

## APPENDIX



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RE: Flood Hazard Area Control Act Amendments  
Proposal: PRN-2015-053

Dear Mr. Brower:

The Stony Brook-Millstone Watershed Association (Stony Brook) appreciates this opportunity to comment on DEP's proposed Flood Hazard Rules. Since 1949, Stony Brook has worked to protect clean water and the environment in the region of central New Jersey drained by the Millstone River. We work closely with state agencies, municipal governments, non-profit organizations, and citizens to improve the policies upon which healthy watersheds depend. Please accept the following as our comments as well as those of the New Jersey Environmental Lobby, Lower Raritan Watershed Partnership and the Rahway River Watershed Association.

The Flood Hazard Area Control Act (FHACA) was adopted by the State of New Jersey to protect the "safety, health and general welfare of the people of the State." N.J.S.A 58:16A-50(b). Furthermore, the Flood Hazard Act rules also implement the State's Water Pollution Control Act and Water Quality Planning Act. N.J.S.A. 58:10A-1 et seq. and N.J.S.A. 58:11A-1 et seq. These acts seek to protect, enhance and improve New Jersey's water quality. N.J.S.A 58:11A-2(a). The Water Quality Planning Act provides

that New Jersey has a “paramount interest in [the] restoration, maintenance and preservation of the quality of the waters of the State.” *Id.* The statutes set out their objective to “wherever attainable, to restore and maintain the chemical, physical and biological integrity of the waters of the State.” *Id.* At (b). These two goals of protecting the public from flooding and restoring (or at the very least, maintaining) water quality underpin the regulatory purpose of the Flood Hazard Area Control Act regulations. It is through this lens that we must examine the Department’s rule proposal to see if it meets these standards and goals.

First, New Jersey continues to be a leader in flood damage claims. According to the Agency’s statistics, from January 1, 1978 to April 30, 2015 New Jersey has received \$5,652,736,211.37 in payments from FEMA to compensate for flood damages. [www.bsa.nfipstat.fema.gov/reports/104.htm](http://www.bsa.nfipstat.fema.gov/reports/104.htm). Last visited July 21, 2015. This places in New Jersey in the number 2 spot in the country for such claims. The Department acknowledges the problem with flooding by noting that New Jersey has a “dense population and extensive level of existing development within flood hazard areas,” and that “periodic flooding causes severe, repetitive, and deleterious social, economic, and environmental impact. Flooding has and continues to be the most frequent, destructive, and costly natural hazard in New Jersey and is responsible for the large majority of disaster-related damage reported in the State.” 47 N.J.R. 1047. As such, this rule proposal should incorporate standards and procedures that reduce the impacts of this problem.

Second, the rules implement the requirements of the WQPA and the WPCA. The goal of these acts and the Federal Clean Water Act is to restore New Jersey’s waterways to meet water quality standards. It is undisputed that New Jersey has not met this goal. According to the 2012 Integrated Water Quality Monitoring and Assessment Report approximately 90% of New Jersey’s assessed water ways are impaired for one or more designated uses. The report demonstrates the following:

- Public Water Supply- Only 37% of designated waters met the standards for this use.
- Recreation- Only 16% of the designated waters met this standard.
- Aquatic Life- Only 23% of the designated waters met this standard.
- Shellfish Harvest for Consumption- Only 58% of the designated waters met the standard.
- Fish Consumption- Only 0.3% of the designated waters met the standard.

In fact there is only one assessment unit that fully meets all of the designated units. *Id.* at xii. According to the Department 60% of the pollution is the result of non-point

source pollution. New Jersey Pollutant Discharge Elimination System Municipal Stormwater Regulation Program: Improving Water Quality and the Quality of Life. 11/12/2014.

Buffers are the best manner to protect water quality. In the Department's proposal of Flood Hazard Area Control Act rules in 2006 the Department determined that expanding the riparian buffer is necessary as existing buffers were "not adequate to preserve the functions of the riparian system." 38 N.J.R. 3950(a), (2006). The scientific literature reinforces the importance of buffers in removing "excess nutrients and contaminants such as pesticides, heavy metals and organic matter, all of which are detrimental to water quality." *Id.* In reviewing the scientific literature in support of riparian zones, the Department noted not only was the width of the riparian zone important but also noted that breaks or gaps in the riparian zone reduced its effectiveness. *Id.* (citing Rabeni & Smale, 1995).

