; I am talking about some kind of a plan we can all know about, and then it would be more predictable.

Lastly, it may be an opportune time for your Committee to look into -- and I hesitate to suggest your setting up another Commission, and I am not sure it should be a Commission -- something that will work on the whole Mullica-Great Bay Estuary as a system, in order to begin to get into issues like cumulative impacts, the transplant program, the oyster beds, the impacts of pollution upstream toward Hammonton, up the river. We have worked as long as we have on this issue because we think that the Mullica-Great Bay Estuary and the Brigantine Wildlife Refuge are gems. I don't think there is anybody in this room who thinks the developer has come down here and said we are going to figure out a way to pollute the Mullica and Great Bay and knock off the Wildlife Refuge. That is obviously not what they are up to, and neither are we. What we do think is, the process we have gotten into right now is leading down that road. And, secondly, we think the Mullica-Great Bay Estuary might be a prime candidate for some kind of -- and, again I hesitate to say commission -- group or organization which would take it on as a major natural resource for the State to protect.

ASSEMBLYMAN HOLLENBECK: Talking about the specific development, when is there going to be a satisfactory answer to the question? In other words, if the development was a scaled down development, because of changes from the time of the original application -- housing demand needs, marketing studies, etc., and there was a request for a scaled down version of that -- satisfaction would never be guaranteed because further studies would still be needed to support the scaled down version. Do you see what I am saying? You are getting into a web.

MR. DRITSAS: To answer that question and also some you brought up earlier regarding outstanding information; things we need to have; the burden on the developer; the cost; and, what they need to do -- these things align with your questions. DEP has to have adequate

information, whether they get it from the developer, or whether they generate it themselves, in order to be able to predict what impacts these developments -- whether they are large or scaled-down -- will have on an estuary. And, frankly, we don't believe they have that data.

We have raised questions. We haven't said what precisely has to be done in order to answer those questions. The Department should be actively finding ways to gain that information. Whether part of that information is from the developers, or whether much of it is from their own staff, that is something for them to decide. Perhaps that is a financial burden for the developer, and maybe, rightfully, the State should be generating the information they don't have, in order for them to make reasoned decisions, based on these policies.

If you go to scaling down a development, what is important is that you get a chance to monitor what is being built, and to monitor it properly. In other words, develop some, and then give the estuary time to react and stabilize. Monitoring should then be done to see what effect those "x" amount of units are having. Then, in a period of time -- and the Division of Water Resources has recommended three to five years of monitoring during and after development -- monitor it in order to see what kind of impact it is having. If it is okay, build some more, and continue to monitor while building. When it is finished, continue to monitor for three to five years, and then look at the next phase.

ASSEMBLYMAN HOLLENBECK: That is an awful long time to wait for a return, isn't it?

MR. DRITSAS: When you are dealing with a system that is as delicate as this one, it is needed, and DEP's own technical staff has recommended that. It is a time constraint, but we are talking about a very delicate system.

ASSEMBLYMAN HOLLENBECK: Thank you very much, gentlemen.

We have some members of the Smithville Homeowners Association with us today. Would you state your name for the record, please?

**LOUIS SCALA:** My name is Louis Scala, and I am the Manager of the Smithville Homeowners Association. I am retained in that capacity by the Board of Directors of the Association.

Prior to becoming Manager of the HOA, I was employed by the Smithville Development Company as their Vice President of Community Management, and I was responsible for setting up the HOA, and instituting the policies and procedures by which the community would operate.

The HOA has adopted many of the control procedures that were initiated by the developer. They have adopted these procedures into the body of their governing documents, rules, and regulations. By way of example, the HOA has established architectural review guidelines. These guidelines prohibit exterior additions, both to the buildings and to the lots, without first having the prior written consent of an architectural review committee made up of homeowners. The idea is that we are trying to limit additions to the community that would cause problems with our drainage systems, with our swail systems, and with our yards.

In addition, we have asthetic considerations, but for the purposes of this particular presentation, the aesthetic considerations have no impact on the environment.

The HOA has adopted a resolution which prohibits the use of lawn seed or sod, other than a specific blend that was customized by the Loft Seed Company for Smithville. We have heard comments about size restrictions and lawn restrictions in Smithville. My understanding, as Manager of the community, is that the restriction dealt with the developer; the developer would not put any lawns in any of the residential areas in excess of 400 feet, unless he could show that the type of lawn he was using, and the maintenance program he would use subsequent to the installation, met certain criteria.

The Association recognized the concern of the Soil Conservation authorities, and what we did was adopt a formal resolution which was enforceable with penalties and fines, whereby we required people to use a specific blend, regardless of how much sod or seed they planned on installing -- whether it be less or more than 400 square feet.

In Smithville, if anyone wants to have a private pool, they are prohibited from installing such a pool unless they hook up the

drainage from the pool into the underground sewer lines, so as to prevent any runoff into the streets, the sod, or the backyards.

ASSEMBLYMAN HOLLENBECK: Is that ordered by the Sewer Authority?

MR. SCALA: We haven't taken it before the Sewer Authority, because we haven't had one application yet, but I believe it is.

We have adopted pet resolutions, prohibiting owners from allowing animals to run loose in the community. We have also instituted scooper requirements, to pick up the droppings.

Our bylaws require the Board of Directors to enter into maintenance contracts for all the common areas. These areas include the proper maintenance of the BMP's that we referred to before. As examples, they include the grass swails; the stone swails, the catch basins, the leaching basins, and so on.

The fertilizers we use on these grass swails and basins contain the least chemical content, as recommended by the County Soil Agency. We coordinate mosquito and insect control programs, such as gypsy moth programs. We coordinate this with the county and municipal agencies to ensure that the proper chemicals are used and that they are safely applied.

Furthermore, we don't use chemicals or salt applications on the streets when we have icy road conditions; rather, we go through the expensive process of sanding the streets, and then subsequently cleaning them up after the ice or snow has melted away.

As Manager of the Association, I conduct monthly meetings, together with members of the Board of Directors, for the benefit of the membership of the HOA. The subject of the environmental attacks comes up often during our meetings. I believe that I speak the sentiments of a great majority of the people who attend these meetings when I say they would like to see the attacks come to an end. The types of controls that I mentioned before, I believe, are indicative of a community which is concerned with its environment.

We have been labeled degraders of the environment; and, quite frankly, many of the people in the community feel this is an insult to the community and to the membership.

The members are concerned and upset over the suspension of the permits in Smithville because they fear they are going to be denied conveniences that were planned for the land within the Smithville complex. Why should they be denied the convenience of local food stores? Why should they be denied the convenience of clothing shops, products, and service organizations, especially when the same care of the environment is going to be exercised by those facilities as is being exercised by the HOA?

More importantly, why should their substantial investment -- the investment they have all made in their homes -- be jeopardized by the potential effects of unwarranted and unsubstantiated claims made by certain groups?

I would like to add that I am also a homeowner in the Town of Smithville. I moved my family -- my two children and myself -- to the Town because I saw what I considered to be good things being done by the developer. I considered the area to be a good environment in which to raise my family, and I show the same concerns that many of my neighbors have expressed to me.

ASSEMBLYMAN HOLLENBECK: Is the Homeowners Association responsible for any of the commercial development?

MR. SCALA: No, not at all.

ASSEMBLYMAN HOLLENBECK: Who is responsible for that?

MR. SCALA: The owner of the commercial facility by deed restriction.

ASSEMBLYMAN HOLLENBECK: If you are responsible for a major environmental impact on the aquifer, who else would be responsible for that impact?

MR. SCALA: If it were brought about by areas, BMP's, or systems that were under the control of the Association, then I believe the Association would be responsible for correcting it.

ASSEMBLYMAN HOLLENBECK: The Association has a bond for that? It has insurance against it?

MR. SCALA: The Association does not have insurance for that. They operate within the confines of a budget. The budget includes the ongoing maintenance of a system. As was mentioned before,

if there were special assessments required, I am not sure the Association has the authority to assess the membership for special corrective measures. However, I just can't relate to the types of corrective measures you refer to.

ASSEMBLYMAN HOLLENBECK: It seems that in the general area we are referring to, with reference to the swails and their possible runoff, if something really went wrong and there was a major expense involved, there is a question of who is going to pay. What recourse does the DEP have? Who says, "Stop?" Who pays for it? I have a feeling that the Homeowners Associations would slowly fade away at that point, without any guarantee that action would be taken. They are promising that certain things will be done, but there is nothing to back that up.

MR. SCALA: No. The Homeowners Association has not conducted any study as to impacts, and it doesn't know what the ramifications are of the systems are, but, they do have an obligation to maintain them and keep them operational.

ASSEMBLYMAN HOLLENBECK: Thank you very much. Did you want to say something, sir?

GARY WALLACE: My name is Gary Wallace. I am the resident Trustee of the Board of Trustees of the Smithville Homeowners Association. The Smithville Homeowners Association represents all of the unit owners within the Smithville development. At present, in Smithville there are approximately 700 units built and occupied, and approximately 1500 people are members of the Association.

I have come here on behalf of the Board of Trustees of the Smithville Homeowners Association to state that the Smithville developers are doing everything possible to carry out a beautiful development that is compatible with the environment. If you visit Smithville, and I urge each of you to do so, you will see that the developer has maintained as many trees as possible on the site. We believe that compared to other developments throughout the State, the Smithville development stands out as a shining example of a development that is sensitive to its surroundings.

Since I have lived in Smithville, I have heard continued criticism from opponents of the Smithville development. Unfortunately, these opponents fail to come forth with any evidence that Smithville will have, or has had, any adverse impact on the environment. Instead, they have used overblown rhetoric to make outlandish allegations without having any facts to back them up.

Among these contentions is the entirely unfounded and untrue statement that the Homeowners Association will not assure the environmental controls for which it is responsible or maintained. The Board of Trustees is committed to maintain these controls so that the pristine environment and high quality of life we enjoy in Smithville will be maintained.

The Board of Trustees of the Homeowners Association feels that Smithville should continue to be able to develop, since the development meets all the environmental criteria.

ASSEMBLYMAN HOLLENBECK: The burden is really not on you, the burden is on the developer, to prove that there will not be an adverse impact on the environment. The courts have said they did not follow the proper procedures. That is where we are right now: That they have to follow the proper procedures and develop the proper information. That is why we are where we are right now.

Thank you, gentlemen, for coming.

Mr. James Cooper will be our next witness. My Cooper, you are a former President of the Historic Smithville Development Corporation?

JAMES COOPER: Yes, sir. My name is James L. Cooper. I am a lifelong resident of Atlantic County, born and raised there. I am a practicing attorney with the firm of Cooper and Perskie, practicing some 30 years in Atlantic County, with offices in Atlantic City.

Perhaps just a little background might be helpful because it will bring into perspective the project as it was conceived by me, because I was the one that brought together the original group that made up the Historic Smithville Development Company.

I was a banker in Atlantic City, Chairman of the Board of the Atlantic National Bank -- now merged into the Mid-Atlantic Banks -- and



I was faced with the prospect of a dying community. It was out of that insight that we created the movement to bring casino gaming to Atlantic City, which in turn was the genesis of the development of Smithville. It was within that framework, plus the one other significant aspect of my own involvement in the community, that was helpful.

I don't come here as a land developer without regard to the environment. I, in fact, represented the clamers of South Jersey in cleaning up Lakes Bay -- some of the same people who are now opposed to us in this litigation. And, I am sensitive to those very issues. I have some personal feelings concerning the environment.

I live on the inland waterway, and I was concerned about my children swimming there. We cleaned that up by improving the sewer system. We moved from a primary sewerage system in Ventnor and Margate to a secondary sewerage system, and the shellfish beds were purified. There is now shellfishing allowed -- or there has been shellfishing allowed as of last summer. I don't know about currently, but I presume it is still the same.

So, I am not insensitive to those issues. And, before I got involved in this project and committed my own funds to it, I looked around to determine what the environment was mentally, politically, and legally, and whether or not this project should go forward. I didn't try to change laws by creating variances. We found a place that had a sewerage system that was built and approved -- designed with Federal funds -- for growth of this type. We found a municipality in which there was zoning that permitted this type of growth. We found a location in which the county, likewise, wanted this growth. And then, we were confronted with a State that I thought was interested in enticing development by creating the casino industry and redeveloping South Jersey. And, we committed dollars, based upon our belief in the laws that existed at that time. It is within that framework of existing laws that we have taken the risk. We are willing to take the risk -- were willing to take the risk -- concerning the project, within the framework of the existing laws.

We don't come here for handouts. We haven't come to the State for anything, other than the laws that you in the Legislature

have passed and approved. You have approved a set of laws that were designed to permit CAFRA to make decisions, and if the decisions are wrong, they are tested in the court. That is a process that we understand. That is a process we can live with, and that is a process I think everybody should live with.

But, my concern was, and still is, a little different, and it is unfortunate. I think perhaps you, Mr. Chairman, and your Committee, are victims of the efforts of the environmentalists, because what has happened here is, this Committee is being put in the position of legally intruding into an otherwise judicial process -- administrative and judicial. I would have no problem, and I have no problem with your Committee concerning itself with the procedural aspects of the process. I really don't. But, as a taxpayer in the State, I recognize the fact that this Committee was not created to call this hearing, nor did Smithville call it; so, I have to assume the environmentalists suggested that this hearing take place, in some form. And, the problem with this is, I sit in an environment that I trust -- because of your reputation -- will be even-handed as far as all of us are concerned; I say that because I have done my homework and I have tried to find out if we will get even-handed treatment. I believe we will get even-handed treatment from the Committee you Chair. But, from the public perception of this, we sit here and we see environmentalists slipping notes to aides, who slip notes to people asking questions, and then these people ask very pointed questions, questions that go to the substance of the hearing. That concerns me, because I am entitled to the same protection the environmentalists are entitled to. I am a taxpayer in this State. I live in the area. I work in the area. My life is in the area. I believe I am entitled to, and I know I will get -- I believe we will all get -- the same treatment in your hands.

I apologize for saying that, but I want the environmentalists and everybody else to know that this is a two-way street, and that we are entitled to the same protection they are entitled to. The Legislature doesn't work for the environmentalists and it doesn't work for the developers. You are elected -- and I don't mean you personally. Legislators are elected to represent the State. The State

has seen fit to create development in South Jersey. That is what we are trying to do, within the framework.

What concerns me as a lawyer -- as a trial lawyer I have spend time litigating cases and doing some environmental work -- is that I don't understand the process being administratively before the Administrative Law Judges, and also being before CAFRA -- which is one step in a legal process. It comes before a public body in a parallel course during that process and asks questions, makes statements, and invites arguments on the substantive merits of a matter. I am concerned whether that, in fact, poisons the whole process. I think unwittingly, we are all being drawn into that process, which is damaging to the process itself. If there is any integrity to the Department of Environmental Protection, and I believe there is, then the process should be allowed to finish taking its course. The courts have seen fit to protect everybody. They will protect everybody in this State.

I object to the environmentalists bringing substantive issues before this Body at this time. I think that is really wrong. That is what concerns me about the process.

There is one specific thing I would like to bring to your attention, and it goes to the gentlemen that were talking here as members of the Smithville Homeowners Association, and particularly to the very good questions you asked here today. Where is the money going to come from for protection, in the event anything should ever go wrong? The answer is, there is built into the process a mechanism to create a positive economic impact. So, tax dollars will be available to Galloway Township from both the commercial taxpayer, as well as the residential taxpayer.

I am probably, if not the largest, the second largest taxpayer in Galloway Township right now. And, by the way, I don't own any housing land, so I am not speaking here with any bias or prejudice concerning this. I am no longer a part of that. I don't own them. I own -- if you are familiar with Smithville -- the Village of Smithville, the shops, the restaurants and the hotel site. It was critical to this entire project that there be a positive economic

impact, and this will come from the tax dollars that are generated, and that will continue to be generated, from those commercial properties, including the lakefront commercial property which we are hopefully going to build on, and from the hotel site we are hopefully going to build. That will fund, to a large extent, the Homeowners Association, because under the bylaws that were created with great care in creating this for CAFRA, a plan was developed wherein the commercial property owners would have to pay a large share of the maintenance of the Association. So, there is a safeguard built into it.

I want you to know -- I don't know the exact dollars, and I apologize for that; I don't have those figures available to me at the moment -- there is that kind of safeguard built into this. I know it probably is not really very important to you, but it was important to me. I live there. I am known there. I know people there. There is no way that Jim Cooper is going to do anything to degradate the environment while living there with my family, and after living there all my life. That is important.

Other people -- the environmentalists -- are from other areas, and they have singled out Smithville -- the Lord knows why, other than the fact that it is a large project. The safeguards that were built into this project in order to protect me and other investors, so that we wouldn't be embarrassed, were the strictest, toughest environmental controls that have ever been seen. To this date I think they have never been seen anywhere.

Now, that, to me, is very, very important and it should be important to the State. It was important to CAFRA. I hope it will still be important to CAFRA. But, if there is any room for improvement when it comes time to build the hotel, the controls will be put there, because we are not going to be here today and gone tomorrow. I have lived there 54 years; I hope to live there until the day I die. So, I have as much at stake in this as everybody else does. I am not talking about dollars now, I am talking about reputation; I am talking about sensitivity to the environment; I am talking about pride; and I want all of you to understand that all of us that have entered into this process, entered into it within a framework of rules, laws, and

regulations that we are willing to live by. We want to live by them, and we want to move this process within that framework, to its logical conclusion.

If CAFRA and the courts ultimately turn us down, then they turn us down. But if, under these circumstances, CAFRA feels this is an appropriate project, with the protection of a planned unit development, and if the courts say that ultimately it is okay, under the law, then so be it. That is what laws are made for.

But, to even consider the question of changing the rules during the middle of the game, that isn't even fair. That doesn't even smack of fundamental fairness. I don't even know why that is being considered, but it certainly shouldn't be, because everybody here, including myself, has invested significant funds, time, and dollars pursuant to the rules that were put on the books by the Legislature. All we ask is the opportunity to follow those rules and to find a way, pursuant to your questions, to simplify the process, so that the next developer that comes along will know what the rules are, and we can move through this in a more speedy and economic fashion and still protect the environment.

I thank you very much for the opportunity to be here. I will be glad to answer any questions you may have.

ASSEMBLYMAN HOLLENBECK: No, other than the fact that I did take exception to your remark about the hearing. It was by Committee action that this hearing was called; and it was through action on the part of the Legislature that this hearing was called to deal with the permit process. If you want to check the past hearings on this subject, you will find that the Committee itself was not the first one to bring up Smithville. It was brought up by the Department, not the Committee. It deals with the whole process itself.

MR. COOPER: I can accept that.

ASSEMBLYMAN HOLLENBECK: The environmentalists called no hearing, unless you can say I am an environmentalist and I called it. So, let's just get that straight real fast.

MR. COOPER: I can accept that. The problem with the process here today -- and I certainly accept what you say -- is when you deal

with the specifics of Smithville and you get into these questions, those questions are going to be determined by the court. That is the problem with the process. It doesn't really have anything to do with the procedure. It has to do with their attack on Smithville. That is the problem.

I would have no problem with an inquiry by this Committee; I think it would be great.

ASSEMBLYMAN HOLLENBECK: I don't know that the courts are attacking Smithville at all.

MR. COOPER: They are not attacking Smithville. They are not; that is what I am saying. The environmentalists are attacking Smithville at a hearing like this.

ASSEMBLYMAN HOLLENBECK: No, they are attacking the process of issuing the permits. They felt they were not done properly, as per the Act and as per the rules, and the courts agreed.

MR. COOPER: And, they remanded it for further hearings.

ASSEMBLYMAN HOLLENBECK: That's what I am saying, so there seems to be a misunderstanding. The rules are there for you, just as they are for them. Rules work two ways, and in the course of reading the cases, we found there were deficiencies, and for that reason we called for further hearings on them. I have no idea -- the Commissioner was here this morning -- of what kind of decision the Commissioner is going to make on these cases. He wouldn't discuss it. He was emphatic when stating points of view on the majority of the cases before him, so that he could clarify, at least as far as he knows, what is going on.

But, I want to thank you, Mr. Cooper for coming. Your testimony is not falling on deaf ears. There is a tremendous burden on the developer, not only on Smithville, but on other developers as well.

Concerning the permit process, when we try to speed them up, we find there are pre-application conferences and studies. After that, just so you don't have to go through the 90 days, you ask for more and you get a delay. I have expressed sympathy for that. I think it is wrong. It is the wrong way to do it. If you know one, two, three what is going to happen, it would be better. Everybody realizes -- it is

implied -- that if you cooperate with the pre-application conferences, it would make it much smoother for you later on. The poor developer in that particular case is stuck, and I don't think that is right. I do not think that is right in the least.

MR. COOPER: In conversation with former Governor Byrne, and in one conversation, in my presence, with Governor Kean, both espoused that one of the ways we could attract business to New Jersey would be a one-permit process, if we can ever simplify it. Forget Smithville for a moment. In your wisdom, if you can find a way to simplify the process for a developer, we will be able to attract more than our fair share of investment capital into the State of New Jersey. And, if that comes out of this kind of a--

ASSEMBLYMAN HOLLENBECK: We are cognizant of that particular problem -- why the original 90-day rule came up, and how fast the bureaucrats found ways to bastardize that particular law we put through. Thank you very much.

MR. COOPER: Thank you.

ASSEMBLYMAN HOLLENBECK: Mr. Robert Tatum.

ROBERT TATUM: I am Bob Tatum, the first President of the Historic Town of Smithville. I started it in 1976 and took it through the process with CAFRA during that time. I will just take a few minutes to say that we spent probably a year of constant studies, and millions of dollars, to put that permit in place, and they did an extraordinarily thorough job. Under David Kinsey's leadership, we had to get the best experts to keep proving our points to them at that time. So, this was not a quick, easy permit. It was a long tedious process.

Upon issuance of a permit, we poured millions of dollars into the project. A developer should, after that long a time, that much work, and that many experts, be able to rely on that permit.

I might tell you that there were over 25 regulatory agencies we had to go to in order to get this project underway -- many of them duplicative. The cost was enormous. It was passed right on to the consumer. Then the Mount Laurel case came down and said, "You must provide low and moderate housing" on top of that -- which is fine, but it all comes out somehow that the consumer has to pay. The process

right now is overburdensome. It is back to Ralph Naderism. Where does it stop? How much does the consumer expect to pay for protection?

ASSEMBLYMAN HOLLENBECK: That's the same question I asked.

MR. TATUM: HUD proved -- not the builders, but HUD -- that the cost of housing could be reduced by as much as 25 percent if the whole system were to be revamped, without any harm to the product itself, that is how much red tape is involved in the system today. I am sure the consumers would like to save that much money on housing.

Today the problem with housing is you can't produce anything below \$42 or \$44 thousand. It is very hard for young people to even get a start. There is no change down there to build rental housing. That is very difficult to do, and most of the people have to start out with rentals.

So, what we have done to ourselves -- all of us, you, us, the builders -- is to put the young people and the older folks in this country completely out of the housing market. They can't afford what we do these days. And, unless we change that process, we will never satisfy the housing needs of a large majority of the people.

I will go back and say that my purpose for stating this was that we bought the property because there were sewers there. The sewers were provided by HUD money, backed up by State, local and county government endorsement, and by the Federal Department of Environmental Protection. They said if a sewer goes in there with a pump station, there will be thousands of homes developed in Smithville. That was done long before we got into the act. If that hadn't been there, we wouldn't be here today discussing Smithville. So, I am saying that CAFRA had a perfect right, based on the history of what took place -- there was definitely infill, based on that sewer line -- to issue this permit after all the study that was done, and we did a thorough job.

ASSEMBLYMAN HOLLENBECK: Thank you very much.

Our last witness to testify will be Karl Wessler, Galloway Township.

**KARL WESSLER:** I am Karl Wessler, from Galloway Township. I am a Township Councilman. Sir, I appreciate your giving me just a few minutes. I just learned about this hearing last night, so I do not



have a long list. I just have a little card here. I would like to make only three points. I think Smithville serves the public need. The people in Atlantic County need it, and I think it does an adequate job with all levels of homes, from \$40 thousand to somewhere in the \$120 thousand range. There is a need. I know of it firsthand. I spend a couple of years prior to being elected, in the casino business. I know Smithville has a good reputation. I know a lot of the dealers, pit bosses, clerks, etc. who live in Smithville; they enjoy living there. I know that as a fact because I am newly elected and I have knocked on every door in Smithville, and I have talked I guess to 70 percent of the residents personally. I know they are happy with their lives there.

I am a resident of Smithville. My wife loves it. I chose Smithville after doing some 30 years in the service. I know Galloway Township because I was raised and went through the entire school system there, and I obviously had a choice of buying anywhere in Galloway Township. But, I deliberately chose Smithville because of the development and the amenities they have, and because of the lifestyle they offer the people of Galloway Township. I think it adequately meets the need of government. I think the local government is adequately protected, with the decisions, resolutions, and the process the Planning Board went through for many, many midnight sessions before I retired and got back into Galloway Township.

The governing body considered it an improvement to the area, from the standpoint of rateables. I know that there was a time when some of the older residents had a natural concern about a large development coming in, that a lot of the people moving in there might be from the so-called gambling element.

One of the reasons I ran for office was because I felt I could represent the oldtimers as well as the newtimers, to help build an understanding between the two elements. I believe the oldtimers in the area have now come to realize that the new residents, associated with the casinos, are volunteering for the local fire departments, and local ambulance services, and that they are contributing to the school system; they are not tearing it down.

