

Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

*"Testimony regarding the implementation of the Department of Environmental Protection's
Water Quality Management Planning Rules"*

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

DATE: June 4, 2009
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Paul A. Sarlo, Chair

ALSO PRESENT:

Carrie Anne Calvo-Hahn
Office of Legislative Services
Committee Aide

Kevil Duhon
Senate Majority
Committee Aide



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SENATOR PAUL A. SARLO, (Chair): Good morning, everybody. Welcome to the June 4, 2009, Senate Legislative Oversight Committee meeting.

This morning our hearing is on the Department of Environmental Protection's Water Quality Management Planning Rules.

Unfortunately, I am it for the Committee. We had some last-minute cancellations. But we are recording. Transcripts will be available to the public, as well as to the members of the Committee.

This is an important issue to the State of New Jersey, especially in the severe economic crisis that we are currently in. Of course we want to preserve our environment, and we want to strike the right balance. And today we want to hear from the stakeholders who are involved in the process of implementing this policy, those who are in the building community and those from the environmental community.

We actually -- this Committee met May 1 of 2008, and we had a series of hearings -- on May 1, 2008 -- with regard to these Rules. The Rules were ultimately adopted in July of 2008 and went into effect April of 2009 -- of this year. In February and March of this year, I had begun an open dialogue with the Department of Environmental Protection and their Commissioner, sharing some of the concerns of the Legislature with regard to counties following through and having their plans approved. And as we know, there are many counties, as we sit here today, whose plans are not approved. What is the impact on the building community with these plans not being approved?

So that's why we're here today. The plans were supposed to be submitted by April 2009. And we would like to get an update from the

Department of Environmental Protection, and then hear from the stakeholders who are involved in this very important public policy.

So why don't we jump right in? Our first panel is going to be Assistant Commissioner for Land Use Management, Scott Brubaker; and Larry Baier, the Director of the Division of Watershed Management, from the New Jersey Department of Environmental Protection.

I'm going to give the Department of Environmental Protection not as much time -- as much time as they need to explain their position on these rules. I'm going to ask the remaining panels that are brought up to keep their remarks -- if you can provide written testimony, that would be great -- keep your remarks to five minutes per person. And then we'll take it from there.

Good morning.

A C T I N G A S S T. C O M M. S C O T T B R U B A K E R:
Good morning, Senator Sarlo.

Can you hear me all right, sir?

SENATOR SARLO: We hear you fine.

ASSISTANT COMMISSIONER BRUBAKER: Thank you, Senator, for the opportunity to address the Committee today, or yourself today, and hopefully to dispel some erroneous information we've been made aware of that is out there in the public.

My name is Scott Brubaker, Acting Assistant Commissioner for Land Use Management. I have Larry Baier, the Director of the Division of Watershed Management, with me today. Larry, of course, needs no introduction to most people in this room. He's been with the Rules since the beginning.

Sir, I have about five minutes or so of comments. And then, at your pleasure, we can take questions.

Much of the wastewater infrastructure in New Jersey has received financial assistance from the DEP and the EPA. We believe, and the current Rules reflect, that it would be poor public policy to extend sewer service at public expense to subsidize and encourage the development of resources the agency is charged to protect. Promoting the extension of sewers and to threaten endangered species habitats, unique and rare ecological communities, and wetlands just does not make sense to us.

Prior to the current Rules, we had a system where areas would be sewered only to find out later that, due to the above conditions, development could not ultimately occur. We know builders and others have raised concerns during these economic times that the current Rules are an impediment to economic recovery. We continue to believe that it benefits no one at this or any other time to extend infrastructure into areas unfit for development or where there is insufficient wastewater treatment to support development.

Properly prepared, the sewer service area and adopted Wastewater Management Plan should tell the world four things: the area has limited environmental sensitivity; it is a region where the local, regional, and State government all agree development should occur; wastewater capacity exists to support the development; and sufficient water supply exists to support development.

These plans should remove, at a glance, much of the uncertainty faced by the development community, by the regulating

community. We believe this certainty is preferable to the former way of doing business.

The regulations adopted last July seek to leverage the assistance of the counties to help integrate local and regional land use plans with updated Wastewater Management Plans. County planning and resources are among the most capable in the state. Counties are also keenly positioned to coordinate municipal land use plans.

The Department developed the Draft Resource Coverage Maps based on the best resources available at the time, which meant using aerial photographs that were six years old. We knew going into this process that the draft map wouldn't be totally correct, but someone had to put the first line on the paper. We asked the counties, working with their municipalities, to reform and refine our draft line to identify sites that are under construction or that have received their local approvals. The drafts of our service area are being corrected to include these projects that have been approved at the local level, and will be corrected right up to the time the WQMP is formally adopted, probably, in most cases, around a year from now.

So for now, nothing has prevented or will prevent entities from moving forward and obtaining those permits or approvals for the near future. Counties have also identified sites with site-specific information, such as letters of interpretation that demonstrate that the GIS layers are incorrect. The sewer service area is being corrected to include these sites.

Senator Sarlo, I know that many present here have expressed concern to you over the draft line, and I know that Acting Commissioner Mauriello has been in communication with you on this issue. Foremost,

there was significant concern that the Department would withdraw all future sewer service area on April 7 for counties or on July 9 for municipalities if they did not submit their Wastewater Management Plans. The counties are crucial to the success of this project. We are bound to them in partnership. As you know, the Department has extended the counties' submission deadlines, and will continue to work with them as necessary and appropriate to see this process through. We have no plans, at this time, to unilaterally withdraw a sewer service area from counties that do not have current Water Quality Management Plans.

Secondly, much criticism has been leveled against the landscape mapping of threatened and endangered species habitats. The landscape project is the best information source available to the Department concerning the actual potential habitats for the state's imperiled wildlife. We recognize that there are limits to the accuracy of these data layers. Where counties and municipalities have identified sites of particular interest or importance, we have taken a closer look at these sites to determine whether we believe these sites can continue to support the identified species, given changes in land use on and adjacent to those sites. There are several sites -- I won't mention -- that we have actually done site-specific investigations into and have changed our draft sewer service lines because of that.

In some cases, a more detailed assessment of site conditions will be necessary. Where that more detailed assessment demonstrates that the site does not contain enough resources, the site will be eligible for reinclusion through a streamlined amendment process with no application fee.

We believe we can do a good job of making impacted property owners aware of these changes if they're reasonably connected to modern methods of communication. We are committed to an open, inclusive information and transparent process. Such a process is indeed necessary to getting the mapping correct. The Department has agreed that where the counties are satisfied that the wastewater service area boundaries are as correct as possible, we will immediately put them up on our Web site as draft maps, and issue press releases and legal advertisements notifying the public of the maps availability, and directing them where they may submit comments and information. We will post these notices in advance of the formal proposal of the Wastewater Management Plans. In fact, the maps will be available while we work with the counties to complete build-out analysis and prepare the narrative parts of the Wastewater Management Plans. The public will then have a second opportunity to comment on the Wastewater Management Plans when it is formally proposed, at which time we will also hold a public hearing in the county to afford further opportunity for public comment.

In a place where a commenter demonstrates that a wastewater service area boundary was modified in error through the submission of letters of interpretation, habitat suitability determinations, valid permits, etc., we will adopt a simple map correction to correct the error. I do want to note that even areas that are documented to be habitat may be included in the sewer service area in order to promote clustering and center-based development, as long as development is coupled with environmental protection outside of the center.

Although each county is at a slightly different place in regard to having their WQMP adopted, one county has had its plan adopted, and 16 are working with the Department and making progress toward completion. We believe these counties should be commended for their efforts.

In closing, I want to again stress that this comprehensive planning approach is intended to eliminate public incentives for the destruction of sensitive natural resources and, in so doing, it will save developers from spending time and money pursuing sites and projects that ultimately won't get built. We think it's a long-term benefit for everyone.

Thank you, again, for allowing us to address the Committee.

Chris Mauriello sends his regrets in not being here today. He had an appointment he could not change with the Governor of New York City.

I'm here with Director Larry Baier to answer any questions you may have, Senator.

SENATOR SARLO: Thank you, Commissioner.

I did speak with Commissioner Mauriello yesterday, and I appreciate his willingness to be here. He actually preferred to be here than traveling all the way up to New York state. But he got the call of the Governor, so--

Just to clarify -- and you did say it, but I kind of missed it -- how many of the counties have submitted plans? Back in February it was seven counties. To date, how many counties have submitted?

LAWRENCE J. BAIER: At present, counties with plans-- Well, Hudson County's plan was just adopted earlier this year. Sussex County and Monmouth County have plans pending in front of us, but we're

continuing to work with those counties. All 17 counties have agreed to prepare countywide Wastewater Management Plans. Again, Hudson is being done, so I have 16 that remain.

SENATOR SARLO: Okay. What about the balance of the counties?

MR. BAIER: The four counties that declined wastewater responsibility -- Wastewater Management Planning responsibility are Union, Bergen, Passaic, and Warren. Passaic County -- actually, the lower peninsula is all covered by Passaic Valley Sewerage Commissioners, and their plan is actually up-to-date. The upper part -- the upper peninsula, if you will, of Passaic County is largely in the Highlands and actually largely in the Highlands Preservation area. So Passaic is going to be fairly simple to deal with.

Bergen County and Union County are both covered by large regional sewer authorities. Those regional sewer authorities brought plans into us before the adoption of the rule in July. We are continuing to work with those large regional sewer authorities to bring those plans to fruition. There's a total of four or five towns in each of those counties, that aren't covered by plans, that are already submitted under the old rules.

Which leads us to Warren County, which is the big nut for us to crack -- 22 municipalities in Warren County. At present, 15 of the 22 have applied for volunteer assignment of Wastewater Management planning responsibility. And we'll be working with those individual municipalities. It's not my preference, but certainly-- My preference would have been to work with the county as opposed to 22 municipalities. But

certainly we will do everything we can to aid those municipalities in accomplishing this.

SENATOR SARLO: So essentially Union, Bergen, and Passaic -- you're going to use their existing sewer mapping from -- for instance, in Bergen, the Bergen County Utilities Authority -- you're going to use their existing sewer mapping and fold them-- I mean, the goal here is to take not 21, but 17 plans, and then the Department will create this overall map. Is that correct?

MR. BAIER: No, the 17 plans will remain individual plans.

SENATOR SARLO: Individual plans.

MR. BAIER: That's correct.

But, yes, you are correct that in Bergen County, we will take BCUA's plan; in Passaic County, we will take Passaic Valley Sewerage Commissioners' plan. They will essentially become the county plan, if you will.

SENATOR SARLO: And there will be no penalties to Union, Bergen, Passaic for not participating in the plan or process that was originally laid out?

MR. BAIER: The only penalty is that unfortunately the grant money that we made available to the counties will not be available to those large regional sewerage authorities. We did take the money that we originally set aside for those four counties and assembled it into one pot, divided it by the number of municipalities we thought were not covered by something already in-house. And basically it came down to offering each of those municipalities about \$10,000 to assist them. We recognize that's a paltry sum compared to what the actual cost will probably be, but

unfortunately we've lost the economies of scale from regionalization at the county level.

SENATOR SARLO: Okay. And I just want to clarify that with Hudson being the only one approved right now -- everything else pending, the other 16 pending, and the other four -- the other three submitting their sewer authority maps, and Warren not participating at all -- currently, today, if a plan is not adopted yet or approved by the Department, are we placing any moratorium on any projects that are currently pending before local boards -- land use boards?

MR. BAIER: Absolutely not. There are plans of various age that cover the majority of the state. Some of those plans are as much as 30 years old. But they will remain in place until we adopt a new plan to replace those. Presently, there is no plan on the part of the Department, no plans going forward, to withdraw a sewer service area as a punitive action for the lateness of submission.

SENATOR SARLO: If there are any projects that currently have been approved, not being built because of the difficult economic times, and then they fall within these restricted areas, how are we going to deal with those projects?

MR. BAIER: Plans that have approvals at the local level, preliminary and/or final, building permits at the local level, and a wastewater approval -- wherever that wastewater approval needs to come from -- sometimes it has to come from the local health department; sometimes, if it's less than 8,000 gallons, it's a connection permit that comes from the local sewer authority that is actually going to provide treatment; sometimes it comes from the State. As long as they have the

wastewater approval, the local approval, and those approvals remain valid, they will continue to remain in the sewer service area.

ACTING ASSISTANT COMMISSIONER BRUBAKER: That's important, Senator, just like--

SENATOR SARLO: It's very important.

ACTING ASSISTANT COMMISSIONER BRUBAKER: It's important that even today, as we speak, entities are available to come in, get their permits, go to the municipality and get permits. So I meant -- when I said that process will continue until these plans are finally adopted, probably in a year from now -- there's been no halt or no delay in any of that up until now, and won't be until that county plan is actually adopted.

SENATOR SARLO: Have we given the counties a definitive date? I know we've-- And we appreciate the extension, and I think it's the right thing to do from a public policy standpoint. But has a definitive date been provided?

MR. BAIER: Yes, actually we've asked each of the counties to submit a revised schedule to the Department for their actual Wastewater Management Plan submission. The way that we'll set up -- we actually have to adopt a revision into each of the areawide Water Quality Management Plans to alter the schedule. So we go through and actually alter -- or adopt a revision that includes a new schedule. Each county, therefore, then has a new deadline.

ACTING ASSISTANT COMMISSIONER BRUBAKER: So far, Senator, we've not approved any extension beyond calendar year 2009. We haven't been asked to, and we haven't.

SENATOR SARLO: By any county at this point in time?

ACTING ASSISTANT COMMISSIONER BRUBAKER: Yes.

SENATOR SARLO: You mentioned briefly, and this is from some conversations I've had. And I know some other members of the Legislature had similar concerns. What is going to be the notice? I live out of state -- well, I live in the state, of course. I'm giving an example. (laughter) Somebody lives out of state-- Let me clarify that. Make sure we get that clarified. I live in Woodridge, where I serve as Mayor. Somebody lives out of state, owns a piece of property in New Jersey, and their property has been clipped from the sewer service area. How is that property owner going to know that his property has been clipped from that sewer service area? He lives out of state and is not paying attention. He's not going on the Internet, he's not paying attention to what's happening in New Jersey, but he owns a valuable piece of property.

MR. BAIER: Unless the property owner actually secures copies of their local newspaper where they actually own the property -- or where the property (indiscernible) resides, he probably would not know about this unless the county or municipality decides to individually notify. We're just not in a position where we can individually, through certified mail, notify every potentially affected property owner.

SENATOR SARLO: Isn't that troubling, though, that property owners are not going to get notified, even if they live in New Jersey? Using out of state was a bad example. But what if they live in New Jersey and don't pay attention to the local newspaper? I mean, isn't that troubling that somebody may not get notified? All of a sudden their property is just going to be clipped.

MR. BAIER: It's a concern, Senator, but I'm not sure how to resolve that concern, given our present resource constraints. I mean, we will do the best we can by issuing press releases, by issuing legal notices in papers in case the papers don't pick up the press releases, by making the information available on our Web site as soon as those maps are at a place where both we and the county are comfortable with their accuracy. Unfortunately, if you're not staying on top of what's happening in New Jersey, then you probably might get passed by.

SENATOR SARLO: I just have a concern about that. I mean, I have a concern that the perception here is, here is government coming in, taking away your rights as a property owner, and you have no say. You don't have the ability to make a statement or make a say. If you're sitting on a piece of property, perhaps it's an investment property for down the road. And then you turn around to try and invest in it, you've made an investment, and now your property, in a way, has been devalued. So that is a concern of mine and I'm sure many others in the Legislature.

MR. BAIER: If I may, sir. Just because your particular piece of property has been removed from a sewer service area because we believe it contains environmentally sensitive resources, you still have the opportunity -- the property owner has the opportunity to demonstrate that our information was bad, was incorrect, and be added back into that service area. So I don't think it's *game-over*, if you will. And I will also say that just because sewer service isn't available as a wastewater management alternative, those properties do continue to have some residual development potential through alternative wastewater treatment mechanisms, on-site systems.

SENATOR SARLO: Some people have said this new planning process that we're working on here could fall victim to the same pitfalls as a cross-acceptance process, where a county could delegate their responsibility to a county utility authority, presumably one that provides sewer service, which might streamline, in certain instances, the planning process. Are we concerned that we may run into a situation where we're not going to be consistent with -- same situation we were with the cross-acceptance plans, where a different county utility authority is not being consistent in their message and their thought process? Any concern on that, or have you seen that so far in what's been submitted?

MR. BAIER: Clearly, I think there are areas where counties have identified specific concerns either because sites are integral to local fair share housing plans or integral to a business' ability to grow. We have taken a very close look at those sites, if they were removed from sewer service, to try and verify whether or not our data is, in fact, correct. Unfortunately, the landscape mapping and much of the mapping resources that we had to use was based on 2002 aerial photography. We now have 2007 aerial photography. So we're able to pull that up now and look to see whether or not land use has changed either on the site or adjacent to the site that would no longer -- or would have compromised the ability of the site to support what we thought originally was there. When we find that, we're putting those sites back in.

I can't promise you that we'll come to amicable resolution of every site. But where we can make that determination, Senator, we are certainly doing that.

SENATOR SARLO: What is the process going to be with amended sewer plans after the fact? You established some criteria. Now, this is not the governing criteria -- limited environmental impact areas where development should occur by planning officials, water capacity, and wastewater capacity, of course.

First of all, are they the governing criteria, or is that just kind of guidelines?

MR. BAIER: I'm not sure I understand where those criteria are coming from, Senator. Could you repeat that again, one more time?

SENATOR SARLO: The Assistant Commissioner mentioned -- I'll just paraphrase, I wrote them down here -- limited environmental impact areas where development should occur by planning officials, wastewater capacity, and water supply -- available water capacity.

MR. BAIER: I mean, ultimately, that's what this process should yield. It should yield a wastewater service area that tells you those things. Ultimately, you asked a question about how you get the map changed and what the process is for changing the map.

SENATOR SARLO: Right.

MR. BAIER: There are two different processes that are established in the reg. One is a very simple process for projects that essentially have no particular environmental impact; no potential for secondary impact -- so not running a sewer line through a large, undeveloped agricultural area or something like that; and that have relatively small volumes of wastewater involved so we don't have issues with capacity at the sewage treatment plant.

They go through a revision process. A revision process just means that the locals get notified, the Wastewater Management Planning agency gets notified, the sewer authority or whoever is accepting the wastewater gets notified. They're asked to consent. If they consent, we adopt a revision. There's no public notice process, there's no delay. It's a very simple process.

For things that are larger than that, that have some potential impact either due to capacity constraints at the sewage treatment plant, or environmental impact because it's an extension of sewer into an area that previously was completely -- it's not adjacent to a sewer service area; it's a completely new area. In those cases, we go through an amendment process. It's essentially-- We haven't altered that process from what it used to be. It does require a New Jersey register notice, and a 30-day public comment period, and potentially a public hearing before we can actually move to adopt. So it's basically a two-step process, as opposed to the one-step process of the revision.

SENATOR SARLO: And just one final question: Are we concerned that-- Is the Department concerned that some of these rules may provide local officials with kind of a back-door method to deny an unwanted project in their community? Could they use this to hang over -- not-in-my-backyard type of syndrome on a project? Could they say, "Down the road they can amend it, and your property may fall within that area that's going to no longer be a sewer service area. So we should deny your project now"? Is there any concern by the Department on that -- that it could be abused by the local municipalities?

MR. BAIER: I don't necessarily have that concern, Senator. Really, these Wastewater Management Plans are supposed to reflect local land use master planning and zoning. So it would have had to have been a thought process by the municipality for a long time that was consistent with their vision of how they were going to grow.

And it's not an easy process to get through. It's not something where you can just sort of make a snap decision and decide, "Okay. I don't like your project, so now I am going to cut you out." In order to cut somebody out, you have to follow that same process as it is to put somebody back in.

SENATOR SARLO: Well, I want to keep this moving along.

I want to thank both of you for being here to provide this update. I am glad to hear that you are providing these extensions. I'm glad to hear publicly that there is no moratoriums being placed or punitive damages being placed on counties that have not followed through yet at this point in time.

It is concerning to me that certain property owners may not be properly notified. And I would urge the Department to continue to work to find a way that we do provide proper notification, and that we're not sending the wrong message that government is going to come in and perhaps devalue your property. I understand there are provisions in place. They do have options available to them to make their case if it doesn't fall within the map. But I think we need to find a way to at least give proper notification. But I'm glad to hear that there is no moratorium that we're expecting.

So I want to thank both of you for taking the time to be here. It seems like you both have a very good handle on this plan, especially Larry. I know you testified on May 1, 2008. And we appreciate the work you're doing.

Thank you, both of you.

ACTING ASSISTANT COMMISSIONER BRUBAKER:
Thank you, Senator.

MR. BAIER: Thank you, Senator.

SENATOR SARLO: The next panel will be PlanSmart NJ, Dianne Brake, President; New Jersey County Planners Association, Kamal Saleh, President; and the Association of Environmental Authorities, Ellen Gulbinsky, Executive Director.

And I know he's here in the background -- I just want to acknowledge Nick DiRocco, from the Association of Counties, who has been weighing in heavily on this issue. He has no need to testify. He's going to leave it up to his planners.

Ellen is not here, but we'll go ahead with PlanSmart NJ and the New Jersey County Planners Association.

D I A N N E R. B R A K E: Thank you for holding this important hearing and inviting me to speak.