Our review of this proposal is based upon an evaluation of how it complies with the authorizing statutes and whether it assists the State in achieving the goals of maintaining and improving water quality as well as reducing the risks of flooding for people and property. Unfortunately in large part the Department's rule proposal moves NJ farther away from achieving these dual goals, not closer. Below are our specific comments:

N.J.A.C. 7:13-10.2. The Department is expanding the limits to riparian zone impacts before an applicant is required to apply for a hardship. The Department indicates "many projects do not meet the limits of N.J.A.C. 7:14-10.2 for a given activity and applicants therefore seek a hardship exception." 47 N.J.R. 1042. This is problematic and contrary to the goals of the applicable statutes. The regulations should be designed and implemented to discourage development in the riparian zone. The Department's explanation and solution is exactly the opposite.

N.J.A.C. 7:13-13. The goal of these regulations should be avoidance of the impacts to the riparian zone. Only after a comprehensive analysis reveals that impacts cannot be avoided should an applicant receive permits that would allow for those impacts and necessitate restoring the disturbance. In these cases, that restoration should be done as geographically close to the damage as possible. Ideally, the restoration should be on the same waterway in the same HUC14. If that is impossible, then it should be on the same waterway in the same HUC11 or a nearby waterway in the same HUC14.

N.J.A.C. 7:-8.5.5(h). The Department is repealing the Special Water Resource Protection Areas under the Stormwater Rules. This removes vital protections for the State's waterways. While the SWRPA does not apply to all of the same waters when compared to the FHA's 300' riparian zone; that does not mean it is inconsistent or duplicative. The SWRPA provides additional protections against disturbance compared to those found in the FHA's riparian zone standards. The SWRPA rules split the 300' buffer into an inner 150' section and an outer 150' section. The inner 150' of the 300' SWRPA buffer around C1 streams and their tributaries must remain undisturbed by development. In the outer 150, the SWRPA rules allow for development only if the area was previously disturbed or developed and an applicant can demonstrate that the functional value and overall condition of the SWRPA will be maintained. N.J.A.C. 7:8-5.5(h)1(i) and (ii). The FHA rules permit disturbance to the inner as well as the outer 150' of the 300' riparian zone. Also the FHA rules permit the width of the riparian zone to be averaged.

The Department has numerous times explained the importance of the SWRPA in protecting water quality. It has said "[t]he goal of the special water resource protection area is to main and/or create an unbroken, undisturbed vegetated buffer to meet these purposes and to prevent water quality degradation, along all Category One waters." In re Stormwater Management Rules, 894 A.2d 1241, 1246 (N.J. Super App Div. 2006). In the challenge to the rule, the Court highlighted the fact that "the 300-foot special water resource protection area is the best and most reliable means to prevent the degradation of surface water quality from nonpoint source pollution and protect the chemical, physical and biological integrity of the State's surface waters." Id. The Department's past defense of the SWRPA makes its proposed abandonment of it completely indefensible.

If the DEP is interested in standardizing language, a solution to the first issue is the expansion of the scope of the SWRPA so that it applies to the same waters as the riparian zone under the FHACA rules and under the same circumstances as the FHACA rules (i.e. the SWRPA is triggered by all projects, not just projects that meet the definition of "major development" and the SWRPA should also apply to all regulated waters not just "blue line" water.). Second, given the FHA rule's objective of protecting and enhancing water quality, the inner 150' of the 300' riparian zone should receive similar protections to those afforded under the SWRPA. The solution to inconsistent application is to harmonize the rules so that the best protections of each rule are incorporated into the other. Third, the SWRPA should continue to apply to waters that are not regulated waters under the FHACA rules, as meeting criteria under N.J.A.C. 7:13-2.2(a)(3).