Just one word as far as the government is concerned, and the Chairman's concern about other smaller developments and whether or not they went through this whole process? There are smaller developments. For example, Hovmanian, which is probably as close to the Mullica Estuary as Smithville is. No, they didn't have to answer all these questions. We are talking about a development which I think was envisioned only two years ago, and has now completed about 192 units, 80 of which are sold. I think this testifies to the need for this kind of housing.

Another one would be Hollybrook on Route 9. It is the same kind of thing; it is a small development of, I think, 80 units. No, they didn't have to go through the same process Smithville is going through.

As far as the environment is concerned, I read these stories about how the deer can no longer roam, and the birds aren't chirping in the morning. I don't see that. I jog around this community every day. As far as I can see -- and I used to hunt these areas as a boy -- there are probably more white tailed deer in this area right now -- they come right into my back yard -- than there ever have been. The only difference is, the tree stand that used to serve the hunters is right next to me; it is still in place, and it is no longer used, of course, to kill those animals.

I believe that is about all I have to say. As far as the clams are concerned, I used to fish that bay every year. From my understanding, the shellfishermen had one of the best years they ever had last year. Also, it is my understanding that where I used to jump overboard and pull out my clams was much closer to Brigantine than it was to Smithville, and I think there are as many safeguards being taken in Smithville as there are in Brigantine.

ASSEMBLYMAN HOLLENBECK: Thank you very much, ladies and gentlemen. That was our last witness for today's hearing, so we will now adjourn for the day.

**(Hearing Concluded)**



## APPENDIX



# STATE OF NEW JERSEY

## SOIL EROSION AND SEDIMENT CONTROL ACT

CHAPTER 251, P.L. 1975\*

### 4:24-39 SHORT TITLE

This act may be cited and referred to as the "Soil Erosion and Sediment Control Act."

L. 1975 C. 251, § 1 eff. Jan. 1, 1976

### 4:24-40 LEGISLATIVE FINDINGS

The Legislature finds that sediment is a source of pollution and that soil erosion continues to be a serious problem throughout the State, and that rapid shifts in land use from agricultural and rural to nonagricultural and urbanizing uses, construction of housing, industrial and commercial developments, and other land disturbing activities have accelerated the process of soil erosion and sediment deposition resulting in pollution of the waters of the State and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resource uses. It is, therefore, declared to be the policy of the State to strengthen and extend the present erosion and sediment control activities and programs of this State for both rural and urban lands, and to establish and implement, through the State Soil Conservation Committee and the Soil Conservation Districts, in cooperation with the counties, the municipalities and the Department of Environmental Protection, a Statewide comprehensive and coordinated erosion and sediment control program to reduce the danger from storm water runoff, to retard nonpoint pollution from sediment and to conserve and protect the land, water, air and other environmental resources of the State.

L. 1975, C. 251, § 2, eff. Jan. 1, 1976

### 4:24-41 DEFINITIONS

For the purposes of this act, unless the context clearly indicates a different meaning:

a. "Application for Development" means a proposed subdivision of land, site plan, conditional use zoning variance, planned development or construction permit.

b. "Certification" means (1) a written endorsement of a plan for soil erosion and sediment control by the local Soil Conservation District which indicates that the plan meets the standards promulgated by the State Soil Conservation Committee pursuant to this act, (2) that the time allotted in section 7 of this act has expired without action by the district or (3) a written endorsement of a plan filed by the State Department of Transportation with the district.

c. "District" means a Soil Conservation District organized pursuant to chapter 24 of Title 4 of the Revised Statutes.<sup>2</sup>

d. "Disturbance" means any activity involving the clearing, excavating, storing, grading, filling or transporting of soil or any other activity which causes soil to be exposed to the danger of erosion.

e. "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

\* as amended by C. 264, P.L. 77 and C. 459, P.L. 79

f. "Plan" means a scheme which indicates land treatment measures, including a schedule of the timing for their installation, to minimize soil erosion and sedimentation.

g. "Project" means any disturbance of more than 5,000 square feet of the surface area of land (1) for the accomodation of construction for which the State Uniform Construction Code would require a construction permit, except that the construction of a single-family dwelling unit shall not be deemed a "project" under this act unless such unit is part of a proposed subdivision, site plan, conditional use, zoning variance, planned development or construction permit application involving two or more such single-family dwelling units, (2) for the demolition of one or more structures, (3) for the construction of a parking lot, (4) for the construction of a public facility, (5) for the operation of any mining or quarrying activity, or (6) for the clearing or grading of any land for other than agricultural or horticultural purposes.

h. "Sediment" means solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

i. "Soil" means all unconsolidated mineral and organic materials of any origin.

j. "Standards" means the standards promulgated by the committee pursuant to this act.

k. "Committee" means the State Soil Conservation Committee in the Department of Agriculture established pursuant to R.S. 4:24-3.

l. "Public facility" means any building; pipeline; highway; electricity, telephone or other transmission line; or any other structure to be constructed by a public utility, municipality, county or the State or any agency or instrumentality thereof. L. 1975, C. 251, § 3 eff. Jan. 1, 1976. Amended by L. 1977, C. 264 § 2 eff. Oct. 18, 1977. Amended by L. 1979, C. 459, § 1 eff. Feb. 27, 1980. 1. Section 4:24-45, 2. Section 4:24-1 et seq.

#### 4:24-42 STANDARDS FOR CONTROL OF SOIL EROSION AND SEDIMENTATION; PROMULGATION, AMENDMENT AND REPEAL

The committee shall have the power, subject to the approval of the Secretary of Agriculture and the Commissioner of Environmental Protection to formulate, promulgate, amend and repeal standards for the control of soil erosion and sedimentation, pursuant to the Administrative Procedure Act, P.L. 1968, C. 410 (C. 52:14B-1 et seq.)

a. Such standards shall be based upon relevant physical and developmental information concerning the watersheds and topography of the State, including, but not limited to, data relating to land use, soil, slope, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics.

b. Such standards shall include criteria, techniques and methods for the control of erosion and sedimentation resulting from land disturbing activities for various categories of soils, slopes and land uses.

c. Such standards shall include standards of administrative procedure for the implementation of this act.

L 1975, C. 251, § 4 eff. Nov. 12, 1975. Amended by L. 1979, C. 459, § 2 eff. Feb. 27, 1980.

4:24-43 CERTIFICATION OF PLAN BY DISTRICT; DEVELOPMENT OF PROJECT

Approval of an application for development for any project by the State, any county, municipality, or any instrumentality thereof shall be conditioned upon certification by the local district of a plan for soil erosion and sediment control. Any person proposing to engage in any project not requiring approval by the State, any county, municipality, or any instrumentality thereof shall, prior to commencing such project, receive certification by the local district of a plan for soil erosion and sediment control. Any public utility, municipality, county or the State or any agency or instrumentality thereof, other than the State Department of Transportation, which proposes a project shall, prior to the construction of such project submit to and receive certification by the district of a plan for soil erosion and sediment control. The State Department of Transportation shall certify a plan for any project that it proposes to construct and shall file such certification with the district. Certification by the Department of Transportation shall be pursuant to soil erosion control standards developed jointly by the Department of Transportation the Department of Environmental Protection and the committee and promulgated by the Department of Transportation.

L. 1975, C. 251, § 5 eff. Jan. 1, 1976. Amended by L. 1979, C. 459 § 3 eff. Feb. 27, 1980.

4:24-44 CERTIFICATION OF PLAN; CRITERIA; NOTICE

The district shall certify such plan if it meets the standards promulgated by the committee pursuant to this act. The district shall provide written notice to the applicant indicating that:

- a. The plan was certified;
- b. The plan was certified subject to the attached conditions; or
- c. The plan was denied certification with the reasons for denial stated.

L. 1975, C. 251, § 6 eff. Jan. 1, 1976

4:24-45 LIMITATION ON TIME FOR GRANT OR DENIAL OF CERTIFICATION

The district shall grant or deny certification within a period of 30 days of submission of a complete application unless, by mutual agreement in writing between the district and the applicant, the period of 30 days shall be extended for an additional period of 30 days. Failure of the district to grant or deny certification within such period or such extension thereof shall constitute certification. For purposes of this section, a major revision of the plan by the applicant shall constitute a new submission.

L. 1975, C. 251, § 7 eff. Jan. 1, 1976

4:24-46 FEES

The district shall adopt a fee schedule and collect fees from applicants for the certification of plans and for on-site inspections of the execution of certified plans. Such fees shall bear a reasonable relationship to the cost of rendering such services.

L. 1975, C. 251, § 8 eff. Jan. 1, 1976



4:24-47 STOP-CONSTRUCTION ORDER; FAILURE TO COMPLY WITH CERTIFIED PLAN

The district or the municipality may issue a stop-construction order if a project is not being executed in accordance with a certified plan.

L. 1975, C. 251, § 9 eff. Jan. 1, 1976

4:24-48 EXEMPT MUNICIPALITIES

Any municipality, which adopts an ordinance that conforms to the standards promulgated pursuant to this act within 12 months of their promulgation and obtains the approval of the committee thereto, shall be exempt from sections 5 through 9 of this act, until such time as the local district determines that the municipality is not enforcing said ordinance.

L. 1975, C. 251, § 10 eff. Jan. 1, 1976, 1. Sections 4:24-43 to 4:24-47

4:24-49 CERTIFICATE OF OCCUPANCY FOR PROJECT; CONDITIONS FOR ISSUANCE

No certificate of occupancy for a project shall be issued by a municipality or any other public agency unless there has been compliance with provisions of a certified plan for permanent measures to control soil erosion and sedimentation.

L. 1975, C. 251, § 11, eff. Jan. 1, 1976. Amended by L. 1979, C. 459, § 10 eff. Feb. 27, 1980

4:24-50 COUNTY PLANNING BOARD AS AGENT FOR DISTRICT

In those counties where the district does not maintain its central office, the board of freeholders may, by resolution, direct the county planning board to act as an agent of the district within that county and to administer the powers granted to the district pursuant to this act, until such time as a district is established within that county. The committee shall establish guidelines to implement this section.

L. 1975, C. 251, § 12 eff. Jan. 1, 1976

4:24-51 COOPERATIVE WITH AND AUTHORIZATION TO RECEIVE FINANCIAL AID FROM GOVERNMENTAL UNITS OR PRIVATE SOURCES

The districts and the committee are authorized to cooperate and enter into agreements with any Federal, State or local agency to carry out the purposes of this act. The districts and the committee are authorized to receive financial assistance from any Federal, State, county or other public or private source for use in carrying out the purposes of this act.

L. 1975, C. 251, § 13 eff. Jan. 1, 1976

4:24-52 STATE AID

The committee is authorized to make grants of State aid to districts and to municipalities to carry out the purposes of this act.

L. 1975, C. 251, § 14 eff. Jan. 1, 1976

4:24-53 VIOLATIONS; INJUNCTION; PENALTY; ENFORCEMENT

If any person violates any of the provisions of this act, any standard promulgated pursuant to the provisions of this act, or fails to comply with the provisions of a certified plan the municipality or the district may institute a civil action in the Superior Court

for injunctive relief to prohibit and prevent such violation or violations and said court may proceed in a summary manner. Any person who violates any of the provisions of this act, any standard promulgated pursuant to this act or fails to comply with the provisions of a certified plan shall be liable to a penalty of not less than \$25.00 nor more than \$3,000 to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:48-1 et seq.). The Superior Court, County Court, county district court and municipal court shall have jurisdiction to enforce said Penalty Enforcement Law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

L. 1975, C. 251, § 15, eff. Jan. 1, 1976

#### 4:24-54 LIBERAL CONSTRUCTION

This act shall be liberally construed to effectuate the purpose and intent thereof.

L. 1975, C. 251, § 15, eff. Jan. 1, 1976

#### 4:24-55 SEVERABILITY

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

L. 1975, C. 251, § 17, eff. Jan. 1, 1976

#### Related statutes codified elsewhere in NJSA 4:24

#### 4:24-6.1 REVIEW AND APPROVAL, MODIFICATION OR REJECTION OF DECISIONS

The committee may, on its own motion or at the request of any person aggrieved by any decision by a local district, review and approve, modify or reject any such decision as it deems appropriate.

L. 1979, C. 459 § 9, eff. Feb. 27, 1980.

#### 4:24-17.6 APPROPRIATION OF FUNDS BY COUNTIES

Any board of chosen freeholders may appropriate such funds as it deems necessary to the soil conservation district serving that county for the purpose of providing district services to the people of that county.

L. 1979, C. 459 § 4, eff. Feb. 27, 1980.

#### 4:24-17.7 LEGAL SERVICES TO DISTRICT BY ATTORNEY GENERAL

The Attorney General, on his own initiative, or the respective county counsel, with the approval of the board of chosen freeholders, may provide any and all legal services to any district.

L. 1979, C. 459 § 5, eff. Feb. 27, 1980.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE  
One Gateway Center, Suite 700  
NEWTON CORNER, MASSACHUSETTS 02158

MAR 3 1984

Mr. Mark O. Smith  
State of New Jersey  
Assembly Agriculture and  
Environment Committee  
State House  
Trenton, N.J. 08625

Dear Mr. Smith,

Thank you for your letter on behalf of Chairman Hollenbeck, inviting me, or my representatives, to attend and participate at a public hearing on permits granted to the Historic Smithville Development Corporation. Unfortunately, your invitation arrived subsequent to the date of the public hearing. I am taking this opportunity to enclose a statement that Mr. Robin Burr of my staff presented at the February 21, 1984 public hearing, conducted by New Jersey Department of Environmental Protection's Division of Coastal Resources on the Smithville Project. I request that this material be entered into the record of the Committee's hearing. In addition, I would be happy to meet with Chairman Hollenbeck and other committee members to discuss our concerns regarding Smithville's impact on the Brigantine National Wildlife Refuge.

Enclosure

Sincerely yours,

Regional Director

DEPUTY

Statement of Mr. Robin Burr presented to the  
New Jersey Department of Environmental Protection  
regarding the Smithville Development  
February 21, 1984, Stockton College, Absecon, NJ

My name is Robin Burr. I am stationed at the U.S. Fish and Wildlife Service's office in Absecon. I am authorized to represent Howard Larsen, the Service's Regional Director. The primary purpose of the Division of Ecological Services is to review, comment and develop recommendations on projects under the authority of the Fish and Wildlife Coordination Act. The goal of our involvement is to conserve, protect and enhance fish and wildlife and their habitats and facilitate balanced development of our Nation's fish and wildlife resources.

Our specific comments and recommendations on the Smithville project are contained in 7 reports, copies of which I submit for inclusion in this hearing's record. In general, our office looks unfavorably on any project which indirectly destroys or degrades wetlands, and associated fish, wildlife or shellfish resources without adequate mitigation of associated impacts. We believe that if the Smithville project development is not strictly controlled, there could be direct or indirect adverse impacts on fish and wildlife on and off of the Brigantine NWR. In order to more fully evaluate effects of the Smithville project on the refuge or wetlands and their resources, the Service recommends that the New Jersey Department of Environmental Protection initiate a comprehensive water quality study. Such a study should include, but not be limited to, the distribution of possible environmental contaminants (e.g., pesticides and herbicides) through surface waters and groundwater from the Smithville project site to the waters of the adjacent estuary system and the Brigantine NWR.

We thank you for the opportunity to provide these comments. I would be happy to address any questions you may have about the Service's position.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

112 West Foster Avenue  
State College, PA 16801

APR 4 1980

Ms. Amanda Kirkpatrick  
Bureau of Coastal Project Review  
New Jersey Department of Environmental Protection  
P.O. Box 1889  
Trenton, NJ 08625

Dear Ms. Kirkpatrick:

This responds to your letter of December 14, 1979, requesting our comments on the preliminary Planned Unit Development (P.U.D.) application for the Towne of Smithville, Atlantic County, New Jersey. Our comments address the Service's concerns over direct and indirect project impacts to the Brigantine National Wildlife Refuge and the fish and wildlife habitat losses in the project area. These comments provide technical assistance only and do not constitute the report of the Secretary of the Interior on the project within the meaning of Section 2(b) of the Fish and Wildlife Coordination Act, nor do they represent the review comments of the Department of the Interior on any federal permits which may be required.

We offer the following comments on the preliminary P.U.D. for the Towne of Smithville.

GENERAL COMMENTS

The P.U.D. document for the Towne of Smithville is generally adequate in describing fish and wildlife resources of the project area. However, the document does not adequately identify the proposed project's adverse impacts to fish and wildlife resources and their habitats, especially cumulative impacts.

Primary and secondary adverse impacts to Brigantine National Wildlife Refuge are not satisfactorily presented. Potential significant adverse impacts such as habitat and air quality degradation, saltwater intrusion, pests, surface water runoff, solid wastes, consumptive recreational uses and insect control should be addressed in project planning. To maintain the integrity of Brigantine National Wildlife Refuge, we recommend the P.U.D. be revised to eliminate these problems.

The document does not identify and describe all freshwater wetlands on the project area. The construction of residential housing and/or recreational facilities in these wetlands will require a Section 404 permit under the Clean Water Act of 1977. Under current federal regulations, it is unlikely these wetland fills would be approved. Moreover, we are concerned about the location of recreational facilities, such as the golf course, in designated Open Space Areas which generally coincide with freshwater wetlands, particularly along Mattix Run.

The proposed development appears to be inconsistent with several Coastal Policies of New Jersey's Coastal Zone Management Plan, especially the Land Areas Policy (page 90). According to the Land Areas Policy criteria, only low intensity development is acceptable for the project area. High-intensity development, such as the proposed Towne of Smithville, can hardly be construed as being consistent with the Land Areas Policy.

#### BRIGANTINE NATIONAL WILDLIFE REFUGE

##### Wildlife

The proposed project will result in a net loss of wildlife on the refuge. These losses can be attributed mainly to a reduction in wildlife habitat. Wildlife habitat losses adjacent to the refuge will result in increased use of refuge habitats by wildlife species displaced from the proposed project area. Such artificial crowding of animals onto habitats already at optimum carrying capacity could seriously impair the basic purpose and function of our refuge. Disease outbreaks, severe depletion of food resources and "stripping damage" to refuge wildlife habitats would be the end result. We expect wildlife populations and habitats on the Refuge to be significantly impacted.

We also expect that construction activities adjacent to the proposed "wildlife movement corridors" will displace resident species and drive them to the west and east -- towards the Refuge. After the Smithville P.U.D. is completed, approximately 20,000 people are expected to live near these "wildlife corridors" within the LD, LMD and MD residential densities proposed. Such a high human population surrounding a proposed critical wildlife habitat will undoubtedly result in increased recreational use of the area. This will drastically restrict use of "wildlife corridors" by native wildlife, especially mammals. In effect, the "wildlife corridors" concept will not work. Resident wildlife populations will be forced to the west and/or east which will lead to the aforementioned overpopulation problems.

##### Ground Water

The development will remove approximately two million gallons of water per day from the Cohansey Aquifer. This could decrease freshwater flow within the aquifer from the west-northwest into the Brigantine Refuge coastal areas. Decreased water volume within the aquifer in the refuge area may result in saltwater intrusion into the refuge's freshwater well systems, as well as within the adjacent villages of Leeds Point, Motts Creek and Oyster Creek.

### Air Quality

The approximately 10,000 automobiles brought into the area by the new residents of Smithville will affect the air quality of the Brigantine National Wildlife Refuge, a Class I Air Quality Area. The Prevention of Significant Deterioration (PSD) standards, promulgated by the U.S. Environmental Protection Agency and the New Jersey Department of Environmental Protection, must be adhered to. Although figures and references were provided within the Smithville P.U.D. Master Plan reflecting concern for the impacts of sulfur dioxide, particulates, etc. upon Brigantine Refuge Wilderness areas, no evidence was presented as to the effects of carbon monoxide upon these Class I Areas. Furthermore, no evidence was provided on the predicted cumulative impacts to air quality by this and other proposed developments next to the refuge.

### Pets

Unleashed pets brought into the new Smithville P.U.D. by its residents may present a problem to bird and mammal populations on Brigantine Refuge and within the proposed "wildlife corridors". How does the consultant propose to handle this problem?

### Surface Water Runoff

Direct surface runoff from the planned residential areas could seriously degrade water quality in Brigantine Refuge. Runoff from proposed developments along Wigwam Creek, Morse's Mill Stream, and Mattix Run eventually enters the Refuge through Wigwam and Nacote Creeks. Furthermore, the P.U.D. document states that for the developed shop areas (including the Smithville and Quail Hill Inns), "All upland runoff is handled by surface flow ultimately into Lake Meone and the small pond south of Lake Meone and Moss Hill Road" (Volume 5, page RP-3). Since Lake Meone empties into Wigwam Creek, a stream already polluted and closed to shellfishing, the surface runoff entering the pond and Lake will aggravate the Creek's condition. This stream ultimately flows through the Brigantine Refuge. How does the consultant propose to alleviate these impacts?

### Solid Waste

An increased volume of solid waste into the nearby Oak Street Landfill will occur as a direct result of the New Towne of Smithville's presence by the mid-1980's. Table RP-U, on page RP-78 of Volume 5, Exhibit N shows the Oak Street Landfill to have a remaining life of eight years from the date of preparation. Our principal concern revolves around the increased volume of solid waste which will be generated by Smithville in 5-10 years; primarily because of the fact that the Oak Street dump is upon and within the Sassafras-type soil classification. These soils readily percolate surface precipitation and/or leakage from liquid wastes deposited at the landfill site. The Oak Street location will probably be the only functional landfill in Absecon, Egg Harbor City and Galloway Township by 1985. The Herschel Street Landfill is expected to reach capacity and close in approximately three years. Therefore, the increased volume of solid waste within the Oak Street Landfill will greatly intensify. Yet, all of this additional waste will be deposited



within a landfill which is located approximately two miles from Brigantine National Wildlife Refuge. Percolation of surface waters within the dump site undoubtedly occurs down to the ground water tables, and possibly even to the Cohansey Aquifer. Consequently, we fear that a significantly increased volume of solid waste deposited in the Oak Street Landfill may produce pollutants within refuge wetlands or at any other location where groundwater, affected by pollution, approaches to or outcrops at the surface. Long-range, environmentally sound provisions for solid waste disposal seem to be absent. Based on this alone, we do not feel that it is appropriate to proceed with such a large-scale development.

#### OTHER FISH AND WILDLIFE RESOURCE CONCERNS

##### Federal Permits

We note with concern that some wetlands under federal jurisdiction have not been delineated in the document. The consultant has identified a total of 310 acres of wetlands on the project area (e.g., approximately 177 acres of Atlantic white-cedar and an additional 134 acres of other freshwater wetlands). According to the USGS topographic map (Oceanville Quadrangle) and the U.S. Fish and Wildlife Service's Draft National Wetlands Inventory (NWI) map (Oceanville Quadrangle), a considerable acreage of palustrine forested, palustrine scrub/shrub and palustrine emergent wetlands are located along Mattix Run. The NWI map identified approximately 320 acres of freshwater wetlands along Mattix Run.

These wetlands are under the regulatory jurisdiction of the U.S. Army Corps of Engineers via the statutory authority of Section 404 of the Clean Water Act. Placing of fill materials in wetlands without a Corps permit would constitute a violation of federal law. We recommend that the applicant coordinate with the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency and this Service to determine the extent and limits of federally regulated wetlands. We further recommend that the plans be revised to identify all freshwater wetlands.

Many wetlands in the project area are designated by the P.U.D. as Open Space Areas for which recreational facilities are planned. Any activity requiring the placement of fill in wetlands will require Corps permits. Approval of such permits is unlikely under current federal guidelines. Therefore, we strongly recommend these recreational facilities be designed for upland sites.

We are also concerned with the proposed construction of residential housing in wetlands along Mattix Run and Morse's Mill Stream as depicted on Map #4 of B in Volume 5. It is unlikely that Corps permits would be approved for residential housing in wetlands.

##### Coastal Zone Management Act Consistency

Because federal agencies are required to assure their activities are consistent with a state's approved Coastal Zone Management Plan, we offer the following comments on our interpretation of how the Towne of Smithville's P.U.D. relates to New Jersey's Coastal Zone Management Plan.



We believe the following policies are especially pertinent:

- 1) White-cedar Stands (page 52) -- "Development that adversely affects white-cedar stands is prohibited";
- 2) Critical Wildlife Habitats (page 55) -- "Development that would adversely affect Critical Wildlife Habitats is discouraged unless: (a) minimal feasible interference with the habitat can be demonstrated, (b) there is no prudent or feasible alternative location for the development, and (c) the proposal includes appropriate mitigation measures";
- 3) Bogs and Freshwater Wetlands (page 58) -- "Development that would adversely affect the natural functioning of the bog or ephemeral pond environment is prohibited"; and,
- 4) Land Areas (page 90) -- "Coastal development which does not conform with the acceptable intensity of development of a site is discouraged".

It is our opinion that the proposed Towne of Smithville P.U.D. does not comply with these four Coastal Policies. Following are more detailed comments and our analysis of the project relative to the Coastal Policies. We would appreciate your reaction to our interpretation of your Coastal Policies.

According to Map #4 of B in Volume 5, residential development is proposed for the white-cedar stands along Morse's Mill Stream in the areas designated LMD-14 and LMD-13. This residential development will inevitably impact the white-cedar stands. Therefore, the P.U.D. appears to violate the white-cedar stands coastal policy.