I'm Dianne Brake, and I've been a land use planner for almost 30 years, 25 of them at PlanSmart NJ. And PlanSmart itself celebrated it's 40th anniversary last year.

Sewer service areas may not be a sexy topic, but it is the most important underpinnings of society. And we planners take sewers very seriously. Without them, we'd have squalor, disease, death.

In 2007, we brought all of our experience to bear on the evaluation of the proposed Water Rules, and we submitted six pages of comments, which I've included in my packet.

SENATOR SARLO: Please don't read all six pages. (laughter)

MS. BRAKE: I'm not, I promise.

And we had some praise for the new direction and the Rules. But overall, our assessment was very concerned. What we saw in the Rules was that it was likely to obstruct growth in growth areas, promote sprawl in nonsewered areas, and therefore degrade the environment. And in this economic climate, to have those conditions be a rule that even has some improvements to the old system in it, is what we consider to be unacceptable.

We felt, with the best of intentions, DEP had written rules that would end up protecting land from sewers rather than protecting water quality overall. And therefore it would deny New Jersey the ability to grow in a planned way to create the future that we want and the communities that we want.

I listened carefully to what the Deputy (*sic*) Commissioner said about what their intent was on the Rules. And we certainly have no disagreement over protecting sensitive areas. And we certainly agree that there should be agreement on where growth areas should be. But the problem is that by coming up with their own assessment of where growth areas should be, they already violated one of those tenets. It isn't where everybody has agreed that growth should be. The maps created by DEP are different from the cross-acceptance maps. There's less growth area in the

new Rules and in the new maps. So it isn't where we all agree on growth areas.

And his last point about where there is already capacity in the infrastructure system-- That is definitely important information to have. But I've seen the scope of work for the plans that the counties are supposed to produce. And the way it's written, it's as if once you determine the current capacity of the system, you're supposed to contain the land use within that capacity. The idea of infrastructure and growth management is to have a land use plan that meets the needs of the economy, the environment, and society, and then create the infrastructure needed to support it. The capping on existing constraints of wastewater doesn't allow for new technology, for conservation, for all kinds of improvements that could be made as development happens. And so just saying, "What is the capacity now," and saying that as the cap, is not how we interpret capacity-based planning to mean.

There are four ways that the regs obstruct growth. First, drawing back the sewer service boundaries; secondly, taking out 25-acre parcels within the sewer service boundaries just because they're undeveloped. And I understand that DEP allows for the expansion and so forth of correcting mistakes. But it's very unclear what criteria DEP will use in order to make those changes and, therefore, it makes it very unpredictable, probably lengthy, and costly in order to go through those changes. So we feel that undermines planning that has taken place, painstakingly, for the growth areas that we have already established.

And then I think that what we really want to say is that we believe that DEP could have created rules that need not threaten the

economy. There are ways to go forward. And I think it depends upon the State agencies sharing a vision of what's important for the future of New Jersey. And that vision must then be the criteria by which you evaluate all the State agencies' rules. There are ways to improve the environment and to protect the economy. And that's what you will find in our comments.

SENATOR SARLO: Thank you.

I do have a question for you, but I'd like to hear first from Mr. Saleh.

K A M A L S A L E H: My name is Kamal Saleh. I am the 2009 New Jersey County Planners Association President.

What I'm going to go over right now -- and we've provided it to the secretary -- is a list of concerns that we have, along with solutions. But because of the time frame, we'll just go over the concerns. And if you'd like, you can ask any questions.

Anyway, we'll go down the line here.

The first item is the WQMP, or WMP, lack of consistency. The concern is that there is no consistent written guidance for each technical area that needs to be addressed in the Wastewater Management Plan. There is a template document that is on the Web site -- DEP Web site -- as a placeholder. The Model Builder -- that is an application provided by the DEP -- relies on parcel mapping that overestimates future flows based on some of our counties.

Again, these comments are not any individual county, but overall counties. So this is not one particular county this relates to.

SENATOR SARLO: It's cumulative -- it's collecting cumulative from all the county planners.

MR. SALEH: Absolutely. And just to go back, we represent 21 counties in the entire state. And those representatives who are on our Association are county planners, per se, and directors, and what have you who participate basically on a monthly basis -- go over concerns like COAH, DEP, and other issues that relate to counties.

Anyway, going ahead. Still on the lack of consistency, another concern is that some DEP review policies are inconsistent with the written DEP Rules -- so that inconsistency is an issue.

Item number two is the habitat suitability and sewer service area boundaries concern. It's that the recommended habitat suitability component of the analysis should be removed, as areas are being clipped from the existing sewer service areas based on data that is not reliable and, in some cases, not available for the public to review.

Item three: the WMP deadline. There's a discrepancy between the plan and the WMP grant deadline so that there -- provides an issue. And I know that we've recommended other timeframes, and I know we've heard earlier about the way DEP is going to handle that.

Number four is the appeal process. This is something-- And, again, these items that we're discussing here we discussed with the DEP's Commissioner at our last meeting.

Anyway, one of the other recommendations is an appeal process that will review WMP and the DEP Rules. This is a needed appeal process that would include other agencies like the Office on Smart Growth, and county planners, and other groups, as well as DEP, to resolve issues that may come about in terms of the Rules.

Item number five: the State agency communication coordination. We feel that there's a need for improved communication between State agencies and key initiatives such as housing, economic development, and obviously sewer service planning areas.

Number six: There is a concern -- I guess it relates to this as well -- is the DEP COAH set-aside in terms of COAH percentages. There should be a requirement between COAH and the proposed DEP in terms of the set-aside.

SENATOR SARLO: Let me just interrupt you there -- to either one of you. Currently, COAH has no impact on how they're establishing these areas, correct?

MR. SALEH: I believe so.

SENATOR SARLO: Am I correct?

MS. BRAKE: You mean DEP's boundaries for the sewer service?

SENATOR SARLO: Yes.

MS. BRAKE: As far as I know, no.

SENATOR SARLO: COAH has no impact on it. Okay.

MR. SALEH: Item number seven: the State plan/landscape project. There's an inconsistency with the OSG mapping. The DEP has its own mapping which, at times, is inconsistent with the mapping established by the negotiations of the Office of Smart Growth, the State Planning Commission, in relation to the county and municipal agencies in the State Plan. Another concern with that one is the sewer service areas that are routinely removed in centers, even though those centers are approved by the State Planning Commission.

Item number eight: the Highlands Planning Area. There is a concern that the DEP has removed sewer service areas in the Highlands Planning Area, even if they're not consistent with the Highlands Regional Master Plan. DEP is requiring consistency, and that is contrary to the Highlands Act. According to some of our counties in the planning area, that should be voluntary for each municipality.

Okay, number nine: sewer service area lines and the impact on economic development. Redevelopment plans are currently not addressed in the WMP process rules, hence sites in the redevelopment areas can be removed from the sewer service area boundaries. The removal of sewer service for key redevelopment properties can impact the growth of a town or county.

And number 10: the county nonparticipation in wastewater management. As Wastewater Management Plan participation is voluntary, and participation for counties -- and the counties that choose not to participate are usually due to economic concerns, staff limitations, or other reasons, they should not be portrayed in a negative manner if they don't participate.

That's it.

SENATOR SARLO: I guess number 10 is to protect your friends in Warren, I guess. (laughter)

MR. SALEH: Union and Bergen.

SENATOR SARLO: Bergen? Make sure you protect Bergen first. (laughter)

A question with regard to some of these concerns. You had mentioned one of the concerns: redevelopment plans aren't addressed in the

WMP Rules, hence sites in redevelopment areas -- your number nine -- can be removed from the sewer service area boundaries. Can you just expand upon that a little bit?

MR. SALEH: I think it's just that some of counties have a concern that -- I guess in the rules that they've interpreted, they don't find a relationship to redevelopment plans. And as some municipalities or counties that have these redevelopment plans -- they've considered -- placed a considerable amount of time and effort in looking at -- over these areas for future development. And they feel if these redevelopment plans existed prior to the WMP process, that if they are included in, say, an area that's clipped or what have you -- may significantly reduce the importance or the ability for those redevelopment plans to continue and to be developed.

SENATOR SARLO: The DEP has assured other policy makers and the Legislature that they've been providing, at the beginning of this process -- providing a lot of the data and the draft -- some of the draft plans. Do you believe this has truly been a bottom-up process with the counties in the driver's seat? If you don't want to answer that, you don't have to answer that.

MS. BRAKE: I don't mind answering that. I'm not accountable to any government.

I would say that it has been more of a top-down process than ever before. That's not necessarily bad if they have recognition that this is a planning process and not a regulatory process. The regulations need to bubble up for detailed parcels. The plans should be meeting overall plans. Sewers support all kinds of development. They support more density in transit areas, they support economic development where jobs have been

lost, they support regeneration. Making it difficult to grow in growth areas impacts cities. There are some cities that don't have any capacity. And it's very unclear how they're going to be growing that capacity given these rules. So it's a-- These are very much rules only from DEP's point of view. And I would argue that that point of view is not even necessarily the most supportive of environmental protection. If that were the only purpose, that would be in itself laudable. But I would argue that the effect of these rules is not going to protect the environment the way they hope. And therefore, all the pain that it's causing to interrupt plans and economic development is not worth it.

What we could do is to have infrastructure planning support the multiple goals that the State needs to produce. And I would argue that's to reduce the concentration of poverty, regenerate in cities, retrofit suburban areas so that we can have transit. Those are the kinds of things we need to do.

SENATOR SARLO: So if I'm hearing you correctly, you don't believe it's been a bottom-up process. It's been more from the top-down. And you think these plans could have a detrimental effect on the environment.

Something in your bulletin -- I don't know if I necessarily agree with you. Maybe you could help clarify it for me. In your written testimony, you had said that these regs promote sprawl.

MS. BRAKE: Yes.

SENATOR SARLO: I don't know if I necessarily agree with that. How can you say that these regs promote sprawl?

MS. BRAKE: Well, in two ways. One is in the fact that they obstruct growth in growth areas. They're going to put more pressure on non-sewered areas. The way in which DEP hopes to protect non-sewered areas is through a model that everybody agrees will likely promote, across a watershed area, densities of about 4 to 7 acres per unit. That is the most elitist kind of sprawl that we could have. It may not be the result, but it's across a HUC 11. These watershed boundaries actually cross municipal and county boundaries. And counties don't have the power to change land use in local areas or to cross their boundaries. Only DEP could come up with a watershed approach and articulate exactly how they want development to happen in non-sewered areas. Otherwise sprawl will happen. The zoning is there.

SENATOR SARLO: For the record, I am a licensed professional planner. You may not know that.

MS. BRAKE: I'm pleased to hear that.

SENATOR SARLO: I'm a licensed professional planner (indiscernible) to be a professional engineer. I don't practice planning, but I do have the license.

MS. BRAKE: A lot of planners don't.

SENATOR SARLO: One final -- to the counties.

Go ahead, sir.

MR. SALEH: I was just going to add one point. I think in terms of the -- obviously with the Water Quality Management-- I think one of the main concerns too is the State planning. Because as county planners, we've considered -- or we've put in a considerable amount of time and effort into working with the State Planning Commission.

MS. BRAKE: Five years.

MR. SALEH: And three rounds -- in terms of putting that together as a guide for the development in our state. And that's a valuable item that seems, at times, to be at odds with what some of the Rules are doing.

SENATOR SARLO: Have any of the counties gone outside, for outside consultants to do this work, or have most of the counties done it in-house?

MR. SALEH: I think it's a mix.

SENATOR SARLO: It's a mix? Some have hired outside consultants?

MS. BRAKE: Yes.

MR. SALEH: Right.

MS. BRAKE: At great price. I know Mercer County had to bond for it.

SENATOR SARLO: Okay. Well thank you both for your testimony.

MR. SALEH: Thank you for having us.

SENATOR SARLO: And we appreciate you being here. Hopefully some of your concerns that you have mentioned -- you're going to continue to have an open dialogue with the Department.

MR. SALEH: I just would add that we did meet with the Commissioner at the last meeting, and there seems to be some positive movement on some of the items we've requested.

SENATOR SARLO: And if anything comes out of this, hopefully that's-- One of the things that will come out of this hearing is

that we're going to continue to have an open dialogue and continue to kind of work together to resolve some of these outstanding concerns.

Thank you.

MR. SALEH: Thank you.

SENATOR SARLO: The next panel actually was a large panel. I have to break it up, unfortunately, because I only have two or three seats here. It was going to include folks from NAIOP, and the Builders Association, and the International Council of Shopping Centers. But what we'll do is -- no disrespect to any group -- we'll just break this up. We'll have the Builders Association, Tim Touhey, CEO; and Mike Karmatz, President, come up first. And then we'll follow up with NAIOP.

MICHAEL H. KARMA TZ: Good morning.

My name is Michael Karmatz. I'm Senior Vice President of Orleans Homebuilders, and I am the current President of the New Jersey Builders Association.

I want to thank you for allowing us to testify today. I would also like to acknowledge Mark Mauriello and Larry Baier for their efforts. We've worked with them, and we will continue to work with them to try and make a better situation for the State of New Jersey.

I won't go into the history, because Senator Sarlo has adequately said what the history is. And we too, a year ago, voiced concern about the timing and the methodology that was being proposed. But rather than dwell on that, I think it's more important that we try to move forward to correct the situation that we're in.

As we know now, the counties have not been able to meet the deadline. Where municipalities have been charged to make the plans where

the counties won't, they haven't completed them. The bottom line is there should be an extension of time, and we're recommending the two years.

Part of our recommendations are that there should be an oversight board that looks at the DEP plans. It's unfortunate that they have to use plans that are seven to eight years old, and they're aerial photography. When municipalities have tried -- and I say this from experience -- have tried to point out to the DEP their errors, the maps that come out still show the incorrectness.

As investors, who wants to come to a state where you can't be sure of where you can make your investment and have at least a chance of having it profitable? There has to be some certainty in these plans. After the fact does not do any good. If they need two years to get it right, they should have the two years to get it right.

The previous testifier said it's a top-down procedure. There's no question in our minds that it is a top-down procedure. The DEP has said, "This is where we think there should be growth," and have disregarded, in many instances -- which is one of the reasons that this process is being delayed. Because in most instances, the municipalities who have tried to plan over these years for where they want growth, their ideas are being disregarded.

You have Somerset County that was able to give notice to everyone. It's been brought up. There has to be a way to give notice to landowners.

SENATOR SARLO: That's what I said previously.

MR. KARMAZ: And it's a very important point.

SENATOR SARLO: And not to interrupt you sir: I think everybody agrees with that, even those who are very supportive of the Rules. I think everybody agrees that people deserve to be properly noticed.

MR. KARMAZ: So the recommendations, to make a very brief presentation -- we should adopt at least a two-year extension, and there should be an oversight board that certainly all groups should be involved in. But there should be a consensus before maps are put out that are totally inconsistent with what lies on the ground or what the municipalities have intended.

With that, I commend the Committee for having this hearing, and know that the Builders Association will gladly work with all groups for a better state.

SENATOR SARLO: Question: oversight board. That oversight board -- would that be a board that would be involved in the planning process or an oversight board that would deal with appeals?

MR. KARMAZ: You need it on both ends. You need it for the planning process and for the working of regulations before they're promulgated. The concern I have is, it's easy to say, "We're going to change mistakes." But if you do it after the fact, you're talking years. By their own admission, they don't have the personnel to do all of this.

TIMOTHY J. TOUHEY: Tim Touhey.

Senator, let me add to this.

The thought here -- and I've heard Dianne many times before. And I'm talking now about my former role as a chairman of the State Planning Commission. It would be wonderful if we could amend maps so easily. We still haven't gotten the State to plan out right.

And in a process where we're facing-- And it's not a word that should be overused. We are in a fragile economy where you sit every day trying to figure out how to get revenues into the State; where credit investors -- capital markets and banks -- are trying to figure out where they're going to lend and how they're going to lend. And we're going to get into this discussion of: Is this the right area to cut off sewer service areas or not, based on this criteria? And we'll work through the process.

Well, a year ago we sat here and listened to how flawless and easy this process was going to be, that we'd be sitting here a year now with consistency, and understanding where we were going to grow and not grow. We're deeply concerned that if there's not an oversight board that looks at the discrepancies that maybe a municipality, county, or DEP have in this process, that you need to bring some integrity to that -- very similar to what's being discussed under the licensed site remediation professional bill that was just passed.

SENATOR SARLO: So you're saying an oversight board now, as the planning process is going on.

MR. TOUHEY: Right.

SENATOR SARLO: And then there could be something separate with an appeals process.

MR. TOUHEY: Exactly.

SENATOR SARLO: Do you feel, from your side, if a property falls within the SSA -- I know we're talking a lot about proper notification -- does it affect-- Are you concerned it will have a significant effect on the value of that property?

MR. TOUHEY: Yes, and I can go through a litany. We've already had pressure on property. There's so much uncertainty, Senator, on how we deal with a variety of regs that have come to the business community, the housing community in New Jersey -- whether it's COAH, this, the Highlands Act, where the Meadowlands is going, how we're dealing with the Pinelands. It's almost impossible to keep up with all of this. So we need to get some sanity back into this process, and slow it down, and get it right.

SENATOR SARLO: Any ideas on how we can notify affected property owners?

MR. TOUHEY: Mail works. (laughter) I'm not sure.

I had two thoughts. And, again, I do want to underscore that Larry and the Commissioner have been tremendous in dialogue with us. But I guess there will be so much removal that the mail system won't be able to handle it. So I think mail will work.

SENATOR SARLO: Registered mail or something like that.

MR. TOUHEY: Yes.

SENATOR SARLO: Okay. I have no further questions.

Thank you. And I would hope you will also continue to have a dialogue with the Department on these Rules.

The next panel is National Association of Industrial and Office Properties, Mike McGuinness, their CEO. And I believe he's joined by--

UNIDENTIFIED SPEAKER FROM AUDIENCE:
(indiscernible)

SENATOR SARLO: Yes. And I'm also going to have Ted Zangari, from the International Council of Shopping Centers.

Can we get--

You're representing?

MICHAEL A. SEMERARO JR.: The International Council of Shopping Centers.

Mike Semeraro.

SENATOR SARLO: Okay.

MICHAEL M c GUINNESS: Thank you, Mr. Chairman, for the opportunity to give you our perspective on the Water Quality Management Planning Rules process.

First off, we represent NAIOP New Jersey, which represents the owners and investors of commercial real estate properties in the state. We have about 500 members. We contribute about \$800 million a year in property tax, have a billion square feet of space in the state. We're also part of a group that represents North America, chapters in Mexico and Canada with about 20,000 members.

We first learned about the seriousness of this matter back in March, when we had the Governor to our annual Public Policy Symposium. And at that time, many of the members were asking questions on the topic. The Governor asked us to provide him with more detail, and we did. It appeared back then that DEP was moving very quickly, unilaterally, to usurp local land use decisions and stopping much-needed economic development. So obviously we were concerned.

I've since spoken with Commissioner Mauriello, and he has assured me -- he's at least told me -- that that's not at all the case and that was not their intent. Nevertheless, there are still a lot of issues hanging out there which need to be addressed.

This really all boils down to communication and coordination. Communication in terms of communicating with the regulated community what their intent is. And then secondly, perhaps even more importantly, is just coordination among State agencies. You've got the State Planning Commission, you've got COAH, DCA, and you've got DEP all sort of going down different tracks in different directions. So it's really important for those agencies to coordinate their act so that we have some predictability here.

At this point, let me introduce George Sowa, who is our Vice President for Public Affairs. And he is also a EVP for Brandywine Realty Trust.

GEORGE D. SOWA: Thank you, Mike.

Good morning, Senator Sarlo.

Thank you for allowing me to testify before you and the Committee.

I'd like to start off by emphasizing that NAIOP and its members are absolutely fully supportive of endorsing ideas that improve the quality of life for the residents of New Jersey. However, we are absolutely not supportive of actions that don't support that objective.

It's interesting, following the builders -- where they mention how difficult it is to track residents of the state. If you can imagine how difficult it is to get someone to invest \$100,000, \$500,000, \$1 million or whatever it is for that house; if you amplify that multiple times over to try to attract companies and retain companies to the state right now, where the investments are \$1 million, \$5 million, \$50 million or more in some cases -- especially in the environment we're in today.

One of the things that NAIOP -- we do provide a broad spectrum of employment opportunities throughout the state from the professionals, the engineers, the attorneys, the finance-related jobs, all the way through the construction and maintenance of the properties as well. I think it's an important aspect that we do provide not only the jobs themselves, through the construction process, but also the acting as the home for a lot of the companies that do actually add to the vitality of the economy of the State. And we have been working in a coordinated way with the administration, trying to resolve the issues that are out there today. And I commend DEP for some of their commentary earlier today, because it sounds like they absolutely recognize some of the issues. And hopefully we'll be able to resolve the issues that are still outstanding here today.

But as Mike had mentioned, really the issue is derived from two fundamental areas. Number one is a lack of coordination between the State agencies. And secondly, the lack of notice and disclosure concerning the revised sewer service maps. The lack of coordination among the agencies is evidenced by the proposed Rules being inconsistent with the State Plan -- which has already been mentioned -- where the State Plan actually has some growth areas in designated sewer areas. And really the proposed rules aren't consistent with the State Plan. Further, it's not consistent with COAH, where the COAH regulations right now are around three -- the proposed regulations actually are trying to have growth in areas that, right now, would not be consistent with these Rules for the water quality.