N.J.A.C. 7:13-1.2, 4.1 and 10.7 Regarding acid producing soils, when the original FHACA regulations were adopted in 2007, the Department implemented additional protections for those specific soils. The proposal reverses these protections by reducing the required riparian zone from 150' to 50' as a result of alleged erosional impacts. Further, the proposal would allow stormwater to be discharged directly into the stream in order to avoid impacts to the acid producing soils. If, as the DEP indicates, erosion is a problem, the solution at a minimum is application of the Soil Erosion and Sediment Control Rules requiring that discharges not create erosive conditions; the optimal solution is to require additional infiltration of stormwater onsite and further dispersion of the remaining runoff outside of the riparian zone. The Department could require the utilization of green infrastructure to infiltrate, treat or otherwise retain stormwater onsite to the maximum extent possible. The solution is not, as the DEP proposes, to allow the piping of excess stormwater through the riparian zone and directly into streams. This piped water has the potential to increase erosion in the stream from the increased velocity at which water will enter the stream as opposed to moving as sheetflow overland through the riparian zone. Given DEP's obligation to protect water quality and to reduce or eliminate erosion, this provision is contrary to DEP's statutory obligations. We therefore oppose proposed N.J.A.C. 7:13-4's deletion of acid producing soils under the 150' riparian zone as well as the similar deletion under the coastal zone protection rules at N.J.A.C. 7:7E-3.26(e)2.

The Department's summary explanation seems to be encouraging the filling in of the riparian zone/flood fringe in order to cap acid producing soils. This encouragement is a direct violation of statutory mandates.

N.J.A.C. 7:7A-1.4. The Department is redefining historically naturally occurring streams that have been converted into a pipe, culvert or bridge as a non-regulated water. This action is contrary to the requirements of statutory law. This proposal will encourage development right up to the edge of the pipe, culvert or bridge. Removing the riparian zone will decrease the area's natural ability to slow, infiltrate and filter runoff. This decrease in capacity could increase flooding downstream. Also, roads are notorious in their ability to channel runoff directly into a stream without the benefits of a buffer. Removing the riparian zone around a bridge channels this runoff without the benefits of the riparian zone, exacerbating flooding and damaging water quality. Given the Department's acknowledgement of the benefits of buffers and the acknowledgment that overall water quality in New Jersey is unacceptable, the Department should not reduce the riparian zone along any feature. Furthermore, the Department's explanation that lined channel or ditches do not function as a natural feature ignores that many of these systems discharge into natural streams. This is especially true if the feature had

been natural. Thus protecting water quality that flows into these manmade structures protects that water quality and quantity that flows out of these manmade structures and into natural waterways.

We acknowledge the preference for redevelopment over new development. However this redevelopment should not sacrifice the need to protect and improve water quality and to address flooding concerns especially in our urban areas and older suburbs. As the Department explained in the beginning of the summary document, NJ has a dense population and extensive development in the flood plain. Redevelopment should not ignore this issue and should occur a manner that is not inconsistent with New Jersey's obligation to protect human life and property and improve water quality. The need to redevelop should not be a rationale to increase the number of people and property subject to periodic flooding which is what this proposal does.

N.J.A.C. 7:13-6, 7 and 8. The Department is proposing to add additional general permits, permits by rule and permits by certification. These types of permits can only be promulgated if there is a finding that the proposal has a de minimis impact on the environment individually as well as cumulatively. 40 C.F.R. 233.21(b). The proposal document does not discuss the Department's analysis demonstrating the compliance with this requirement. Further, permit by certification requires relying on a third party to ensure compliance with the Department's requirements. There is little assurance that the Department will have the staff to inspect these proposals prior to their construction and little evidence that enforcement actions will be taken in situations where the certifications were incorrect.

N.J.A.C. 7:7A-2.3(c). The proposal to remove protections along naturally occurring stream that had been piped violates the goals of the authorizing statutes. Under the Federal definition of Waters of the United States these streams would be a regulated water under the WOTUS definition of a tributary and tributaries; a waterway would remain a regulated water even if it has been placed in a bridge, culvert or pipe. 40 C.F.R. 230.3(o)(iii). Given the obligation under Federal and State laws to protect and improve water quality this provision would be less stringent than the Federal law. New Jersey's regulations cannot be less stringent.

N.J.A.C. 7:13-1.2. The proposal here is not limited to areas where human usage or intervention was legally permitted. A strict reading of this proposal would reward those that actively disturbed the riparian zone without legal right to do so. Additionally, the Department's rules should discourage development in any riparian zone and encourage the restoration of previously disturbed riparian zones.