Critical Wildlife Habitats have not been addressed in the document. According to the definition, "Critical Wildlife Habitats are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding and migrating." The white-cedar stands and other wetlands on the project area are important as wintering habitat for white-tailed deer. Hence, we question whether designating wetlands as residential developments and as open space, which may be developed as recreational facilities, is consistent with this policy. We recommend critical wildlife habitats be preserved and designated as preservation areas in the plan.

We question the plan's consistency with the Bogs and Freshwater Wetlands Policy. First of all, the consultants have not identified all of the freshwater wetlands. Secondly, according to Map #4 of B in Volume 5, residential developments are planned in freshwater wetlands along Mattix Run and Morse's Mill Stream. Surely these developments will alter the natural functioning of these wetlands.

We disagree with the consultant's analysis of the Land Areas Policy. According to the Land Areas Policy (page 90), "Three factors determine the acceptable development intensity for various locations in Land Areas: (a) Coastal Region, (b) Environmental Sensitivity, and (c) Development Potential." The consultant has not addressed the Coastal Region factor in the document. Therefore, the consultant's conclusion, "...that the site should be designated as having high development potential" on page LA-2 of Volume 5, is based upon an improper and inadequate analysis.

The project area situated north of Atlantic County Road 561 (Moss Mill Road) is in the Mullica-Southern Ocean Region and is designated a Low Growth Region. Low Growth means that only infill development is acceptable. "Infill" means that at least 50% of the boundaries of the site are either immediately adjacent to or directly across from a public road with existing residential developments or closely related and associated type of development such as schools. The proposed Towne of Smithville P.U.D. cannot meet the infill requirement. Because the project area has High Environmental Sensitivity, based on the definition on page 92, and has a Low Development Potential, based on the infill requirement on page 96, only low intensity development is acceptable (see the Land Acceptability Table: Low Growth Region, line 7, page 107). The proposed development north of Atlantic County Road 561 is inconsistent with the Land Areas Coastal Policy.

The project area south of Atlantic County Road 561 is in the Absecon-Somers Point Region and is designated a High Growth Region. High Growth means that infill, extension and some scattered development patterns are acceptable. Again, the infill requirement cannot be met. Since the area has High Environmental Sensitivity and has Medium Development Potential, only low intensity development is acceptable (see Land Acceptability Table: High Growth Region, line 6, page 105). The proposed development south of Atlantic County 561 also appears to be inconsistent with the Land Areas Coastal Policy.

Our interpretation of the Land Areas Policy indicates that the project area is acceptable only for low intensity development. The Towne of Smithville's P.U.D. can hardly be construed as low intensity development.

#### Golf Course

The document states that a golf course and club will be constructed adjacent to and on both sides of Mattix Run (Exhibit E, item 9c) and will be about 200 acres in size (page ii, Volume 5). We were unable to find the location of this golf course in the document. Because Exhibit E is the Common Open Space Report, we must presume that the golf course is located as part of the designated Open Space Areas along Mattix Run. According to the Proposed Land Uses Preliminary Plan (Map 8, Exhibit J in Volume 5), four Open Space Areas totaling 292.1 acres (i.e.,

OS-10=110.8 acres, OS-11=15.6 acres, OS-12=155.7 acres and OS-13=10.0 acres) are located along Mattix Run. The golf course and club would consume 200 acres of the total 292.1 acres. Constructing a golf course in these Open Space Areas, already identified as wetlands, will require a Corps Section 404 permit. This golf course would undoubtedly degrade water quality in Mattix Run by the addition of nitrates, phosphates, insecticides and herbicides. We recommend this golf course and club be built on upland properties away from sensitive wetlands and waterways.

#### Consumptive Recreational Uses

Approximately 20,000 new residents are expected to move into the area if the Towne of Smithville is developed as proposed. We expect increased pressures to develop wetlands either on the refuge or on Great Bay for recreational facilities such as boat ramps, boat docks and marinas. We would appreciate knowing how the applicant proposes to prevent these wetland fills and what plans have been developed to reduce habitat losses associated with the expected increased recreational demand.

#### Water Quality

The document does not adequately discuss existing surface water quality of the project area. No description of existing water quality is provided for Mattix Run and Morse's Mill Stream in the Water Quality section (page RP-1, Volume 5). Furthermore, no documentation is offered on the anticipated impacts to water quality from upland runoff. We question whether the applicant can adequately retain nutrients (e.g., nitrates and phosphates), fertilizers, insecticides and herbicides. With the golf course and other recreational facilities proposed along Mattix Run and in wetlands, we question the effectiveness of any storm water detention areas in maintaining water quality. To protect water quality, all housing and recreational facilities should be pulled back from the streams and out of all freshwater wetlands, and we recommend that a 50 foot to 100 foot wide vegetative buffer be left between all proposed facilities and the streams and wetlands.

#### Wildlife

The consultant has attempted to argue that data collected somewhere in Atlantic County on browse utilization and preference by deer are representative of the carrying capacity of the project site. There is no indication how these data relate to the project area, its vegetation or its deer population. Furthermore, it is doubtful that food is the only limiting factor affecting the carrying capacity of this area. We believe that wintering habitat and bedding areas are equally important and that they may also constitute critical wildlife habitat. We also note that no data are presented on the project area's carrying capacity for other wildlife species.

The consultant has postulated that Open Space Areas will act as "wildlife corridors". We question this in light of the recreational facilities planned for these corridors.

Based on our review of the wildlife data (pages RP-37 to RP-42, Volume 5), we anticipate that native wildlife will be replaced by species more tolerant of man. In the short-term, some wildlife will be displaced into adjacent habitats such as Brigantine National Wildlife Refuge, further stressing habitats already at optimum carrying capacity. In the long-term, many native wildlife will be eliminated both on and adjacent to the project area. The end result will be an overall decrease in wildlife populations resulting from habitat degradation and overcrowding. It is our view that the document does not adequately discuss these adverse impacts. Nor does it present methods to mitigate or minimize these adverse impacts.

#### Aquatic Fauna and Fishes

The document does not discuss predicted impacts to the aquatic ecosystem. We would expect that fishery resources and other aquatic life will be adversely impacted by degraded water quality and by destruction of riparian floodplain habitats. What measures are planned to mitigate these impacts?

#### Insect Control

There is no discussion of mosquito and biting fly control programs. Saltmarshes, such as those on Brigantine National Wildlife Refuge, are inhabited by saltmarsh mosquitoes, greenheads, and other biting insects. Contact between these insects and human populations generally spawns demands for control measures. Ditching and insecticide spraying are commonly employed control techniques.

At present, there is no problem with biting insects. However, with an increase of 20,000 people in a small, relatively undeveloped area proximate to saltmarshes, mosquito and biting fly problems will develop. Since the Fish and Wildlife Service discourages mosquito control on National Wildlife Refuges, we recommend that the consultant prepare a site-specific plan to combat these induced nuisance problems. We do not believe that fish and wildlife habitat should be sacrificed or degraded by a demand for insect control resulting from the proposed development.

#### Cumulative Impacts

The cumulative adverse impacts to fish and wildlife resources from the proposed Towne of Smithville P.U.D. and other high density developments in this portion of Galloway Township have not been addressed. Furthermore, no measures to mitigate these impacts have been proposed. We contend these impacts will be devastating and significant. We are also concerned that Brigantine National Wildlife Refuge will be surrounded by development and effectively isolated, thereby degrading the refuge's habitat and resulting in a decline of wildlife populations.

#### SUMMARY

We do not believe that the proposed Towne of Smithville P.U.D. has adequately addressed measures to avoid significant adverse impacts to Brigantine National Wildlife Refuge or to fish and wildlife resources in

general. Additionally, it would not seem prudent to approve conceptual plans at this time which may be largely revised due to the requirement for Corps permits for work in freshwater wetlands.

In view of the above, the U.S. Fish and Wildlife Service recommends that a high intensity development for the Town of Smithville not be approved. We recommend that only a low intensity development be allowed which is consistent with New Jersey's Coastal Zone Management Plan and which will protect Brigantine National Wildlife Refuge and other significant fish and wildlife habitats.

We appreciate the opportunity to comment on this project at this early stage in your planning process.

Sincerely yours,

*Charles J. Kulp*  
Charles J. Kulp  
Field Supervisor

ES/Absecon:THupf/amt

Revised ES/SCFO:EPerry/clr 4/4/80

Brig. NWR comments by J. Gallegos and G. Inman

CC:

ASO files

SCFO files ✓

EPA - Charles Warren, Regional  
Administrator, New York, NY

USFS - D. Vandenburg, Broomall, PA

NJ FG&S - Bill Shoemaker, Trenton, NJ

HAO

RO

DOI - Mr. Patterson, Regional Env. Officer/Northeast, Boston, MA

Corps - R. Denmark, Permits Branch, Phila., PA

FWS - G. Inman, Brigantine National Wildlife Refuge, Oceanville, NJ



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE  
112 West Foster Avenue  
State College, PA 16801

April 23, 1980

Colonel James G. Ton  
District Engineer, Philadelphia District  
U.S. Army Corps of Engineers  
Custom House, 2nd and Chestnut Streets  
Philadelphia, PA 19106

Dear Colonel Ton:

Several high intensity residential developments are being planned adjacent to the Brigantine National Wildlife Refuge, Galloway Township, Atlantic County, New Jersey. These developments are planned in adjacent wetlands and along streams flowing into the refuge.

We have provided comments to the New Jersey Department of Environmental Protection, Bureau of Coastal Project Review, on the State CAFRA application for the Towne of Smithville Planned Unit Development Master Plan. In these comments, we identified a multitude of concerns and adverse impacts to the refuge and fish and wildlife resources. A copy of our comments on the plan is enclosed for your information.

It appears that high intensity developments, such as the Towne of Smithville, could contaminate streams flowing into the refuge. Moreover, the discharge of fill materials could degrade the refuge's water quality. Without proper environmental safeguards, the project could result in permanent reduction of wildlife habitats, degrade spawning habitats of finfish and shellfish and reduce production of fish and wildlife food organisms. In addition, the filling of wetlands would permanently destroy wildlife habitats and reduce the overall carrying capacity of the area.

The EPA's 404(b)(1) guidelines (Federal Register, vol. 44, No. 182 - Tuesday, September 18, 1979) states that maintenance of water quality on wildlife refuges should receive a high priority in the Section 404 permit review process. In part 230.40 (Sanctuaries and refuges), EPA has promulgated specific guidelines and special determinations, in addition to the standard guidelines and determinations, to minimize

adverse impacts on refuges. In our opinion, neither the guidelines nor determinations could be met by the proposed developments bordering on the refuge.

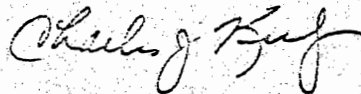
We request that you exert discretionary Section 404 jurisdiction to regulate the headwaters, wetlands and smaller tributaries of the following streams flowing into Brigantine National Wildlife Refuge:

- 1) Cordery Creek;
- 2) Doughty Creek including Lily Lake and the Oceanville Bog;
- 3) Mattix Run;
- 4) Morse's Mill Stream;
- 5) Nacote Creek;
- 6) Wigwam Creek.

Portions of these waterways are currently under Corps jurisdiction by the virtue of the streams being tidal and/or having an average annual flow exceeding five cubic feet per second.

We would appreciate your assistance in this matter. We are taking the liberty of notifying the New York EPA of this project proposal. We would be pleased to arrange to visit the site with your staff at the earliest possible time.

Sincerely,



Charles J. Kulp  
Field Supervisor

Enclosure

cc: NMFS - S. Gorski, Highlands, NJ  
NJ FG&S - Wm. Shoemaker, Trenton, NJ  
Regional Administrator, EPA, New York, NY  
(ATTN: Barbara Metzger, w/c encl.)  
Staff Director, USFS, Broomall, PA  
Area Manager, FWS, Harrisburg, PA  
FWS - G. Inman, Brigantine NWR, Oceanville, NJ

ES/Absecon/THHupf

Revised: ES/SCFO:CKulp:clr





UNITED STATES  
DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

Absecon Sub-Field Office  
P.O. Box 534  
705 White Horse Pike  
Absecon, New Jersey 08201

September 3, 1980

Mr. David Kinsey  
Director, Division of Coastal Resources  
New Jersey Department of Environmental Protection  
P.O. Box 1390  
Trenton, New Jersey 08625

Dear Mr. Kinsey:

This letter is in further reference to the Towne of Smithville's Planned Unit Development (P.U.D.), CAFRA application number 79-0357-05. This also supplements our April 4, 1980, comments (enclosure 1) on the subject permit application.

The Towne of Smithville proposes to construct 6,850 residential units, 410,000 square feet of commercial space, 670,000 square feet of office space, a hotel, a golf course and recreational space on 2,375 acres of land in eastern Galloway Township, Atlantic County, New Jersey, next to Brigantine National Wildlife Refuge.

Our April 4, 1980 letter expressed our concerns about wildlife habitat destruction and degradation, water quality degradation, air quality impacts, saltwater intrusion, solid wastes, consumptive recreational uses, insect control, fisheries, freshwater wetlands, and cumulative adverse impacts this development will generate. This report further emphasizes and expands our concerns and comments, relative to fish, wildlife and related environmental resources.

The project plans should be revised to relocate the development outside of the freshwater wetland boundaries. As mentioned in our April 4, 1980, letter, freshwater wetlands were not correctly identified on the conceptual plans. Enclosed are copies of the Fish and Wildlife Service's National Wetlands Inventory (NWI) maps for the project site. These NWI maps are clear plastic overlays for the U.S.G.S. topographic maps for the Oceanville, Pleasantville, Brigantine Inlet, Tuckerton, New Gretna and Green Bank quadrangles. Also enclosed is the legend for the wetland classification system (enclosure 2) and a copy of the Service's publication, entitled "Classification of Wetlands and Deepwater Habitats of the United States" (enclosure 3). No development should be approved for these wetlands so that their public values can be preserved. These values include aquifer recharge, flood water retention, absorption of water-borne pollutants, sediment and erosion control, water



Mr. David Kinsey

quality buffering and critical wildlife habitat. A 100-foot wide buffer strip of upland vegetation should be required between wetlands and upland development sites to protect these wetlands from degradation by associated surface water runoff from the developed areas.

Project implementation will result in the loss of a substantial acreage of wildlife habitat on the project area. All freshwater wetlands as well as the upland areas on-site are critical wildlife habitats for white-tailed deer as defined in New Jersey's Coastal Zone Management Plan. According to a report by Mr. David Burke, Deer Project Leader for the New Jersey Division of Fish, Game and Wildlife (enclosure 4), the Towne of Smithville site is in an area which is one of the most productive deer habitats in South Jersey, excluding the agricultural lands of southern Salem County. Loss of either critical winter habitat, which is generally lowland (e.g., lowland wetlands), or significant expanses of upland, would drastically reduce or eliminate the deer population in this area. These data support preservation of all wetlands and approval of only low density housing on the uplands. The deer herd and other wildlife species on this site receive considerable public use by hunters and non consumptive users alike. In our opinion, the loss of large expanses of upland deer habitat should be compensated for by the applicants. Food plots, public access areas and deer management areas should be planned and implemented on the upland portions of the property to partially compensate for the lost wildlife habitat. Service biologists are available to assist you in determining the amounts and types of compensation necessary to adequately recoup wildlife habitat values. Further, all wetlands areas should remain open to public access.

We also question the motives of the developers in regards to wildlife resources because they have already destroyed beaver lodges on and lowered the water level of Pickerel Pond. The developers have been issued a warning by the New Jersey Division of Fish, Game and Wildlife (enclosure 5) for this action. This lowering of the water level could adversely impact the Atlantic white-cedar stands and the Pine Barrens treefrog colonies. In our opinion, actions such as these do not reflect project planning which promotes conservation of fish and wildlife resources and their habitats.

The Great Bay-Mullica River Estuary is extremely productive for the eastern oyster and the hard clam. Both shellfish resources support intense commercial and recreational fisheries. This estuary is approved for the direct harvest of shellfish, has leased shellfish beds, and is a cleansing site for contaminated shellfish from polluted waters. It also has some of the few remaining seed oyster beds in New Jersey. Any degradation of water quality in the Mullica River-Great Bay Estuary will drastically alter shellfish resources and their associated commercial and recreational activities. Additional information on shellfish resources is summarized in an enclosed report by the National Marine Fisheries Service (enclosure 6). In our opinion, shellfish resources of the Great Bay-Mullica River Estuary must be protected from any degradation of water quality emanating from the Towne of Smithville's development. For this reason alone, it is imperative to protect the quality of both the surface and ground waters.

Mr. David Kinsey

We have reviewed the "Water Quality Aspects of the Towne of Smithville" (WQATS), August 1980, document, prepared by Coastal Plains, Environmental Consultants and Planners. In our opinion, the proposed monthly water quality sampling is inadequate to document short-term water quality problems which may result from pollutants transported during heavy rainfall or incurred by construction activities. Short-term impacts can devastate aquatic resources and, most probably, monthly water quality sampling will not detect them. Therefore, weekly water quality sampling and analysis should be required at all seven stations. Weekly sampling will also provide accurate baseline information. Several additional water quality parameters, including stream flows (volumes and velocities), chlorine, conductivity, chlorophyll a, alkalinity, temperature, total phosphorus, phosphates, copper, lead, zinc, fecal coliforms, fecal streps, and oil and grease, should be sampled and analyzed to fully monitor water quality.

Coastal Plains has stated in the WQATS document that "in order to assure that water quality degradation does not occur, an extensive water quality monitoring program is being instituted by the Towne of Smithville". They further stated that "since the Towne of Smithville is a phased development which will require further detailed regulatory review at each stage of construction, the water monitoring program provides a strong guarantee that degradations in water quality will be minimized, if they occur at all". A water quality monitoring program only defines the characteristics and quality of the water by measuring parameters; it does not rectify or alleviate problems. Based on the water quality monitoring program and the "Proposed Site Design Controls for the Towne of Smithville, Galloway Township, New Jersey" document, Coastal Plains has concluded that "the development of the Towne of Smithville will actually improve the water quality of the streams on the property and, by extension, have no adverse impact upon the Mullica River-Great Bay Estuary to which the property drains". This is due to the combined effects of the existing sewers and the utilization of the drainage and vegetation controls. Although this may be the best available technology, we question whether or not water quality can be maintained by the Towne of Smithville's high intensity and density developments. Reports by Dr. Haskins and Dr. Durand of Rutgers University (enclosure 7) and John Osborn of the Bureau of Shellfish Control, New Jersey Division of Water Resources (enclosure 8) corroborate our views. These water quality experts also question the effectiveness of the Towne of Smithville's water quality controls and predict water quality degradation.

The ecological balance of the Great Bay-Mullica River Estuary is dependent upon surface and ground water quality of the waters flowing into it. Dr. Durand in his 1979 publication, entitled "Nutrient and Hydrological Effects of the Pine Barrens on Neighboring Estuaries" (enclosure 9), reported that the phytoplankton community in the Great Bay Estuary is controlled by the supply of nitrogen derived from the Mullica River drainage basin. High nitrate-nitrogen concentrations were characteristic of streams draining agricultural and urban areas. Primary production in the bay increased, even when the nitrogen was supplied in minute quantities. Because shellfish resources and the other ecological communities are dependent on the phytoplankton, even small long-term increases in nitrate-nitrogen are unacceptable. Nitrates are readily soluble in water and are easily transported in solution as surface water runoff and as percolating ground water. In the project area, surface streams are actually

Mr. David Kinsey

upwellings of the ground water which account for most of their annual flows. Also, the soils on the project area are extremely sandy. The Soil Conservation Service of the U.S. Department of Agriculture calculated, that under the existing conditions of soils and vegetation and that for an average rainfall, approximately ninety percent of the rainfall percolates into the ground water versus approximately ten percent resulting in surface runoff. It also takes a rainfall of approximately 1.6 inches before there is any runoff at all. These data strengthen our reservations about the inadequacy of the Towne of Smithville's plan to protect water quality. Most rainfall will be percolated into the ground water.

In our opinion, water quality must be maintained even if this results in a reduction in the project's scope of less ambitious development. The ecological integrity of the Great Bay-Mullica River Estuary and Brigantine National Wildlife Refuge is dependent on the maintenance of water quality in their watersheds.

The cumulative impacts and precedent setting nature of approval of the Towne of Smithville's conceptual plans must be thoroughly evaluated. The concepts of wildlife corridors, environmentally acceptable high density developments, and water quality maintenance are all ineffectual when reviewed in the regional context of all proposed developments, such as Reeds Bay and Wrangleboro Estates and future proposals. Approval of the Towne of Smithville's plans is precedent setting and the cumulative impacts of other developments must be considered in your decision.

In view of the foregoing and our previous comments, the Fish and Wildlife Service offers the following recommendations:

- 1) the conceptual approval of high density and high intensity development (e.g., approval of 6,850 residential units for 20,000 people) be denied;
- 2) only low intensity development be allowed;
- 3) the project be reviewed and approved in phases based on individual and cumulative analysis;
- 4) the density of development for each phase will be predicated upon water quality assessment and standards from each previous phase and the overall development;
- 5) if preproject water quality conditions are degraded, development will be halted pending resolution of the water quality problems;
- 6) if water quality problems cannot be resolved, no further development will be allowed;
- 7) weekly water quality sampling and analysis be conducted;
- 8) stream flows (velocities and volumes), chlorine, conductivity, chlorophyll a, alkalinity, temperature, total phosphorus, phosphates, copper, lead, zinc, fecal coliforms, fecal streps, and oil and grease be added to the existing list of water quality parameters;

Mr. David Kinsey

- 9) no development be allowed in the freshwater wetlands or stream corridors as delineated by the National Wetlands Inventory maps;
- 10) a 100-foot wide buffer of upland vegetation be provided around all wetlands;
- 11) the loss of upland white-tailed deer and other wildlife habitat be compensated by habitat enhancement and management measures;
- 12) public access to the wetlands for hunting and other recreational activities be maintained; and,
- 13) shellfish resources in the Great Bay-Mullica River Estuary be protected from degradation by strict water quality maintenance.

Thank you for the opportunity to comment.

Sincerely,



Oliver T. Edstrom  
Assistant Field Supervisor

FOR Charles J. Kulp  
Field Supervisor

9 Enclosures, 6 maps

Suite 322  
315 South Allen Street  
State College, PA 16801

October 6, 1982

Mr. Karl Braun, Supervisor  
South Shore Region  
Division of Coastal Resources  
CN401  
Trenton, New Jersey 08625

Dear Mr. Braun:

This letter responds to your recent request for Fish and Wildlife Service (FWS) comments regarding the "Towne of Historic Smithville, Phase 1C (CA#81-0524-5), Response to Public Hearing, December, 1981" (SRPH) document. We understand that the subject document constitutes the response of the applicant to comments received regarding the Phase 1-C Open Space Community of Smithville environmental assessment (EA). The FWS previously submitted technical assistance comments pertaining to the environmental assessment by our October 28, 1981, letter.

These comments again provide technical assistance only. They do not constitute the report of the Secretary of the Interior within the meaning of Section 2(b) of the Fish and Wildlife Coordination Act, nor do they represent the review comments of the Department of the Interior on any federal permits which may be required.

#### General Comments

In the October 28, 1981, letter from the FWS, many deficiencies related to a number of different issues were identified. The FWS believes that the applicant's responses to the issues raised in that letter and at the public meeting consist of vague generalizations that cannot be accepted as adequate. As for the many concerns which remain unrebutted, apparently the applicant either was not directed to respond or did not feel compelled to address concerns regarding inherent conceptual flaws and inconsistencies.

#### Specific Comments

##### Moss Mill Road

From an examination of the U.S.G.S. Topographic Map Series (7½ minute Oceanville, N.J. Quadrangle) and National Wetlands Inventory topographic overlays, we observed that the proposed realignment and upgrading of Moss Mill Road may involve a modification of an existing stream crossing of Mattix Run, a tributary of Nacote Creek. According to the National

Wetlands Inventory examination, several wetland cover types occur within the project impact area. Project related impacts resulting from this wetland involvement cannot be definitively determined at this time. However, the magnitude of project related wetland impacts would be strongly related to the type and number of wetland involvements. We suggest that the applicant be advised that federal and state permits may be required to accomplish the road work as proposed.

#### Status of Prior Correspondence

In the October 28, 1981, letter, the FWS requested that a June 30, 1981, letter by Dr. James Whelan be excluded from further consideration and the environmental assessment revised to reflect this request. We have not yet been notified that the requested action has been completed.

#### Pickerel Pond/Mattix Run Cranberry Bog

Characterizations of impacts to the subject bog in which beavers have apparently contributed to the creation of an open water impoundment were determined to be deficient in the EA. Accordingly, a quantitative evaluation was recommended. A cursory field survey (procedures unspecified) for plant species of the area utilized by beavers for food and beaver activity as reported is not acceptable. Furthermore, it is misleading to attribute a general lack of evidence of beaver activity or failure to sight a single beaver to habitat modifications effected by the animals themselves or interference due to horseback riders, fishermen or nighttime parties. Horseback riding and fishing are predominately daytime activities. Beavers are predominately nocturnal animals. Although nighttime parties could constitute a disturbance, such activity would be in violation of numerous "No Trespassing" signs posted in the area, but may explain the proliferation of beer bottles and other refuse in the vicinity of Pickerel Pond. Overlooked as influencing factors are the effects of lowering the Pickerel Pond water level to facilitate upgrading of the spillwall and of recurrent removals of plant material placed at the spillway by beavers to reestablish previous water levels. We note that the lowering of the water level was initiated without benefit of the required state permit.