Also, the fact that the revised maps are dated could result in many of the proposed revisions being unwarranted or improper. The lack of

the formal notice -- in trying to go back and correct after the fact -- would absolutely create a tremendous amount of uncertainty. And to do it is going to take time, it's going to take the cost in actually the expense of trying to do that after the fact. It doesn't seem right, nor does it seem fair.

Now, as a real-time example-- As Mike had mentioned, I'm currently serving as Executive Vice President and Senior Managing Director for Brandywine Realty Trust. We're a national real estate investment trust, publicly traded, about 37 million square feet of properties across the country. And right here, locally, in Princeton Pike Corporate Center, in Lawrence Township near the intersection of Route 1 and 95 -- clearly a development corridor -- existing park where we have eight buildings, 850,000 square feet of existing property valued at nearly \$200 million. We also have three development sites that could accommodate another 315,000 square feet of space. With the current rules that are being proposed, two of our development sites would be wiped out, about 250,000 square feet of new office buildings within the park.

Why is that important? Number one, there's \$65 million of investment that would not be made as a result, the elimination of a thousand jobs that would no longer be there. Plus, the tenants within our park who may need expansion or who are considering coming into the park would no longer have a home for those jobs -- those clean ratables that are so duly needed.

The other thing-- Again, I mentioned just the business attraction and retention. Again, I mentioned at Brandywine we do business across the country. And the state versus state, especially with the border being so close to us of Pennsylvania -- being exceptionally aggressive these

days -- just makes the uncertainty associated with getting a tenant-- Again, if you could imagine how difficult it is, when we're playing building versus building within our own world -- which we're fine with doing by the way. But when you go state versus state -- in the inherent uncertainty in terms of what we can get approved, when we can get it approved -- tenants aren't in the decision-making process. With the uncertainty override-- Where they need to have certainty in terms of where they go, what they do, and the timing associated with that, they're typically driven by leases or some other decision process that needs to be hit with some absolute certainty.

So as a result, we respectfully request that you consider the following recommendations related to DEP's Water Quality Management Planning Rules.

First, immediately suspend the Water Quality Management Planning Rules until the DEP has coordinated it's actions with the State Planning Commission and COAH. Secondly, we grandfather the sewer service area designation for projects that are fully or partially developed or acquired, upon reliance on the sewer service area in existence as of the date of the property's acquisition. Third, that we publicize the current program now underway so that property owners have the opportunity to study the potential impact in advance of final delineation. And finally, fourth, place all draft-revised sewer service maps on a readily accessible Web site so that owners are apprised at all times of the current state of the sewer service area maps as they proceed through the revision process.

In closing, we recognize that business has always been highly competitive, with a significant investment of capital at risk well in advance of project completion. We as developers, and in turn our tenants, are

willing to accept the significant risk inherent with the development and construction of buildings. However, neither we nor our tenants can accept the risk in connection with the time, expense, and uncertainty associated with the viability of any project potentially impacted by the revised sewer service maps.

Thank you for your consideration and your time.

SENATOR SARLO: Thank you.

Michael Semeraro, from the International Council of Shopping Centers.

MR. SEMERARO: Yes, good morning.

I'm Mike Semeraro. I'm a Senior Principal at Langan Engineering and Environmental Services. And I am also the International Council of Shopping Centers' New Jersey State Government Relations Chair.

On behalf of ICSC, I would like to thank Senator Sarlo for allowing ICSC to give testimony on the implementation of the Water Quality Management Rules, which were adopted on the 28th of July, 2008. ICSC concurs with the State that the current Wastewater Management Plans, which in part regulate the high quality of the waters of the state, need to be updated for proper development throughout the state.

The goal of the 2008 Water Quality Management Plan Rules were to have all of our State Wastewater Management Plans resubmitted and approved using an updated, consistent set of criteria which was included within the approved Rules. The revised county/areawide plans were to be submitted to the New Jersey DEP prior to April 7, 2009. Prior to this date, most county or areawide Wastewater Management Plans

throughout our state were out-of-date and were in need of recertification. To date, we understand that only two counties have submitted their Wastewater Management Plans to the New Jersey DEP. We further understand that 13 additional counties are in the process of requesting or have received deadline extensions for the submission of the Wastewater Management Plans.

In reviewing this process, we have three recommendations that we believe will be beneficial to the process of updating these Wastewater Management Plans.

Our first recommendation is in relation to New Jersey DEP GIS database, which is referred to as the Department's "Landscape Maps of Habitat for Endangered, Threatened, and Other Priority Wildlife," as well as the Department's wetland maps. These maps are excellent planning tools. But due to the scale of our state, site-specific studies and specific site data are more accurate than the statewide maps. To use these statewide maps to identify where development should take place is positive, as any development must provide site-specific documentation to the New Jersey DEP to receive New Jersey DEP permits. However, we believe that the use of these statewide maps to remove a site that was within a sewer service area under a prior Wastewater Management Plan, without site-specific data, is inappropriate. New Jersey DEP should encourage the use of site-specific data and documentation to override the statewide maps wherever that site-specific data is available.

Our second recommendation is that we believe that any property that will have its sewer service area removed or limited when compared to the prior Wastewater Management Plan for that property

should be notified individually in the same manner as if this property were to be rezoned by a municipality. This notification, as well as giving the property owner a means where they can present site-specific documentation which could show that their property meets the New Jersey DEP criteria to be included within the sewer service area, should be provided to the property owner.

Our final recommendation is to extend the timeframe for submission of the Wastewater Management Plans to the end of 2010. Only two counties have submitted to date. Also, we understand that only published public notices have been issued. Since these Wastewater Management Plans are removing sewer service areas from private property owners, we believe the counties or areawide districts should be given time to properly notify the affected property owners and to compile local documentation to support the statewide GIS maps. This time extension would also allow time for the individual private property owner, who may be affected by a sanitary service area removal, to compile site-specific information and to justify their property's compliance, if it is so applicable, to the New Jersey DEP criteria for inclusion in the sanitary service areas. During these economic times, we should take the time to get it right. And providing an extension will afford the shareholders of the state an opportunity to do so.

ICSC would like to thank the Committee for allowing our input. And we remain available to work with all regulators throughout the State to improve the quality of our environment and our lives throughout New Jersey.

SENATOR SARLO: We've heard a lot this morning. We haven't raised this issue yet -- I have not raised the issue -- with regard to what both ICSC and NAIOP have raised here extensively with regard to more site-specific data.

The question I have is-- You're telling me, in your opinion these maps are being generated off of maps that are five to seven years old. Is that your opinion, or is that fact, or is that your thought process?

MR. SEMERARO: That is also what DEP had indicated initially here.

SENATOR SARLO: Okay. So the maps that are currently being generated are based upon maps that are five to seven years old.

MR. SEMERARO: And then supplemented periodically as things are brought to their attention.

MR. McGUINNESS: Mr. Chairman, if I might.

SENATOR SARLO: Yes, sure.

MR. McGUINNESS: And during that time period, certainly, lots of permit applications go into DEP. DEP, of course, is challenged for resources. They don't have the proper computer technology, and they do need help there, in terms of funding for their IT work. And a lot of the applications that go in do have current data, but they don't take the time -- maybe for good reason -- to update their data based on current applications. That's my understanding.

SENATOR SARLO: So you would recommend-- From this panel, you recommend that taking permits that have been approved by the DEP -- take that site-specific data where there have been reports prepared

by outside environmental consultants -- take that data and use that data to get more specific and update this statewide GIS map.

MR. McGUINNESS: Why not? We've already spent a lot of money doing the research to provide them with data, because they have to do that. Why not just incorporate it into their plan? Perhaps it's Herculean. I don't know how it's done.

MR. SEMERARO: Well, the regulations -- they could require the applicant to have it in a certain format.

MR. SOWA: It kind of underscores the disconnect that exists currently, where you can spend a lot of time, a lot of money in the designing and getting approvals, and not end up with your sewer at the end of the day. And so it's critical that we get the inconsistencies and uncertainty out of the equation.

MR. SEMERARO: Chairman, the point is that they're using that data to remove a property -- a private property from an existing sewer service area from a prior plan. And it just seems that if that's the case, that private property owner should be individually notified and have the opportunity to present his own site-specific information, that would be more up-to-date than the State maps, to justify inclusion if it is so appropriate. And it will take-- I mean, a modification to the Wastewater Management Plan will take years. Typically two years is what you have to budget yourself. I mean, you could probably get it done in one year if you follow the exact timeline, but nothing ever goes by the exact timeline. And if you have a property that doesn't have a sewer service area, anyone coming in from a business to go develop on that site isn't going to look at

the site. They have to waste two years even before they can start their development plans.

SENATOR SARLO: Okay.

Thank you.

MS. SEMERARO: Thank you.

MR. McGUINNESS: Thank you.

MR. SOWA: Thank you.

SENATOR SARLO: Okay. The final panel is the New Jersey Environmental Federation, David Pringle; New Jersey Sierra Club, Jeff Tittel; and the Association of New Jersey Environmental Commissions, Abby Fair.

J E F F T I T T E L: Thank you.

Jeff Tittel, Director, New Jersey Sierra Club. And I have a written statement that I will hand in.

I also want to spend a few minutes talking about some of the things that I've heard, because I think there's a lot of misinformation out there about the Water Quality Planning Rules.

You have to understand that we support the Rules. We've also had concerns with them in certain areas, and you will see that in my more detailed, written testimony.

But I just want to start out by saying that New Jersey has a very serious water problem. We have seen cycles of flood and drought. In any given year, northeastern New Jersey, meaning Bergen and Passaic counties, could run out of water. Overdevelopment -- we've seen the impact it's had on water quality where, in the summertime, 90 percent of the flow in the

Passaic River is sewer effluent. We've also seen a water planning process that's been broken for too long.

And the reason we supported the Rules wasn't because these were great environmental rules and the environmentalists got everything we wanted to. I would rate the Rules at about 65 percent. But the system before was at about 20 percent, because it was broken. We've had towns and counties -- Water Quality Planning Rules have been outdated for over 20 to 30 years. Many sewer service areas in the state, especially in some of the more rural and ex-urban areas, go back to water planning grants that were given out when Lyndon Johnson was President. And many of them were designed for regional sewer plants that were never built, because either the Federal money dried up or the towns didn't want to get that kind of development.

And so the concept of these Rules was to pull back environmentally sensitive areas; areas that didn't have major sewer plants; also to regulate septic for the first time, which was critical; and to look at water supply. Because many times we have areas where we're putting in sewers, and we have no water. A good example of that is Woolwich Township, where all of a sudden it becomes a growth area and they approve 4,000 units of housing because it's in the middle of a sewer service area. Meanwhile, there's no way to get water there.

We've seen areas that are in sewer service areas literally on the banks of New Jersey's major reservoirs. Union Township and Clinton Township, in Hunterdon County, on the banks of Spruce Run Reservoir -- on sewer service areas that go back to a regional sewer plant that had never been built. The same thing up in the Highlands region, where along the

Pequannock River system -- right above major water supply intakes. And so it's been a broken system.

And what was happening in the past -- instead of towns coming in or counties coming in and redoing their plans, basing it on protection of natural resources, making sure they have adequate water and wastewater supply -- we would have this piecemeal system where there would be one amendment after another; or in some of the more rural areas, they'd be coming in with package systems where they couldn't even get a sewer plant permit to dump the effluent into the stream, because the stream is either too high-quality or goes into a reservoir. And so we had this mishmash system. So these Rules were an attempt to try to bring that all together. And they're not perfect, but they're a major step forward.

A couple of things I just wanted to talk about when I hear some of the things about the State Plan. These Rules -- and part of your job is to look at these Rules and how they meet with the guiding authorities, legally, for these Rules, which were the State and Federal Clean Water Act, the New Jersey Water Quality Planning Act, and the Pollution Control Act. And they fit. There's no violation of those laws. In fact, in some areas, these Rules don't go far enough in implementing those laws.

The State Planning Act cannot be used. First of all, the State Planning Act cannot be used for regulation, and that's in the law. Secondly, these are regulatory boundaries -- part of regulatory programs, and so the State Plan can't be used. Secondly, the State Planning Act -- the State planning maps are based on 1986 flyovers and 1991 data. So talk about something that's obsolete and outdated.

Also, in the State Plan they never looked at water quality issues, water supply issues, wastewater issues, or endangered species, because that information was not available back in 1991. So the State Plan legally cannot drive water quality planning. And also, the State Plan is even more obsolete.

And when they say this was a top-down approach, for some of us in the room -- we went to stakeholder meetings for years to discuss these Rules from 1994 on, and we had proposals on these Rules in '96 and '98. So there's been a lot of bottom-up fighting over these Rules.

And the main thing I want to just end with is that sewers determine land use more than anything else. And if you run sewers into environmentally sensitive areas, you will create not only sprawl, but high-density sprawl, and it will have direct impact on water quality.

By running sewer lines into environmentally sensitive and rural areas, you're taking capacity and the assimilation out of your streams, and you actually hurt the redevelopment of urban areas. So one of the things that the State was trying to do with these Rules -- by clipping environmentally sensitive areas -- was allowing for more growth in the areas that already had sewers. Because there's only so much -- there's a finite amount of pollution we can put into our streams and rivers.

And so, again, we think these Rules are far from perfect. They're relatively balanced. The counties and the towns are getting more time to implement them. But they're an important step forward if we want to have drinking water for the future and to make sure that our land use patterns don't destroy New Jersey's water supply and create a cycle of flooding and drought.

Thank you.

SENATOR SARLO: Thank you, Jeff.

ABIGAIL FAIR: My name is Abigail Fair.

I'm here on behalf of the Association of New Jersey Environmental Commissions. We are a statewide, educational, nonprofit organization serving environmental commissions, local officials, and the public. ANJEC, which we call ourselves, aims to promote the public interest in natural resources, especially water resources -- their preservation and sustainable development.

There's been a lot of information put out today. I want to go back a little bit. I probably will be repeating a little bit of what Jeff just said.

DEP does have the authority to protect environmentally sensitive areas, and they have to use the best available data they have. And I've heard a lot of criticism of that data, but they have to start with something.

The original 1990 WMP regulations did not require plans to protect waters from secondary or nonpoint source impacts caused by zoned-for growth that the wastewater infrastructure would have to support. As a result, in 2000, Governor Whitman acted to correct the problem after all the stakeholder meetings -- or before them even. She issued Executive Order 109, which has been in place until these new regulations incorporated the Executive Order. It directs DEP to ensure that WMPs examine alternatives, depletive and consumptive water use, pollutant loading; and it directs DEP to conduct environmental build-out analysis to take into account the constraints to development from the presence of

environmentally sensitive areas. So that was nine years ago. Anyway, the Rules were proposed, and they incorporated Executive Order 109. We support the Rules. As Jeff said, they're a much-improved version of the Water Quality Management Planning process.

We do have problems with them. We have deep concerns that they allow -- and perhaps this is an important part, but we are concerned about how it is going to happen. If development is going to happen outside of suburban or urban areas, the rules do provide that they can, in fact, have cluster development and that, in fact, the standards will be lower in the cluster development. So we are concerned about that.

The rules only protect environmentally sensitive areas that are over 25 acres in size. Wow, that excludes a lot of areas that could, in fact, create terrible impacts. The steep slopes are defined, but they're apparently not required to be mapped so that they could be taken into account in the build-out. Open space under 10 acres is excluded from mapping in the build-out analysis. This could create the perception that there's a lot more really easily developed land out there than there really is.

Use of GIS is very convenient, and it means that the scale of the mapping, most often, is very broad. And this is one of the criticisms we've heard from the building community. However, the rules do provide that more detailed maps will be accepted by DEP. And it's going to be a process of, in fact, incorporating the more detailed maps.

Again, DEP is using the best data available. And this data has been used in the wetlands program, the flood hazard area program, and other programs of the State without being challenged.

I would like to point out that I was a municipal official for 27 years. Our planning process depended on data from the State, which was broad. And our caution has always been, "Please, this isn't site-specific. This is a broad planning document. We've zoned in accordance with it. But there might be site-specific information that you have to be aware of; but we can't deal with it until it comes down to a development proposal." This is -- unless it's different in your town, that's the way our town used to work, because we just didn't have good site-specific information.

I think the Rules were no surprise. I think I'm getting the feeling from the developers they knew they were coming. And it's the specifics of the mapping that seem to be the most contentious.

The one recommendation I would have is that the DEP require public hearings in each municipality. This would be one way that those poor folks who don't know that they might not, all of a sudden, be in a sewer service area could find out. And then they could start the process of getting their information into the whole process.

That concludes my recommendations.

I would just like to say that we need these current regulations implemented. We need to avoid extending permits forever, based on very old data. We need to give predictability to building interests and municipalities, and I believe that these rules can do that. We need to prevent escalating costs from sprawl development.

Thank you very much.

SENATOR SARLO: Thank you.

David.

DAVID PRINGLE: Thank you, Mr. Chairman.

David Pringle, Campaign Director for the New Jersey Environmental Federation.

I also appreciate being here. It feels a little bit like Groundhog's Day, because 13 months ago pretty much everybody said the same thing at the last hearing before this Committee on this issue, before the Rules were adopted. But now that they're a reality, I think it's important for all to be heard.

SENATOR SARLO: Actually, Jeff said 50 percent then. He went up to 65 percent. So 13 months--

MR. PRINGLE: And if you ask him in three days, he'll probably give you a different--

SENATOR SARLO: He never gives you 100.

MR. TITTEL: I'm over 50 now. I'm getting Alzheimer's.

SENATOR SARLO: Jeff will never give you a 100 percent grade.

MR. PRINGLE: It's art. It's not precision or science.

In addition to our testimonies, several other environmental groups will, and/or have already submitted testimony. I know the American Littoral Society has, and the Pinelands Alliance is planning on it, and I'm sure there are others.

The first question I want to tackle is legal authority. The Federal Clean Water Act is a presiding operative law here. New Jersey has passed several laws to implement the Clean Water Act, as well as go beyond that -- the Water Quality Planning Act, the Water Pollution Control Act, Endangered Species Act, etc. All of those give plenty of underlying authority for these Rules. So we really don't think it's germane for testifiers

to be questioning whether DEP has the authority to propose these Rules in the current form or not.

Second, I want to talk about -- and I heard someone say that these Rules threaten the economy. Nothing could be further from the truth. They don't stop growth. They help ensure growth is better than it has been in the past, that it's a step in the right direction to ensure that we're developing in the right places as opposed to the "wrong" ones. Sprawl is incredibly expensive and unsustainable. And it is good business to grow right. And these Rules help grow right.

New Jersey's three largest industries are water reliant: pharmaceuticals, food processing, and tourism. Anheuser-Busch is in Newark because of the clean and plentiful water supply in New Jersey. And these Rules help sustain that.

In the testimony that the Pinelands Preservation Alliance will be submitting, Carleton Montgomery writes, "Barnegat Bay is dying. It is people who are killing it." And we have the science to back it up. It is because of how we have developed in Ocean County that Barnegat Bay is in the sorry state that it is. Without stronger rules like this, that will get worse. And what is the economic cost if we lose Barnegat Bay or if it becomes a glorified sewer retention basin, which it is on a path to become?

That includes what is of value to our crabbing, clam, shellfish industries. New Jersey used to be a leader in oysters, and they are no more, because of crashes. So there are many economic factors that need to be looked at here, not just whether a builder on a hundred acres is getting premium return on the investment that they made.

In the movie *Field of Dreams*, Kevin Costner says, “If you build it, they will come.” And that’s the same with sewers. Just like roads, they determine how much growth occurs and where it will occur. These Rules are the sixth effort in 20 years to update these sewer plants. The first five all failed. The first was never even proposed. The four were so horrible that the environmental community and many others -- and sometimes in league with the builders -- opposed them. And we finally have these Rules before us. They’re far from perfect, but they are a significant step in the right direction. They’re moderate, they’re balanced. Several of the pieces are quite reasonable. We’re starting to look at developments on septic when it’s six or more units, as opposed to the past where there was 50 or more; to strengthen the standard for nitrates, which is a fancy name for where we go number two, so that the standards are much stronger to protect human health as well as the environment; and to remove environmentally sensitive lands from overdevelopment on sewers.

There are several provisions in the Rules that aren’t strong enough, or actually weaken standards. Looking at watersheds at a HUC 11, which is a much larger scale than at a HUC 14, the Rules omit absolutely critical data in terms of what is an environmentally sensitive property, where recharge areas are, where our surface water intakes are, wellhead protection areas, contiguous forest. All of this data is not in the Rules. So to suggest that these Rules go too far is a hyperbole at best.

The same flaws that (indiscernible) lack when we talk about the State Plan -- the State Plan is even more flawed than these Rules, because they lack that kind of key data. So these Rules were 20 years in the making. It’s the sixth effort. To suggest that we need to wait or slow down

to get it right-- How long do we need to wait? How slow? When we're entirely built out and it's after the fact? Business as usual in the sewer business is killing the state. And it would be -- and killing irreplaceable treasures like the Barnegat Bay.

So we urge the Committee to provide the political support to the DEP, to make these Rules a reality, to strengthen them over time, to ensure that we develop in the right places, and to give the DEP the courage to not permit the kinds of delays they're already permitting. They've acknowledged there are huge flaws, and they're already delaying their own Rules. So we would respectfully urge the Committee to give the DEP the political cover they need, as well as the resources. DEP, in the last few years, has been cut by 30 percent. That's on top of the Whitman cuts. And they're being asked to do more and more.