Recent events at the Pickerel Pond and bog areas highlight the necessity of undertaking a creditable comprehensive impact evaluation encompassing all fish and wildlife resources and their habitats.

#### Silvicultural Practices

The proposed program included cutting from heavily timbered areas, openings, corresponding to the configuration of a golf course, for the purpose of achieving an unspecified level of fire protection. Once the desired level of fire protection is determined, a forester, working as part of a quantitative habitat evaluation team, could then assist in formulating optimum cut sizes and configurations while minimizing habitat and cover type losses. Because this concern was not addressed by the applicant, the benefits of the silviculture program (i.e., minimum temporary adverse effects, greatly improved habitat quality) remain unsubstantiated.

## Proposed Fish Study

The "Proposal to Study the Fish Populations and Supporting Ecosystems of Pickerel Pond and Mattix Run," (Steiner) is a general discussion of a sampling scheme to identify and monitor physical and chemical characteristics, flora and fauna. Data would be used to construct a trophic food web for the study area and "keystone species" would be used to predict potential impacts. Unspecified is how losses/gains will be quantified and how "accounting" will be accomplished. Nonetheless, the approach is attractive and should be pursued.

## Outdoor Recreation and Equestrian Center

The applicant has yet to formulate a satisfactory deer management plan (including a hunting program). As such, the conflict of purposes between potentially incompatible uses (e.g., horseback riding and hunting) remains unresolved. The FWS suggests that this issue be resolved before a permit is issued.

The FWS would like to review an authoritative explanation of how "...the development of Smithville will result in improved wildlife habitat," (Towne of Smithville Controls, page 10). Hopefully, this claim can be substantiated before a permit is issued.

Because the equestrian center has already been constructed and is operating without benefit of final approvals, it would be inappropriate to comment on this aspect of the Phase 1-C proposal.

## Expanded Herpetological Survey

The results of this study are sufficiently encouraging to warrant implementation of management programs for the northern red salamander and the eastern king snake. This effort should be coordinated with the New Jersey Nongame and Endangered Species Program. The scope of such an effort could be expanded to include definitive studies of New Jersey's undetermined status species associated with the Smithville holdings and could serve as a basis for identifying desirable habitat/population manipulations that could be undertaken within the environmental open space areas as part of an overall mitigative effort.

## Cartway and Golf Course

Because five excellent golf courses already exist within 15 miles of Port Republic (Homes and Land of Atlantic County, Vol. 1V, Number 11, June 28, 1982 - page 8), the justification for constructing another golf course consisting of 27 holes (several of which are bounded by wetlands) is suspect. Those holes involving wetlands should be deleted and those areas should serve as wetland buffers or environmental open space. The feasibility of conducting an active habitat improvement program on the remaining portions of the proposed course should be investigated.



## Fish, Shellfish and Wildlife

The applicant has requested that results from an SCS habitat evaluation procedure be accepted as evidence of a commitment to conduct a project that is reflective of "a wildlife community approach." Unfortunately, the SCS procedure was not intended for evaluating attributes of wildlife habitat and was intended to be used on a state or national scale. These and other deficiencies were detailed in a December 7, 1981, FWS technical assistance letter. Accordingly, the results submitted are invalid relative to the stated concern.

The applicant apparently still claims not to understand what the FWS proposed regarding a specific evaluative procedure. As was stated clearly and repeatedly to the applicant and his consultant on several occasions, the FWS was intent upon using a procedure that could isolate and quantify impacts associated with or resulting specifically from actions attributable solely to the applicant. The applicant's insistence to address only selected environmental aspects of the overall project is disturbing. First, any possibility of implementing a comprehensive evaluation is precluded. Second, chances of adequately mitigating for impacts to the cover types and fish and wildlife resources of the Brigantine National Wildlife Refuge (BNWR) are minimized. Third, because the applicant submitted a traffic analysis that was reflective of their total build out and the cumulative impact of all real development along the Route 9 corridor, this "selectivity" constitutes a glaring departure from their often claimed environmental conscienceness.

A concern shared by the N.J. Division of Fish, Game and Wildlife and the FWS is maintenance of important cover types. Although the proposed evaluative procedure for addressing this shared concern was attractive to both agencies, the required effort would have exceeded the Division's funding and manpower capabilities. The Division offered to review any evaluative documents that may be forthcoming. The FWS offered to work cooperatively in developing an alternative evaluative procedure and to assist in formulating mitigative efforts. For these reasons it is misleading for the applicant to state that the initially proposed study is invalid. Furthermore, it is contrary to the spirit and intent of the collective discussions for the applicant to offer a mitigative proposal at this time that was apparently unilaterally prepared and not previously offered for review. The FWS requests that this situation be modified accordingly before a permit is issued.

The mitigative proposal to not develop and subsequently perpetuate an area as old field cover type would do nothing to diminish the magnitude of losses expected to occur elsewhere involving many cover types and certainly would do nothing to mitigate impacts to the BNWR. The proposal is also inconsistent because, ironically, if the existing old field is to be perpetuated, the intensive management necessary to maintain this single cover type must necessarily diminish the efforts that can be undertaken elsewhere to offset impacts to many cover types. This inconsistency should be resolved before a permit is issued.



The construction of an observation deck, shelter and an elevated cartway bridging the Mattix Run wetland corridor does not constitute a wetland related or dependent action. Observation and rest areas could be located within nonwetland areas. If the golf course was eliminated, these structures would be unnecessary.

#### Artificial Ponds

A commitment to implement the "managed ponds" alternative would constitute a rare and apparently reasonable mechanism for recovering some of the recreational opportunities lost elsewhere as a result of constructing Phase 1-C. For this reason it is unclear whether the passage, "...recreation during the warmer months... will be passive, non-structural. No swimming, fishing... is proposed or anticipated," (SRPH - Item 5.4(C): Seasonal Use) means the applicant will discourage such activities or simply will not encourage them. The applicant should be directed to clarify this point. Furthermore, expansion of freshwater fishing opportunities would seem to be an effort reflective of the applicant's often claimed environmental conscienceness.

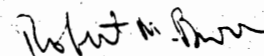
#### Summary

The Phase 1-C environmental assessment served as a mechanism for identifying deficiencies in the existing environmental information and pinpointing potential areas of conflict. The applicant's responses to questions raised by the public in some instances were incomplete, inconsistent or contradictory and possibly even misleading. Furthermore, some concerns previously raised by the FWS but not the public remain to be satisfactorily answered.

The FWS maintains its belief that the applicant's environmental assessment and responses to questions from the public collectively are deficient. Furthermore, the applicant has yet to present information to substantiate claims, or the adequacy of proposed mitigation efforts. Additionally, we do not believe that the applicant has evaluated all reasonable mitigative alternatives. Accordingly, the FWS considers the environmental documentation submitted in support of Smithville's Phase 1-C proposal to be incomplete and unacceptable and suggests that the applicant be directed to take appropriate corrective action prior to the issuance of a permit.

Thank you for this opportunity to comment. Should you have any questions you may contact our Absecon, NJ, office by telephone at 609/646-9310.

Sincerely,



Robert M. Burr  
Acting Field Supervisor

ES:Absecon:RBosenberg:amt 10/5/82

CC: ASO files

SCFO files

NJDFGW - R. Burke, Nacote Creek

NJDFGW - R. Lund, Clinton WMA

NJDFGW - G. Howard, Trenton

NJDFGW - A. Pyle, Trenton

USFWS - G. Inman, Oceanville

NJPC - T. Moore, New Lisbon

ALS - D. Bennett, Highlands

P.O. Box 534  
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OCT 28 1981

Mr. Karl Braum, Supervisor  
South Shore Region  
Division of Coastal Resources  
CN 401  
Trenton, N.J. 08625

Dear Mr. Braum:

This letter responds to your request for Fish and Wildlife Service (FWS) comments regarding the Phase 1-C Open Space Community of Smithville environmental assessment (OSC-EA), Galloway Township, Atlantic County, New Jersey. These comments provide technical assistance only. They do not constitute the report of the Secretary of the Interior within the meaning of Section 2(b) of the Fish and Wildlife Coordination Act, nor do they represent the review comments of the Department of the Interior on any federal permits which may be required.

#### General Comments

The subject of the OSC-EA is an assessment of adverse impacts that are expected to occur as a result of the development of the Phase 1-C Open Space Community of Smithville. A mitigation proposal is also presented. Implementation of this proposal will reportedly result in "improved wildlife habitat." This claim is made even though more than 60 percent of the existing vegetative cover types that currently comprise the Phase 1-C project area will be either irretrievably lost or extensively modified.

The information presented in the OSC-EA is incomplete regarding impact characterizations. Mitigation proposals are vague and theoretical. Specifically, the methodologies used to investigate the biota were qualitative (i.e., presence/absence), and impact characterizations were limited to only short-term, site-specific, primary impacts. Formulation of an objective and comprehensive mitigation plan is predicated upon analyses of unbiased data, not subjective and speculative discussions. For these reasons, the proposed mitigation plan is fundamentally flawed and unacceptable in its present form.

#### Detailed Comments

##### Pages 1 and iii

Dr. James B. Whelan, a Wildlife Biologist with the FWS is listed as a contributing author. In a August 19, 1981, letter to Mr. Gary Sawhill,

Dr. Whelan requested the withdrawal of his June 30, 1981 letter in which he discussed impacts to the wildlife community in the Smithville project area. Furthermore, Dr. Whelan has requested that his comments not be included in any evaluation of project related impacts. The document should be revised and resubmitted to honor that request.

#### Pages 25 and 26

An abandoned cranberry bog is identified as a portion of the Historical Smithville Development Company's (HSDC) Phase 1-C holdings. Beaver activities have resulted in the creation of an impoundment. From inspections of this area, beaver activity (e.g., cuttings, creation of an impoundment) appears to be a regular occurrence that has influenced the structure and function of the floral and faunal communities of this wetland area. Apparently, this value to fish and wildlife was overlooked or discounted as insignificant. Thus, project related impacts to this area were not completely characterized. This deficiency should be corrected by conducting a quantitative habitat evaluation.

#### Page 41: Silvicultural Management Recommendations for Smithville Property

The purpose for implementing a silvicultural management program is to attain an environmentally sound and aesthetically pleasing atmosphere. This will be accomplished by, "... improving (the) natural surroundings in contrast to careless cutting with a lack of forethought."

The "environmentally sound" aspect of the proposal appears to hinge upon fire abatement. Wildfire in residential areas is a serious problem. The FWS is not aware that the accepted silvicultural methods for achieving fire protection include the selective cuttings of heavily timbered areas in a size and a configuration of a golf course. This concern could be addressed as part of a quantitative habitat evaluation.

The "aesthetically pleasing" aspect of the proposal hinges upon the implementation of a timber stand improvement program. The proposed program apparently consists of two aspects: 1) controlled burning; and, 2) selective cutting.

The FWS agrees that controlled burning can be beneficial to wildlife. However, the impacts are not always easily characterized. Although the immediate response would be a "flush" of growth, recurrent burns in the same location over large tracts of land could adversely affect fish and wildlife resources. These affects could result in the development of a vegetative community that is structurally simplified (i.e., two layered) and floristically and faunistically depleted. Thus, information regarding the size and the location of areas to be burned, frequency of burning, initial floral and faunal community structure and composition all must be considered independently as well as collectively before the "benefits" can be identified and quantified. Therefore, the two statements that appear on page 11 of the document in regard to "minimal temporary effects" and "greatly improved habitat quality" do not constitute an adequate assessment of the primary, secondary, long or short term or cumulative impacts that will occur to the fish and wildlife resources and their associated cover types.

Pursuant to the selective cutting aspect inferior species would be eliminated. Additionally, deformed, diseased and partly decayed trees would also be removed. As a result site protection will be enhanced, windfall will be minimized, reproduction is enhanced, fire hazard will be reduced and cutting can be adjusted to fit various extraneous conditions (unspecified). Before these claims can be accepted, the detrimental effects associated with the presence of "inferior species" (undefined) in a natural system must be identified and conclusively demonstrated. Furthermore, quantitative assessments of the site protection, windfall and deformed, diseased and partly decayed trees problems should be conducted. The results of these efforts could then be used by the HSDC to evaluate the merits of creating an "aesthetically pleasing" environment from a naturally occurring, relatively undisturbed forested ecosystem.

Because the implementation of a timber stand improvement program is intended to be mitigation for lost habitat, an objective and quantitative characterization of all anticipated impacts is required before this Service can completely evaluate the merits of the proposed program as a mitigation measure.

#### Pages 44 and 45: Fish, Shellfish and Wildlife

The FWS agrees that there is a need to evaluate overall project impacts relative to "a wildlife community approach." In 1976, the FWS (Office of Biological Services-Ft. Collins, Colorado) began developing and later published a community assessment methodology entitled "Habitat Evaluation Procedures" (HEP). A team of HEP trained biologists can identify attributes of the environment that influence the distribution and abundance of individual species or collections of species. This information can then be used directly to both quantify impacts and to formulate quantitative, comprehensive mitigation requirements. The HEP methodology is currently being used by Federal agencies. Additionally, the FWS conducts annual HEP training sessions throughout the country. This training is not limited to Federal personnel. For example employees of consulting firms and state agencies (including the New Jersey Division of Fish, Game and Wildlife) have also received HEP training. Participation by all interested individuals is encouraged. Many familiar with HEP have expressed their support and intent to utilize this methodology. Information about the HEP methodology is available through the Washington, D.C. office of the FWS.

#### Pages 46 to 51: Wildlife Species Which May Be Found On the Project Site

A review of the species/cover types lists revealed that the compliment of vertebrate species associated with the Pickerel Pond/white cedar/bog wetland complex is incomplete. Specifically, a list of the reptiles and amphibians (e.g., Pine barrens tree frog) and mammals (e.g., beaver, muskrat) associated with this wetland complex was not included in the OSC-EA.

Furthermore, the bald eagle and peregrine falcon should be identified as Federally designated endangered species. These deficiencies should be corrected.

The value of the species lists presented in the OSC-EA is that they constitute only a first approximation of the presence or absence of species. Detailed site specific information regarding cover type/habitat distribution and use patterns, seasonality, productivity, population dynamics and harvest, is required to formulate a creditable mitigation plan reflective of the basic principles of ecology and wildlife management.

#### Pages 52 to 59: Fish of Mattix Run/Pickeral Pond

The section of the document entitled, "Fish of Mattix Run/Pickeral Pond" (pages 52-59) is inadequate for the purpose of determining potential adverse impacts to the aquatic ecosystems of the Phase 1-C and Smithville area and for presenting a fishery management plan for this area if the development as proposed is constructed. The limited information that is presented in this section of the document lacks the detail necessary to properly evaluate potential adverse impacts. Much of the discussion concerning fishery resources is based upon references that do not apply to the Smithville area. Even the list of Pinelands fish species (Table 9.7.2 - page 52) contains several errors in the scientific nomenclature. Furthermore, two important Pinelands fish species, bluespotted sunfish (Enneacanthus gloriosus) and ironcolor shiner (Notropis chalybasus) are not listed.

Although this section of the document is an attempt to address a fishery management plan for Pickeral Pond, only one sentence (page 53) directly refers to this. This one sentence is "At this time data available on the present fish community are too limited to provide an extensive discussion." On page 58 the following statement is presented, "These regulations are consistent with the potential Pickeral Pond fishery." References on pages 53 through 58 to, "good fish faunas, catching aunker, fair to good fish crop, fish in Massachusetts, largemouth bass in New York, Pennsylvania lakes, waters of the eastern seaboard and Canadian fish," do not constitute a fishery management plan. Further, the FWS questions whether or not they are applicable.

Detailed information is required concerning fish communities and their supporting ecosystems. This information should include fish species diversity, composition and distribution, consumptive and nonconsumptive uses and the environmental factors influencing this resource, with and without the proposed project. Once this information is obtained and evaluated, a careful analysis of project impacts should be undertaken. Only at this point could a effective and meaningful fishery management plan be developed.

#### Pages 127 to 133: Outdoor Recreation

Development of the proposed equestrian center will result in, ". . . an increase in the usage of areas proposed for open space and recreational facilities within the Smithville development and those in nearby communities," (page 130). The implication is that the environmental open space,

rather than the open space associated with either the golf course or community center will experience this increased use. If this is true, the potential for successfully implementing a hunting program, which was included as part of the proposed deer management plan prepared by HSDC, is further jeopardized. Specifically, hunting (even if only for deer) could be undertaken safely only when non hunters are temporarily excluded from areas proposed for hunting (still unspecified). In either case a conflict of purposes exists which is based upon a fundamental incompatibility of uses. The resolution of this conflict will obviously have to be a compromise. However, the form of the compromise can only be determined once the concerns regarding the adequacy of the proposed deer management plan are resolved and an acceptable deer management plan is formulated.

Pages 168 and 169: Phase 1-C Land Use Chart (Continued) and Land Use Chart Summary, respectively

A review of these two charts revealed that 48.2 percent (389.9 acres) of the Phase 1-C area will be converted from predominately forested cover types to other non-forested cover types (i.e., residential, commercial, equestrian center, school, roads). Upon closer examination, the golf course (161.7 acres) and the site for a community center (7.8 acres) were included in the open space land area. Furthermore, included under the "environmental open space use" (249.0 acres) are such ecologically dissimilar land uses as sidewalks, lawn areas in and around residences (see Notes 10 to 12 in Towne of Smithville Controls) and wildlife corridors. The biological justification for this "grouping" is not clear. Further, the FWS believes that a maximum of 31 percent of the preproject cover types will be relatively unaltered (overestimate). Thus, implementation of Phase 1-C will result in either the irretrievable loss of or extensive modification of at least 69 percent (559.41 acres) of currently productive wildlife habitat. If habitat quality and habitat quantity are assumed to be equally influential (simplist case) in determining carrying capacity, the habitat quality of the remaining 249.0 acres would have to be enhanced more than three fold to assure that "... the development of Smithville. . . . will result in improved wildlife habitat," (Towne of Smithville Controls, page 10). An increase in habitat quality of this proportion is probably not possible. If it were, the associated costs would surely be great.

Miscellaneous Comments

Many of the studies referenced in the text of the OSC-EA (particularly the Fish, Shellfish and Wildlife section) were not included in the Literature Cited section. This deficiency should be corrected.

Many of the above mentioned biological inadequacies could be eliminated by conducting a quantitative habitat evaluation. The information gained from a quantitative habitat evaluation could serve as a basis for formulating and implementing a satisfactory mitigation program. (See also comments regarding pages 44 and 45).

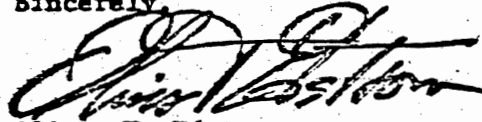
## Summary

Characterizations of environmental impacts as presented in the OSC-EA are incomplete. Impacts to a white-cedar/bog wetland were not adequately addressed. Furthermore, justifications for and characterizations of impacts associated with a controlled burn and selective cutting program are vague and incomplete. Additionally, only short-term site specific, primary impacts are discussed, and the habitat/species lists are incomplete. The fisheries and wildlife management proposals offered as mitigation are vague and, like the claims regarding enhancement of wildlife habitat, are conceptually flawed.

X The FWS believes that implementation of the "mitigation" proposals described in the OSC-EA will result in significant irretrievable losses of fish and wildlife resources and their supporting cover types in and around the Phase 1-C and Smithville areas. The magnitude of those losses and the level of mitigation required can only be determined by conducting a quantitative habitat evaluation. The FWS would welcome an opportunity to review a mitigation proposal based upon quantitative studies. Until such studies are done, the FWS considers the OSC-EA to be unacceptable.

Thank you for the opportunity to comment. Should you have any questions, I can be reached by telephone at 609/646-9310.

Sincerely,



Oliver T. Edstrom  
Assistant Field Supervisor

ES:Absecon:RBosenberg:OTEdstrom:amt

CC: ASO files

SCFO files

NJDCR - D. Kinsey, Trenton

NJDFGW - D. Burke, Nacote Creek

NJDFGW - R. Lund, Clinton WMA

NJDFGW - G. Howard, Trenton

USFWS - G. Inman, Oceanville

NJPC - T. Moore, New Lisbon

ALS - D. Bennett, Highlands





UNITED STATES  
DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

Suite 322  
315 South Allen Street  
State College, PA 16801

RECEIVED  
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SUB-OFFICE

December 7, 1981

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SUB-OFFICE  
7/13  
6/15

Mr. Karl Braun, Supervisor  
South Shore Region  
Division of Coastal Resources  
CN 401  
Trenton, New Jersey 08625

Dear Mr. Braun:

This responds to your October 6, 1981, request to Mr. Oliver Edstrom for the Fish and Wildlife Service (FWS) comments regarding the Smithville Phase 1-C Wildlife Impact Study Primary Sampling Unit Method. These comments provide technical assistance only and do not constitute the report of the Secretary of the Interior on the project within the meaning of Section 2(b) of the Fish and Wildlife Coordination Act, nor do they represent the review comments of the Department of the Interior on any forthcoming environmental statement.

General Comments

The purpose of the subject study is to predict the impact on wildlife habitat which would result from development of the Phase 1-C Open Space Community of Smithville. The exercise was completed according to instructions given in three papers:

- 1) "U.S.D.A., Soil Conservation Service Multi-resource Inventory" (March 1980);
- 2) "U.S. Soil Conservation Service - U.S. Fish and Wildlife Service Co-operative Agreement, Prototype Fish and Wildlife Analysis Process" (June 1981); and
- 3) "Predicting Wildlife Values of Principal Sampling Units" (June 1981).

For several reasons, the techniques outlined in these papers are not suitable to accurately predict the impact of the proposed development on wildlife habitat.

Habitat Evaluation Techniques

The draft procedures as outlined do not approach state-of-the-art habitat evaluation techniques such as the FWS Habitat Evaluation (HEP). In contrast, the methodology employed was designed solely to meet different purposes as set forth by the Soil and Water Resource Conservation Act of 1979 (Public Law 95-192)- to appraise the soil, water and related resources of the nation. As such, there are problems with this draft technique that would disqualify its application for an impact study on a 1,000 acre tract.



1. The technique is geared for broad application to national assessments and not to site-specific evaluations. The first sentence on page two of the SCS-FWS Cooperative Agreement states that "the basic level of resolution is to be at the state level." A system geared for application at this level will not afford the sensitivity needed for an impact evaluation on a 1,000 acre tract.
2. The process is designed to utilize data collected by the U.S.D.A. Soil Conservation Service National Resource Inventory (NRI). As a result, the data collected are not designed for evaluating wildlife habitat. This constraint is brought forth in the paper entitled "Predicting Wildlife Values of Principal Sampling Units (PSU), SCS." The habitat measures collected may give an indication of the potential usefulness of a PSU for wildlife by indicating the potential species richness or number of species present. It will not produce an evaluation of the species evenness, relative abundance, carrying capacity of the habitat, or the effects of cumulative impacts upon the carrying capacity of the habitat. The technique measures habitat diversity and weights toward increasing diversity without an evaluation of a particular species' needs in terms of the amount of a particular habitat type. This technique, therefore, was used over other techniques such as HEP and we question the credibility of the results in accurately assessing the cumulative impacts of construction of the Smithville Phase 1-C Development.

#### Detailed Comments

1. Page 2, Wildlife Impact Study. "Sampling points were selected from a random numbers table and located by an overlay grid; however, in order to represent diversity within the unit, they were kept well spaced." How were the sampling units kept well spaced? Such techniques bias the randomness of the initial procedure. What sampling technique was used to collect the vegetative data? The study results could be better analyzed if the data for each PSU and the locations of the corresponding sample points were submitted.
2. Results Section A. It is stated that "development never occurs in high value wildlife areas rated above 1083." Of the 34 sample points rated above 1083, seven show post-development impacts. This discrepancy should be clarified. PSU #3 shows that the mean point value increases after development although the area of available wildlife habitat decreases. This should be explained. The results show a decrease in "only" 23% of the mean point value of the wildlife habitat after development of 42% of "wildlife habitat available." We question the reliability of this projection considering that development is supposedly restricted in areas with a mean point value greater than 1083. The mean point value of 1083 represents the Oak-Pine forest which is an important habitat component for deer. The impact of the alteration of this ecosystem on the remaining "high value wildlife areas" is not accounted for.

Results Section B. The increase in the standard deviation computed from the 68 sampling points is claimed to indicate an "increase in the amount of 'edge' or ecotone areas, separating habitat types" and to represent an increasing diversity of habitat types due to the addition of developed areas and the golf course. Developed areas and the golf course are not productive habitat types for most desirable species.

Results Section C. Breaking up units of continuous suitable habitat with areas that are less suitable as habitat will not have the benefits normally associated with "edge" or ecotone. An assumption is made that the edge areas between undeveloped habitat and the golf course fairways will become focal points for wildlife activity during crepuscular and nocturnal hours. This claim is not substantiated nor is there any sampling information that would verify this assumption. The development would reduce the extent of Oak-Pine forest which provides important food and cover for wildlife. Although the Atlantic white-cedar ecosystem will remain undeveloped, no assessment of the cumulative impact of increased browse pressure or disturbance due to nearby development on this ecosystem is made. Atlantic white-cedar is a preferred food for deer in New Jersey, but browse pressure is sometimes so strong that very little regeneration occurs in the understory (Kantorl). Therefore, an assessment should be made of the impacts of possible increased browse pressure on the white-cedar ecosystem due to removal of an important food source, (i.e. acorns).

Results Section D. The document states that the vegetation of the golf course "roughs" "certainly surpasses the qualitative food and cover value of the sparsely vegetated fields surrounding the airport." This assumption is not documented. The existing utilization of the fields during spring, summer and fall months should be evaluated and the food value of the existing vegetation compared to the golf course roughs. Are we to assume that grasses preferred by deer will be planted and not mowed?

3. SCS-FWS Cooperative Agreement - Prototype Fish and Wildlife Analysis Process  
The section entitled "Technical Approach" stated that community properties such as stability, resiliency and elasticity are important considerations, but cannot be measured using existing data collected at the PSU's. These parameters are critical in evaluating the impact of changes in habitat on a particular species. If the habitat components are small or not juxtaposed in suitable ways the carrying capacity will be adversely affected. This model is not suited for habitat evaluation.
4. Water Quality Data (submitted with wildlife impact study)  
A number of questions arise in reviewing the water quality data:
  1. Why do the levels change so much? If the sampling was accurate and the samples uncontaminated, the system appears to have undergone significant loading.
  2. Where was the sampling done? The location of the sample point(s) is not indicated. Was the sampling done at one station or many?
  3. What are the units of measure? They are not legible on the xerox copies submitted for our review.
  4. Overall, the units on the X and Y axes should be expanded so that the data covers the majority of the graph paper.

#### Specific Comments on the Data Presented

Mercury - In ug/l, .00057 is the criteria for mercury, not to exceed .0017 ug/l. If this is mg/l, it is 1000 times too high.

Lead - Criteria for domestic water supply is 50 ug/l. Data shows levels going to 1300 ug/l on July 22.

Fecal Strep - Levels appear high.

Fecal Coliform - Levels after May 8 would not allow shellfish harvest and levels after July 8 would prohibit bathing.

Nitrate - What is causing nitrate to increase so rapidly?

Total Kjeldahl N - Why was total N not sampled on August 4?

Alkalinity - The drastic fluctuation in alkalinity would indicate that either acid was dumped in the stream between July 22 and August 4 or a base was dumped in the stream between May 8 and July 22.

pH - The sharp drop in pH reflects what was observed from the alkalinity data. Fluctuations from a pH 7.5 to 5.3 in less than two months, and from 6.7 to 5.3 in two weeks would result in a loss of organisms requiring stable levels.

Suspended Solids - Could reflect rainfall or siltation from development activities.

More information is needed regarding the sampling method before any solid conclusions can be made. However, the data as presented raise serious questions as to what activities may be affecting the water quality of the area sampled.

#### Summary

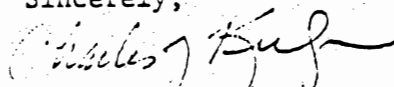
The techniques used in the Smithville Phase 1-C Wildlife Impact Study Primary Sampling Unit Method are not designed for a study of this nature. The results, therefore, are not applicable.

The study findings are inconclusive for the following reasons:

1. The study technique was designed for national assessment and not site-specific mitigation. Methods such as the FWS Habitat Evaluation Procedures are better suited for evaluating wildlife habitat and assessing the cumulative impacts of development.
2. Cumulative impacts of the development on the wildlife habitat are not addressed.
3. The data gathered at each sample point and location of each sample point were not submitted for review so that even if the technique employed were acceptable, analysis of the study findings would be difficult.
4. The data collected in the technique employed are not suited for evaluating wildlife habitat.
5. The randomness of the sample was biased.

We thank you for the opportunity to comment. If you have any questions, please contact us.

Sincerely,

  
Charles J. Kuhl

Harrisburg Area Office  
Abscon Suboffice

EPA, New York, NY  
Brigantine NWR - Inman



# Sierra Club

WEST JERSEY GROUP

"...TO EXPLORE, ENJOY AND PRESERVE THE NATION'S  
FORESTS, WATERS, WILDLIFE AND WILDERNESS..."

February 21, 1984

Public Hearing regarding review by the Division of Coastal Resources, Department of Environmental Protection, of permits for Phases 1A and 1B of Smithville.

My name is Carol Barrett and I am the Chairman of the West Jersey Group of the Sierra Club. Our interest and concern about the construction of the Historic Town of Smithville has been expressed since the public discussion began <sup>before</sup> ~~about~~ 1980. I do recall comments and charges made during the boundary plans for the Pineland Protection Plan as to why this area, mainly Galloway Township, was excluded. To this day I have been questioned by many, including news people, why this obvious Pine Barrens environment was put under C.A.F.R.A. regulations instead of the Pinelands Protection Act. That piqued interest with suggestions that it was slated for heavier development than might be possible under a Pine Barrens plan.

Be that as it may, I am pointing out that the Sierra Club has been watching this township fearfully because we are in the business of protecting natural resources as our slogan "...to explore, enjoy and preserve the nation's forests, waters, wildlife and wilderness..." states. It seems that the acreage to be developed by "Smithville" fits into that goal of the Sierra Club explicitly.

We ask the Division of Coastal Resource to take this opportunity, afforded to us by the Appellate Division of the Superior Court and previous court decision negating the "conceptual approval" method used for this development, to take an objective review of the entire record to assure themselves and us that proper weight has been given to the evidence which contradicts both the developer's and division's assurances that irreplaceable damage won't be done to the natural resources there as well as impact on the close <sup>or</sup> national wildlife refuge. There are also the certain to follow secondary impacts to the entire coastal, rural area. In fact, it will obviously not be a Limited Growth Region.

The questions that the Division must respond to are raised in the court's decision. We legitimately expect that this government agency will toss out of consideration any bias it might have to uphold its own pronouncements

more

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of the past and to reject tunnel-vision when arriving at its conclusions of whether to issue permits for development of Smithville as in Phases 1A and 1B.

The Coastal Management Plan, C.A.F.R.A. regulations, protection of our Brigantine National Wildlife Refuge, health of the shellfish industry of that area, impact on the Pine Barrens, and so important, confidence of the public that integrity is important; these are the guidelines to follow when considering your actions and coming to final decisions.

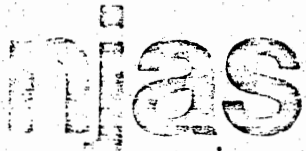
Finally, no one, including this agency, can have it both ways. When you find that your planning intelligence leads you to declare a region "limited growth" for environmental <sup>and</sup> ~~or~~ <sup>other</sup> sensible reason, you cannot contrarily approve a large amount of construction and population into it. I have difficulty even writing that sentence, it seems so incongruous.

There are times when the Department of Environmental Protection, like the rest of us, makes mistakes. From the onset it seems this huge development has been misjudged and superficially studied by the Division of Coastal Resources. Hard decisions must be made and I would like to quote from the court's latest decision, referring to the court's denial of a stay previously, "The Historic Smithville Development Corporation is expressly cautioned that it proceeds <sup>(c)</sup> as its own risk....."

In closing, we request a new start for these permits and reconsideration of handling of 1C permit in order that a fresh, unprejudiced study and evaluation may be made with the protection and preservation of our natural resources and laws foremost and uppermost.

*Carol Barrett*

Carol Barrett, Chairman  
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new jersey audubon society

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Statement regarding  
Historic Smithville Development Corp., Phases 1A & 1B  
New Jersey Division of Coastal Resources  
Public Hearing, February 21, 1984

As the state's oldest conservation organization, founded in 1897, New Jersey Audubon Society has long spoken for the preservation of habitat, conservation of wild species and quality of the environment. We are grateful for the opportunity to comment on the reissuing of CAFRA permits for Phases 1A and 1B of the town of Historic Smithville, Galloway Township, Atlantic County.

Testimony on Phase 1C of Smithville has brought to light information that was not fully available during review of the earlier permits. Coupled with testimony on the original permits and with the court's striking down of the Division of Coastal Resources (DCR) conceptual approval, this information casts serious doubts on the DCR's ability to make a positive finding in this case. We submit that data on the secondary effects of Smithville, the impact on avian species, especially those that are threatened or endangered, and the long-term implications for water quality are so tentative that reissuance of these permits is impossible.

Take, for example, water quality. Smithville's own experts have testified that they cannot predict whether the Best Management Practices (BMPs) they have incorporated for storm water management will work, given the unique soils and hydrology of the area. Dr Tavit Najarian, originator of the S.T.O.R.M. model upon which these practices are based, himself testified that the model does not apply to projects of Smithville's density. And, the effects of the pesticides, herbicides and

hydrocarbons that may be introduced by homeowners were not taken into account. In issuing the permits which are being reconsidered, DCR assumed that the EMPs would be effective over the long term and that the homeowners' association would be zealous in maintaining the system. In fact, your own colleagues in the Division of Water Resources (DWR) were so skeptical of the effects on ground and surface waters that they required installation and operation of a ground water monitoring system. Indeed, DWR's water quality expert, Dr. Hsueh, recommended that a three to five-year hiatus for monitoring and assessment occur between development phases. These data militate for a negative finding of fact. The potential detrimental impact of this development on water quality throughout the surrounding area, including Brigantine National Wildlife Refuge and the lower Mullica River complex, and the resulting harmful effects on wildlife and on shellfish (upon which an entire local industry depends) is alarming to say the least.

NJAS is particularly concerned about the impact of the town of Smithville upon the adjacent Brigantine National Wildlife Refuge and on the avifauna of the entire region. The coastal areas of New Jersey have for millenia served as a primary migratory route for valuable avian species. In addition, they have provided permanent and nesting habitat for a variety of native birds. Studies, including those done by NJAS, have thoroughly documented the dependence upon the region of twenty-one avian species endangered or threatened in New Jersey. Clay Sutton's "Six Year Study of Wintering Eagle Populations and Wintering Eagle Habitat in Southern New Jersey" clearly shows that Brigantine NWR and the Mullica River complex are critical habitats for our beleaguered national symbol. CAFRA regulations defining "Endangered or Threatened Wildlife Species Habitat" have been clarified to include all areas known to be inhabited on a seasonal basis or critical at any stage in the life cycle of any threatened or endangered species, and require a sufficient buffer to insure survival. Yet JoAnne Frier, Coordinator of the Endangered Species and Non-game Project, New Jersey Division of Fish, Game and Wildlife, has testified that neither the DCR nor Smithville has studied the possible impact of development on Brigantine NWR or its endangered species resources. Dr. Gary Sawhill, Smithville's wildlife management expert, has also admitted on the record that the project's



impact on endangered and threatened species on Brigantine NWR has never been evaluated. Surely this potential impact calls out for investigation before a permit can be approved! The very existence of a score of rare species demands the protection your Division is charged with providing. Hear their names and heed their future:

Pied-billed grebe - T	Black skimmer - E
Great blue heron - T	Short-eared owl - E
Cooper's hawk - E	Red-headed woodpecker - T
Red-shouldered hawk - T	Short-billed marsh wren - T
Bald eagle - E	Bobolink - T
Northern harrier - E	Ipswich sparrow - T
Osprey - E	Savannah sparrow - T
Peregrine falcon - E	Grasshopper sparrow - T
Upland sandpiper - T	Henslow's sparrow - T
Roseate tern - T	Vesper sparrow - T
Least tern - E	

The danger to these species and to the other plant and wildlife species that find sanctuary on the Refuge comes not only from the threat of diminished water quality or of draw-down which will imperil wetland vegetation. The impact of circa 20,000 additional humans, the resulting pressure on wild populations, the effect of increased recreational marine traffic, of wandering pets (cats and dogs are, after all, predatory species) and of exploring children can only be harmful. However, these impacts are hard to predict, and they are beyond regulation. They must be considered another negative finding that points to permit denial.

In reference to critical habitats, the experts of the Smithville Development Corporation assessed the impact of their new town by using a Primary Sampling Units model. The originators of this model state explicitly that it must not be used when making an analysis of potential impact on endangered or threatened species. The special habitat needs of these species are to be examined under separate assessments. Here, again, the data are inadequate for a positive finding to occur. Critical habitats serve an essential role in maintaining wildlife and the CAFRA regulations themselves demand its protection. Have critical habitat maps of the Smithville region been prepared for species other than colonial waterbirds? NJAS has offered Mr. Sutton's



for endangered bald eagles, and would be glad to assist in the mapping of habitat for other avian species. But until these studies are completed, we must ask that permits not be granted.

Finally, NJAS protests the invoking of the Large Scale Residential Rule to permit the development of Smithville in an area designated by the DCR as a Limited Growth Region. If the Division truly believes that the environmental sensitivity and natural resources of the region outweigh development, how can you justify the complete alteration of the habitat to accommodate 20,000-plus new human residents? To say that the self-contained nature of PUD's is preferable to infill where only a limited possibility of infill exists is absurd! To permit development on this scale in a Limited Growth Region when high-growth areas have been established nearby is very nearly criminal. If the DCR thinks the Limited Growth designation is wrong, then, for heaven's sake, be honest enough to change it. But don't bring development in the back door by circumventing your own designation.

In summation, the New Jersey Audubon Society is convinced that the data necessary for a positive finding of fact is insufficient in the areas of water quality, critical habitats, impact on the neighboring Brigantine National Wildlife Refuge, on endangered and threatened species and on shellfish resources in nearby waters. And we question the application of the Large Scale Residential Rule in this instance.

Therefore, we believe that the Division of Coastal Resources has no recourse, based on the data available, other than to deny the reissuance of permits for Phases 1A and 1B of the town of Historic Smithville. We urge you to require thorough and complete studies of the impact of the above issues before further applications are accepted or reviewed.

Thank you.

Janet S. Jackson

2/21/84

P.O. Box 534  
705 White Horse Pike  
Absecon, New Jersey 08201

APR 30 1981

Mr. David Kinsey  
Division of Coastal Resources  
New Jersey Department of Environmental Protection  
P.O. Box 1839  
Trenton, N.J. 08625

Dear Mr. Kinsey:

This letter is in response to a recent request by a member of your staff for comments the Fish and Wildlife Service may care to offer regarding the proposed deer management program for the Historic Towne of Smithville development. These comments provide technical assistance only. They do not constitute the report of the Secretary of the Interior on the program within the meaning of Section 2(b) of the Fish and Wildlife Coordination Act, nor do they represent the review comments of the Department of the Interior on any federal permits which may be required.

#### General Comments

The proposed action is the formulation and subsequent implementation of a deer management program for the Historic Towne of Smithville development. The purpose of the proposed program is to compensate for the loss of upland habitat used as deer management zones.

This Service believes that the program document submitted for review is vague, suggestive and theoretical in scope. Further, inconsistencies occur in the document and, in some instances, the information presented is contradictory. Thus, we believe that the document lacks the detail necessary to completely evaluate the effectiveness of the proposed deer management program. To fully evaluate the proposed program, detailed information is required regarding cover type dispersion patterns, proportions and their seasonal uses by deer, characterizations of within and between year dietary patterns, herd productivity data as well as explicit information regarding the specific spatial arrangements and management alternatives for the remaining cover types. Once this information is made available, a complete, detailed and objective analysis of the proposed deer management program would be possible.

#### Detailed Comments

##### Page 2 - Introduction (Basic Assumption #4):

Wildlife management is defined as the science and art of ensuring the continued existence and production of healthy populations of plants and

animals. The passage, "...to insure that man's need for space, shelter and living standards do not result in the depletion of the resource," is thus not a definition. This passage is, however, an example of what may constitute an objective of a particular wildlife management program.

Page 2 - Introduction (Basic Assumption #5):

The definition of carrying capacity presented in the subject document resembles the classical interpretation. Implicit in the classical interpretation is that insufficient food is available to permit the individuals comprising a population to attain optimum body growth, vigor and reproductive potential. Thus, a small change in the weather or a failure of a food supply can have grave consequences. In southern New Jersey many of the between year differences in the deer population in the pinelands have been related to the year-to-year variation in the acorn crop. Further, deer from the pinelands portion of southern New Jersey exhibit smaller body sizes and lower reproductive rates than deer elsewhere in southern or northern New Jersey. Thus, the use of the classical interpretation is appropriate. Nonetheless, a statement identifying the "Smithville Tract" as one of the most productive deer areas in the southern part of the state, exclusive of the agricultural lands in Salem County (photostatic copy included), should have been incorporated into the document. (This information was obtained through the New Jersey Division of Fish, Game and Wildlife, Bureau of Wildlife Management). Thus, we must conclude that the last sentence of assumption five is not completely accurate or objective and is also misleading.

Pages 2, 3 and 4 - Biological Base of Management Considerations (Food and Shelter Requirements of the White-tailed Deer in the Area of Smithville):

Page 2 - Rather than using the term "developmental stages", it would be more accurate and precise to describe the successional vegetation community with which white-tailed deer are most commonly associated as the early forest stage. High quality deer habitat is characterized by an interspersed cover types resulting from successional changes after grazing, burning and/or logging activities have been discontinued or where agricultural practices are currently or previously had been undertaken. The factors most often responsible for changes in these land uses are economically motivated and, thus, beyond the control of the wildlife manager. Mention is made of the threat posed to white-tailed deer by domesticated or feral dogs and the requirement of deer to be free of such molestations. We noted that although this concern was identified as one that would influence the success of the deer management program, no further mention was made of how the existing level of this problem (also unspecified) would be aggravated or what alternatives would be implemented to alleviate or offset any expected increase. We perceive this as a deficiency.

Page 3 - Regarding the biological reasons for deer movements and the associated habitat correlations, updated information pertaining to this aspect of deer ecology has become available to the professional

wildlife manager during the past several years. Had a complete literature review that included the Journal of Wildlife Management, a publication of the Wildlife Society (Washington, D.C.), been conducted, this information could have been obtained and used to develop a deer management program that reflected the current state of the art.

As stated in the document, congregation by deer in cedar areas does occur. Further, as was also stated, this behavior probably also occurs most frequently during periods of inclement weather. In the northern part of their range, deer remain congregated in areas throughout the winter because the coniferous overstory provides food, protection from wind and precipitation, intercepts much snow and provides a relatively stable thermal environment. In southern New Jersey where the weather is more moderate, congregation in areas dominated by coniferous (cedars: red and white) vegetation probably occurs primarily in response to high wind speeds coupled with low ambient air temperatures and/or periods of precipitation and is therefore a more transient phenomenon. However, other cover types provide other life requisites to deer. For example, both upland and lowland cover types can be utilized by deer for different functions (e.g., food sources, escape or fawning cover) but these cover types are used differentially by deer depending upon season or biological function. The operative consideration is that an interspersed of all biologically functional cover types must be available to a deer population to ensure its continued existence without being degraded. Thus, in regard to deer, the shortcoming of the wildlife corridor system is that it is designed to "protect" one cover type at the expense of many others that are also biologically functional. Thus, other cover types (and their associated life support functions) will be in short supply (limiting).

Because deer are extremely mobile and will avoid direct contact with man, the deer from the Smithville Tract will be required to move into surrounding areas (including the Brigantine National Wildlife Refuge) where a population of deer, that is already at or near the maximum number of individuals that can be supported by that habitat, occur. The result is that not only the displaced deer from the Smithville Tract, but the resident deer, will undergo physiological stress (i.e., starvation) because the previously sufficient supply of life requisites will become relatively scarce. Equilibration will eventually occur. In the mean time, however, the habitat will have been overtaxed and physically modified (by man's activity as well as the deer themselves) and the total number of deer will be drastically reduced in proportion to the total habitat destroyed and any habitat deteriorations that will occur.

These aspects of the biology of the deer population at the Smithville Tract were apparently overlooked or discounted as being of little consequence. This Service interprets this as evidence of a deficient understanding of the fundamental and basic deer/habitat interrelationships.

Pages 3 and 4 - A discussion of the functional (i.e., uses as food sources) value of cedar and non-cedar cover types in relation to successional age is then presented. One of the points that was emphasized was the need for

successional diversity. Apart from disjunct, vague and infrequent references to "open space" and "edge" (page six) and "forest management," in the context of a commercial silvicultural endeavor (page eight), no specific information, documentation or explanation of just exactly what is to be accomplished where, on the Smithville Tract, other than the "creation" of wildlife corridors, was presented in the subject document. Further, reference is made to the importance of food quality as a limiting factor. This reference is based upon investigations performed on deer harvested during the hunting season. A copy of the paper by which the results of this investigation were reported was submitted along with the deer management program document. It was impossible to fully evaluate the findings reported in this paper because no specific information as to where in southern New Jersey the specimen animals were harvested was given. Presumably, an unspecified number of the specimens were from the Smithville area or northeastern Atlantic County. Nonetheless, some interesting observations can be made. For example, can the presence of apple, corn and carrots in the diet be attributed to deer harvested near agricultural areas or did this reflect the activity of bow and arrow hunters? Further, without these supplemental foods the quality of the diet is marginal. However, the importance of acorns to the health and well being of deer in southern New Jersey could be evidenced no more dramatically than it was by the 1976 data when acorns were reported to comprise nearly 60 percent of the average rumen contents. This represents an increase of nearly 58 percent from the preceding year and caused the quality of the 1976 diet to far exceed the quality of the diet of the previous year. We also noted that the proportion of the other foods ingested also differed between the two years of the study but none of these differences were as drastic. From these observations this Service concludes that the general condition, overwinter survival and reproductive rates of southern New Jersey deer may well be expected to respond in proportion to the quantity of acorns available in the fall and winter. Thus, in addition to year-to-year differences in acorn production, if acorn availability were further reduced (as a result of habitat alteration) or the relative amount of acorns was diminished (as would occur as a result of crowding the deer population into a smaller habitat space), the health and well being of the deer on and in the vicinity of the Smithville Tract and their habitat would be jeopardized. Where and how anticipated losses could be offset should have been the topic of objective analyses, not subjective discussions.

Pages 4 and 5 - Biological Base of Management Considerations (Succession):

Page 5 - Apart from the fact that the comments presented on this page appear to be in conflict with the last sentence of the first paragraph on page three, the criteria for establishing the admixture and juxtaposition of the old field and wooded areas cover types is not presented. Since this relationship is critically important, the inclusion of the above mentioned criteria in the program document would be appropriate, as would a characterization and comparison of existing and proposed proportions and spatial arrangements of these two cover types.

The same may be said of the information regarding the value and function of "edge" to deer. Further, the rumen contents analyses were designed to characterize the materials ingested during the fall and winter months only. The question of whether old field plant species are consumed for food at other seasons was not addressed. Thus, to imply that old field vegetation is an unimportant source of food for deer is inappropriate and constitutes an unjustifiable extrapolation of admittedly "limited data" (page four). We perceive this as another deficiency.

Pages 6, 7, 8 and 9 - Management Program:

Page 6 - In the first paragraph of this section, the topic is how to determine what cover types, of what quality, located where, should be retained so as to ensure that the deer population is not detrimentally impacted. The problem is to decide what method to use. The operative assumption was that the larger and more diverse an area is the greater is its inherent value as deer habitat. We must take exception to the use of this assumption. It is useful primarily when any other information is lacking. Because pertinent information does exist it is inappropriate to invoke that assumption. As an alternative, we offer the following:

The Smithville Tract is located in one of the most productive deer areas (i.e., high quality habitat) in southern New Jersey. Realize that the carrying capacity of a specific area for deer, or other animal population, is related to both habitat quality and habitat quantity. If habitat quality is constant relative to changes in habitat quantity, then the carrying capacity of a specific area must decrease in proportion to habitat loss. However, a species within a specified area interacts with other species as well as the environment. For this reason, seldom, if ever, will either habitat quality or habitat quantity remain constant. Changes can occur naturally (e.g., succession, fire) or be induced (e.g., development, management). Nonetheless, if it is assumed that the total surface area to be impacted by a project is constant but that the proportion of each cover type within the same study area is to be altered, habitat quality and quantity for any specific species will be altered. To offset these changes the wildlife manager can manipulate either the habitat quality or the habitat quantity of a species of interest. Therefore, any desired corrective action, depending upon the peculiarities of the situation and the management objectives, could be accomplished by appropriately affecting either habitat quality, habitat quantity or both. From a practical perspective, the areas that will not be developed, and thus constitute the bulk of the areas to be incorporated into the deer management program, will be of a higher quality than will the areas that are disturbed and developed. (These latter areas can effectively be considered to be irretrievably lost). Thus, the proportionate decrease of habitat quantity will surpass the decrease in habitat quality. Although some improvement of the quality of the remaining deer habitat may be possible, it is difficult to envision any program that could be implemented that could offset the amount of habitat

that will be lost and the negative impacts that will occur to the deer and their habitat in the area surrounding the Smithville Tract (see comments regarding page three of the subject document). Were such a program to be developed, the primary thrust would have to be directed towards improving the existing high quality cover types within the limits of the Smithville Tract as well as improving the quality of remaining cover types elsewhere in the vicinity of the Smithville Tract. This would be difficult to accomplish given the development to be undertaken in northeastern Galloway Township. As such the proposed deer management program would be expensive in terms of time and money to implement and maintain, if the objective is to be attained and success assured.

Developing a management program that is directed towards improving habitat quality simplifies considerably the job of the wildlife manager. However, this simplification should not be perceived as an opportunity to invoke subjective assessments. Rather, the plan should be developed (as would be appropriate for any scientific endeavor) by objective analyses, documentation and review of proposed solutions. Because many aspects of the proposed deer management program do not appear to be based upon objective analyses and the documentation is suspect (i.e., the rumen analyses data that were submitted with the subject document), we perceive the proposed program to be flawed and, therefore, the likelihood of success as seriously suspect.