So with that, I thank you for the opportunity to testify, and look forward to working with you on this issue.

SENATOR SARLO: Thank you, David.

Thank you to the panel.

I just want to-- Back when we did meet 13 months ago, this Committee -- not that it was binding -- but we did find that these Rules, the Water Quality Management Rules, did fall within the intent of the Federal Clean Water Act. We did find that back then and still believe that today.

However, one of the reasons we're here today is, we're taking this Committee a step further. We're kind of hearing a little bit about the implementation and the process. And I think the Committee did find that, yes, this was the intent of the Federal Clean Water Act. And if the

Legislature felt it wasn't the intent, there would be some type of resolution to try to overturn these Rules. That's not happened.

But I think there is some concern with the implementation and the process, to make sure we're striking a balance. And I think that's the key word here, to make sure we're striking a balance. We all agree we need good water quality. I hear you loud and clear about Barnegat Bay. It upsets me to know about the Barnegat Bay. Having something down the shore and being on the Barnegat Bay often, it does upset me to know of the environmental conditions of the Barnegat Bay. So I just want to make it clear here: We're not questioning the intent here, but we're concerned about the process and the implementation.

A question I have is: From the environmental community, do you believe if we had more site-specific information, it would make these Rules better?

MR. TITTEL: I think it can. Because, again, I think the more information we have, the better the transparency. One of the reasons we think these Rules are a step in the right direction is because, right now, it's a piecemeal approach where people come in-- Because plans are out-of-date, everybody has to come in for an amendment to try to move a line a few feet one way or the other for a project. So the better the data we have, I think the better you can make decisions. So absolutely.

I mean, part of the problem we have is, we have limited resources. I'd like to see, as part of this whole planning process, more public involvement. But the problem is, DEP doesn't even have the staff for it. Just like when someone mentioned we should mail to everybody-- If we mail to all the property owners, there would be no money for anything

else in DEP. I mean, that's one of the problems we're facing right now -- that DEP doesn't always have the access to the data because they don't have the money. It takes them a number of years to take their flyovers and to digitize them.

SENATOR SARLO: But you do agree that people should be notified?

MR. TITTEL: I do. But how do we do it in a way -- when we don't have the resources? I mean, that's what you have to look at -- is that balance of-- And part of the reason it may take longer to get some of the plans approved is they don't have enough staff. Because the average person in land use, for instance, has to handle 40 applications at one time. DEP has had bare-bones budgets for a long time. They've now had a series of cuts. So the resources aren't there. I mean, I wish we had the money we had back during the Water Quality Planning days, when they were throwing money all over the place, so that we could actually do a better job and give more input into the process. Absolutely.

SENATOR SARLO: Do you have concerns that these Rules will lead to more suburban sprawl, more septic?

MR. TITTEL: I actually think that septic that are properly installed in rural areas do a much better job than sewers. And I'll use Lake Hopatcong as an example, because you've seen all of the stories about not having water. Two million gallons a day out of that watershed gets removed because of the sewer system, and dumped downstream. And so that's robbing that watershed, which is a relatively small watershed, of water.

In the rural areas, having large-lot zoning is the only way you can go. Because if you run sewer lines in there, instead of getting large-lot

sprawl, you're going to get high-density sprawl, which is going to have bigger water quality impacts. What we really need is to have a better system of transferring development from those rural areas into urban and growth areas, and to have a better program in place to buy some of those environmentally sensitive lands to limit development in those areas.

One thing I just wanted to follow up with is -- because one of the concerns I've heard-- We don't want to see COAH plans drive water quality planning. It should be the other way around. Sites for affordable housing should be based on the best site where you have the availability for infrastructure, you have available water and sewer, not to put them in the middle of nowhere and create a sprawl zone out in the middle of nowhere, like a Windy Acres or something like that.

SENATOR SARLO: David, did you want to answer that?

MR. PRINGLE: I just wanted to go back to the -- can we use more site-specific information? We can't know enough. But not knowing enough can't be an excuse for delay. These Rules should have been in place 15 years ago. So we can continue striving to learn more, but we have to push forward fast, and we can continue to refine the process as it moves forward.

MS. FAIR: I'd like to also comment on that. It seems to me that including the municipality is very essential. The basis for the Wastewater Management Plan is local planning and zoning. Local planning has a much better opportunity to, in fact, identify more site-specific data than the State does. I think it would be just too resource-intensive to say the State has to go to more site-specific information.

This (indiscernible) process, unfortunately, does take time. But that's the way it has to work to be economically feasible, in my opinion.

MR. PRINGLE: You can always build later. It's much harder to unbuild later. So we kind of follow the Hippocratic oath of--

SENATOR SARLO: Anyone on the panel, do you believe there is a conflict between what COAH and various overlays have been approved, with regard to the restriction?

MR. PRINGLE: COAH has a conflict with everything.
(laughter)

MR. TITTEL: I mean, some of the worst projects-- I'll use the example, again in Hunterdon County, of Clinton Township and Union Township out there. These are areas next to reservoirs. And they were environmentally sensitive areas, CI streams. And yet Windy Acres becomes a COAH site, 900 units on top of a trout stream. They could never get a sewer plant there. It just doesn't make sense.

SENATOR SARLO: I'm not sure -- I haven't seen any mapping -- but I can guarantee you there's vacant land on there that COAH's assuming is going to be available for affordable housing.

MR. TITTEL: Right. And it's not.

SENATOR SARLO: And DEP is coming along on the other side -- is taking that same parcel of land, and taking it outside of a sewer service area.

MR. TITTEL: There is a piece of property in Washington Valley, Morris County, which was a COAH site. The County wanted it for a jail. The County planning department wanted to buy it for open space.

DOT wanted to put a garage on it for Route 24. So you had basically four different agencies fighting over the same piece of property.

SENATOR SARLO: Well, thank you. Thank you, the three of you, for being here.

And I just want to acknowledge what David said. There have been various other environmental groups that have submitted testimony. Their testimony will be compiled as part of the transcript.

I also want to acknowledge -- just acknowledge that they have provided written testimony -- New Jersey Future has provided written testimony; as well as the Somerset County Planning Board, on how they have been working through this process. And it appears to us that they are kind of ahead of the curve in trying to deal with this issue.

This wraps up our hearing this morning. I want to thank everybody for being here. I do apologize that there are not more members here. But everybody will be provided a transcript.

And, again, I just wanted to acknowledge that this does -- one second folks -- that back on May 1 of last year, this Committee did find that these Rules were within the intent of the Federal Clean Water Act, and we've monitored over the period of the last 13 months. As we sit here today, we hear from stakeholders on both sides of the issue. And there are some areas where these Rules need to be improved and need to be taken a step further, and cleaned up.

Just a few comments I want to finalize and make here. I would hope that we continue an open dialogue between all the stakeholders and the Department. I would urge the DEP not to provide a definitive date at this time until some of these submissions get further along. I would hope

there are no punitive damages to any counties that are currently working on these and trying to comply with these Rules. There has to be a way to notify affected property owners. There has to be a way. In this day and age, we have to find a way. It's kind of unacceptable, I think, to the Legislature that we're not going to notify affected property owners.

I would think the DEP, with the stakeholders, need to rely on more site-specific information data that's out there. Whether it's coming from the counties or other stakeholders in this process, the more data that we can put toward these, the better off we're going to be. And we need to also look at the inconsistencies between what COAH is planning and what the Department is planning, as I said previously. I believe there are probably some conflicts. Vacant pieces of land, where they think affordable housing can be built on, no longer will have a sewer service area. It doesn't make sense for the planning community to go forward with things like this.

And then the final thing I just wanted to mention is-- Well, just one other thing with inconsistencies. It also goes for not just COAH, but the State Plan map where there are inconsistencies between those two.

And then the final thing is, I believe there should be some type of appeals process. In this day and age, taxpaying citizens in New Jersey at least deserve to be heard in an appeals process. The everyday person is paying taxes on the property. Just because he's not been a vocal critique or -- he may support the environment -- I hope everybody in this room supports the environment and supports good water quality -- but they at least deserve the right -- their property is being affected.

I want to thank everybody for their input. All the panels were excellent. And I want to thank you for your input. Hopefully you'll

continue to work together with the Department to make these Rules even better.

(MEETING CONCLUDED)

APPENDIX

plan

Senate Legislative Oversight Committee
Hearing on DEP's Water Quality Management Rules
June 4, 2009

Thank you for holding this important hearing and inviting me to speak. My name is Dianne Brake and I have been a land use planner for almost 30 years, 25 of them at PlanSmart NJ. PlanSmart just celebrated its 40th Anniversary last year.

Sewer service may not be a sexy topic, but it is one of the most important underpinnings of society. As planners, we take sewers very seriously. Without them, we would have squalor, disease and death.

In 2007, we brought all of our experience to bear on an evaluation of the proposed Water Quality Management Plan regulations. We submitted six pages of comments – including praise for some new ideas in the rules. But our overall assessment was that the rules would likely **obstruct growth, promote sprawl** and therefore **degrade the environment**. In fact, PlanSmart NJ became the only non-profit to ask DEP to start over.

We felt that with the best of intentions, **DEP had written rules that would end up protecting land from becoming sewer**, instead of protecting water quality and providing the infrastructure New Jersey needs for communities to prosper. We believe that **infrastructure should follow land use**, not the other way around.

As things stand today, we still think the rules are likely to obstruct growth, promote sprawl and degrade the environment. Let me quickly go through each of these three points.

Problem 1: Obstructing growth: PlanSmart NJ is not an advocate of growth for growth's sake. We support growth that is needed to make conditions better. And we don't want growth just anywhere: **we want growth in sewer service areas in mixed-use centers**. Last year PlanSmart NJ completed a four-year Smart Growth Economy Project which showed us how desperate our economy had become, headed for a Rust Belt-like obsolescence. And this was before the current economic meltdown. New Jersey must ensure that its regulations do not obstruct companies from staying and growing in New Jersey. It is vital for the state to work to come out of this recession stronger than before.

Here is how the regs obstruct growth in sewer service areas:

1. DEP wants counties to draw back existing sewer service boundaries, so that less land will have access to sewers. These boundaries are different from the State

Plan cross-acceptance maps where there is broad agreement on appropriate growth areas.

2. Furthermore, DEP wants any undeveloped land of more than 25 acres **within** sewer service areas to be removed. This undermines planning for the future in areas that had already – painstakingly – been agreed as growth areas.
3. DEP asks for a plan based on an analysis of the capacity of the existing infrastructure and want the land use plan to fit within that cap.
4. The regs do make it possible to expand the sewer service area or the treatment facilities – but it is not easy or clear what criteria DEP will use to make a decision

Today, when our economy is already threatened, these obstructions are dangerously unacceptable. We firmly believe that DEP can fulfill its mission of protecting water in particular and the environment in general **without killing the economy**.

Problem 2: The regs promote sprawl. The regs promote sprawl by striving to manage septic areas by means of a watershed-wide restriction based on a model that is expected to create patterns of 4-7 acres per unit – **sprawl in its most elitist form**. Further, it is difficult to see how the septic areas will be managed, since watersheds cross municipal and county boundaries. And that brings us to problem # 3.

Problem 3: The regs will degrade the environment: To the extent that the regs obstruct growth in sewered areas, they push it into unsewered areas – if not out of state. That is sprawl. The regs encourage by default large lot sprawl, which all agree will degrade the environment. There are better ways – better rules – that could be adopted.

First, get all agencies of government to agree on growth areas that will meet all the state's needs. No more fear of Home Rule or platitudes about Smart Growth. Get specific – **How much growth? Where? To achieve what?** This will take leadership from the Governor and the Legislature. PlanSmart NJ has developed a framework for performance measures to hold the state agencies accountable. It includes government setting targets for **the jobs and housing** that we need, and finding places for them that will achieve three other targets: 1) **optimize transit** use to meet our greenhouse gas targets, 2) **reduce the concentration of poverty** to reduce the state and social costs it brings; and 3) **improve environmental conditions** and **protect prioritized natural resources** from growth.

In the past, DEP thought that reconciling their regs to meet other state goals is asking them to step away from their mission. This is far from the case. We only ask that they change their approach to their mission so that it does not undermine other important state goals. It can be done. It must be done, or New Jersey's future is very much in jeopardy. Thank you.

August 20, 2007

Gary J. Brower, Esq.
Attn. DEP Docket Number : 10-07-04/527
Office of Legal Affairs
N.J. Department of Environmental Protection
P.O. Box 402
Trenton, NJ 08625-0402

By email

Dear Mr. Brower:

PlanSmart NJ is the new name for the Regional Planning Partnership. We are pleased to submit our comments on the proposed Water Quality Management Planning rules. Our comments are based on our experience over the last 39 years researching, testing and advocating the best land use planning practices to produce better outcomes for New Jersey's economy and its environment, as well as improve regional equity and resource efficiency in the State.

Protecting New Jersey's watersheds, maintaining and improving water quality, and directing infrastructure investment in a fiscally and environmentally responsible way are all connected to our mission. We have been actively involved in issues regarding wastewater management planning for many years, and for as long, we have looked forward to a significant overhaul of these rules.

We would like to congratulate the DEP staff who have labored so hard and long to produce rules that will end the years of layering amendments to outdated plans, and begin to address the vision for water quality protection outlined in the Clean Water Act. In particular we are pleased that this rule has the following characteristics:

- Begins to address land use issues through the requirement of zoning build-out analyses
- Is based on county-based water quality management planning, which provides a practical approach to administering watershed-based plans. Reviewing only 21 plans will be more manageable for DEP staff, but we strongly encourage DEP to increase its staff to produce the data needed to support consistent plans and a quick-turnaround time for reviewing plans, and to provide the technical assistance to the counties' planning staff.
- Supports center-based development patterns and provides opportunities for residential clustering.
- Is based on capacity-based planning to understand better where infrastructure should be capped and where it should be expanded.
- Introduces the concept of beneficial re-use, connecting the wastewater rules for the first time to water supply.

However, PlanSmart NJ's reading of this rule has produced some serious concerns about how effective this rule will be in producing its intended results. We look forward to better understanding DEP's rationale behind certain aspects of the rule by asking you to supply the answers to the following questions:

1. The current New Jersey State budget has a significant structural deficit. According to some measures, New Jersey has the fourth-highest amount of state debt in the country. As part of his plan to remedy this situation, Gov. Corzine expects his agencies to support significant economic growth in New Jersey over the next few years.

Even allowing for significant in-fill development and revitalization efforts, which this rule does little or nothing to support, the Governor's growth target will require significant amounts of suburban land to be integrated and densified, and may even require some amount of Greenfield development to promote the functionality of the existing land use pattern (to promote transit over auto-dependency, for example). This rule, however, seems intended to thwart these efforts. Instead, the rule seems to be written to "protect" more land from sewers, and to reduce the amount of development on the land remaining in sewer areas. PlanSmart NJ knows from years of experience that this approach will hurt the state's pursuit of many goals and does little to protect natural resources. Instead, DEP will hurt the economy, impede racial integration and encourage sprawl style development of low densities (but not conservation densities).

Has DEP analyzed whether this rule will provide enough land and infrastructure capacity in the right places for regional growth that will meet Gov. Corzine's targets? Has DEP analyzed whether this rule will encourage growth in growth areas, discourage sprawl and improve water quality? How has this been measured and how will the results be monitored?

2. Another significant plank in Gov. Corzine's platform addresses housing, specifically housing affordable to median wage earners. **Under this rule, significant amounts of housing opportunities will be eliminated.** This occurs in three different ways.

1.) The way protected open space is handled in the calculation of build-out encourages sprawl without improvements to the economy, equity or the environment. Municipalities can choose to consider land that is permanently protected from development as if it were available for development in their build-out analysis. This will result in a calculation of wastewater flow that is higher than is warranted. If the overestimate will exceed the existing treatment capacity, this will then lead to a municipality opting for one of four outcomes allowed in this rule: 1) expand/build new treatment plants, which may not be needed in reality; 2) reduce the area within the sewer service boundary, which may not be warranted; 3) reduce the amount of development allowed by zoning, which is likely to be accomplished through downzoning to sprawl levels, rather than conservation levels; or 4) perform I&I analysis to find ways to meet the needed capacity. The first three options do not serve any planning or environmental goals and the second and third choices will eliminate housing opportunities – simply because of a misrepresentation of development potential. **Has DEP analyzed whether or not these regulatory hurdles and density changes will allow enough housing opportunities in New Jersey to meet the Gov.'s workforce targets?**

2.) The flow standards to be used in the calculation of build-out overestimate the amount of flow that is likely to be produced by actual development. Your proposed values for wastewater flows per unit, taken from your non-residential converter section are 500 gallons per day. Rutgers University (Burchell, 1992/2001) and the Delaware River Basin Commission (1999) have researched this number to in fact be an average of 232.5 gallons per day for three and four bedroom households, and 125.25 gallons per day for one and two bedroom households. By using such a high value per unit in the

proposed rule, fewer total units will be permitted under existing treatment capacity – again working to reduce the amount of development, with no improvements to the economy, equity or the environment. **Why has DEP chosen a gallons-per-day figure more than double the standard demonstrated in existing research, and how can they show this will not reduce the allowable housing opportunities – essential to New Jersey’s economy and regional equity – that would otherwise be permitted by the ecosystem capacity?**

- 3.) The effort to transfer the amount land in sewer service areas to septic service areas may protect land from sewers but not from development – it will instead encourage sprawl and reduce water quality.** Preliminary analysis of this rule suggests that the new sewer service boundaries will be smaller – perhaps significantly smaller – than the current ones. Given that the allowed density in the septic portions will be lower than the sewered portions, a large amount of housing will then be eliminated from potential production, with no offsets to encourage housing development within sewered areas. **Given that there are land use plans, best management practices and other tools available, has DEP considered how to protect water resources at the same time as meeting appropriate levels of development in appropriate places? Has DEP ensured that this rule will not prevent housing from being built to meet the needs of New Jersey’s future workforce and produce affordable housing in areas that have already allowed job growth?**
3. The septic system nitrate dilution standard in this rule will likely result in encouraging a residential density of around 4-7 acres per unit in many non-sewered communities. Residential density at 4-7 acres/unit essentially guarantees the total price of a home will be unaffordable to the median worker in New Jersey. It will also result in fragmenting habitats and producing polluting levels of impervious surface within areas that should be protected better than this standard. Research in the Pinelands suggests a maximum density about 3.5 acres or more per unit to protect watersheds, but they have based their permitting on a land use plan that has significant density variations and this standard does not create a blanket 3.5 acre unit standard across the region.

Given Gov. Corzine’s pledge to build 100,000 homes in 10 years that are affordable to the median worker, how can DEP show this rule will not hinder that goal? Is DEP expecting the layering of their rules to protect resources, requiring a T & E rule to reduce development in septic areas even further? Why not recognize the land use implications of these rules more directly and propose rules that will encourage development in growth areas that can improve existing conditions, and restrict development to real conservation levels in areas outside of growth areas?

4. While this rule allows for “centers” to be built in Environmentally Sensitive Areas (ESA) that are approved through State Plan Endorsement, it is unclear how those centers will relate to either the surrounding ESA or the sewer service areas. Indeed, given the uncertainty surrounding Endorsement, it is unclear how centers will be planned for at all, let alone monitored for results. PlanSmart NJ supports center-based development to provide for appropriate jobs and housing growth in otherwise rural areas – it is the only way to protect the land from sewers and from sprawl development – but we have questions: **How large will endorsed centers in ESAs be expected to be? How many will be allowed? In what ways might growth from the “non-growth” (septic) areas be re-directed into the centers, through programs like TDR, mandatory clustering, conservation zoning, or lot averaging? What kinds of sewage treatment**

technologies will be allowed? Will DEP expect regional management of these sewage treatment facilities?

5. One component of this rule will be to change the process by which sewer service boundaries are delineated. One part of this process is to exclude from sewer areas any ESA greater than 25 contiguous acres, as identified by the Landscape Project. On page 143 of the rule, DEP assumes this standard of 25 acres will protect approximately 90% of the ESA habitat in New Jersey. At the same time, this rule would place residential density in the same areas around 4-7 acres per unit. This level of density tends to destroy more habitat than nearly any other development pattern. Some have even called this pattern "sprawl by septic." Again, PlanSmart NJ points out that protecting land from sewers will not necessarily protect it from development! **How can DEP show that 90% of the designated ESA will be protected, given the type of development associated with the residential density it is requiring?**
6. Under this rule, a nitrate dilution standard must be maintained across each HUC 11, far too broad an area. This kind of averaging across such a large area means water quality within a HUC 14 may not meet the water quality standard, while the overall HUC 11 does. This is yet another instance demonstrating that DEP is trying to protect land from development by taking it out of sewer service areas – a false protection indeed. It does little but encourage sprawl and does nothing for environmental protection.

PlanSmart NJ proposes that a more transparent, direct and effective approach is to set the land use standards by assessing the impervious cover of each HUC 14, a simple enough analysis, and examine the build-out of zoning within that HUC 14 area, another simple analysis using tools such as our own GOZ model. This would allow DEP to connect the build-out analysis to effective wastewater management plans that will reflect identified growth areas, encourage growth in them, and reduce sprawl and protect natural resources, including water supply and water quality.