Page 7 - The provision for including existing and to utilize unique and specific wildlife habitats (i.e., the cranberry bog and Pickerel Pond) into the Mattix Run wildlife corridor can not be construed as providing "....a significant increased potential of this corridor for providing benefit to deer and significantly increasing habitat diversity." These areas are already functionally important to deer in the area. It should be noted that the "....luxurious food source....", in the form of grass associated with the golf course, is far less nutritious during winter and early spring (a critical time for deer) than during other times of the year.

The statement, "...The planting of thorny vegetation along borders of the wildlife corridor system adjacent to multi-family development should be sufficient to discourage activities of children in areas of particular value to wildlife...." is worthy of two comments. The first is that it has been our experience that streams are attractive to children. Where vegetation impedes access, it is removed. The result is that a network of pathways is established. Thus, the wildlife species remaining would be those that are extremely tolerant of human activities. Fencing would be an alternative. However, apart from being aesthetically displeasing, it would fence wildlife in as well as people out. The second comment is that it appears that multi-family dwellings are to be sited in close proximity to the portions of the wildlife corridors that are of particular value to wildlife. Although this interpretation may be due to the syntax of the sentence, this point should be clarified. However, a wildlife corridor is only as good as its weakest point. Should incompatible land uses be sited in close proximity to the corridors, movements by wildlife species, including deer, within the corridors would be disrupted. The effect of such an



occurrence would be the isolation of the affected wildlife species populations, including those of the Brigantine National Wildlife Refuge. We agree that where the wildlife corridors become narrow, movements can be jeopardized. However, to minimize the negative impacts related to the constriction of the corridors, we believe that supplemental plantings of native vegetation to enhance vegetative density should be mandatory where the width of a corridor is less than 300 feet.

#### Pages 8 and 9 - Forestry Management as a Tool to Create Quality Deer Habitat:

This discussion is appropriate for an area where timber production is the primary objective and non-forested areas are the exception rather than the rule. This situation does not typify the Smithville Tract. Nonetheless, conducting a deer management program that incorporates appropriate silvicultural practices reflective of the biology of the particular system of interest may result in some increase in habitat quality. However, without an opportunity to review the specifics of the proposed manipulations, we are unable to fully appraise the overall effectiveness of this aspect of the proposed management program.

#### Page 9 - Population Control:

Pursuant to existing New Jersey hunting regulations, hunting with bow and arrow or firearm within 450 feet of an occupied dwelling or structure is illegal. Given the number and spatial arrangement of residences, their position relative to the wildlife corridors, and the potential for opposition to hunting, the likelihood of even implementing a hunting program, designed to reduce the size of the deer herd, is suspect.

#### Miscellaneous Comments

Three other fundamental aspects of the deer/urbanization interaction were not addressed in the proposed deer management program. One aspect is what efforts are to be undertaken to offset the negative impacts to the deer and their habitat during the construction phase during which overcrowding in surrounding cover types (including those that occur on the Brigantine National Wildlife Refuge) will constitute a chronic problem. The second aspect is what mechanism will be used by the Historic Towne of Smithville development to mitigate the added management efforts that will have to be undertaken by the staff of the refuge to offset expected damages. The third aspect is what procedures or management alternatives will be implemented to offset or eliminate the increased potential for deer/automobile collisions. The damage to motor vehicles that often occurs from such collisions can be expensive to repair and such collisions can result in the death of the driver.

#### Summary

This Service believes that the proposed deer management program for the Historic Towne of Smithville development is inadequate, vague and



superficial. Until the indicated deficiencies are adequately addressed and corrected the proposed program should not be considered as acceptable compensation for the loss of uplands used as deer management zones.

Thank you for the opportunity to comment. Should you have any questions, I can be reached by telephone at 609/646-9310.

Sincerely,



Oliver T. Edstrom  
Assistant Field Supervisor

**Enclosure**

ES:Absecon:RBosenberg:amt

CC: ASO files

SCFO files

NJDFGW - D. Burke, Nacote Creek

NJDFGW - R. Lund, Clinton WMA

NJDFGW - G. Howard, Trenton

USFWS - Brigantine NWR

NJPC - T. Moore, New Lisbon

D. Bennett, Highlands

LOCATION #: 19080 REPORT #: 12  
E: 09/14/82 COMMENT:  
ALS FOR K&B MODELS LOTS 32:33:34

LOCATION #: 19080 REPORT #: 13  
E: 09/13/82 COMMENT:  
ER TO PALMERI REMINDING HIM THAT ALL AREAS MUST BE STABILIZED THIS FALL. IF  
THIS WILL BE REFERED TO NELSON FOR LITIGATION

LOCATION #: 19080 REPORT #: 14  
E: 10/15/82 COMMENT:  
ULDERS OF LEEDS POINT PLACE MUST BE MULCHED.

# AMERICAN LITTORAL SOCIETY



*For The Study and Conservation of Aquatic Life*

SANDY HOOK • HIGHLANDS, NEW JERSEY 07732 • 201-291-0055

Statement of Paul C. Dritsas, New Jersey  
Coordinator for the American Littoral  
Society, at hearing on Phases 1A and 1B,  
Towne of Smithville, Stockton State College,  
February 21, 1984.

I have prepared detailed comments on six issues that the Division of Coastal Resources (DCR) mishandled in its evaluation of the permit applications of Historic Smithville Development Company for construction of residential and commercial facilities in Lower Galloway Township.

The thrust of this statement is that DCR cannot make the positive findings required by law to grant the conceptual and phased permits for Smithville construction. The courts agree.

The topics I will cover are:

- (1) Surface Water and Groundwater Quality.
- (2) Shellfish.
- (3) Endangered and Threatened Species and Habitats.
- (4) Groundwater Withdrawal.
- (5) Secondary Impacts.
- (6) Housing Demand/Alternatives.

## Surface and Groundwater Quality

At the heart of much of the Coalition's concern lies the issue of water quality. Careful protection of groundwater and surface water quality is required to protect the Mullica River-Great Bay Estuary and its resources from contamination by Smithville. Without such protection, the environmental impact will spread to include white cedar wetlands, shellfish, endangered and threatened species, and the estuary's pristine quality. The livelihood of the estuary's shellfishermen will be destroyed.

As proofs that water quality will be preserved and protected, Historic Smithville Development Company (HSDC) has proposed a series of Best Management Practices (BMP's) and hired Dr. Najarian to perform a computer model projection of the increased pollutant loadings attributable to Smithville. These two items are the core of HSDC's environmental data from which their analysis of project impacts on white cedar wetlands, shellfish, endangered and threatened species, and the estuary is drawn.

There was extensive testimony given during the Phase 1C hearing by Smithville's own experts which in our opinion details the critical flaws in HSDC's water quality data. I will only highlight some of those shortcomings here but call your attention to our brief, Petitioner's Exceptions to Initial Reply and Recommendations of the Administrative Law Judge, for more detailed criticisms.

The S.T.O.R.M. model was used by Dr. Najarian to predict the levels of pollutant loading attributable to Smithville. By Dr. Najarian's own admission the model he used does not even apply to projects of Smithville's density (up to 20 units per acre) and his predictive numbers are only ballpark estimates of pollutant levels. We have found his calibration of the model to be scientifically unreasonable because he used only one storm event and pollutant loading data from other regions of the country that are not analogous to Smithville with its

unique soils and hydrological regime. Dr. Najarian also admits he did not model for impacts caused by pesticides, herbicides, and hydrocarbons or for offsite impacts generated by on-site activities (e.g. traffic related to residential and commercial uses). In addition, Dr. Najarian's model predicts that levels of zinc at the confluence of Nacote Creek and the Mullica River could cause adverse impacts to shellfish. HSDC has failed to meet its burden to show that water quality will not be degraded by the project; consequently DCR is mandated to deny CAFRA approval for Phase 1A, and 1B, and 1C.

HSDC has proposed a series of BMP's which it contends will prevent stormwater runoff pollutants from discharging directly into surface waters. But neither HSDC nor DCR knows if in fact the BMP's proposed will work at Smithville due to the site's unique soils and hydrological regime. Furthermore, in order for water quality standards to be met by the project, the BMP's must work effectively forever with maintenance and replacement of the BMP's the sole responsibility of the Smithville homeowners association. HSDC's own experts testified that even with BMP's operating at full effectiveness and with complete maintenance, post-development loadings of pollutants such as heavy metals, nitrates, phosphates, pesticides, herbicides, and hydrocarbons, will be greater than pre-development pollutant loadings. Neither HSDC nor DCR knows the levels of increases of any of these pollutants which would adversely affect white cedar wetlands or shellfish.

It is critical, at this time in the DCR's review of phases 1A, 1B and 1C, that the recommendations of Dr. Shing Fu Hsueh, (DWR) be examined closely. Dr. Hsueh has stated that a review period of three to five years should be inserted between construction of one phase and approval or disapproval of each subsequent phase of Smithville. According to Dr. Hsueh, three to five years after construction is the approximate period of time needed to determine the surface and ground water systems have been stabilized and if enough data has been collected to make an informed judgment about whether or not the constructed phase is having a detrimental water quality impact. DCR reapproval of Phases 1A and 1B would fly in the face of this recommendation by the DEP's leading expert on water quality analysis.

Dr. Hsueh's phasing recommendations is significant for another reason. It indicates that no one knows precisely how the Mullica River-Great Bay estuary will react to the pollutants to be introduced to it by Smithville and other CAFRA projects in the region. Critical questions such as the following about the estuary remain. What impact would a lack or an excess of phytoplankton production have on shellfish populations? What affect would phytoplankton production changes have on other marine organisms (fishes, benthos, and crustaceans)? What about synergistic effects? Will pollutants at non-adverse levels become destructive by combining with other pollutants also in the system?

How will the estuary react to the combined pollutant inputs by Smithville, Wrangleboro, Reed's Bay, Mattis Forge, Club at Galloway, and other CAFRA approved developments? What is the rate of stabilization of the estuary? What are the background levels of pollutants presently in the system?

Broad and detailed scientific study of the Mullica River-Great Bay estuary must be performed in order to uncover the data required to answer these questions and others. Without such information DCR cannot make the positive finding necessary to approve 1A, 1B, 1C or any other development project in the basin. We urge DCR to deny the Smithville applications and undertake the studies that are needed to supply the data on which knowledgeable and responsible permit decisions can be made.

Shellfish:

The Mullica River-Great Bay estuary is the most pristine shellfishing water along the Atlantic coast of New Jersey. The estuary produces significant natural beds of oysters and hard clams and also provides clean water for purification of clams relayed from other coastal waters of the State. The estuary supports a historic shellfishing industry worth several million dollars. (More than 50 million clams have been relayed to the estuary for purification).

We are astounded that, given the value of this resource, neither HSDC nor DCR has undertaken any independent analysis of the potential for adverse impacts to shellfish resources in the estuary from pollutant loadings generated by Smithville and other developments in the region.

Perhaps DCR has chosen to dismiss concerns about shellfish impacts voiced by shellfishermen and environmentalists. But how can DCR ignore the repeated warnings of sister agencies within DEP charged with the mandate and possessing the expertise to protect shellfish resources?

The valid, lingering concerns of these agencies -- the Division of Fish, Game, and Wildlife and the Bureau of Shellfish Control -- remain because HSDC has failed to answer critical questions about the project's impact on shellfish. Director Cookingham's August 1981 memo to DCR, concerning Phase IC, is most clear in this regard:

### Shellfish

As in previous applications the applicant has failed to consider the potential adverse impacts on the shellfish resources of the Mullica River-Great Bay Estuary. The only reference to shellfish is made as a footnote on page 43.

Just what are the potential impacts on the shellfish resources should the mitigating measures proposed by the applicant for minimizing water quality degradation not be effective? The potential consequences should at least be considered. It will be too late to discuss it after the damage has been done.

### Summary

It is therefore our opinion that the application is incomplete regarding Shellfish, Wildlife and related sections as submitted. We also recommend that the applicant address the possible adverse impacts this development could have on Shellfish resources and the associated industry.

Director Cookingham testified during the Phase IC hearing that nothing submitted by HSDC in support of its applications had alleviated his Division's concern about the potential for irreversable harm to shellfish in the Mullica River-Great Bay estuary.

HSDC's only attempt to address this concern was made through the testimony of Dr. Vernberg during the Phase IC hearing. An honest evaluation of Dr. Vernberg's testimony shows that all he succeeded in demonstrating was that neither Smithville nor DCR has the slightest idea about the project's impact on irreplaceable oyster and hard clam resources of the estuary. HSDC's expert testified that increased pollutant loadings by Smithville, particularly of pesticides, herbicides, and heavy metals, could cause lethal and sub-lethal impacts on shellfish in all stages of their life cycles.

None of HSDC's experts knows the levels of increased pollutant loadings of heavy metals, pesticides, and hydrocarbons at which these adverse impacts to shellfish in the estuary will occur. This is an outstanding omission that cannot be ignored by DCR. The conclusion that Smithville will not adversely affect these unique and valuable shellfish resources cannot be made and therefore the project must be denied.



## Endangered and Threatened Species and Habitats

DCR regulations prohibit coastal development that adversely effects endangered and threatened wildlife species habitats. Further, these regulations discourage coastal development that adversely effects important and critical wildlife habitat. These policies are not limited to on-site impacts only, but also to impacts on wildlife habitat in the surrounding region. DCR cannot approve Phases IA, IB, or IC unless and until a comprehensive study of the project's environmental impacts (including secondary impacts) has been completed and has shown the project to be ecologically sensitive to wildlife habitat on and off site. A careful examination of the Smithville record clearly shows that HSDC has not done this analysis.

The Towne of Smithville is adjacent to the Brigantine National Wildlife Refuge, which provides endangered and threatened wildlife habitat as well as critical and important habitat for a variety of wildlife species. In particular, the refuge provides critical habitat for the bald eagle, peregrine falcon, osprey, northern harrier, short-eared owl and cooper's hawk. Each of these six species is endangered in New Jersey and alternate suitable habitat for these species in the region is unavailable.

Nonetheless, HSDC has failed to study and assess the impacts of Smithville on these habitats at and about the refuge. Within the thousands of pages of material submitted by HSDC on wildlife, there is not one word of analysis concerning the direct consequences of Smithville or its secondary impact on the habitat of endangered raptors of the refuge and in the region. The construction of IA, IB, and IC with the associated population increase, will create conditions, such as increased recreational

demand for the land and water resources of the refuge, increased automobile traffic and emissions, demands for more toxic insect control, and displacement of wildlife, that could adversely effect the refuge. Wildlife experts in the Division of Fish, Game, and Wildlife and the U.S. Fish and Wildlife Service are convinced that such analysis is crucial to the DCR's informed judgment on Smithville.

HSDC has refused to evaluate this critical issue. It is unreasonable to HSDC or DCR to assume that all adverse impacts arising from the project will be confined within its borders and not spill over to the refuge. The law commands that an analysis of regional impacts, in this case the project's impact on crucial habitat in the refuge, be done. Absent such analysis DCR must deny CAFRA approval for Smithville.

### Groundwater Withdrawal:

We have reviewed the Geraghty & Miller (G&M) geohydrologic report for Towne of Smithville as well as the testimony of Michael Wolfert, HSDC's expert at the Phase IC hearing. We find -- with regard to saltwater intrusion and drawdown impacts -- that the G&M study fails to provide critical information about the structure of the aquifer from which up to 90,000,000 gallons of water per month will be drawn by Smithville alone.

On page 36 of the G&M report in the section Hydrologic Impact of Proposed Ground-Water Development the consultants state that "Because of the presence of two confining units separating the lower artesian aquifer from the water table...contamination of the lower artesian aquifer by vertical salt-water intrusion appears to be only a remote possibility." There are two basic problems with this conclusion. First, to our knowledge G&M has not established how far upstream the salt/fresh water interface is on Mattix Run and Wigwam Creek, as well as the tidal ditches in the salt marshes to the east of Route 9. Second, and more importantly, the applicant has yet to prove that the confining layers referred to in the G&M report actually exist in areas of the aquifer to the north, northeast, and southwest of Smithville's well field.

We raise questions about the extent of the confining layers, because according to Barksdale (1952), historic data on the Cohansey aquifer indicates that there is a potential for major separations in the confining layers of the aquifer to the northeast and southwest of the Smithville site. To the north and northeast of the Smithville well field lie extensive salt water wetlands. If, as Barksdale indicates, the confining

is missing or not as extensive as predicted by G&M in this area, then the threat of vertical intrusion (saltwater) into the lower artesian aquifer increases dramatically. By locating its test well profile along an east-west corridor through Smithville, G&M failed to test for the presence or lack of confining layers to the north, northeast, and southwest regions of the aquifer. Barksdale's data cannot be ignored, especially in light of the Division of Water Resources August 1981 memo to DCR that indicates that a G&M test well drilled 4000-5000 feet southwest of the well field failed to show the presence of a confining layer.

During the Phase IC hearing, we presented significant evidence through Dr. Joan Ehrenfeld that a drawdown in the water table aquifer of as little as three inches could jeopardize the ability of cedar tree seedlings to survive due to the drying up of the sphagnum moss layer on which the seedlings depend for moisture. In addition, a three-inch drawdown could adversely impact endangered and threatened plant species inhabiting Oceanville Bog. HSDC's expert testified that, based on the G&M report, no more than two inches of drawdown would occur in the water-table aquifer through Smithville's diversion. However, the G&M report does not evaluate the combined effects from the existing and proposed major groundwater diversions in the region. When the cones of depression from two or more pumping centers overlap, the resultant drawdown is equal to the sum of the individual drawdowns at that point, not just the drawdown from one pumping center such as Smithville.

With Wrangleboro, Reeds Bay, Mattix Forge, Club at Galloway and other diversions combining with Smithville's diversion, the potential impact for increased drawdown of the water table aquifer must be analyzed. If a combined diversion increases the amount of drawdown only inches, then adverse impacts to the regeneration of white cedar stands and endangered and threatened plants in Oceanville bog can occur.

The complexity of this issue is no excuse for its being ignored or misrepresented by HSDC or the Division. We urge you to consult with Mr. George Farkekas of USGS to determine the type and extent of testing required to fill in the sizeable gaps in your knowledge of the Cohansey aquifer.

SECONDARY IMPACTS

The Towne of Smithville project will cause a host of secondary impacts such as increased automotive traffic and emissions, increased land and water recreation demands, and spin-off commercial and retail development. The type and extent of impacts to be generated by such activities has not been evaluated by HSDC.

Recent CAFRA approvals in eastern Galloway Township have resulted in the potential establishment of a new extensive growth center in a region of historically low growth and population. Certainly, the new residents will need and demand commercial, retail and service outlets beyond those presently available in the region. It is unreasonable for DCR to consider that the commercial development proposed in Phase 1B will sufficiently meet the breadth and variety of the new regional demand for service. Furthermore, construction of limited commercial facilities at Smithville will not hinder or eliminate service facility construction by other private developers, given the dramatic population increase that would occur if CAFRA approved projects in Galloway are ever constructed.

Smithville in Phase 1B proposes not only commercial and retail facilities but a hotel and sports complex as well. These uses will generate substantial transport to and from the site by residents, guests, and employees from within and without the community. Increased levels of hydrocarbons, heavy metals, oil and grease, and emissions will be deposited on the roads leading to and from the site. The runoff from these roads will not benefit from even limited protection provided by Smithville's BMP's.

The secondary impacts generated by Phases 1A, 1B, and 1C will be both adverse and significant. HSDC must study these impacts competently. Without such analysis a positive finding regarding secondary impacts cannot be made by DCR and the Large Scale Residential Rule is therefore inapplicable.

Housing Demand/Alternatives

According to DCR, the conceptual, Phase IA, and Phase IB permits were issued in this limited growth region based on the predictions of extraordinary housing need created by casino construction in Atlantic City and the DCR's fear that without large, "well planned" projects in the region, this housing demand would in turn be met by a proliferation of 24-unit developments (not regulated by CAFRA), capable of much greater unmitigated environmental harm.

Recent Atlantic County growth projections and studies show conclusively that DCR's housing expectations are fears were grossly misplaced.

Since 1979, a variety of conditions and trends have combined to decrease regional housing demand. Current population projections are close to 40% lower than the projections used by DCR when considering Smithville permits in 1980. The findings of the draft Atlantic County Regional Growth Impacts Study, prepared by DCR, graphically show the paucity of housing demand in the region. Of the 12,686 housing units approved by DCR in Atlantic County since 1975, only 2150 units (17%) have been or are being constructed. Since 1980, DCR has approved 5770 housing units in eastern Galloway Township. The courts and lack of housing demand have prevented most of the units from being built. 24-unit development projects in Galloway have met a similar fate: since 1980, the Galloway Township Planning Board has given final approval 19 subdivisions totaling a maximum of 187 non-CAFRA units, or 3% of the CAFRA units approved during the same four-year span. At this four-year rate of township approval for non-CAFRA units (46 units per year) it will take 120 years of approvals to reach the number of CAFRA approvals

given by DCR between 1980-1983. DCR's concern about non-CAFRA growth is groundless and cannot be used as overriding justification for approving large-scale growth in the Mullica-South Ocean Limited Growth Region.

If some growth needs to be accommodated in Atlantic County it is the responsibility of the applicant to consider all alternative development locations for all or portions of its proposals. HSDC's consideration of alternatives has been self-serving and void of competent analysis. Given DCR's mandate to consider alternatives and the court's strong directive for such analysis, it is inexcusable that the study has not been done. At the very least, sites in Atlantic City, along existing growth corridors bordering Route 30, and the Pinelands Regional Growth Areas offer reasonable opportunity for appropriate, environmentally sound development.



# AMERICAN LITTORAL SOCIETY



*For The Study and Conservation of Aquatic Life*

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February 27, 1984

Mr. John Weingart  
Acting Director  
Division of Coastal Resources  
Department of Environmental Protection  
Trenton, New Jersey 08625

Dear John:

This letter supplements the information I presented at the public hearing at Stockton State College on February 21 about the Phase 1A and 1B permits for Historic Smithville Development Company (HSDC).

At that hearing, I commented on violations committed by the developer during the construction of these two phases. Here I want to correct one error in terminology and then add to the record I presented last week.

My statement at the hearing was that I was submitting records of 109 HSDC "violations" found in the files of the Cape-Atlantic Soil Conservation District. After talking to Frank Burns, a resource conservationist for the District, I find that District records showed 15 "violations." The other items I cited are more properly called "deficiencies."

I gather the different terms couch legal and procedural niceties. The fact remains: there were at least 109 different instances when the developer failed to comply with the law as set down in Soil Erosion and Sediment Control Act (Chapter 251, P.L. 1975 as amended by C.264, P.L. 77 and C. 459, P.L. 79). My understanding is that violations of the Control Act are automatically CAFRA violations.

Attached to this letter is a copy of the law. Additionally, I have attached copies of some of the citations (violations and deficiencies) from the files of the Soil Conservation District. The citations are in chronological order and cover three different sections of Smithville: Phase 1A North, Phase 1A South, and Phase 1B. I have also enclosed computer log sheets on each phase.

The major reason for calling these citations to your attention is as follows:

The entire Smithville development, from conceptual approval through phased construction, is based on several premises: the area is environmentally sensitive; extreme caution must be exercised in the control of runoff to protect both surface and ground water; the developer will use best management practices to control runoff; the BMP's will work forever; the BMP's will, at some time, become the responsibility of the Smithville Homeowners' Association and, possibly, of the township in some

circumstances; and, finally, the future of the Mullica River/  
Great Bay estuary hangs in the balance and depends on BMP's  
that are superbly installed and maintained.

The list of citations -- the failure of the developer to conform to its  
vaunted, pledged standards -- is ample evidence that the BMP's are badly  
installed, that their installation is almost impossible to police, and that  
their maintenance will become an even more vivid nightmare when an uninterested  
and untrained entity -- the Homeowners' Association -- assumes responsibility  
for trying to patch and clean a faulty system.

Consider some of the examples from the Soil Conservation District files:

(1) Letter of July 22, 1981, from Frank Burns to Gary Sawhill:  
silt fence improperly installed, stone swales not mulched, dewatering onto  
a floodplain, and disturbance prior to approval (second offense).

(2) Letter of Sept. 29, 1981, from Ronald Gronwald to Thornton Hole:  
fill being placed on existing vegetation; "recalculate hydrology based on the  
reduced infiltration."

(3) Letter of Feb. 9, 1983, from Frank Burns to Joseph Vento:  
wood mulch applied below minimum State Standard.

(4) Letter of March 4, 1983, from Frank Burns to Joseph Vento:  
another overflow of recharge basin number 4 (missing basin and outlet).

(5) Letter of March 9, 1983, from Frank Burns to Joseph Vento:  
27 deficiencies ("Many of these have been re-occurring problems over the past  
six (6) months...").

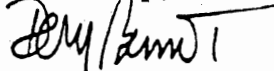
The computer printouts contain more details of failure: "No additional CO's  
will be issued until the stone swale and inlets have been cleaned and upgraded."  
"Violation notice issued -- offsite tracking and adjacent rows...disregard of  
telephone conversations." "File referred to Nelson Johnson; deficiencies still  
outstanding." "Ravenwood is still in bad shape." "No additional CO's until the  
site has been cleaned off." "Occupancy of section A units is illegal."