Another problem with using the HUC 11 as the assessment level is that if one HUC 14 within the HUC 11 develops more quickly than the others, all other development within that HUC 11 may be prevented. This is a flawed first-come-first-served approach that fails to address the cumulative impact of development, fails to prioritize development that is needed to reach goals and ignores the benefits that land use planning can provide.

How can DEP show this rule will maintain water quality that meets the nitrate standard within individual HUC 14s, some of which may be extremely important to overall water supply and water quality standards? How can it show this rule will not increase pressure on the "ratables chase" encouraging towns to pursue commercial development everywhere and obstruct housing where needed?

7. Currently, local municipalities and counties have a long and varied list of requirements to meet through the permitting and cross-acceptance processes. One way for State government to reduce this burden is to streamline and coordinate some of the steps. One simple step DEP could take is to advocate the standardization of the build-out analysis used by all agencies, ensuring that all the necessary impacts (wastewater flows, housing units, traffic, etc) were included to suit various departmental requirements. Build-out does not have to be expensive, but when a municipality or county must perform different analyses for different agencies the total expense can increase quickly.

PlanSmart NJ was surprised to find that DEP, under this rule, has chosen to ignore *its own* build-out methodology, used in the stormwater rule. **Standardizing build-out will not only make for a more efficient process, it is the only way DEP will be able to add up municipal build-out analyses and cut it by HUC 14s, HUC 11s, or any other way it needs to analyze the land use impacts on natural resources.**

Why has DEP chosen a methodology for the wastewater rule that is different from both its own stormwater rule and that of the Office of Smart Growth?

8. Thinking regionally, and taking the above points together, this rule would potentially reduce growth opportunities within “growth” (sewered) areas, while at the same time increase sprawl in “non-growth” areas. At the same time, there is no way to show that these rules will actually improve the protection of water supply and quality – the intended outcome of the Clean Water Act. We understand that this has not been DEP’s intention, but it remains as a likely result of the process. **How has DEP considered the impact of this rule on “growth” versus “non-growth” areas? Can DEP demonstrate that this rule will encourage growth in growth areas, reduce growth in “non-growth areas” and improve water quality?**
9. As we have said repeatedly over the years, we feel that the Department has the explicit statutory authority and responsibility to protect the environment and that they can do that through all means possible, including enlisting land use planning. We feel that DEP is laboring to layer multiple command-and-control style rules to achieve through permitting what could be done more effectively and efficiently through regulations based on land use planning.

The proposed rules demonstrate that DEP is trying to protect the environment by reducing the amount of development. The result, however, is likely to hurt both the State’s economy and its ability to reduce racial and economic segregation and auto-dependency and to accomplish these blows with little or no benefit to the environment!

Land use planning that encourages growth in growth areas and conservation levels of development in conservation areas – not a blanket of medium density across the state – will provide a far stronger basis, producing better environmental results, for DEP’s permitting programs.

In what ways has DEP considered how to use land use planning standards as part of its approach to protecting water supply and quality. What will the impacts of this rule on land use, and what is DEP currently doing to ensure (as opposed to encourage) that effective changes are made to land use policy to encourage growth patterns that will protect water resources? In what ways does DEP feel it affects land use, and where does it see its proper role in the land use process?

Finally, PlanSmart NJ identified five further specific recommendations to improve this rule and planning for water quality in New Jersey:

1. The rule should working toward a watershed-based approach to resource planning and protection – the only way to integrate effectively the many environmental programs that fall within DEP’s responsibilities. Programs can be administered at the county level for practical reasons, but should be analyzed and planned for by watershed. In order for

this rule to succeed in improving water quality, DEP must make data available for the planning process on the existing conditions and expected standards for each watershed.

2. The State Plan process should use accurate and detailed data from all relevant sources – including DEP – as the basis for identifying growth areas and conservation areas that will meet all of the goals listed in the State Planning Act. The State Planning Commission was given this duty as its statutory responsibility. DEP can support this **and** meet its own mission to protect natural resources and environmental quality in these growth areas and conservation areas by creating rules that are based on appropriate planning techniques, best management practices and effective permitting standards.
3. Conservation practices should be articulated and promoted in this rule – low-flow toilets, re-use of gray water, etc. can all be encouraged in every wastewater management plan.
4. Meaningful economic analyses of rules should be performed by Department of the Treasury staff, assigned for each department, including DEP, as is done in other countries such as Canada and Britain.
5. Build-out methodology should be consistent for all state agencies to provide data that can be compiled and cut for different purposes.

Thank you for the consideration of our comments. We will continue to support the work of DEP in protecting environmental resources in New Jersey in whatever way we can.

Yours sincerely,

Dianne R. Brake
President

plan

for the future

2008

Celebrating 40 Years

2008

40 Years At a Glance

1968

Founded as Middlesex Somerset
Mercer Regional Study Council

1970

Wrote *Housing and the
Quality of the Environment*

1974

Wrote *Region at a Crossroads*

1975

Developed Municipal Planning
Scorecard

1976

Developed *Plan X* to stop sprawl
in the Hopewell Valley

1978

Developed Model stream
protection ordinance

Amicus in *Mt. Laurel II*

1979

Turnpike becomes I-95 Corridor

1980

Analysis used to create
Agricultural Development Areas

1983

Farmland Preservation Act

Public Outreach for NJDOT's
first State Highway Corridor

1984

Founded the first private TMA

1985

Created the REGIONAL FORUM

Fair Housing Act

Common Sense Planning 40 Years Young

As planning horizons go, 40 years is a long time. In an era now dominated by demands for immediate results and a preference for short-term gain over long-term sustainability, the PlanSmart NJ organization has managed to keep itself at the forefront of rational planning and coalition building in central New Jersey and throughout the state. This success has been achieved by learning from the real-world experience of our members, who work on all sides of issues.

The result has been that we are now celebrating PlanSmart NJ's 40th anniversary, acknowledging how much we have changed and how much we have stayed the same. We have maintained our focus on our land use reform mission as we moved from Princeton to the state capital.

We have kept our eye on the big picture and the long-term, while changing from a behind-the-scenes, quiet organization working within a single region of the state, to a statewide force, vocal about what we see needs to be done while producing the tools and strategies to do it.

PlanSmart NJ is not the organization we were twenty years ago. Nor should it be. Times have changed here and so have we.

Celebrating our 40th Anniversary, however, we recognize that in the past four decades we have only begun to unlock the potential for better land use, better planning, and better lives for the residents of New Jersey.

And the work is even more important today than it was 40 years ago. Too many of New Jersey's economic indicators are currently falling at an alarming rate. Although the State's assets are enviable – a premier global location, world-class infrastructure, good schools, and a highly educated workforce – they must be respected and nurtured effectively to turn our economy around.

Instead, New Jersey's regulations reflect an attitude, unconscious as it may be, that the environment is fragile, but the economy can take care of itself. This is not simply false, it is dangerously false. There are other ports on the Eastern Seaboard. There are other states in the mid-Atlantic region which share our proximity to huge continental markets.

Without a paradigm shift – away from sprawl but also away from the fear of growth, New Jersey's economy may not recover.

The problem cannot be blamed solely on the disastrous financial crisis that is affecting the nation and the globe. Before that crisis emerged, New Jersey's economic indicators were already in a tailspin.

The problem is also associated with New Jersey's land use decision-making system, which is so broken that it obstructs hope for a steady economic recovery.

Without significant changes to plans, regulations and public investments across the board, New Jersey's economy is at risk of acquiring a Rust-Belt-like obsolescence.

From the files...

Forty years after it was founded in central New Jersey, modeled on the revered Regional Plan Association in New York City, PlanSmart NJ holds a unique statewide position striving for both economic and environmental goals, while reducing public costs and increasing racial and economic integration.

Marking the achievements of our 40 years at a statewide event earlier this year, PlanSmart NJ unveiled a comprehensive new agenda for land use reform. We demonstrated how to use the land use decision-making system to improve results for jobs, housing, transportation, water, open space, redevelopment, tax reform and racial and economic integration.

How did we get here? Founded in 1968 as the Middlesex Somerset Mercer Regional Study Council (MSM), this not-for-profit civic group has tackled the most important planning challenges facing the region and the state. Recognizing that these issues are by nature some of the most politically charged, the goal of PlanSmart NJ has been to forge partnerships and solve problems by engaging elected officials, leaders from the business community, and planning professionals to foster a spirit of cooperation and progressive action.

While the organization's move to become a statewide leader only became formal in 1999 with the adoption of a name change to the Regional Planning Partnership (RPP), the spirit of seeing the big picture has been a fundamental part of PlanSmart NJ's creed since its inception.

Rather than disparaging New Jersey's Home Rule system, often the bane of regional planners, PlanSmart NJ has sought to create solutions that bridge the gap between local interests by demonstrating benefits that transcend municipal boundaries.

A focus on policy debate as an instrument for improved planning and implementation brought PlanSmart NJ to the forefront of New Jersey's statewide planning system, even in the early days when its geographic focus was limited to central New Jersey. Already in the late 1970s, when tackling the regional issue of farmland preservation, then-President Samuel M. Hamill, Jr. said, "we realized early on that regional objectives could only be accomplished through state level policy changes."

Current President, Dianne Brake, emphasizes, "We have always found that local officials realize that traffic, watersheds, and other systems can only be dealt with by working with their neighbors within

(continued)



John McCoullough, a founding Board member. Below, Ron Berman receives the C. McKim Community Development Award at the 1995 Annual Dinner. Also pictured: Carol Beske, Chairman, and Tom O'Neill, former Board member.



40 Years At a Glance

1986

State Planning Act

1987

**Founded with partners
New Jersey Future**

1988

**Created centers framework
adopted in State Plan**

1989

**Wrote *The Growth Management
Handbook***

**Founded with partners the D & R
Greenway**

Highway Access Management Act

1990

**Transportation Development
District Act**

1991

**Wrote nationally recognized study
showing land use/transportation
connection**

1992

**Wrote *Mercer County
Green Links Plan***

Created the Planning Institute

1994

**Wrote and published *Redesigning the
Suburbs: Turning Sprawl into Centers***

1996

**Created the Regional Housing
Partnership**

1998

**Invented Goal-Oriented Zoning
and the GOZ® model**

40 Years (continued)

a larger regional context. The problem has been the failure of state agencies to create policies and regulations that establish that regional context. Without it, statewide goals remain unaddressed and local government spends time and money they don't have trying to meet ineffective regulations."

PlanSmart NJ is now weaving the threads of all the work we have done over the years. We have created an exceptionally comprehensive, and yet strategic framework to "connect the dots," developing tools and strategies to line up state, regional and local plans, regulations and public investments to work across jurisdictional boundaries and across issues to meet goals and reduce costs.

Core Issues, Core Values

Since 1968, the issues facing the region and the state have evolved, and PlanSmart NJ's planning efforts have matured, yet the organization's core issues have remained the same, land use policy that affects:

- Economic development
- Affordable housing
- Transportation
- Open space
- Water resources
- Governance

Individually, each of these elements represents a distinct regional issue in need of a watchdog group and planning facilitator. Collectively, they determine the future of New Jersey. PlanSmart NJ has worked to ensure the best future possible by identifying broad policy objectives and connecting them to unique local solutions. The goal is to move the practice of land use planning away from single issues and toward holistic efforts that anticipate new challenges that lie ahead.

Tools to Improve the Trade

Throughout its 40 year history, PlanSmart NJ has continued to focus on the most important themes shaping New Jersey's growth, its economic vitality and the quality of life of its residents. Most importantly, PlanSmart NJ has recognized that these themes are intrinsically linked and that every act of planning, whether well-designed or ill-conceived, affects another.

Over the past four decades, PlanSmart NJ has introduced a number of progressive planning tools, including:

- **Goal-Oriented Zoning (GOZ®)**, a GIS-based program that calculates zoning yield (build-out) and associated development impacts for existing zoning and Goal-Oriented Zoning alternative scenarios.

- **4-E Planning**, a process which stresses the interconnection between the economy, the environment, regional equity, and resource efficiency to reduce the cost of government.

- **PlanMapping**, a template, a map, and a strategy for resolving differences among various stakeholders who make planning decisions for a particular area.

- **TrendShift**, a three-step protocol for allocating statewide total projected growth to Planning Areas based on State Plan policies.

• **PlanMetrics**, a technique for creating a **Land Use Score** to describe base conditions and **Planning Calculators** to set regional targets. PlanMetrics break down goals into manageable, measurable regional targets that address issues affected by local land use planning, regulations and infrastructure decision-making. The metrics cover Jobs, Housing, Transportation, Water, Open Space and Poverty.

These tools have also followed the continued evolution of technology as a planning tool, particularly the explosion of geographic information systems (GIS) as an instrument for modeling and examining a variety of inputs and data sources in concert. All PlanSmart NJ's tools are created to help public officials manage complexity and optimize results on the ground.

Land Use and Transportation

As PlanSmart NJ President Dianne Brake has emphasized, it all comes back to land use. And what connects the myriad land uses in New Jersey and the region? Transportation.

Land use and transportation go hand in hand, and PlanSmart NJ was among the early organizations to recognize the importance of this link with its groundbreaking work to highlight how new growth in the region and in the state could be best focused to avoid rampant sprawl and traffic congestion.

Beginning in 1989, PlanSmart NJ welcomed the challenge of putting the newly created New Jersey State Development and Redevelopment Plan to the test. The Land Use/Transportation Project tested the hypothesis that building as the state plan suggested- in higher density, mixed-use centers, would reduce the growth in traffic. And while centers had often been defined as traditional urban cores, PlanSmart NJ had the vision to rethink the suburbs and redefine what could constitute a center.

Through a detailed research effort and with the support of highly qualified project team members, a steering committee, and peer review committee, the study emerged with a number of critical insights into New Jersey's new planning goal of center-based development: The Federal Transit Authority, which sponsored the work, printed and distributed the work nationwide.

1. Mixed-use centers significantly reduce the growth in automobile trips - by as much as 60% - and vehicle miles traveled by creating a setting which encourages the use of transit, and they make ridesharing and shuttle buses a viable option.

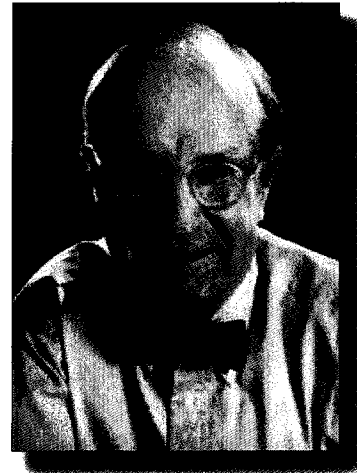
2. Promotion of strong urban growth along with suburban mixed-use centers provides the best regional results.

3. Regional benefits include: less growth of regional air pollution, less growth of fuel use, fewer traffic delays, less wear and tear on highway surfaces, and better preservation of the pace and overall amenities of suburban life.

These were important insights at the time and they remain just as vital today. Indeed, in 1983 PlanSmart NJ had already created the

(continued)

From the files...



Harry Sayen served as chairman of the Board from 1989-1989.



Sam Hamill, President from 1976 - 1990.

40 Years At a Glance

1999

Became statewide organization

2001

Wrote and published the
Green Infrastructure Guide

2002

Created TrendShift

Created Urban Growth Targets

2004

Founded with others
the New Jersey Regional Coalition

Transfer of Development Rights
(TDR) Act

Moved to Trenton into own building

2005

Launched the
Smart Growth Economy Project

2006

Created PlanMetrics, other tools

40 Years (continued)

first private transportation management association (TMA) on the east coast, the Greater Mercer TMA. This group, which continues to promote transit and ridesharing as alternatives to single occupancy vehicle travel, could now begin to see better development and policy decisions support the goals of reduced traffic congestion and increased availability and viability of public transportation.

PlanSmart NJ's work continues with advocacy for transit-oriented development, funding for transit infrastructure, and demonstration of the potential for zoning and land use planning to either foster or derail transit projects such as NJ Transit's plan for bus rapid transit (BRT) service in the Route 1 corridor.

Open Space and the Protection of New Jersey's Natural Resources

Along with sustainable development, PlanSmart NJ has from its inception considered the preservation of open space and natural resources to be a guiding principle. Attention was turned to the preservation of farmland in the late 1970s and in 1980 PlanSmart NJ conducted an analysis that became the basis for New Jersey's farmland retention program and for the delineation of Agricultural Development Areas (ADAs).

Building on this effort, the organization embarked upon a number of projects designed to protect and enhance the region's natural resources, as well as demonstrate how these resources had attracted growth and development in the past and, if threatened, could prompt residents and businesses alike to relocate elsewhere.

"I was struck by the fact that people seemed to know what they didn't want, but nobody had a view of what to do with the landscape," the late Harry Sayen (Board President, 1979-89) noted in the early 1990s. "There was a general recognition that we must work to keep the best and not destroy what was bringing people here in the first place."

To this end, PlanSmart NJ created and managed a major urban forestry demonstration project in 1992, developing the Mercer County

Green Links Plan and educational materials for local residents. Building upon this success, the *Green Infrastructure Guide* was completed in 2001 for the US Department of Agriculture, demonstrating the importance of natural resources in community planning and attracting national press and the attention of a national publisher.

Most recently, PlanSmart NJ has developed an Open Space Access Score, which evaluates a place on the



*PlanSmart NJ's first
Planning Institute,
author Joel Garreau,
center.*

From the files...

accessibility of its open space to neighborhood residents, pointing out the equity issue raised by the amount of investment that goes to suburban, rather than urban areas.

Governance

In addition to creating these pioneering tools, PlanSmart NJ has worked to shape important laws critical to New Jersey's future, including the Farmland Preservation Act, the Fair Housing Act, and the State Planning Act the Transfer of Development Rights Act.

PlanSmart NJ has also written handbooks on smart growth land use strategies (*Green Infrastructure Guide*, *Mercer County Greenlinks Plan*, *Growth Management Handbook*, and *Redesigning the Suburbs: Turning Sprawl into Centers*).

Following the theme of regional cooperation and consensus-building, PlanSmart NJ has also helped form numerous public/private partnerships and statewide coalitions, including D&R Greenway, NJ Future, the Coalition for Affordable Housing and the Environment and the NJ Regional Coalition.

"It's been highly important for [us] to assume a consensus-building role," Sayen explained. "Everybody comes to the table with his or her own particular interests. [This] is the only body to serve as an honest broker. It is not elected and has no majesty under the law. We've moved ahead with common sense planning positions and the power of ideas."

Economy and Justice

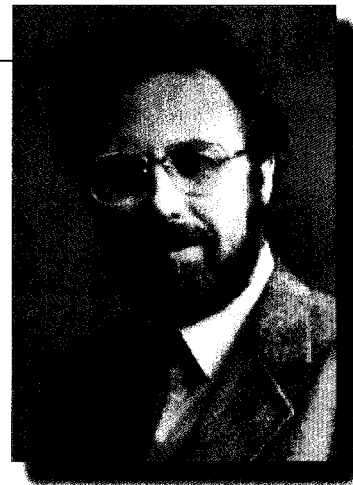
The economy and social equity issues, often overlooked in planning, have always been central themes of PlanSmart NJ's work. PlanSmart NJ's founders were business leaders in the Rt. 1 Corridor foresaw how un-managed growth would not only affect their quality of life, but their companies' bottom line as well. From early research linking housing and the quality of the environment, the organization has been a champion of fair housing policies and an effective balance of open space, single-family zoning, and concentrations of higher density residential development suitable to a range of income levels and available in a diversity of housing types.

In 1999, PlanSmart NJ created the Regional Economic Partnership to develop regional guidelines for local economic development activity, with over 70 recommendations to ensure that economic development would achieve smart growth.

In 2003, the organization partnered with others to form the New Jersey Regional Coalition to report on New Jersey's pattern of racial and economic segregation. PlanSmart President, Dianne Brake, is Treasurer of the Board and co-chair of the policy advisors. The Coalition, consisting of faith-based and union groups as well as policy organizations, focuses on organizing a constituency to support racial and economic integration, more affordable housing in the suburbs, property tax reform and stronger regional planning.

Equity issues are also addressed through PlanSmart NJ's planning tools, including the 4-E Planning framework, since problems such as concentrated poverty are costly financial burdens for all taxpayers that can be avoided with better planning.

(continued)



Mel Lehr, Board member and Former Assistant Commissioner NJ Department of Transportation.



Van Zandt Williams, Jr. Chairman from 1990 - 1996.

Bob Wolfe, Board member, former Chairman, and Regional Forum Chairman.



40 Years At a Glance

2007

Changed name to PlanSmart NJ

2008

Permit Extension Act

Wrote Handbook on Planning to
Protect Natural Capital

Built coalition of single issue
groups on united platform for
2009 elections

plansmart nj
better **land use**
better **lives**

40 Years (continued)

In 2005 PlanSmart NJ correctly foresaw the current economic crisis facing the State and launched our Smart Growth Economy Project. The project was designed to provide planners with an understanding of the economic engines driving growth in New Jersey. Without that understanding, planners would be unlikely to succeed in managing growth.

A Foundation for the Future

PlanSmart NJ's track record in its first 40 years bodes well for planning in New Jersey in the next 40. Its evolution from a regional civic group into a statewide planning and policy leader has led to important integrations of the business and planning communities and worked to build stronger ties among municipalities and special interest groups throughout the state. Combining technical advances, advocacy and outspoken, apolitical policy recommendations, PlanSmart NJ will continue to build on past successes by promoting its mission of improving the quality of community life through the advancement of sound land use planning and regional cooperation. ■

PlanSmart NJ thanks Christopher Henry, a transportation planner with Urbitran, for writing this article on our history. A former PlanSmart NJ intern, Henry is a cycling, photography and planning enthusiast.

For more details about
PlanSmart NJ, go to:
www.plansmartnj.org

WQMP/WMP Concerns and Potential Solutions

— Kamal Saleh
President

1. WQMP/WMP Lack of Consistency

Concern

- There is no consistent written guidance for each technical area that needs to be addressed in the Wastewater Management Plan (WMP). The Template Document on the website is a document place holder. The Model Builder Application relies on parcel mapping and grossly overestimates future flows.

Solution

- We recommend that the NJDEP author an official WMP Technical Manual by topic. The build-out methodology should be based on detailed zoning that accurately evaluates vacant land that is developable for future growth. If a county does not have parcel mapping and has developed an approach which more accurately estimates future flow when compared with the Model Builder, the county's approach must be endorsed by NJDEP.

Concern

- Some DEP review policies are inconsistent with the written DEP Rules. For example, in Section 5.24 and the County WMP Template lists criteria for "Sewer Service Areas in Environmentally Sensitive Areas" that is not being followed. Instead, criteria in Section 8.1 "Withdrawal" of designations is being used and NJPDES or TWA Permits are being required.

Solution

- Counties should be able to rely upon the written DEP rules and County WMP Template in preparing their WMPs.

2. Habitat Suitability/Sewer Service Area Boundaries

Concern

- We recommend that the habitat suitability component of the analysis be removed. Areas are being "clipped" from the existing sewer service areas based on data that is not reliable and in some cases not available to the public to refute. This puts the counties in a precarious position with our municipalities.

Solution

- The environmental sensitivity analysis should be based on concrete detailed information. The removal of GIS layers that grossly overestimate the potential for habitat for endangered species would ensure that clipped areas of 25 acres or greater are based on sound environmental decisions.

3. WQMP/WMP Deadline

Concern

- Deadline associated with the plan that is separate from the deadline assigned to the grant.

Solution

- Work with the counties to develop a workable approach to plan development that automatically links plan extension requests to grant extension requests.

4. Appeal Process for WQMP and other DEP Rules

Concern

- If a public member disagrees with the NJDEP on its determination there is no Appeal process in place other than preparing a Letter of Intent (LOI) and/or a Habitat Suitability Study which can be costly. There is no template for completeness for what the Habitat Suitability Study should include. This creates a situation where funds are expended by the applicant for studies that will be evaluated against a standard that does not exist.

Solution

- The NJDEP should establish an Appeals Body comprised of representatives from the housing and planning agencies to review all appeals and evaluate the complaint against established standards for determining significant environmental impact of the proposed project on the site.

5. State Agency Communication/Coordination

Concern

- Establish horizontal integration between state agencies to ensure communication on key policy initiatives for the development of affordable housing and the creation of economic development opportunities as well as future sewer service area planning.

Solution

- We recommend that the NJDEP take the lead to create a WMP Interagency Task Force that meets regularly with the NJDEP WMP staff and the County planners. This Forum would serve to answer any questions as the plans are being developed. Members would include representatives from key state agencies involved in housing, economic development and transportation. The Governors Office would also be represented.

9. Sewer Service Area Lines – Impact on Economic Development

Concern

- Redevelopment plans aren't addressed in WMP rules hence sites in redevelopment areas can be removed from SSA boundaries. The removal of sewer service for key redevelopment properties can impact the growth of a town or county.

10. County non Participation in Wastewater Management

Concern

- As Wastewater Management Plan participation is voluntary in participation, Counties that choose not to participate due to economic concerns, staffing limitations or other reasons should not be portrayed in a negative manner.



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OF CENTRAL NEW JERSEY

BUILDERS LEAGUE OF
SOUTH JERSEY

BUILDERS
POLITICAL ACTION COMMITTEE
OF NEW JERSEY

FOUNDATION FOR HOUSING

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT COMMITTEE

FROM: MICHAEL H. KARMAZ, PRESIDENT

DATE: JUNE 4, 2009

RE: WATER QUALITY MANAGEMENT PLANNING RULES

Good morning. I'm Michael Karmatz, Vice President at Orleans Homebuilders, Inc. based in Mt. Laurel. I am also President of the New Jersey Builders Association (NJBA). Here with me is Tim Touhey, Chief Executive Officer & Executive Vice President of the NJBA.

On behalf of the NJBA, I would like to recognize Acting Commissioner Mark Mauriello for his leadership, and thank him for his collaboration since his appointment and throughout this process.

I would also like to thank the Committee for the opportunity to appear before you today.

It was 13 months ago that this Committee last convened, and a similar assembly of panelists presented testimony regarding the then-proposed DEP Water Quality Management Planning rules. At that time, we raised concerns about the timing of such rules and DEP's ability to implement the new rules due to staffing and budgetary constraints. We also offered recommendations as to how these concerns could be addressed for the benefit of New Jersey's economy and environment.

Today, we look back at what has transpired over the past 13 months and assess what remains to be done, and we offer additional recommendations so that we can continue moving forward in an efficient and effective manner, for the benefit of all New Jerseyans.

Let me begin by stating that the NJBA continues to support coordinated regional planning and the provision of high-quality sewer treatment, just as we support efforts to upgrade sewer treatment facilities to New Jersey's high environmental standards. That being said, it is equally important to plan for the expansion of treatment capacity in all identified growth areas so as to accommodate smart growth principles as well as provide a strong base for the State's economic future.

The Water Quality Management Plan rules were adopted in July 2008 for the purpose of updating and consolidating Wastewater Management Plans, most of which were out-of-date. Each of New Jersey's counties was given the countywide planning authority and the responsibility to prepare revised plans. These plans were to have been submitted by the counties by April 7th of this year. However, the amount of work necessary to prepare these plans has proven to be enormous. It has required extensive staff time, and it has been a very expensive undertaking.

To date, only Hudson County's plan – which had already been under review for many years – has been approved, yet the rules provide that DEP would rescind sewer service areas if the plans were not submitted on time.

We are now two months beyond the April 7, 2009 deadline for the county submission of draft Wastewater Management Plans. While most counties have undertaken this planning responsibility, several have not. In those instances where counties have not done so, some municipalities and regional sewer authorities have assumed this responsibility.

Given these circumstances, it is clear that a deadline extension is both needed and warranted in order to complete this work. While the DEP has been granting short-term extensions to counties on a case-by-case basis, it would be prudent for the DEP to issue a uniform, two-year extension during this time of economic crisis.

To that point, financial commitments from lenders and investors require certainty that sewer service areas will not be revoked. Sporadic extensions to individual counties, municipalities and utility authorities – while helpful – do not provide such certainty. A two-year extension would allow the counties to more accurately and appropriately project their workload, spread-out costs, and schedule the phases of their submissions with DEP; this should also help to balance DEP's workload.

There had been some uncertainty in the regulatory requirements for the preparation of the initial sewer service area maps to be prepared as part of the Wastewater Management Plans. As it turned out, DEP prepared and distributed to the counties its initial assessment of the sewer service area maps. These maps are intended to show where sewer service currently exists and where sewer service should be provided in the future.

Most parties with a vested interest in the process attest that the DEP-initiated maps:

1. Are based on out-of-date information
2. Ignore longstanding regional, county, and local public policy decisions that have identified areas within their master plans and zoning ordinances where sewer service is to be provided
3. Fail to account for affordable housing sites that have received COAH substantive certification or been court ordered; and
4. Unnecessarily remove undevelopable land (land that is otherwise protected from development).

The DEP-initiated maps appear pockmarked where sewer service areas have been omitted. This arbitrary approach has led to widespread confusion as well as controversy, and will almost certainly require a series of future amendments in order to correct these errors.

There is clearly a need for a broad-based oversight board to review the standards for DEP materials – such as maps and models – used for various decisions, calculations and reports. There are also many procedural and policy issues that need to be resolved in a uniform fashion as the counties and the DEP work through the process. Likewise, there is the need for an arbitration process to resolve disputes between DEP and the counties (or other planning entities) about source data and application as policy.

As this process has evolved, it has become apparent that landowners with a longstanding, vested interest in the designation of a sewer service area have been left out of the process.

When land has been located in a designated sewer service area which is also identified as a development area in master plans and zoning ordinances, the land is viewed as having considerable rights associated with it. This is reflected both in the cost of the land, as well as the property taxes paid. Many already have development approvals. Should the property then be removed from a sewer service area without direct notice and recourse for the property owner, it will generate countless legal problems that the State can ill afford in such difficult economic times.

Clearly, individual public notice to affected property owners is needed with an easily administered process to correct errors and resolve disputes before revised Wastewater Management Plans are approved by DEP. It is my understanding that Somerset County is providing individual notice. We would suggest that DEP do the same, or mandate that the other counties follow suit.

To summarize, the NJBA recommends the following:

1. Adopt a uniform, two-year extension for the preparation and submission of the Wastewater Management Plans by the counties or other entities that have accepted responsibility for their preparation.
2. Create a broad-based, representative oversight board to review the data, modeling, material, and policy and procedural guidance to be used as the basis for the Wastewater Management Plans together with an arbitration process to resolve disputes in an efficient and timely manner.
3. Provide individual public notice to landowners when their property is to be removed from a sewer service area, together with the creation of an administrative process to correct errors and resolve disputes before a Wastewater Management Plan is approved by DEP.

The NJBA remains committed to work with all stakeholders to ensure that New Jersey has high-quality sewer treatment in all the areas identified as needing this service through our comprehensive state, regional and local planning.

We appreciate this opportunity to appear before the committee to express our concerns and recommendations.

Thank you for your time and attention.

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
NEW JERSEY CHAPTER

317 George Street, New Brunswick, NJ 08901 P732-729-9900 F732-729-9901 www.njnaiop.org

TO: Members of the Senate Legislative Oversight Committee
FROM: George Sowa, VP Public Affairs, NAIOP NJ
DATE: June 4, 2009
RE: Water Quality Management Planning Rules

On behalf of the 488 members of the New Jersey Chapter of NAIOP, the Commercial Real Estate Development Association, we appreciate the opportunity to offer our comments on the Water Quality Management Planning (WQMP) process.

As the leading commercial real estate, land use and economic development resource in New Jersey, NAIOP New Jersey has an impact on hundreds of thousands of people, from the construction jobs we create at groundbreaking to the tenants and employees who work in our buildings after ribbon cutting. Our members are involved in all facets of office, industrial and related commercial properties, including ownership, management, financing, leasing, master planning, design and construction, and ancillary services. NAIOP members contribute more than \$800 million annually in local and state property taxes, and are committed to creating an atmosphere of growth and opportunity by attracting new jobs in the state's business community and producing valuable ratables that help provide community services. We are proud of the role we play in maintaining and building New Jersey's economic strength.

The current WQMP rules (**readopted July 7, 2008**) require all counties to update their Wastewater Management Plans by **April 7, 2009**. In cases in which a county refuses to participate, a municipality within the county may submit its own WMP by July 7, 2009. Failure to comply may result in withdrawal of sewer service areas. NJDEP (New Jersey Department of Environmental Protection) has formally extended the April 7 deadline until November 30, 2009 in some counties, and has informally told other counties that November 30 is the deadline. As part of this process, NJDEP provided counties with revised maps based on dated Geographic Information System data. **We have serious concerns about the process:**

- The information on which the revised maps are based is dated and does not take into account development and other activity over the past five to seven years, or site-specific information that was provided to NJDEP as part of the permitting process.

- Owners have received no formal notice that their properties are subject to removal from sewer service areas.
- Owners have received no formal notice that there exist draft revised sewer service area maps proposed by NJDEP, and/or that these proposed revised maps have been provided to the counties.
- NJDEP's proposal to provide public notice of the final revised sewer service area boundaries only after completion of the delineation process involving the counties (or municipalities) and NJDEP is inadequate. Owners should be apprised of the process now underway so that they have the opportunity to contest the proposed redesignation of sewer service areas affecting their property.
- Because NJDEP's analysis of whether to remove properties from existing sewer service areas has been based on dated and incomplete information, many of the resulting NJDEP proposals are unwarranted and improper.
- Current owners, prospective purchasers, and parties providing debt and equity financing (whether in connection with an acquisition or refinancing) are concerned about whether or not a property will remain in a sewer service area. This uncertainty results in a chilling effect on the acquisition, financing, management and disposition of property throughout the State.
- NJDEP's proposal to provide public notice only after the county (or municipality) and NJDEP complete the delineation process is inadequate to address the inherent uncertainties of the current process, and does not afford owners the ability to assess the impact of proposed removal from a sewer service area until after the fact.
- NJDEP's rule allowing an aggrieved party to demonstrate that a property was erroneously removed from a sewer service area and seek an amendment of the wastewater management plan to reinstate the property affords only an "after the fact" remedy that fails to recognize the damage inflicted by the initial process.
- The State Planning Commission is in the process of readopting the State Development and Redevelopment Plan (the "State Plan") including a revised State Plan Policy map. The State Plan and the State Plan Policy map identify areas where growth, limited growth, agriculture and open space conservation are appropriate. N.J.S.A. 52:18A-200d. While we have only limited knowledge of the mapping that DEP has provided to the counties, it is clear that there are significant inconsistencies between that mapping and the proposed revised State Plan Policy map in designating areas that are appropriate for sewers.
- COAH's current third-round rules including the affordable housing obligations assigned to municipalities were based in significant part on the assumptions that were made on the amount of vacant developable land.

- There is no consistency in the planning efforts of COAH and DEP. Again, the full extent of this inconsistency cannot be determined since the maps DEP has provided to the counties are not public. However, based on what is known, there are clearly numerous instances where COAH has assumed that vacant land was fully developable and DEP is proposing to remove the same land from a sewer service area, significantly reducing its development potential.
- The affordable housing plans adopted by the municipalities, that are currently being reviewed by COAH based on current infrastructure availability, will be significantly impacted if significant areas of vacant land that are currently in sewer service areas are now taken out of sewer service areas.

NAIOP recommends the following actions:

- Immediately suspend the WQMP rules until there is an assessment of all regulatory action and NJDEP has coordinated its actions with those of the State Planning Commission and COAH (and reached a consensus with those agencies on those lands which should be in a sewer service area). NJDEP should notify the counties of such action and goals. Counties should not be required to submit plans to NJDEP until that consensus is reached.
- Grandfather sewer service area designation for: existing fully developed properties; properties now under development for which applications for permits and approvals are pending (with a suggested benchmark of the application being deemed complete), and; existing undeveloped or partially developed properties purchased in reliance on sewer service area designation status as of the date of acquisition.
- Publicize the current program now underway under which NJDEP is providing counties with draft revised sewer service area maps, including its potential ramifications (e.g., removal of a property from the sewer service area) so that property owners have the opportunity to study the potential impact in advance of final delineation.
- Place all draft revised sewer service maps, including comments from the counties (or municipalities), on a readily accessible website so that property owners are apprised at all times of the current state of the sewer service area maps as they proceed through the revision process.

Thank you.



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For Immediate Release
June 4, 2009

Contact: Jeff Tittel
(609) 558-9100

Don't Send Water Quality Down the Tubes

Trenton – Today the Senate Oversight Committee will hold a hearing on Water Quality Management Plans (WQMP). The hearing will question the validity of DEP's rule requiring updated management plans. The Sierra Club believes that the WQMP rules are legally justified and have an overall positive effect on water quality. The rules took almost 20 years to put in place and were considered a compromise between all stakeholders. They should be regarded as a cornerstone of planning and water conservation.

The WQMP Rules were passed in 2007 and can have a more significant impact on the state of New Jersey than virtually any other rule or rule proposal. They determine how much development is allowed and where, how much water will be polluted, and how much water will be protected.

"To pull down this rule would send protection of our water supply backwards 20 years and allow for degradation of our water," **said Jeff Tittel, director of the NJ Sierra Club.**

The Senate Oversight Committee should judge this rule on its legality. The rule needs to follow the NJ Clean Water Act, NJ Pollution Control Act, and the Water Quality Planning Act. The Sierra Club believes that the rule follows the legislative intent of these laws and meets all requirements to be upheld by the committee.

Currently 90 percent of the towns and entities in New Jersey do not have up to date wastewater management plans. Implementation of the rules would require entities to submit up dated WQMPs by the end of the year.

"If there is concern by the legislators that the process of approving a WQMP is too slow, they should put more people back to work at the DEP," **said Tittel.** "Increasing DEP staff and budget will ensure that plans get done in a more timely fashion."

Updated WQMPs would allow communities to focus development in non-sensitive areas, improving water quality and reigning in sprawl. The plans would pull back sewer service from areas next to Category 1 stream buffers and away from habitat for threatened and endangered species.



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“We supported these rules because the system in place prior was a complete failure that did not protect water supplies and promoted sprawl,” **said Tittel**. “These rules were a compromise and they need to go forward.”

Many of the plans that are used for zoning and planning purposes were drawn up with federal grants in the 1960s or 70s. In some areas of the state the plans include regional sewer plants which were never built. For example lands next to Spruce Run Reservoir in Union and Clinton Township are in a sewer service area for a regional sewer plant that was never built. Likewise, Titusville, along the banks of the Delaware, is in a sewer service area that was to be connected to the Hopewell plant. Hopewell never joined.

The WQMP rule also finally tasked the DEP with regulating development on septic systems. Almost half of New Jersey’s development is on septic systems; One third of those septic systems show contamination.

“It is critical for the state to manage water quality in areas that are septic, because these are the areas that are growing,” **said Tittel**.

Instead of trying to repeal the WQMP rule, the Senate Oversight Committee should leave the rule as is. The rules were a compromise between all stakeholders and many issues that concerned environmentalists were unaddressed. The following is a list of those areas:

1. **Rules only apply to areas 25 acres or greater** - Although we applaud the pullback of sewer service areas in areas that have threatened and endangered species, under the Landscape Protection Designations of 3, 4, and 5, it seems that the technical criteria used leave a substantial and arbitrary loophole by only having the rules apply to areas that are 25 acres or greater. The DEP’s GIS system can go down to 5 acres or less. We believe this loophole was deliberately inserted to take large areas that are environmentally-sensitive and allow them to be developed. We are concerned that this loophole will encourage more fracturing of small threatened and endangered species areas.
2. **Sewer expansion in environmentally sensitive areas** - We are also concerned about the loophole that would allow expansion of sewers in environmentally-sensitive areas that have been designated for growth under the State Plan’s Plan Endorsement Procedures, undermining the protection of New Jersey’s waters. We do not believe the State Planning Commission has the expertise or concern necessary when it comes to protecting New Jersey’s waters and that this procedure will serve as nothing but a rationalization to allow for more development in environmentally-sensitive areas. The State Plan itself does not look at water quality, water quantity, water supply intakes, or well-head protection areas. We also believe that under Plan Endorsement, you could extend sewers outside of centers for development of the environs of environmentally-sensitive areas, contrary to the SDRP Rural Wastewater Policy 22.



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3. **Plans lack accurate zoning capacity analysis** - This proposal bases the amount of development that will be allowed on local zoning, not on true capacity analysis. Our current problems when it comes to sewers and water quality have occurred because we've allowed local zoning and parochial interests to drive sewer planning, rather than the protection of water quality, water supply, and natural resources, and this model will only increase the problems.
4. **No protection for slopes, scenic corridors** - The WQMP Rules call for mapping of steep slope and other environmentally-sensitive areas, however nowhere in the rules are these steep slopes, contiguous forests, and scenic corridors actually protected.
5. **Inadequate water supply analysis** - DEP requires an analysis for water supply when doing water quality planning; however, the required analysis is inadequate. The rules do not require a water budget and there is a disconnect between quality and quantity when it comes to water. There is no depletive use model to show where sewer service areas will impact both groundwater and surface water supplies. The Water Quality Management Planning Rules need to show a direct relationship between water supply, water withdrawal, and sewer service areas, septs, and their impact on the environment.
6. **Water reuse not designed for conservation** - Water reuse is not designed to protect or conserve water supplies, but to come up with sources of water for more development. Secondary impacts from water reuse will include more nutrient loadings to both ground and surface waters and an excuse for development.
7. **Nitrate dilution models is flawed** - Looking at a region as large as a HUC 11 for water quality impacts undermines the purpose and scope of the rules because HUC 11s have so much dilution coming from public lands and other sources that it obscures any real carrying capacity model. The purpose of a nitrate dilution model is to come up with a lot size that is protective of both public health and the environment. The only way to determine appropriate densities and protect against groundwater pollution to wells is to look at the sub-watersheds. When using the broad scale currently proposed, it is possible to meet the water quality for a vast region but still have polluted wells and localized areas of surface pollution.

The second serious flaw we see is the use of the NJGS model for nitrate dilution. This model severely overestimates the amount of dilution available to deal with septs. In addition, the model does not look at background nitrates from farming or existing development. According to this model, the best recharge area in the Highlands is the Rockaway rock outcrop. This is inaccurate because the rock in this location does not percolate. This model also overestimates the amount of water available in the Pinelands. Our concern is that the DEP is not using the most widely-accepted and court-tested nitrate models, but is instead using the NJGS model as a way to undermine protection of groundwater and the environment.



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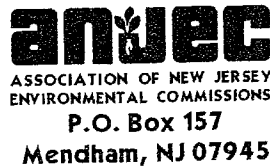
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We believe that by using both the HUC 11 bases and the NJGS model, we are going to further groundwater pollution and not adequately protect groundwater and streams in the state of New Jersey. While we support the use of 2 mg/liter as the target level of nitrates, we do not believe this will really be accomplished because of these two huge flaws.