You may have been told that most normal development has these kinds of  
problems. But this is not "most normal development." This is Smithville, on  
an environmentally sensitive landscape and only permitted after adoption of  
runoff designs and control structures.

The BMP's are put together badly. They are not working. They cannot be  
maintained. DCR already has enough evidence from the failures so far to withdraw  
the permits for 1A and 1B (and deny 1C).

We appreciate this opportunity to add to the Smithville record. I trust  
that it helps you reach a rational decision.

Sincerely,



D. W. Bennett  
Executive Director

Enclosures



CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

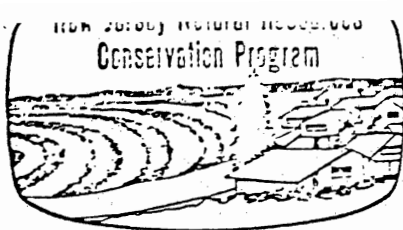
11-  
1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-9400

INSPECTION SHEET: 190-80/Phase 1A South, Sections LD-2, LD-3, LMD-4

4/15/81:

Off-site tracking noted onto Moss Mill Rd. See Violations Notice issued.

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CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-9400

May 20, 1981

Dr. Gary Sawhill  
c/o Smithville Development Co.  
Route 9  
Smithville, NJ 08201

RE: SMITHVILLE PROJECTS

Dear Dr. Sawhill:

On Tuesday, May 19, 1981, the Cape-Atlantic District conducted an on-site inspection of all Smithville projects. As a result of this inspection, the following discrepancies were noted:

1. All construction entrances must be maintained as detailed on your soil erosion plan. Off-site tracking was noted at several places on Moss Mill Road. (RE: 234-80)
2. The detention basin in section LD-3 (190-80) which was recently seeded, will have to be reseeded in the fall. The percentage of germination at present will not properly stabilize the slopes of the basin.
3. The road shoulders on Quail Hill Blvd. from Nacote Creek (92-80) Drive to Smith Bowen Road need to be graded and mulched. The inlets on Nacote Creek are also in need of protection.
4. The road shoulders at Schooner Landing (13-81) onto Smith Bowen Road must be protected with a hay bale dike around the stockpiled soil.

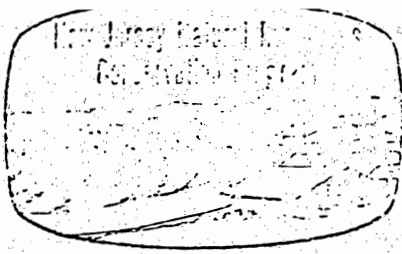
Please correct the above items within five (5) days upon receipt of this letter.

Any questions or comments concerning the above should be directed to this Office at 625-3144.

Sincerely,

ARNOLD H. CLEMENSON  
Site Inspector

cc: J. Ade



CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 07050  
TELEPHONE: (609) 625-4400

June 25, 1981

Dr. Gary Sawhill  
Moss Mill Road  
Smithville, NJ 08201

RE: #92-80 - Phase 1A North  
#167-80 - Phase LMD IB  
#233-80 - LMD 3

Dear Gary:

A recent inspection of Phase 1A North, Phase LMD-IB, and Phase LMD-3 indicates several erosion control deficiencies:

6

1. The stabilized construction entrance on the south side of Moss Mill Road must be upgraded.
2. The shoulders areas on the norther end of Quail Hill Blvd. must be graded and mulched (mulch must be tacked down). Mulch should extend from the break in the grade at the Cul de Sac, northerly to the intersection of Quail Hill Blvd. and Smith Bowen Road.
3. All inlets that are functional must be protected with the standard protection as specified in the Certified Plan.
4. A silt fence must be installed along the lower end of Fishers Creek Road. In conjunction with the silt fence, diversions may be used to reduce the length of the slope, thereby reducing the erodable velocities in the cartway.
5. Fall seeding will be required in all active phases. The optimum seeding dates are from August 15th to October 15th.
6. The water line presently being constructed on Moss Mill Road will require fall stabilization. Also, erosion controls must be implemented at the point where the pipe will be in close proximity to the lake.

Any questions concerning the above should be directed to this Office at 625-3144.

Sincerely

FRANK A. BURNS  
Resource Conservationist

cc: J. Ade



CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-9400

July 22, 1981

Dr. Gary Sawhill  
Moss Mill Road  
Smithville, NJ 08201

RE: 92-80, 167-80, 190-80, 234-80, 233-80, 10-81, 158-81

Dear Gary:

On July 20, 1981, the Cape-Atlantic District conducted site inspections on the active phases of Smithville. The following is a list of deficiencies noted by this Office as a result of the inspection:

1. Inlet Protection - a majority of the catch basins do not have adequate inlet protection.
2. Stabilized Construction Entrances - the construction entrances have not been maintained at the specifications of the certified plan.
3. Silt Fence - the silt fence has been improperly installed.
4. Stone Swales - the stone swales were not mulched.
5. Hay Bale Dikes - the dikes were not installed in accordance with the certified plan.
6. Dewatering - dewatering must not exhaust into the flood plain of any stream on the property. This was observed on Kings Highway near Smith-Bowen Road.
7. Pipe Line Construction - adequate erosion control devices have not been utilized on Moss Mill Road in the vicinity of Lake Meone.
8. Stockpiled Soil - a majority of the stockpiles have not been seeded or mulched.
9. Disturbance Prior to Approval - the area between Route 9 and the airport in the vicinity of the gravel pit has not received approval. This is the second offense of this nature. All work must cease in this area until the necessary information has been submitted to this Office, and the plan has been certified. Future offenses will result in immediate legal action by this Office.

Dr. Gary Sawhill  
Page Two  
July 22, 1981

The above items, with the exception of Item 8, must be corrected by July 31, 1981. Item 8 must be corrected no later than September 30, 1981 to accommodate the seeding dates (August 15th to October 15th).

Any questions concerning the above should be directed to this Office at 625-3144.

Sincerely,



FRANK A. BURNS  
Resource Conservationist

cc: John Ade

UNITED STATES DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

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Ockap Building, 251 Bellevue Avenue, Hammonton, NJ 08037

September 29, 1981

TO: Thornton Hole

SUBJECT: Smithville 251 Project

On a recent visit to the project site with Frank Burns, district inspector, I observed that in many of the homesite locations, Fill was being placed on and around the existing vegetation. This will lead to the elimination of the vegetation.

✓ Since all drainage calculations were done assuming that existing vegetation would remain undisturbed by construction, these are now erroneous. I suggest that the District contact the developer and have him stop the filling or else recalculate his hydrology based on the reduced infiltration.

*Ronald F. Gronwald*  
Ronald F. Gronwald  
Civil Engineer.







CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-3144

October 15, 1982

Mr. Joe Vento  
Smithville Development Co.  
Route 9  
Smithville, NJ 08201

RE: #190-80

Dear Joe:

On October 13, 1982, the District conducted a site inspection on the above referenced project. As a result of this inspection, it was noted that the shoulders of Leeds Point Place are eroding, and the material is being transported onto Quail Hill Boulevard. To reduce the amount of erosion in this area, the shoulders of Leeds Point Place must be mulched in accordance with the Soil Erosion Plan.

Areas, such as the one described above are critical due to the subsurface drainage systems installed at Smithville. Whenever construction occurs up-slope from completed drainage areas, all erosion controls should be installed. Frequent inspections of these areas will reduce the possibility of damage to the drainage systems, and thereby reduce the cost of repair to the Development Company.

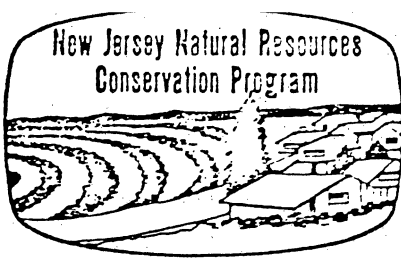
If you have any questions, please call 625-3144.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank", written over a horizontal line.

FRANK A. BURNS  
Resource Conservationist

FAB:and  
cc: J. Ade  
G. Sawhill



CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-3144

February 9, 1983

Mr. Joseph Vento  
Smithville Development Co.  
Route 9  
Smithville, NJ 08201

RE: #190-80 Phase IA South

Dear Joe:

Pursuant to your request, the District conducted a site inspection in the above referenced phase for the purpose of issuing Certificates of Compliance. During the course of this inspection, it was noted that the wood mulch ground cover on the lots inspected was applied below the minimum State Standard. The minimum application rate for a wood fiber mulch is 2 inches thick. Also, the streets in this Phase must be swept on a regular basis to remove the accumulated sediment.

The above items must be completed prior to the expiration date of the Certificates of Compliance which is March 1, 1983.

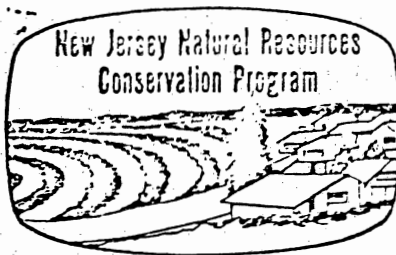
Any questions or comments concerning the above should be directed to this Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank A. Burns".

FRANK A. BURNS  
Resource Consvst.

FAB:and  
cc: J. Ade  
G. Sawhill



CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-3144

March 4, 1983

Mr. Joe Vento  
Smithville Development Co.  
Route 9  
Smithville, NJ 08201

RE: Phases IA South and North

Dear Joe:

On March 2, 1983, the District inspected the above referenced phases in Smithville. The following is a list of deficiencies noted during the inspection:

92-80 Phase IA North

The catch basin located in Nacote Creek Court East, in the vicinity of Ryland's construction is silted over. This inlet must be cleaned by March 9, 1983.

190-80 Phase IA South

There is excessive amounts of sediment on Osprey Court as a result of construction in the area. Since the sweeping of the streets is not effectively being accomplished, individual lot stabilization will be necessary. This may be done by either using hay bale dikes (as in the Ryland Section of IA North) or by a mulched strip along the shoulders of the roadways (as in Scarborough Towns).

Individual lot stabilization will be applicable to all future development in the P.U.D.

190-80 Phase IA South and 32-82 Pheasant Meadows

Recharge Basin number 4 has once again overflowed as a result of the 1.3 inches of rainfall on February 28, 1983. The problem appears to be the deletion of the proposed Basin 5, which is actually in the Pheasant Meadows parcel. Also, the 75 foot R.C.P. that was originally designed to outlet into Basin 5 does not outlet as designed. As a result of these modifications, Basin 4 is accepting most of the stormwater runoff from Quail Hill Blvd, and the Ryland Section of Phase IA South. Please clarify by what means the Developer intends to control the additional stormwater runoff in this

Mr. Joe Vento  
Page Two  
March 3, 1983

area of Phase IA South (Quail Hill Blvd. and Moss Mill Road).

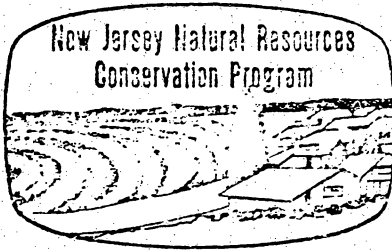
General Comments

A plan for the extraction site west of 1-B borrow area must be submitted to this Office by March 21, 1983.

Sincerely,

FRANK A. BURNS  
Resource Consvst.

FAB:and  
cc: Municipal Eng.  
J. Ade  
G. Sawhill



CAPE--ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-3144

March 9, 1983

Mr. Joseph Vento  
Smithville Development Co.  
Route 9  
Smithville, NJ 08201

RE: DEFICIENCIES

Dear Joe:

(27)

Enclosed is a list of deficiencies found in the active phases of Smithville. Many of these have been re-occurring problems over the past six (6) months, which have not been adequately corrected. With the exception of seeding, all the deficiencies must be corrected by no later than March 24, 1983. Seeding should be scheduled as early in the growing season as possible for good germination and root development.

The present site conditions at Smithville are not in accordance with the New Jersey Standards for Soil Erosion and Sediment Control. In order to prevent the interruption of building permits and Certificates of Compliance, or legal action by this Office, it is recommended that all site work is done in compliance with the State Standards.

Any questions or comments concerning the above or the enclosed should be directed to this Office.

Sincerely,

FRANK A. BURNS  
Resource Conservationist

FAB:and  
encs.

cc: J. Ade  
G. Sawhill

## SMITHVILLE

### 32-82 - Pheasant Meadows

1. Stabilized construction entrance must be topdressed with 4 inches of stone.
2. All sediment must be removed from Moss Mill and Quail Hill Blvd.
3. All adjacent inlets must be cleaned and protected.
4. Spring seeding of all exposed soil, not subject to construction traffic, is required.
5. A stabilized construction entrance must be installed at each road cut in Phase II.

### 190-80 - IA South Timbers Section

1. Osprey Court is completely covered with sediment. Individual lot stabilization will be required.
2. All sediment must be completely removed from Osprey Court, Quail Hill Blvd, and Route 9.
3. All adjacent inlets must be cleaned of sediment and protected.
4. All exposed soil must be seeded this spring.

### 233-80 - Quail Hollow

1. All sediment must be completely removed from Quail Hollow Run, and Quail Hill Blvd.
2. All inlets must be cleaned of accumulated sediment, and protected with an approved inlet protection device.
3. All exposed soil, not subject to construction traffic, must be seeded this spring.

### 204-81 - Barnes Plexes

1. The stabilized construction entrance must be topdressed with additional stone to prevent tracking onto Route 9.
2. All exposed areas not subject to construction traffic must be seeded this spring.

101-82 - Phase B Temporary Retention Area

1. All exposed areas must be seeded in accordance with the certified plan during the spring.

10-83 - Phase B Borrow Area

1. The stabilized construction entrance at the intersection of Route 9 and Quail Hill Blvd. must be topdressed with additional stone.
2. All exposed areas must be seeded in accordance with the certified plan.

92-80 - Phase IA North

1. All areas not subject to construction traffic must be seeded in accordance with the certified plan.
2. All sediment must be completely removed from the paved areas in this Phase.
3. All inlets adjacent to active construction must be protected with an approved inlet protection device.

10-81 - Phase IA LMD-2B - Ryland Section

1. All exposed areas in this Phase must be seeded this spring.

General Comments

1. Soil Erosion controls will be required on individual lots in Smithville. This will include, but is not limited to, hay bale sediment barriers, silt fence, and mulch. This is necessary due to the accelerated rates of erosion prevalent in Smithville, which is causing siltation of the subsurface drainage systems, as well as, off-site erosion.
2. The spring seeding dates for this area is from March 15th to May 1st.
3. The street cleaning program has been ineffective due to the period of time elapsed between sweepings. The streets must be swept a minimum of once (1) every two (2) weeks, or when sediment becomes evident on the streets of an active phase.
4. Please contact a representative of this Office when the annual maintenance program for the stone swales is scheduled.



CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-9400

July 29, 1983

Mr. Joseph Vento  
Smithville Development Co.  
Route 9  
Smithville, NJ 08201

RE: Active Phases at Smithville

Dear Joe:

Pursuant to inspections conducted on July 28, 1983, and the subsequent field meeting, the following list represents site work to be completed:

PHASE IA NORTH #92-80

1. Great Bay Circle must be graded and seeded.
2. The sod shoulder areas on the east side of Quail Hill Blvd., <sup>across</sup> in the vicinity of the bike path, must be repaired or replaced.
3. All swales must be installed on Moonraker Drive.
4. Inlet protection must be repaired on Moonraker Circle. Also, a sediment barrier must be installed between the fill and the existing stone swale at this location.
5. All swales must be completed on Great Bay Drive.
6. Mulch must be placed on the shoulder areas in the Whalers Cove Section where exposed soil is evident.
7. The sewer easement on Lot 2.22 on Moonraker Drive must be stabilized.
8. All exposed areas not subject to construction traffic must be permanently stabilized.

PHASE IA SOUTH #190-80

1. The property line swale on Eagle Point must be stabilized, also, the retaining wall must be repaired.
2. The basin must be re-seeded in the vicinity of the headwall. Also, the rip rap blanket must be installed in accordance with the certified plan.
3. The sod swales at the cul-de-sac on Osprey Court and in the front of the home numbered 700 must be repaired.



Mr. Joseph Vento

Page Two

July 29, 1983

#190-80 (continued)

4. Hay bales will be required in front of the lots under construction if development continues into the fall or if sweeping is not done on a regular basis.
5. All exposed areas not subject to construction traffic must be seeded this fall.

QUAIL HALLOW #233-80

1. Replace all mulch in the shoulder areas where exposed soil is evident.

PHEASANT MEADOWS #32-82

1. All disturbed areas must be seeded this fall.

MOSS MILL ROAD #157-82

1. The sod swale on the eastern side of Moss Mill Road must be replaced. This area of repair begins at the lake and terminates at the parking lot access drive.
2. A traffic control structure (railroad ties, fence, etc.) must be installed between the parking lot, and the swale to prevent vehicular traffic from crossing the swale.

FOX CHASE #201-81

1. All areas not subject to construction traffic must be permanently stabilized.

PHASE IB BORROW AREA #10-83

1. The entire area must be seeded in accordance with the certified plan.
2. The stabilized construction entrance must be upgraded.

MALLARDS LANDING #204-81

1. Inlet protection devices must be installed on all inlets in the unstabilized areas.
2. All roadways must be swept.
3. Hay bale sediment barriers must be installed between construction areas, and those areas which are complete.
4. Fall seeding of all disturbed areas not subject to construction traffic is required.

Mr. Joseph Vento  
Page Three  
July 29, 1983

LAKES #101-82

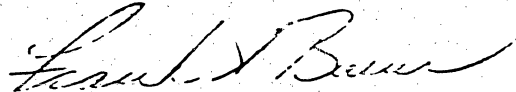
1. This appears to be one of the most critical areas. Construction timing must be ~~Scheduled~~ to insure that this area will be permanently stabilized this coming fall.

GENERAL COMMENTS

1. All disturbed areas which are to remain exposed for more than sixty (60) days must be stabilized this fall.
2. The recommended fall seeding dates for this area are from August 15th to October 15th.

Please keep this Office informed of any contracts relating to the above list. Also, please submit a schedule addressing approximate dates for completion of the deficiencies listed above.

Sincerely,



FRANK A. BURNS  
Resource Conservationist

FAB:and  
cc: J. Ade  
G. Sawhill  
bcc: J. Higgins



CAPE-ATLANTIC SOIL CONSERVATION DISTRICT

1200 WEST HARDING HIGHWAY,  
MAYS LANDING, N. J. 08330  
TELEPHONE: (609) 625-3144

February 22, 1984

Gary Sawhill PP, PhD, & Associates  
Moss Mill Road  
Smithville, NJ 08201

RE: SMITHVILLE P.U.D.

Dear Dr. Sawhill:

On February 21, 1984, I attended the Public Hearing conducted by the Department of Environmental Protection for Phases IA and IB in the Smithville P.U.D. During this hearing, Mr. Derry Bennett of the American Littoral Society gave testimony that referenced Violation Notices issued by the Cape-Atlantic Soil Conservation District to the Historic Smithville Development Company. During Mr. Bennett's testimony, it was stated that a total of 109 Violation Notices have been issued to the Developer by this District. The number of Violations, as stated by Mr. Bennett, is erroneous and does not reflect the records of the District.

There have been approximately fifteen (15) Violation Notices issued to the Developer for the active Phases in Smithville. In addition, there have been numerous letters written to the Developer with regard to site deficiencies found during the course of inspections which were conducted by this Office. It appears that Mr. Bennet misconstrued general correspondences to the Developer as Violation Notices.

Should you require any additional information in this matter, please contact this Office at 625-3144.

Sincerely,

FRANK A. BURNS  
Resource Conservationist

FAB:and

CATION #: 9280 REPORT #: 1  
05/26/82 COMMENT:  
CO FOR LOT B.47

-----  
CATION #: 9280 REPORT #: 2  
06/10/82 COMMENT:  
MULCH NEEDED AT K&B SITE ALL ELSE OK FOR THE TIME BEING

-----  
CATION #: 9280 REPORT #: 3  
06/25/82 COMMENT:  
R BLK 1201.01 LOTS 2.18 & 2.12 RYLAND; ALSO BLK 1201.02 LOTS B.22 & B.43 K&B

-----  
CATION #: 9280 REPORT #: 4  
09.30.82 COMMENT:  
SUED ON B1201.02 LB.12

-----  
CATION #: 9280 REPORT #: 5  
11.18.82 COMMENT:  
PROTECTION AND MULCH STILL NEEDED

-----  
CATION #: 9280 REPORT #: 6  
12/28/82 COMMENT:  
CO FOR SCARBOROUGH LOT 2.24

-----  
CATION #: 9280 REPORT #: 7  
01/10/83 COMMENT:  
OOKS OK

-----  
CATION #: 9280 REPORT #: 8  
02/15/83 COMMENT:  
TIONAL FOR LOT 1.25 RYLAND

-----  
CATION #: 9280 REPORT #: 9  
03.02.83 COMMENT:  
BASIN LOCATED IN NACOTE CREEK CT EAST IN VICINITY OF RYLAND'S CONSTRUCTION  
ILTED OVER. INLET MUST BE CLEANED OUT BY 3/9/83.

-----  
CATION #: 9280 REPORT #: 10  
03.30.83 COMMENT:  
CO ISSUED ON B1201.02 LOT 2.37

APPLICATION #: 9280 REPORT #: 1  
DATE: 04.07.83 COMMENT:  
AREA AROUND THE PERIMETER OF QUAIL HILL TERRACE IS ERODING ONTO QUAIL HILL BLVD  
ALSO SEDIMENT IS WASHING INTO THE INLET ON QUAIL HILL BLVD.

---

APPLICATION #: 9280 REPORT #: 2  
DATE: 04.07.83 COMMENT:  
CONT. OF #11. THIS AREA SHOULD BE MULCHED OR SEEDED AND THE INLET ON QUAIL HILL  
BLVD MUST BE PROTECTED.

---

APPLICATION #: 9280 REPORT #: 3  
DATE: 04/26/83 COMMENT:  
EMP CO ISSUED FOR B1201.02 L2.36 2.39. TO EXPIRE ON 05/15/83

---

APPLICATION #: 9280 REPORT #: 4  
DATE: 05/10/83 COMMENT:  
FINAL CO FOR B1201.02 L2.41

---

APPLICATION #: 9280 REPORT #: 5  
DATE: 05.17.83 COMMENT:  
EMP CO ISSUED ON B1201.02 LOT 2.10

---

APPLICATION #: 9280 REPORT #: 6  
DATE: 05/25/83 COMMENT:  
EMP CO ISSUED FOR B1201.01 L2.01

---

APPLICATION #: 9280 REPORT #: 7  
DATE: 05/25/83 COMMENT:  
FINAL CO ISSUED FOR B1201.01 L2.10

---

ICATION #: 9280 REPORT #: 1  
: 06.21.83 COMMENT:  
L CO ISSUED ON B1201.01 L2.04; 2.05

---

ICATION #: 9280 REPORT #: 2  
: 06.24.83 COMMENT:  
L CO ISSUED ON B1201.02 LOTS 2.40;2.35; 2.21

---

ICATION #: 9280 REPORT #: 3  
: 07.28.83 COMMENT:  
NSIVE REPORT. SEE LETTER IN GEN. CORRES.-SMITHVILLE DRAWER.

---

ICATION #: 9280 REPORT #: 4  
: 08.16.83 COMMENT:  
CO ISSUED ON B1206.02 L2.34; EXPIRES 9.16.83

---

ICATION #: 9280 REPORT #: 5  
: 08.24.83 COMMENT:  
CO ISSUED ON B12.02 L2.12;2.13; PENDING FINAL STABILIZATION.

---

ICATION #: 9280 REPORT #: 6  
: 09.07.83 COMMENT:  
CO ISSUED ON B 1201.02 LOT 2.38.

---

ICATION #: 9280 REPORT #: 7  
: 09.27.83 COMMENT:  
CO ISSUED ON B1201.02 L2.14 EXPIRES 10.15.83.

---

ICATION #: 9280 REPORT #: 8  
: 10/13/83 COMMENT:  
ATION NOTICE ISSUED FOR RYLAND IN MOONRAKER CIRCLE-NO ADDITIONAL CO'S WILL B  
BUED UNTIL THE STONE SWALE AND INLETS HAVE BEEN CLEANED AND UPGRADED

---

ICATION #: 9280 REPORT #: 9  
: 10.13.83 COMMENT:  
ATION NOTICE ISSUED. NO ADDITIONAL CERTIFICATES OF COMPLAINEE WILL BE ISSUED  
IL THE STONE SWALE AND INLETS HAVE BEEN CLEANED AND UPGRADED.