Finally, we are concerned that the DEP Highlands Rules' requirements for septic systems in the Preservation Area will be greatly undermined by the disparity between those rules and this weak DEP model, which will be applied in the Highlands Planning Area, and that these new rules will be used by developers to challenge the existing Highlands Rules in court.

8. **Too many projects were grandfathered** - It allows for too much potential infill without looking at the environmental concerns, and it grandfathered both projects that have local approval – without looking to see what effect those approvals may have on water quality or threatened and endangered species – and WQMP amendments or revisions that happened just prior to the adoption of the new rules. These exemptions constitute a loophole large enough to run a bulldozer through some of the most environmentally-sensitive areas in New Jersey.
9. **County should not be planning entity** - While we strongly support the idea of removing water quality planning from sewage authorities, we are concerned about designating the county as the planning entity. Our waters would be better protected by having water quality planning done at the municipal level, where there is direct political and environmental accountability.

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May 4, 2009

Senator Paul Sarlo and Members
Senate Legislative Oversight Committee
State House, Trenton, NJ

SUBJ: Implementation of the Water Quality Management Rules

My name is Abigail Fair. I am here on behalf of the Association of New Jersey Environmental Commissions and its 2800 members. We are a state-wide educational, non-profit organization serving environmental commissions, local officials and the public. ANJEC aims to promote the public interest in natural resources preservation and sustainable development. Please consider the following information.

Authority to Protect Environmentally Sensitive Areas

The Water Quality Management Plan regulations under Section 208 of the Clean Water Act are to prevent water resource degradation from point and non-point sources of pollution.

The original, 1990 WMP regulations did not require plans to protect waters from secondary or non-point source impacts caused by zoned-for growth that the wastewater infrastructure would have to support. As a result, in 2000 Governor Whitman acted to correct this problem by issuing Executive Order 109, which has been in place **until these new regulations incorporated the EO 109 provisions**. It directs DEP to insure that WMPs examine alternatives, depletive and consumptive water use, pollutant loading and to conduct an environmental build-out analysis to take into account the constraints to development from the presence of environmentally sensitive areas.

Rules Try to Implement Smart Growth and Prevent Expensive Sprawl

Sprawl is expensive. It's expensive as we pay for construction or expansion of new or expanded roads, water supply, traffic congestion. New Jersey has tried to encourage centered development through the State Plan, through Smart Growth grants, through Highlands protection. Fiscal impact analysis of the State Plan conclusively shows that centered development is much more economically feasible than sprawl.

The Rules Should Be Stronger

Although the WMP rules' purpose is to prevent degradation of water resources, they allow for development outside of urban and suburban areas and provide lower standards for clustered development. At the same time, the rules require protection of environmentally sensitive areas only if they are over 25 acres in size. This provision is of particular concern to us. It means smaller environmentally sensitive areas can be

disrupted and damaged. It means future public expense in correcting problems from disrupting these areas.

Steep slopes are not counted as environmentally sensitive areas for the build-out analysis. Open space that is under 10 acres in size is excluded from mapping for the build-out analysis. This is a problem because these areas can then be considered as developable. Use of GIS means the scale of the mapping most often is very broad and doesn't show important features.

The Rules Were not a Surprise

The rules were originally adopted in 1990 with a deadline for compliance of late 1993.

Because of very substantial non-compliance with the 1990 rule deadlines, in October 2005, the Commissioner of the DEP put a public notice in the *NJ Register* announcing public hearing on rescinding sewer service areas for most of New Jersey. There was such public outcry at the public hearings that the proposal was withdrawn. However, nearly all testifiers acknowledged that the action was justified, but that they needed time to comply. They've had three more years.

New Jersey needs the current WMP regulations implemented to protect water resources, to give predictability to building interests and municipalities, and to prevent escalating costs from sprawl development.



Comments on the Water Quality Management Planning Rules New Jersey Future, June 4, 2009

New Jersey's economy demands that our Water Quality Management Planning (wastewater) rules provide good opportunities for concentrated development, in a timely and predictable fashion. New Jersey's environment depends upon wastewater rules that protect water quality and quantity and help stop sprawl development. And a sense of fairness and efficiency mandates equitable treatment of property owners based on clearly defined guidelines, and an implementation process that is not overly burdensome on local government.

There is broad recognition that the wastewater rules in place prior to 2008 failed to meet these objectives. In fact the process of preparing, reviewing and revising wastewater management plans (WMPs) was viewed as broken. Although there are problems with implementation of the new rules, they provide important improvements over the previous system:

- They better support economic growth, by clearly articulating the criteria for defining and amending Sewer Service Areas through a transparent, data-based methodology.
- They extend state oversight over septic areas, where large-lot sprawl continues to convert farmland and forest land, including areas designated for preservation in the *State Development and Redevelopment Plan*. In the rural parts of the state, the wastewater rules lay the groundwork for, and support, more permanent preservation through planning methods such as clustering and Transfer of Development Rights, as well as through outright acquisition as open space or preserved farmland.
- They are based on better-articulated standards for including land in a sewer service area, and take advantage of GIS technology to apply these standards more quickly and consistently. For the first time, DEP has used GIS tools to give clear guidance to counties on where sewer service areas will be approved.
- And, they take advantage of a regional approach, by relying on the 21 counties to do wastewater planning, rather than the previous unwieldy and ineffective process of working through nearly 200 wastewater entities.

New Jersey Future supports the continued implementation of the existing Water Quality Management Planning rules. **However, there are significant problems with the implementation of the rules. We call on the Governor and the Department of Environmental Protection to prioritize resources to address these issues, and incorporate our specific recommendations, below:**

1. **Make the process easier for counties and property owners, especially in priority growth locations.** The wastewater planning process starts when DEP sends counties initial suggested Sewer Service Areas based on GIS data. DEP acknowledges that the data is not always current or correct. The counties are then responsible for "ground truthing" the data and

proposing changes based on better information. This has proven time-consuming for counties, especially when the data involved is "Landscape Project data" that indicates wildlife habitat. To ease this process, DEP should:

- a. Commit its staff to a conducting a desktop habitat suitability analysis to help clarify what the habitat issues may be, for areas where it is recommending withdrawing the SSA based on Landscape Project data AND which are disputed by the county AND which are priority growth areas such as the following locations:
 - i. Within one-half mile of a transit facility AND within State Plan Planning Area 1, 2, or centers;
 - ii. In an approved redevelopment area AND located within State Plan Planning Area 1, 2, or centers;
 - iii. A Transfer of Development Rights receiving area.
 - b. Making clearer and more specific technical guidance available to counties and other entities preparing WQMP and WMP plans, including step-by-step mapping protocols for different kinds of situations.
 - c. Continuing to provide adequate staff resources, access to high-level decision makers within DEP, and better communication to counties and other WMP entities.
2. **Prioritize "Potential Future Growth Areas" for the provision of wastewater-related permits and low-interest NJEIT financing.** The wastewater planning process dictates that areas suitable for sewers (based on the lack of significant environmental constraints) may be removed from the Sewer Service Area if there is inadequate wastewater capacity to serve possible development under a build-out scenario. DEP should formally designate these areas as "Potential Future Growth Areas" in Wastewater Management Plans. Land within these areas should be downzoned to reflect their status outside of the SSA. However, DEP should make every effort to facilitate the provision of wastewater capacity to enable compact growth in these areas. This would include: 1) priority permit review for any proposed wastewater treatment facilities, including integration within the procedures recommended by the Permit Efficiency Task Force; and 2) access to the most favorable lending terms through NJEIT's infrastructure financing programs.
3. **Facilitate partnerships for counties who lack adequate staff resources to complete wastewater planning.** DEP has made available \$200,000 in grant funds to counties for the preparation of WQMPs, which in many counties is adequate. Many counties view their new role in wastewater planning as an opportunity to help their municipalities manage growth productively. However, counties do vary widely in the size and sophistication of their planning staffs. For those counties who may need extra help, DEP should help facilitate partnerships between counties and organizations that could serve as consultants: local watershed organizations, nonprofit planning organizations and Metropolitan Planning Organizations.
4. **At the state level, coordinate and communicate with other state agencies engaged in land use-related efforts, including DCA and the Council on Affordable Housing.** This must be done to minimize conflicting state mandates, which cause unneeded expense at the local level and impede progress towards important goals. The State Planning Commission was created to help align and coordinate between state agencies and DEP should work with DCA and the Governors

office to make the Commission a more effective venue for coordinating state regulations and more specifically, implementation of the WQMP rules and the COAH rules.

Now is not the time to throw out the significant investment made by counties, municipalities, utilities and the state of New Jersey in rational planning for the provision of wastewater services. New Jersey Future urges the Governor and the DEP to continue to improve the implementation of the WQMP rules to ease the burden on all involved and ensure fair and appropriate outcomes.

Conclusion...

SOMERSET COUNTY PLANNING DIVISION STAFF RECOMMENDATIONS
SUBMITTED TO THE NJ SENATE LEGISLATIVE OVERSIGHT COMMITTEE
JUNE 4, 2009

I. History of Somerset County Involvement in the Wastewater Management Planning Process:

1. Served as "201" Agency since 1981; responsible for Somerset/Upper Raritan Wastewater Management Plan encompassing 2/3 of the County which was adopted in 1999
2. Provided formal written comment on draft WQMP Rules during the formal public comment period and hosted workshops
3. The County has facilitated the appointment of Municipal WMP Committees comprised of an elected official, engineer and planner to assure a close working relationship and significant opportunities for local input into the WMP Process
4. Use multiple venues such as breakfast forums, briefing memos and County website to post all meeting notices and guidance documents
5. Strong Freeholder support and County Planning Board itself is fully informed and engaged in process and has prioritized the WQMP in its Work Program

II. WQMP Rules & WMP Process – What Works

1. Importance of the County Wastewater Management Plan as a growth management and water resource protection tool broadly recognized at the state, county and local levels.
 - Most counties and municipalities are actively engaged in the WMP Update Process
2. Lines of communication between County Planners, NJDEP Officials and staff have been opened resulting in an improved working relationship
 - The Commissioner has agreed to provide a forum for WMP issues to be discussed in response to NJCPA's request
3. NJDEP has made resources available to Counties
 - Grants, GIS Environmental data layers, WMP Model Builder Tool, County WMP Guidance System, Model Ordinances, standardized WMP Map notation, etc...
4. Increased transparency, certainty and predictability is gradually happening and is critical to building support for the WMP Process and the completion and adoption of WMPs
 - The Commissioner, for example, recently agreed to NJCPA's requests to: 1) to post draft updated SSA Maps on the NJDEP Website, 2) address the need to provide adequate "Due Process" by notifying impacted property owners; and 3) post a running list of "Questions and Answers" that provide *guidance on addressing various complex WMP issues*
5. Goal of the Department to also cull the most environmental sensitive sites from sewerage and intensive development to avoid major permit problems later and loss of critical resources is very laudable -but

III. WQMP Process – What Doesn't Work

1. Uniform, consistent application of WMP rules, requirements, methods and process are essential statewide
 - *The WMP rules and requirements can no longer be a moving target – major changes mid-way through the process are extremely wasteful of public resources and will prevent the completion of Updated County WMPs in a timely manner. The resultant frustration will lead to a lack of trust and loss of support for process.*
 - *Different rules and requirements for different counties will create unfair advantages and disadvantages. The high public costs of re-doing and re-doing work **must** be avoided.*
 - *The current “**invent as you go**” approach has also added significantly to the project timeline and costs – for example, NJDEP is still trying to figure out what the minimum requirements are for Municipal Septic Management Plans and Ordinances.*
2. The new County WMP update process is complex and requires a high level of resources and expertise. Differences in resources available and needed by various Counties must be recognized.
 - *Up-front, reality-based information about the true amount administrative and technical resources Counties needed to complete the WMP Update Process must be recognized so that Counties and municipalities can establish appropriate work plans, timelines and budgets.*
 - *Realistic timelines, tailored to the unique needs and capabilities of each County must be allowed.*
 - *NJDEP must acknowledge Counties do **not** have absolute control over the project timeline. The timeline is significantly impacted by Municipal resources and expertise necessary for supporting the County's work in preparing Municipal WMP Chapters and opportunity for private property notification and interaction .*
3. The use of inaccurate, unverified environmental data by NJDEP in preparing its preliminary draft Updated SSA boundaries has made the process of updating the SSA boundaries extremely inefficient, time intensive, costly and difficult from both an administrative and technical perspective.
 - *The GIS Landscape Project Habitat data layer is not scientifically credible enough to be used as the **sole** reason for removing development projects, planned community facilities, COAH sites and other properties in the early planning stages from SSAs that are consistent with municipal Master Plans, Zoning, NJDEP's previously adopted SSA boundaries, the State Development and Redevelopment Plan and smart growth principles.*
 - *Equal consideration **must** be given to other State; Regional and local land use planning priorities, particularly when they all reinforce each other, when deciding on whether or not a property is removed from the SSA.*
 - *The removal of property from the SSA must be substantiated enough to hold up in court.*
 - *The assignment of “**burden of proof**” to Counties and municipalities on a site-by-site basis is inefficient, costly and time-consuming. Many SSA corrections*

are due to outdated, inaccurate NJDEP data and NJDEP itself controls much of the permit documentation it requires to justify the return of properties to the SSA.

IV. County Role as WMP Pilot- What have we learned:

The Somerset County Board of Chosen Freeholders executed an agreement with NJDEP in 2007 allowing the County to serve as a Pilot to create a model Countywide WMP that is consistent with the Adopted WQMP Rules.

- *Saved money for the County's municipalities who previously served as municipal WMP Agencies.*
- *Must assign senior and well- experienced Planning staff due to complexity of process*
- *Provided feedback to NJDEP to help refine its Wastewater Flow Estimator Model and interaction at a peer-to-peer level worked well*
- *Importance of preparing easy-to-understand guidance documents for WMP Stakeholders in cooperation with NJDEP and the Highlands Council*
- *County took lead to identify regulatory, technical and policy issues that require better coordination among NJDEP, Highlands Council, OSG, COAH and other State Agencies and offered potential solutions so towns and County do not get torn between inter-agency conflicts*
- *Delineating SSAs is far from an exact science and reasonableness and flexibility should guide work*
- *Due process is important so the WMP for Somerset County is developed through an open public participation process by providing frequent public information forums, one –on-one meetings with municipal WMP Committees, making information about WMP meetings, guidance documents, draft maps and draft County WMP available through the County Website*
- *Facilitated the use of NJCPA as a way for NJDEP to tap into County expertise to: 1) share “what works; 2) avoid “re-inventing the wheel”; and 3) “preventing past mistakes”.*

V. County Recommendations to Committee

1. The County WMP process should **not** be suspended since too much time and resources have been committed and progress is being made.
 - Realistic project timelines that are uniquely tailored to the capabilities and resources of each County, and that recognize time needed for local involvement and the work yet to be done by NJDEP to facilitate the process must be provided.
 - Focus on **getting it right** – rather than arbitrary deadline for submitting WMPs
 - Recognize potential economic impacts of removing SSAs particularly for redevelopment-type projects
 - Do not **penalize** Counties and municipalities that are making progress and working cooperatively to complete WMP Chapters i.e. do not roll back SSAs for towns working diligently with NJDEP and the County to resolve outstanding issues.

1. Pursue “**fixes**” to shortcomings in the current WQMP Rules and WMP Process that can be implemented immediately and with little cost – without going through the time-consuming Rule Amendment Process.
 - Involve Counties in the process of identifying appropriate, realistic solutions.
2. Apply the “**Reasonableness**” Litmus Test
 - **Counties must be given greater authority in the decision making process.** County Planners are uniquely and superbly qualified to identify property specific solutions to SSA delineation issues that balance the protection of environmentally sensitive areas with other critical State, Regional and Local land use priorities. If this authority is denied, an interdisciplinary arbitration body should be considered to resolve real policy disputes.
3. A much more **reasonable and balanced** application of the Landscape Project Data Layer must be considered.
 - *NJDEP Should Update its Environmentally Sensitive Areas Analysis to show, rather than suppress species specific Landscape Project Habitat Rank 3, 4, and 5.*
 - *More realistic, affordable, timely and do-able alternatives to the performance of Habitat Suitability Determination Analyses, which can be accomplished during the WMP Update Process, and that allow properties to be returned to the SSA located in State Plan PAs 1, 2, and centers must be provided.*
 - *Extend “Desk-Top” Habitat Analysis performed by NJDEP to other high priority areas including Brownfield redevelopment, TDR receiving areas, Transit Villages, etc.*
 - *Rules that implement the Habitat Protection Act must be adopted rather than manipulating the WMP process to serve as pseudo-Habitat Protection Rules. The WMP Process does not comprehensively or effectively achieve Habitat protection goals from a regional perspective.*
 - *The Landscape Study, with its many shortcomings, should not serve as the sole basis for the removal of any properties from the SSA*
4. Much **greater coordination** among State Agencies is needed.
 - *The role of the State Planning Commission and the State Development and Redevelopment Plan in both guiding and balancing land use and infrastructure investment decisions must be strengthened and enhanced.*
 - ***The Regulatory WQMP and WMP Processes cannot substitute for Comprehensive Sustainable Land Use Planning at the State, County and Local Levels.***

Additional Supportive Documents Provide by Somerset County Planning Board:

- a. Final Somerset County WMP Public Information Guidance Document
- b. NJCPA May 22, 2009 Discussion Questions for Commissioner Mauriello

Presented by:

Robert Bzik, AICP/PP

Prepared by: Somerset County Planning Division
June 3, 2009

Director of Planning
Somerset County

SOMERSET COUNTY PLANNING BOARD
COUNTY WASTEWATER MANAGEMENT PLAN
PUBLIC INVOLVEMENT PROCESS SUMMARY
June 2009

1) How is municipal input being obtained?

The County Planning Division is working with Municipal Wastewater Management Committees to prepare GIS feature maps; update Sewer Service Area boundaries; compile facility data; identify solutions to water and/or sewer capacity constraints if applicable; adopt environmental protection ordinances; and prepare the municipal WMP Chapters and associated maps required for inclusion in the County WMP. Municipal WMP Committees are appointed annually by the mayor at the request of the County Planning Board and are comprised of an elected official, professional planner or planning board member and municipal utility authority representative or engineer.

2) Is the County interacting with private property owners?

Both the County and Municipal WMP Committees have been responding to inquiries from private property owners and developers regarding how their sites have been affected by NJDEP's draft Modified Sewer Service Area (SSA) boundaries on an on-going basis. Basic information is being provided. The working maps illustrating the draft NJDEP Modified SSA boundaries or proposed revisions thereof are not being shared or released to the public by the County Planning Division or Municipal WMP Committees pursuant to NJDEP request, since they are currently subject to change.

However, once an agreement has been reached on the draft updated sewer service area boundaries among the Municipal Wastewater Management Committees, County and NJDEP, illustrative maps will be posted on the County and NJDEP's websites (and municipal website at the municipality's discretion). The County and/or NJDEP will be issuing press releases announcing the availability of the draft refined SSA maps on their websites.

The SSA maps to be released will illustrate the draft updated SSA boundaries agreed to by the Municipal WMP Committee, County and NJDEP for use in performing the Build-out and Capacity Analysis. The maps will be accompanied on the website by 1) a written summary of the SSA delineation requirements specified by the WQMP Rules; 2) an overview of the process used by the NJDEP, the County and Municipalities to develop the refined boundaries and other pertinent documents providing information and guidance to property owners.

Although individual property owner notification is not required by the WQMP Rules, **the County will provide written notification to all property owners who may have been removed from the previously adopted SSA.** The notification letter will request that inquiries be submitted in writing using a "response form" available at the county website. It will also direct property owners to maps and related guidance documents on the County website that describe NJDEP's procedures, requirements and standards for making corrections to the draft SSA boundaries, and the documentation that must be submitted to

substantiate them. The letter will also describe the process the County, municipal WMP Committees and NJDEP will use for addressing questions and requests for corrections.

All requests for corrections to the draft SSA boundaries will be evaluated by Municipal WMP Committees, NJDEP and the County. Written responses to property owner request will be provided by the County, but will be coordinated with the Municipal WMP Committee and NJDEP. This coordinated approach necessitates the submission of all property owner requests in writing in electronic format using the response form provided on the County Website.

The County will establish a timeline for the property owner review and comment period. After the deadline for submitting responses, no further requests for corrections to the draft SSA boundaries will be addressed until after the Build-out and Capacity Analysis is performed. This is necessary in order to 1) determine if capacity constraints exist, 2) identify capacity solutions and 3) complete the Draft County WMP in accordance with the December 2009 deadline.

All property owner requests for site-specific SSA boundary adjustments must be consistent with the WQMP Rules and substantiated with the documentation required by NJDEP in order for the correction to be considered by NJDEP, the County and Municipality.

Please note that in addition to any corrections made as a result of the property owner notification process, changes to the draft updated SSA boundaries may be required to address capacity constraints identified through the WMP Build-out and Capacity Analysis. The maps that are posted on the County and NJDEP Website will be updated to reflect additional revisions to the SSA boundaries with a list of all changes made.

3) Is the County fielding general WMP questions?

The County is currently answering general questions from both public and private sector representatives regarding the overall WMP process requirements and timeline; status of the County WMP work tasks; the Water Quality Management Planning Rules and other related topics. In addition to addressing individual e-mail and phone inquiries, written guidance documents and other information are being prepared by the County Planning Board and posted on the County Website.

However, once the draft updated SSA maps are posted on the County Website and the notification process commences, members of the general public will also be required to submit comments regarding the draft Updated SSA Boundary maps or other aspects of the County WMP Update in writing using the forms provided on the County Website within a specified time period. The County will share all submitted comments with applicable Municipal WMP Committees and NJDEP, and will be taken into consideration during the County WMP Update Process.

4) How is the County disseminating information to the public?

The County Planning Board has added a Wastewater Management Planning icon to its webpage so that documents and information regarding the County Wastewater Management Plan and process can be readily accessed by the public, including meeting announcements, PowerPoint Presentations, draft maps, guidance documents, response forms and other information as they become available.

5) Will municipalities be required to endorse their WMP chapters?

Prior to submission of the final draft County Wastewater Management Plan and associated Municipal WMP Chapters to the NJDEP, municipalities will be required to adopt a resolution endorsing both their chapter and the overall WMP. Draft chapters will include a copy of the required proposed or adopted ordinances. Municipal assurance must be provided that all ordinances required by the WQMP Rules will be adopted within the NJDEP specified timeline.

6) Is a public hearing required prior to the submission of the County WMP to the NJDEP?

The NJDEP will hold at least one public hearing in each county prior to the adoption of a new wastewater management plan. The WQMP Rules require notice to be published in the NJ Register by NJDEP, as well as in appropriate newspapers.

7) What actions will be taken by the Highlands Council?

The proposed updated Sewer Service Areas in both Conforming and "Non-Conforming" Highlands Municipalities must be consistent with the Highlands Regional Master Plan. The final County WMP will be reviewed by the Highlands Council for Conformance with the Highlands Regional Master Plan. The Highlands Council will submit its comments to NJDEP prior to NJDEP's adoption of the County WMP.

The WMP Build-out and Capacity Analysis, delineation of proposed updated SSAs and determination of allowable septic densities in Highlands "Conforming" Municipalities are being led by the Highlands Council. The Highlands Council's procedures and requirements differ from those of NJDEP. NJDEP's WMP process and requirements are emphasized in this document. Conforming Municipalities and property owners within these communities with specific questions about WMP requirements in the Highlands Region are encouraged to contact the Highlands Council in writing via e-mail to Dan Van Abs, Director of Planning and Science, NJ Highlands Council: dan.vanabs@highlands.state.nj.us.

8) How will the final Wastewater Management Plan be distributed?

Electronic copies of the Draft Plan will be made available to WMP stakeholders in accordance with the WQMP Rules, and a copy will be posted on the County Planning Board and the DEP's Division of Watershed Management Webpage. An electronic and paper copy will be available for public review at the County Planning Board Office and Municipal Buildings.

9) What is the criteria being used to draft and modify Sewer Service Areas (SSAs)?

N.J.A.C. 7:15-5.24 requires NJDEP to exclude Environmental Sensitive Areas (ESAs) from future sewer service areas. ESAs are defined as 25 or more contiguous acres (land on more than one lot can be combined to meet the threshold) consisting of undeveloped Threatened and Endangered Species Habitat, Natural Heritage Priority Sites, Category 1 Riparian Buffers and Wetlands. Please see questions 11 and 12 below for additional information concerning exceptions to this general guidance.

SSAs in the Highlands are restricted to the Existing (Unconstrained) Community Settlement Overlay Zone and Existing Areas Served by Sanitary Sewers. A lower acreage threshold and additional GIS environmental constraint features are used in the Highlands as well.

10) What are NJDEP's public notification requirements?

The State WQMP Rules require that proposed wastewater management plans be noticed for public comment in the New Jersey Register. The NJDEP has also determined that it will hold at least one public hearing on each proposed wastewater management plan in the county covered by the plan. The public hearing will be noticed in newspapers of general circulation within the county. The public notice must be provided at least 30-days before the hearing. The hearing will be recorded by a court transcriber to ensure that oral comments are accurately captured. Written comments may be submitted in writing at any time up until 15 days after the public hearing. In addition to the notice required by the rules, NJDEP will employ a "broadcast notification" approach, using press releases and public advertisements to inform the public of the release of the refined SSA maps on a town-by-town basis or for the entire county on the Somerset County and NJDEP Website, as well as municipal websites where available.

The Rules do not require either NJDEP or local jurisdictions to notify individual property owners, since the rules were proposed and adopted in accordance with the State's rule-making requirements. However, NJDEP will not discourage county or local jurisdictions from implementing expanded public notification processes provided it can be accomplished within the NJDEP-approved County WMP timeline.

11) Will adjustments to the draft Updated SSAs be allowed and when?

The primary vehicle for identifying and addressing SSA boundary adjustments as part of the County WMP Process is Municipal WMP Committee review of the draft NJDEP modified SSA maps, which must be completed prior to performing the Build-out and Capacity Analysis. County Planning Staff are making adjustments to NJDEP's GIS Draft Modified SSA data layer to reflect corrections identified and supported by both the County and Municipal WMP Committees. An Excel Table is used to describe each adjustment and why it has been proposed to NJDEP. Some of the corrections involve alignment of SSA and parcel boundaries where appropriate and removing large tracts of preserved open space from the SSA. Other corrections address temporal problems with NJDEP's data layers or to address local and regional land use planning priorities. The draft updated SSA boundary shape file and corresponding table are then forwarded to NJDEP staff, who examine the changes for consistency with the WQMP Rules. The County and Municipal WMP Committees must work

with NJDEP to resolve any conflicts they identify. Once conflicts with the WQMP rules have been substantially resolved and municipal authorization is granted, the draft Updated SSA Boundary map will be posted on the County and local websites. This work is being completed and the draft Updated SSA Maps are being posted on the County Website on a town-by-town basis.

As noted in # 2 above, property owners will have an opportunity to comment upon and provide documentation substantiating requests for further corrections to the draft SSA boundaries within a prescribed period of time. Only properties removed from NJDEP's previously Adopted Sewer Service Areas or with documented failing septic systems under limited circumstances are eligible for adjustments to the draft Updated SSA boundaries provided all of the below NJDEP requirements are met. Please note that the County WMP process can not be held up waiting for property owners to obtain NJDEP Wetland delineations (Letters of Interpretation or LOIs), treatment works approvals for sewer connections (TWAs), Habitat Suitability Determinations, Final Local Subdivision or Site Plan Approval or other documents which would allow projects and properties to be grandfathered into the sewer service area. Existing developed parcels that were removed from the previously adopted SSA, are fully developed and cannot be re-subdivided without a variance may be returned to the Sewer Service Area.

12) Under what circumstances will an adjustment to the draft Updated SSAs be allowed by NJDEP?

- A. Adjustments to the draft updated SSA boundaries will be permitted by NJDEP pursuant to N.J.A. C. 7:15 5.24 and 7:15-3.5(b)ii prior to the adoption of the updated County WMP provided they are consistent with the WQMP Rules, appropriately substantiated and adequate sewer capacity is available. Areas removed from NJDEP's previously adopted SSAs are eligible to be returned to the SSA if they comprise:
 - i. Development projects that are under construction or have been completed; and
 - ii. proposed projects that have received, prior to the adoption of the Updated County WMP, both a local preliminary or final local site plan or subdivision approval where subsequent site plan approval is not required under Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (MLUL) or a municipal construction permit; and NJDEP treatment works approval (TWA) or NJPDES permit if one is required, until such time as one of those qualifying approvals expires".
- B. If an area that can be further subdivided or developed and that does not have final local approvals or TWAs was removed from the previously approved SSA based solely on the presence of wetlands as shown in NJDEP's GIS Wetlands data layer, the SSA boundaries can be corrected in accordance with a NJDEP Wetlands Letter of Interpretation (LOI) or Division of Land Use Regulation (DLUR) Permit. LOIs and DLUR Permits used for this purpose must be obtained prior to the date of adoption of the updated County WMP by NJDEP.
- C. If an area was removed from the previously adopted SSA due to the presence of NJDEP Landscape Project Habitat Rank 3, 4, or 5 (not just wetlands), and the area

can be further subdivided or developed, only the developed portion of the parcel, or the portion approved for development can be returned to the SSA provided the project has final subdivision and site plan (if required) approvals and TWA (if applicable) prior to NJDEP adoption of the County WMP.

- D. Areas proposed for development that were removed from the previously adopted SSA due to the presence of NJDEP Landscape Project Habitat Rank 3, 4, or 5 (not just wetlands), where final local approvals and TWAs have not been obtained cannot be returned to the SSA during the County WMP Update Process unless they have completed a Habitat Suitability Determination (HSD) which demonstrated that the habitat was not suitable for the identified species. Note that it may not be possible to complete a HSD and its review during the WMP Update Process. Where an HSD has been completed between the proposal and adoption of the WMP, the site may be included as a correction to the final adopted map. Where the HSD is completed after the adoption of the WMP the site must be included through either a revision or amendment to the adopted WMP.
- E. Sites containing threatened and endangered species habitat may also be included in a SSA through the Municipal Plan Endorsement Process, where the designation of the SSA is accompanied by adequate protections outside of the sewer service area and provided NJDEP "determines that the environmentally sensitive areas to be included in the SSA are not critical to a population of endangered or threatened species, the loss of which would decrease the likelihood of the survival or recovery of the species in the State". Typically these adjustments will require a WQMP Amendment or Revision because of the timing of the County WMP adoption.
- F. NJDEP has agreed to perform a more detailed habitat review for proposed COAH projects that have been identified by the municipalities or county as critical to a fair share housing plan. The affordable housing rules typically require residential development to include 20 percent affordable housing. NJDEP cannot provide this level of review to every residential site. Therefore, NJDEP is offering this review to those site that contribute significantly more affordable units than the required 20% generally those where 40% or more of the housing units are affordable to income-eligible households. Please note that an HSD may still be required, if the NJDEP cannot determine based on the information available to it whether the habitat on a particular site is suitable for the identified species.

Requests for adjustments to the draft Updated SSA Boundaries submitted after the public comment period associated with the SSA boundary maps will not be addressed until after the Build-out and Capacity Analysis is performed provided they are received prior to adoption of the Updated WMP by NJDEP.

After the new County WMP is adopted by NJDEP, the WQMP Revision or Amendment Process must be followed for any proposed adjustments to or expansions of the SSA boundary.

13) What kind of documentation must be provided to substantiate requests for adjustments to the draft Updated SSA Boundaries?

Depending on the site-specific circumstances, the following documents will be required in order for a correction to proceed during the County WMP Update Process. Each request shall be submitted electronically to the County Planning Board and municipal WMP Committee using the "response forms" provided on the County Website, must be accompanied by electronic copies of the documents required by NJDEP to substantiate the change and must be submitted to the County in accordance with the comment period deadline established by the county. The NJDEP requires the following documentation:

- A. Evidence that the development has been built or is under construction (for example local building permits if required);
- B. Evidence that a development has local preliminary and/or final site plan approval or subdivision approval where site plan approval is not required under MLUL and a copy of the approved site plan if additional future development can be accommodated on site;
- C. Evidence that the development has either a NJDEP - NJPDES permit or Treatment Works Approval if required;
- D. Evidence that a NJDEP – NJPDES permit or Treatment Works Approval is not required (for example, a letter from the Sewerage Authority stating the approved development will generate less than 8,000 GPD and no sanitary line connection across more than one lot or right-of-way will occur);
- E. If NJDEP's GIS Wetlands data layer is the only environmental constraint shown on the property and is the reason it was removed from the previously adopted SSA, a NJDEP Wetlands LOI and associated wetlands delineation map and/or DLUR permits must be submitted;
- F. If the presence of Landscape Project Habitat Rank 3, 4, and 5 and Natural Heritage Priority Sites is the basis for removal of property from the previously adopted SSA, an application for a NJDEP approved Habitat Suitability Determination (HSD) that meets all of the criteria specified in N.J.A.C. 7:15-5.26 is required. The Application must be submitted to NJDEP, deemed complete and approved by NJDEP before the County WMP is adopted by NJDEP. Otherwise, the application for the HSD must be submitted as part of an application for a WQMP Amendment or Revision following the adoption of the Updated County WMP by NJDEP.

14) How are requests for the addition of NEW properties to SSAs being handled?

All requests that the County and NJDEP receive from private entities to have new properties added to the SSA **during the County WMP process** prior to performing the Build-out and Capacity Analysis will be forwarded to Municipal WMP Committees. The County Planning Board will **not** take any action on these requests unless they are verified by the Municipal WMP Committee to be consistent with municipal master plans and zoning; meet the environmental constraint requirements of N.J.A.C. 7:15-5.24 in Piedmont Municipalities; or the Highlands Regional Master Plan in Highlands Municipalities; and available treatment plant capacity is identified through the Build-out and Capacity Analysis. Once the municipality, county and NJDEP have reached agreement on the refined SSAs to be used in the Build-out and Capacity Analysis, no additional new properties will be considered for

inclusion in SSA boundaries until after NJDEP adoption of the County WMP. Instead, applicants will be required to follow NJDEP's WQMP Amendment process as specified in N.J.A.C. 7:15-3.8, assuming sufficient wastewater and water supply/availability exists.

The County Planning Board will provide an overview of the site-specific WQMP Amendment Process on the County Planning Board Website.

15) Can neighborhoods with ongoing septic system failures be added to the proposed updated SSA?

Municipal WMP Committees can request, during the County WMP Update process, that areas with clusters of existing failing septic systems that are located near or adjacent to the NJDEP previously adopted Sewer Service Area be added to the proposed updated Sewer Service Area, provided there is adequate sanitary sewer capacity at the treatment plant.

In general, if a Municipal WMP Committee wishes to expand the proposed updated SSA to include areas currently served by individual septic systems, they can do so without providing compelling proof to NJDEP that the septic systems are failing, provided there is capacity at the designated sewerage treatment plant. However, if the Build-out and capacity analysis results show sewerage capacity constraints exist at the treatment plant, the NJDEP, Highlands Council, County and Municipalities would have to prioritize areas in the most critical need to receive sanitary sewer service. At this point, NJDEP would require documentation of pervasive septic failures, in the form of a letter from the local health officer, that addresses the history of surface saturation due to soil types and conditions, reported visual proof/odor of discharge, significantly undersized lot sizes; and that indicates the failing systems cannot reasonably be addressed through rehabilitation or replacement. The Municipal WMP Committee would be required to provide a map showing the location of and proximity of the affected neighborhood to the sanitary sewer collection system.

Property owners with failing septic systems should contact their Municipal WMP Committees to request inclusion of their properties in the proposed updated Sanitary Sewer Service Area.

16) Is there any "legal shield" for the County and municipalities that follow the WQMP Rules in preparing the County WMP and associated Municipal WMP Chapters?

The NJDEP will provide support for any legal challenge of any changes to Sewer Service Area boundaries required by the NJDEP to meet the WQMP Rule. Changes initiated by the County and/or municipalities that exceed the Rule requirements will have to be defended by the entity that initiated the change.

17) What is the WMP Process moving forward after the County WMP is adopted by NJDEP?

NJDEP has indicated that it will consider approving completed individual municipal WMP Chapters so that cooperating municipalities and the County are not held up in the event the completion of WMP Chapters is delayed for other municipalities. Because several municipalities are served by regional treatment plants, partially completed Municipal Chapters

will be incorporated if necessary so that coordination can be achieved. The County will cooperate fully with NJDEP and the affected municipalities to advance the completion of remaining municipal WMP Chapters as expeditiously as possible. The County will also provide follow-up assistance to NJDEP to assure required ordinances are adopted within NJDEP's specified timeframe. Please note that the WQMP Rules authorize NJDEP to roll-back future sewer service areas in municipalities without completed Municipal WMP Chapters.

The County will continue to work cooperatively with all of its municipalities and NJDEP to address amendment requests after NJDEP Adoption of the County WMP.

The County will continue to work cooperatively with utility authorities, treatment plant operators, and other appropriate entities regarding implementation of capital improvement plans designed to address capacity constraints identified in the County WMP. The County will work with local health officers to assure septic management plans and ordinances are developed and adopted in accordance with NJDEP's timeline.

In areas where water supply deficits are identified through the WMP Build-out and Capacity Analysis, the County will follow-up with municipalities to assure appropriate local Water Supply and Conservation Plans and Ordinances are adopted and implemented in accordance with NJDEP's timeline.

More detailed information in the WQMP Amendment Process is available through the NJDEP Website. Proposed Amendments in the County's Highlands Municipalities must be consistent with the Highlands Regional Master Plan and meet the Highlands Council's requirements.

18) How can I find out more about the unique approach to Wastewater Management Planning required in the Highlands Region?

The County Planning Board is working cooperatively with the Highlands Council and NJDEP to prepare written guidance describing the WMP process, requirements and standards that must be applied in the Highlands Region, which will be placed on the County Planning Board Website. These guidelines will be specific to conforming and non-conforming municipalities. The WMP process for the County's five Highlands Municipalities will be coordinated with the Highlands Plan Conformance Process and timeline. Certain Highlands WMP requirements will apply to non-conforming Highlands Municipalities pursuant to the Highlands Act and EO 114.

19) What if more information is needed by Municipalities?

The County Planning Board, in collaboration with NJDEP will provide additional guidance on the public involvement, due process and property owner notification, and all other aspects of the Wastewater Management Planning Process as needed.

For more information, please visit the Somerset County Planning Board Website:

www.co.somerset.nj.us/planweb/wastewater/index.htm



PINELANDS PRESERVATION ALLIANCE

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June 4, 2009

Senator Paul A. Sarlo
Senate Legislative Oversight Committee
The State House
Trenton, NJ 08625

Dear Senator Sarlo and Members of the Legislative Oversight Committee,

The Pinelands Preservation Alliance (PPA) wishes to submit this testimony as part of the hearing the Committee is holding today on the Water Quality Management Planning regulations and wastewater management planning process.

We believe that proper implementation of the regulations through rigorous wastewater management planning is a critical step towards bringing rationality and planning to the sprawling pattern of development we see in New Jersey today – and to reversing the terrible damage that sprawling pattern of development is bringing to critical resources like Barnegat Bay. We will focus on the example of the Barnegat Bay watershed, where we are working with a range of private and public agencies.

Barnegat Bay is dying, and it is people who are killing it through the nutrients and other contaminants that flow off of our subdivisions, roads and shopping malls into the streams and aquifers that feed the Bay. The flow of nutrients and organic carbon into the bay has sparked a cascading array of harms to the Bay, including algal blooms, high turbidity and low dissolved oxygen, loss of submerged aquatic vegetation, and disappearing and declining shellfish and finfish populations. There is now abundant scientific data demonstrating a direct correlation between the rapid growth of development in the watershed over recent decades and the precipitous decline of the Bay's key resources. To take one example, hard clam landings have fallen from 1.4 million pounds per year in the 1970s to less than 10,000 pounds in recent years.

Barnegat Bay is not only an ecosystem. It is also a vital economic and recreational asset for the people of New Jersey. That asset's value is tied to its wildlife and flora, just as much as it is to the beaches on the barrier islands that form the estuary. When people can no longer find blue crab and all species of clam join the fate of the hard clam and the oyster, the tourism value of our coastal estuaries will also plummet. Barnegat Bay and our other estuaries are also critical breeding grounds for our local sport and commercial fisheries.

The State of New Jersey, the Pinelands Commission, and the county and local governments of the watershed have unwittingly abetted this assault on Barnegat Bay through,

among other means, the approval of sewer extensions to support new subdivisions in a completely random and haphazard fashion. The old Wastewater Management Plans, which the current regulations and planning process are designed to replace, were drawn up without regard to protecting natural resources and without an understanding of how the plans would impact the watershed and estuaries. It makes no sense to blindly continue using old sewer service areas. Business as usual in the sewer business is killing an irreplaceable treasure that brings so many benefits to New Jersey.

The WQMP regulations provide counties an opportunity and the authority to bring good, large-scale planning to bear and begin to reverse the negative impacts of past practice. We do not know yet what the results will be. The legislature and the public should give the counties and DEP the time to complete this planning process before judging its outcomes.

An important issue has arisen in recent months on which we believe legislators can provide needed support for the planning process. It appears that DEP has been pressured to grant Treatment Works Approvals (TWAs) to extend sewers into areas that are supposed to be the subject of the county planning process. Granting TWAs in these cases directly undermines the ability of counties to fulfill the very point of their planning process, since these sewer extensions render the new Wastewater Management Plans irrelevant. We are baffled as to why DEP would institute a planning process, then negate that very process by failing to apply the rules that would suspend sewer extensions while the plans are being drawn up and finalized. We believe this practice is both bad policy and a violation of the regulations.

Planning sewer service areas is not the single panacea for the problems. Low density subdivisions served by septic systems also fragment the forest, destroy farms and add nutrients to the system. They also will not provide affordable, mixed income housing that the state desperately needs. Good regional land use planning is needed to integrate economic, environmental and social justice goals. Well-tested tools like transfer of development rights, density transfer, clustering and low-impact design are available to ensure needed housing can be built in ways that protect natural resources like Barnegat Bay and produce better, more economically and socially sustainable communities. Wastewater management planning is one key element of good land use planning, but it is a key element that must be preserved and implemented.

We ask the members of the Committee to consider these points and voice their support for the continuing planning process which the WQMP regulations have set in motion.

Sincerely,

Carleton Montgomery
Executive Director