---

ICATION #: 9280 REPORT #: 10  
: 10/19/83 COMMENT:  
ED FOR CO ON MOONRAKER HOWEVER WHEN INSPECTING THE STONE SWALE DISCOVERED TH  
HE SWALE WAS ONLY TOPDRESSED WITH CLEAN STONE NO ACTUAL CLEANING HAD TAKEN  
E-NO CO ISSUED

---

APPLICATION(S) ENTERED IN 3 - R(S) - 11 MIN(S)  
APPLICATION #: 9280 RECEIVED: 06/11/80  
RECEIVED: 525 RECEIVED BY: AND STATUS: A  
OF CO'S ISSUED TO DATE: 1  
E OF TRACT: 28 # BLOCK/LOT GROUPS: 3  
199 L2-5 B1201 L1:2:P/04.01 & L5.01:6-9:10.01  
OBJECT NAME: PHASE 1A NORTH  
MUNICIPALITY: GT  
ADDRESS: MOSS MILL RD

----- OWNER -----  
TE: HIST SMITHVILLE CO PHONE: 6096527777  
ADDRESS: ROUTE 9 & SMITHVILLE NJ 08201

----- PLANNER -----  
TE: FELLOWS READ PHONE: 2013493121  
ADDRESS: 310 MAIN ST & TOMS RIVER NJ 08753

----- AGENT -----  
TE: SAME AS PLANNER PHONE: 0  
ADDRESS: SAME

OF REPORTS: 35

REPORT # 1  
TE: 04/15/81 COMMENT:  
NOTIFICATION NOTICE ISSUED-OFFSITE TRACKING ON ADJACENT ROWS -DISREGARD OF TELEPHONE  
CONVERSATIONS- OTHER REPORTS PREVIOUS TO THIS INCLUDED WITH THE MODLE HOME SIT

REPORT # 2  
TE: 06/26/81 COMMENT:  
WITH SAWHILL -SCE ON ALL ACCESS ROADS MUST BE UPGRADED-ALLDISTURBED AREAS TO  
BE SEEDED THIS FALL -UPGRADE ALL INLET PROTECTION

REPORT # 3  
TE: 07/20/81 COMMENT:  
DEFICIENCIES FOUND. SEE LETTER IN FILE DATED 7/22/81.

REPORT # 4  
TE: 07/21/81 COMMENT:  
IP CO B1201.02 LB.01-8.09 & 8.57:8.55:8.50:8.51:8.53 EXPIRES 9/31/81

REPORT # 5  
TE: 07/30/81 COMMENT:  
IP CO B1201.02 LB.13& 8.14 HOWEVER NO ADDITIONAL CO'S UNTIL ALTERNATIVE DRAIN  
HAS BEEN APPROVED BY THE ENGINEER AND THE DISTRICT

REPORT # 6  
TE: 07/30/81 COMMENT:  
IP CO B-1201.02 L-231 TO 233

REPORT # 7  
TE: 08/19/81 COMMENT:  
GIVE ALL ACTIVE PHASES WITH JOB SUPER -TONY- ALL DISTURBED AREAS MUST BE STABIL  
ID-INLET PROTECTION MUST BE UPGRADED-SEDIMENT MUST BE REMOVED FROM ALL OFFSITE  
AREAS

RT # 9  
08/26/81 COMMENT:  
CO B1201 L8.49;8.44;8.36 PENDING THE PROPER INSTALLATION OF ROOF WATER RUN  
FACILITIES

RT # 10  
COMMENT:  
A LOT OF ACTIVITY-AREA GENERALLY IN GOOD SHAPE ALL SEDIMENT IS SITE CONTAI  
a a

RT # 11  
07/30/81 COMMENT:  
CO'S FOR SCARBOROUGH LOTS 2.31-2.33 & 2.25

RT # 12  
09/14/81 COMMENT:  
CO B1201.01 L1.20-1.23; 2.26

RT # 13  
09/22/81 COMMENT:  
CO ON B1201.02 L8.16 .31 .31 .38 .39 .40 .58. TO EXPIRE ON 10/05/81. GROUND  
RECHARGE SYSTEM TO BE WRAPPED WITH FILTER FABRIC. LOTS TO BE MULCHED 2" M.  
M.

RT # 14  
09/25/81 COMMENT:  
CO B1201.01 L2.21

T # 15  
10/05/81 COMMENT:  
CO ISSUED L2.26-2.30; 2.22;2.23;2.25

T # 16  
10/13/81 COMMENT:  
CO ISSUED ONB1201.01 L1.18 & 1.20. FAB

T # 17  
10/21/81 COMMENT:  
CO B1201.01 L8.05;8.35;8.21;8.48;8.41

T # 18  
10/29/81 COMMENT:  
CO ISSUED L 2.20; 2.17; 2.16



-----  
 # 20  
 11/18/81 COMMENT:  
 K 1201.01 LOTS-2.14;2.24;2.27--BLK 1201.02-LOTS-8.10;8.34;8.23;8.46;8.42  
 C.E. MUST BE UPGRADED ON MOSS MILL RD AS TOLD TO RAY TUCKER

-----  
 # 21  
 11/23/81 COMMENT:  
 CO'S FOR LOTS 2.06;2.07;2.09

-----  
 # 22  
 12/04/81 COMMENT:  
 O LOTS 2.13;2.15;1.19

-----  
 # 23  
 12/14/81 COMMENT:  
 CO ISSUED ON B1201.02 L8.19; 8.37; 8.27

-----  
 # 24  
 12/31/81 COMMENT:  
 CO ON B-1201.02 L8.28 & 8.24

-----  
 # 25  
 02/17/82 COMMENT:  
 AGE CALCS WERE REC'D AND ACCEPTED TEMPORARY CO'S ISSUED FOR K&B LOTS 8.45;8.11

-----  
 # 26  
 02/19/82 COMMENT:  
 (PILED SOIL ALONG MOSS MILL RD WILL BE LEVELED GRADED AND SEEDED

-----  
 # 27  
 03/11/82 COMMENT:  
 CO FOR BLK 1201.02 LOT AB32 SCARBOROUGH- FINAL FOR BLK1201.01 LOT2.02 RYLAN

-----  
 # 28  
 03/31/82 COMMENT:  
 SYSTEM INSPECTIONS REQUIRED ON ALL RECHARGE AREAS PRIOR TO FINAL CERTIFICAT  
 EING ISSUED CO ON LOT 8.17 K&B SECTION

-----  
 # 29  
 04/14/82 COMMENT:  
 LATE CO FOR 8.59

---

RT # 31  
: 05/05/82 COMMENT:  
ISSUED FOR RYLAND LOT 2.28

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RT # 32  
: 05/10/82 COMMENT:  
H STILL NEEDED ON K&B SITES

---

RT # 33  
: 05/13/82 COMMENT:  
L FOR K&B LOTS 8.04;8.07;8.56;8.54;8.52;8.33

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RT # 34  
: 05/18/82 COMMENT:  
L CO ISSUED ON B1201.02 LB.09 AND 8.29.

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RT # 35  
: 05/26/82 COMMENT:  
CO FOR LOT 8.47

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LICATION #: 19080 REPORT #: 1  
E: 11.24.82 COMMENT:  
AL CO ISSUED B1260.01 L79.47; 79.40

② ④ ⑤  
last!

LICATION #: 19080 REPORT #: 2  
E: 12.01.82 COMMENT:  
MUST BE TOPDRESSED WITH ADDITIONAL STONE.

LICATION #: 19080 REPORT #: 3  
E: 11.30.82 COMMENT:  
HAS NOT BEEN PLACED AT THE CONSTRUCTION ENTRANCE. MUST BE INSTALLED PRIOR TO  
XT INSPECTION ON 12/14/82.

LICATION #: 19080 REPORT #: 4  
E: 11.29.82 COMMENT:  
NOT INSTALLED AS SPECIFIED IN PLAN. MUST BE INSTALLED AT INTERSECTION OF JIM  
LEEDS ROAD AND THE PROPOSED ROAD IN YOUR SITE. RE-INSPECTION ON 12/14/82.

LICATION #: 19080 REPORT #: 5  
E: 11.18.82 COMMENT:  
AL CO ISSUED ON B1260 L90.02

LICATION #: 19080 REPORT #: 6  
E: 11.19.82 COMMENT:  
AL CO ISSUED ON B1201 L59.30;59.36;59.38

LICATION #: 19080 REPORT #: 7  
E: 11.19.82 COMMENT:  
T HAS BEEN VACUUMED FROM QUAIL HILL BLVD.; GULL WING CT; AND FOXCHASE SECTION  
ALL INLET FILTERS HAVE BEEN REPAIRED. BERMS IN SECTION IV HAVE BEEN SEEDED.

LICATION #: 19080 REPORT #: 8  
E: 11.22.82 COMMENT:  
P CO ISSUED ON B1260.01 L79.55;79.56;79.60;79.67.

LICATION #: 19080 REPORT #: 9  
E: 11.24.82 COMMENT:  
AL CO ISSUED B1260.01 L79.47; 79.40

LICATION #: 19080 REPORT #: 10  
E: 12.01.82 COMMENT:  
P CO ISSUED ON B1260.01 L59.28; FINAL CO ISSUED ON B1260.01 L59.10; 59.12; 59  
; 59.04.

PLICATION #: 19080 REPORT #: 1  
TE: 12.01.82 COMMENT:  
E MUST BE INSTALLED AND MAINTAINED ON OSPREY CT; RAVENWOOD DR; AND FACLOM CREE  
ALL PAVED STREETS INCL QUAIL HILL BLVD MUST BE SWEEP ON A WEEKLY BASIS.

PLICATION #: 19080 REPORT #: 2  
TE: 12/28/82 COMMENT:  
VAL CO'S FOR TIMBERS- 59.10;59.21;59.33;59.34;59.28;59.32;59.25;59.23;59.11;59  
7;59.02;59.19;59.13;59.27

PLICATION #: 19080 REPORT #: 3  
TE: 12/28/82 COMMENT:  
VAL CO'S FOR RYLAND-79.69;79.71;79.66;79.58;79.75;79.78;79.68

PLICATION #: 19080 REPORT #: 4  
TE: 01.19.83 COMMENT:  
VAL CO ISSUED ON B1260.01 L59.09;59.14;59.32;59.16;79.57

PLICATION #: 19080 REPORT #: 5  
TE: 01/27/83 COMMENT:  
S 79.41;.42;.43;.45;.46

PLICATION #: 19080 REPORT #: 6  
TE: 02.08.83 COMMENT:  
MP CO ISSUED ON B45.09;45.10;45.13;45.17

PLICATION #: 19080 REPORT #: 7  
TE: 02.08.83 COMMENT:  
MP CO ISSUED ON B1260.01 LOT59.17;59.18;59.32

PLICATION #: 19080 REPORT #: 8  
TE: 02.08.83 COMMENT:  
D MULCH GROUND COVER ON LOTS INSPECTED WAS NOT APPLIED AT MIN STATE STANDARD.  
APPLICATION RATE IS 2 INCHES. STREETS MUST BE SWEEP ON A REGULAR BASIS.

PLICATION #: 19080 REPORT #: 9  
TE: 02/23/83 COMMENT:  
DITIONAL FOR LOT 79.73 RYLAND ON GULL WING CT.

PLICATION #: 19080 REPORT #: 10  
TE: 03.02.83 COMMENT:  
GTHY REPORT. SEE LETTER IN SMITHVILLE CORRES. FILE.

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#: 19080 REPORT #: 1  
/81 COMMENT:  
ACKING NOTED SEE VIOLATION NOTICE

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#: 19080 REPORT #: 2  
/81 COMMENT:  
RY SAWHILL RE-DRAINAGE PROBLEMS ASSOCIATED WITH SEDIMENT IN BASINS &  
ACKING ON ADJACENT ROWS

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N #: 19080 REPORT #: 3  
0/81 COMMENT:  
CIES FOUND. SEE LETTER IN FILE DATES 7/22/81.

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ON #: 19080 REPORT #: 4  
21/81 COMMENT:  
1260.05 &.06 LOTS 49-63 &1-15 RESPECTIVLY

-----  
ON #: 19080 REPORT #: 5  
05/81 COMMENT:  
OTS 16-29 ALSO ALL SWALES BEING RE-BUILT LOOKS IN GOOD SHAPE

-----  
ION #: 19080 REPORT #: 6  
/25/81 COMMENT:  
ISSUED B1260.05 L11-20 & 44-48

-----  
ION #: 19080 REPORT #: 7  
5/10/82 COMMENT:  
MUST BE INSTALLED AT QUAIL HILL BLVD & OYSTER CREEK CT.-ALSO FALL SEEDING  
CLOSED AREAS MUST BE DONE

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TION #: 19080 REPORT #: 8  
1/12/82 COMMENT:  
R LOTS 59.01;59.31;79.62;79.70;79.72

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TION #: 19080 REPORT #: 9  
6/22/82 COMMENT:  
OR LTOS 79.50-79.52 RYLAND SECTION

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TION #: 19080 REPORT #: 10  
7/16/82 COMMENT:  
ISSUED ON B1260.01 L45.05;45.06;45.07 EXPIRES 9/1/82.

LOCATION #: 19080 REPORT #: 1  
: 04/15/81 COMMENT:  
SITE TRACKING NOTED SEE VIOLATION NOTICE

See 2

LOCATION #: 19080 REPORT #: 2  
: 06/26/81 COMMENT:  
WITH GARY SAWHILL RE-DRAINAGE PROBLEMS ASSOCIATED WITH SEDIMENT IN BASINS &  
SITE TRACKING ON ADJACENT ROWS

LOCATION #: 19080 REPORT #: 3  
: 07/20/81 COMMENT:  
EFFICIENCIES FOUND. SEE LETTER IN FILE DATES 7/22/81.

LOCATION #: 19080 REPORT #: 4  
: 10/21/81 COMMENT:  
CO B1260.05 & .06 LOTS 49-63 & 1-15 RESPECTIVLY

LOCATION #: 19080 REPORT #: 5  
: 11/05/81 COMMENT:  
CO LOTS 16-29 ALSO ALL SWALES BEING RE-BUILT LOOKS IN GOOD SHAPE

LOCATION #: 19080 REPORT #: 6  
: 11/25/81 COMMENT:  
CO ISSUED B1260.05 L11-20 & 44-48

LOCATION #: 19080 REPORT #: 7  
: 05/10/82 COMMENT:  
E. MUST BE INSTALLED AT QUAIL HILL BLVD & OYSTER CREEK CT.-ALSO FALL SEEDING  
EXPOSED AREAS MUST BE DONE

LOCATION #: 19080 REPORT #: 8  
: 06/10/82 COMMENT:  
NG TODAY SOME HOMES BEING BUILT; ALL SEEMS WELL FOR THE TIME BEING TO BE SE  
THIS FALL-NO ROOF WATER RECHARGE IN AS OF THIS INSPECTION THEREFORE NO FINA  
S WILL BE ISSUED

LOCATION #: 19080 REPORT #: 9  
: 06/22/82 COMMENT:  
FOR LTOS 79.50-79.52 RYLAND SECTION

LOCATION #: 19080 REPORT #: 10  
: 07/16/82 COMMENT:  
CO ISSUED ON B1260.01 L45.05;45.06;45.07 EXPIRES 9/1/82.

LOCATION #: 19080 REPORT #: 11  
: 07/17/82 COMMENT:

PLICATION #: 19080 REPORT #: 1  
TE: 08/31/83 COMMENT:  
O ISSUED FOR B-1260.04 L-13 RAVENWOOD DRIVE

PLICATION #: 19080 REPORT #: 2  
TE: 09.13.83 COMMENT:  
MP CO ISSUED ON B1260.04 LOTS 1 & 12 (RAVENWOOD)

PLICATION #: 19080 REPORT #: 3  
TE: 09.14.83 COMMENT:  
MP CO ISSUED ON B1260.04 L6.

PLICATION #: 19080 REPORT #: 4  
TE: 09/20/83 COMMENT:  
MP CO FOR B1260.04 L10 & B1260.01 L79.09. TO EXPIRE ON 09/30/83

PLICATION #: 19080 REPORT #: 5  
TE: 09/19/83 COMMENT:  
VAL CO ISSUED FOR B1260.01 L79.30 79.31 79.37 79.38.

PLICATION #: 19080 REPORT #: 6  
TE: 09.27.83 COMMENT:  
VAL CO ISSUED ON B1260.01 L59.07;79.02;79.08;79.09; B1260.04 L6; 10.

PLICATION #: 19080 REPORT #: 7  
TE: 10/13/83 COMMENT:  
VENWOOD IS STILL IN POOR SHAPE- SEDIMENT IS ON THE ROAD AND THERE IS LITTLE E  
ION CONTROL EVIDENT-LINDSEY SAID THIS WILL BE TAKEN CARE OF

PLICATION #: 19080 REPORT #: 8  
TE: 10.19.83 COMMENT:  
VAL CO ISSUED ON B1260.01 L79.39; 79.28.

PLICATION #: 19080 REPORT #: 9  
TE: 10/19/83 COMMENT:  
ADDITIONAL CO'S UNTIL THE SITE HAS BEEN CLEANED OFF ACCUMULATED SEDIMENT AND  
LETS ON SITE MUST BE PROTECTED

PLICATION #: 19080 REPORT #: 10  
TE: 10.28.83 COMMENT:  
VAL COS ISSUED ON B1260.01 L79.29; 1260.04 L28; 1260.04 L26;1260.01 L79.26.

ICATION #: 19880 REPORT #: 1  
: 07/17/81 COMMENT:  
TIVE

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ICATION #: 19880 REPORT #: 2  
: 10/26/81 COMMENT:  
TED

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ICATION #: 19880 REPORT #: 3  
: 11/12/81 COMMENT:  
E. MUST BE INSTALLED BY 11/23/81

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ICATION #: 19880 REPORT #: 4  
: 12/15/81 COMMENT:  
NEEDS UPGRADING. FILTER FABRIC RECOMMENDED AS UNDERLAYMENT.

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ICATION #: 19880 REPORT #: 5  
: 02/19/82 COMMENT:  
ING LETTER SENT

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ICATION #: 19880 REPORT #: 6  
: 03/15/82 COMMENT:  
ALL RIP-RAP-AS WELL AS A HAY BALE DIKE ALONG THE PERIMETER OF THE ROAD WHERE  
IMENT IS WASHING INTO THE STREAM- ALSO CHANGE THE FILTER FABRIC TO A COURSER  
ERIAL

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ICATION #: 19880 REPORT #: 7  
: 05/10/82 COMMENT:  
REFERED TO NELSON JOHNSON DEFICIENCIES STILL OUTSTANDING

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ICATION #: 19880 REPORT #: 8  
: 05/10/82 COMMENT:  
ATION NOTICE ISSUED FOR-IP-SED BARRIER-TEMP SEED- MULCH MUST BE COMPLETED BY  
1/82

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ICATION #: 19880 REPORT #: 9  
: 05/26/82 COMMENT:  
EO CALLED-PROBLEMS WITH THEFT OF HAY BALES WILL SEED AND MULCH AREA INSTEAD-  
WILL CLEANOUT BASINS AND SEED DRAINAGE EASMENTS

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ICATION #: 19880 REPORT #: 10  
: 11/10/82 COMMENT:  
ER SENT EXPLAINING THAT ALL EROSION CONTROLS MUST BE INSTALLED BY 1/1/83 ALS  
L CONTACT ADE TO REQUEST THAT ALL PERMITS BE WITHHELD

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LOCATION #: 23380 REPORT #: 1  
E: 06/26/81 COMMENT:  
INSPECTION REPORT FOR THIS DATE APP # 9280 SAME APPLIES HERE

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LOCATION #: 23380 REPORT #: 2  
E: 07/20/81 COMMENT:  
EFICIENCIES FOUND. SEE LETTER DATED 7/22/81.

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LOCATION #: 23380 REPORT #: 3  
E: 12/14/81 COMMENT:  
P CO FO BLDG 15-19

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LOCATION #: 23380 REPORT #: 4  
E: 06/10/82 COMMENT:  
MENT WASHING FROM QUAIL HOLLOW ONTO QUAIL HILL BLVD TO STONE SWALES; WILL HAVE  
BE SEEDS THIS FALL; ALSO NO ROOF RECHARGE SYSTEMS IN SCARBOROUGH SECTION TH  
FORE NO FINAL CO'S

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LOCATION #: 23380 REPORT #: 5  
E: 07/13/82 COMMENT:  
D SHOULDERS ON QUAIL HOLLOW NEED MULCH. SECTION A TEMP CO'S HAVE EXPIRED. ROO  
ATER RUNOFF SYSTEMS MUST BE INSTALLED. OCCUPANCY OF SECTION A UNITS IS ILLEGAL

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LOCATION #: 23380 REPORT #: 6  
E: 11.19.82 COMMENT:  
AL CO ISSUED ON B1260.05 L6-10;12-19;21-25;27;30-32;36-38;41-42;44-63; B1260.  
1-20

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LOCATION #: 23380 REPORT #: 7  
E: 01/03/83 COMMENT:  
ELLENT

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LOCATION #: 23380 REPORT #: 8  
E: 03.16.83 COMMENT:  
AL CO ISSUED ON B1260.07 LOTS 5-9

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# AMERICAN LITTORAL SOCIETY



*For The Study and Conservation of Aquatic Life*

SANDY HOOK • HIGHLANDS, NEW JERSEY 07732 • 201-291-0055

February 27, 1984

Mr. John Weingart  
Division of Coastal Resources  
Dept. of Environmental Protection  
CN-401  
Trenton, New Jersey 08625

Dear Mr. Weingart:

To further supplement my written statement from Tuesday's public hearing, I have enclosed a copy of a letter that I received from the Galloway Township planning board which documents the non-CAFRA final site plan approvals issued by the planning board from 1980 through 1983. Assuming that one home could be built on each lot, the nineteen subdivisions represent a maximum of 187 units, or only 3% of the total number of housing units (5,770) approved by DCR in Galloway during the same four year period.

The Division has stated in each summary report prepared for Smithville, in the courts, and most recently at the Agriculture and Environment Committee meeting last Tuesday, that DCR's decision to permit large-scale development in the Mullica Southern Ocean Region (MSOR) was permeated by the Division's perceived threat of environmental harm resulting from the construction of non-CAFRA developments. It is clear that DCR's fear of 24-unit proliferation in the MSOR has not been realized. In addition, the draft Atlantic County Regional Growth Impacts Study indicates that since 1975, 83% of all CAFRA housing units approved in Atlantic County have yet to be built. Based on this information, we believe that DCR will be hard-pressed to substantiate the claim that a critical housing need exists in Atlantic County, and that without large-scale development in the MSOR, 24 unit development will flourish. The facts do not bear out this assumption; therefore DCR must reevaluate it's rationale for approving PRDs in the MSOR.

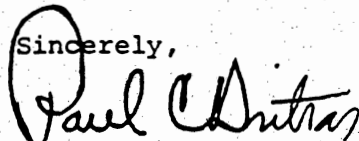
DCR has argued that the only way for DEP to control the impact of 24-unit development in the MSOR was to approve PRDs in their stead. We disagree, and offer an alternative approach. If DCR is concerned with the potential impact of future 24-unit development on the resources of the MSOR, then we suggest that DCR seriously discuss with Galloway Township how, and in what capacity, DCR could provide guidance, assistance and oversight to the planning board to assist them in their review of non-CAFRA development in the Township. Cooperation between DCR, DWR, and Galloway Township, in the planning of environmentally sound non-CAFRA development, would accomplish the need to safeguard the fragile resources of the Mullica River-Great Bay Estuary and also provide for the accommodation of a realistic demand for housing in the region.

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PRDs are "well planned" but their densities are too great to avoid impact upon coastal resources of the region. 24-unit developments are not as "well planned," but their density is more suitable in the MSOR given the region's soil and hydrological characteristics. We believe that DCR's efforts should be directed towards aiding the Township with planning low intensity developments so that they are sensitive to, and planned within the environmental constraints of, the MSOR.

We ask you to give careful consideration of our suggestion. Thank you for this additional opportunity to comment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul C. Dritsas". The signature is written in a cursive, flowing style with a large initial "P".

Paul C. Dritsas  
N.J. Coordinator

Enclosure

cc: S. Whitney, DCR

Galloway Township Planning Board

TOWNSHIP OF GALLOWAY  
**Planning and Zoning Board**

*Municipal Building - 2468 White Horse Pike*

COLOGNE, N. J. 08213

February 15, 1984

TELEPHONE  
646-3909

American Littoral Society  
Sandy Hook,  
Highlands, New Jersey 07732

Attn: Paul Dritsas

1980	Victor Vergata-Upland Ave.	B-936, L-2.03	4 lots
	Summerwood Estates-Seaview Ave.	B-1164, L-37	10 lots
	Griffin Const. Co.-Leeds Pt. Rd.	B-1260, L-42	24 lots
	Golden Conklin-8th Ave.	B-948, L-9	14 lots
	Lost Pine Village-Rt. 9	B-1167, L-43 & 45	15 lots
	Moss Mill Woods-Moss Mill Rd.	B-1261, L-8	8 lots
	Mainland Dev.-2nd. Ave.	B-938, L-14, 15.01, 15.02	13 lots
	Ridgewood Estates-Ridgewood & Seaview	B-1065, L-13	5 lots
	Audubon Lane-Highlands Ave.	B-1165, L-15	5 lots
	Breakers West-Jim Leeds Rd.	B-1164, L-8 & 9	11 lots
	Misty Lane-2nd. & Upland	B-936, L-16.02	4 lots
1981	Richard Cohen-Cologne Port Rd.	B-694, L-11, 15, 16	6 lots
	Alfred Paulson-Jim Leeds Rd.	B-1065, L-2	5 lots
	Schooner Landing-Smith Bowen Rd.	B-1260, L-80 & 81	23 lots
1982	Phil Alessi-Seaview Ave.	B-1004, L-40.01, 40.02	4 lots
	Thomas Logue-Rt. 9	B-1204.01, L-18	6 lots
1983	Seaview Hill-Jim Leeds Rd.	B-1165, L-8	11 lots
	Wanda Petrella-Pitney Rd.	B-1166, L-12	6 lots
	401 Investors-2nd. Ave.	B-935, L-14, 15.01 15.03	13 lots