N.J.A.C. 7:13-11.2(b). The Department's should not abandon the regulatory

requirement to scale back a project in order to avoid impacts to the riparian zone. The Department's blaming of municipal land use is a misunderstanding of the Municipal Land Use Law. A municipality's zoning requirements are generalized requirements over large geographic areas. The zoning requirements do not necessarily, and rarely, take into consideration environmental resources or constraints. Simply because a zoning ordinance may allow a proposal does not require the Department to issue permits contrary to the goals of the Flood Hazard Area Control Act and the Water Quality Planning Act. The entire history of Department decisions regarding wetlands permits, sewer service areas and many other areas make this abundantly clear. This proposal justification is contradictory to the hierarchy of statutory authority.

N.J.A.C. 7:13-11.2(e). The department's proposal to increase the amount of disturbance allowed in a riparian zone is contrary to the requirements of the law. The Department's comment that "in some cases the riparian zone disturbance allowed for certain projects is of insufficient area to appropriately accommodate responsible development" is misguided. There truly should be limited development in a riparian zone. The limited exceptions allowed under the existing regulations have not improved water quality or reduced flooding so expanding those exceptions could only serve to exacerbate the problem. Further limiting the amount of disturbance and strictly enforcing those limits would send the clear message that projects should be designed to avoid, then (if avoidance is not possible) minimize incursions into the riparian zone.

Additionally, the failure to require mitigation in all circumstances for the reduction of or disturbance in the riparian zone is contrary to both the law and the intent of the Act.

N.J.A.C. 7:13-11.2(f)(1). Given New Jersey's obligation to issue permits and implement regulations that lead to cleaner water, the proposal to allow up to one-quarter acre of riparian zone vegetation removal is contrary to statutory requirements. The rules should require the restoration, on site, of all riparian zone disturbances. The Department has acknowledged that historic impacts to the riparian zone have resulted in flooding and water quality degradation. The cumulative impacts of further degradation to the riparian zone must be taken into consideration. The Department notes that one quarter acre of disturbance will have de minimis impacts, but that does not address aggregate impacts and is not the real test. The impacts should be analyzed based upon how the disturbance to the area compares to the natural condition of the riparian zone.

The department should provide its analysis that the net loss of a quarter acre of riparian vegetation will not adversely impact riparian zone's functionality as compared to a fully functioning, naturally occurring riparian zone, individually or cumulatively. New Jersey needs to stop allowing death by a thousand brush clearings and pretending there

are no consequences. The facts demonstrate the contrary.

N.J.A.C. 7:13-11.2(f)(3). We appreciate that the Department is re-enforcing the idea that converting forest riparian zones to other vegetation reduces their capacity to protect our waterways and should not be permitted under this section of the rules. This also reinforces the concept that the rules should encourage the restoration of disturbed riparian zones, not further negative impacts to these areas.

N.J.A.C. 7:13-11.2(f)(5). When relocating an existing structure in the riparian zone, an applicant should be required to move the structure farther away from the waterway, or at the very least, be prohibited from moving it closer. This proposal contains no such requirements or prohibitions.

N.J.A.C. 7:13-11.2(f)(7). Since all disturbances to riparian zones should be temporary (other than the actual structure and any immediate and necessary area of permanent disturbance), disturbed areas should be restored as closely as possible to their naturally functioning condition. To the extent that the roadways channel runoff towards streams it is vital that a healthy and fully functioning riparian zones exist to intercept the runoff, slow it down, infiltrate and filter the water before it reaches a waterway.

N.J.A.C. 7:13-11. The Department's experience regarding the limits of allowable disturbance for projects leading to too many hardship applications is not a cause to increase the limits of disturbance. Rather, it speaks to an unwillingness of applicants to engage in proper desing. Existing Table C/ proposed Table 11.2 should be restructured to first avoid impacts to the riparian zone and then, if that is not possible, to minimize those impacts. Increasing these limits removes this incentive. This is contrary to the goals of reaching water quality standards and keeping people and property away from floodways and ecologically valuable lands.

N.J.A.C. 7:13-15.1 The Hardship provision should truly be applied to unique and unusual situations. Hardship should be strictly reviewed and the requirements set out in existing 9.8 should be enforced. This reinforces the incentives to keep development out of the riparian zones. The Department's proposal to not disqualify an applicant that created his or her own hardship will only encourage bad behavior. It is also entirely contrary to the well-established statutory intent in land use law, where hardship is based on the character of the parcel, not the action of the applicant. We strongly believe that an applicant that creates his or her own need for a hardship waiver (including the subdivision of land such that one or more lots are deliberately compromised regarding this rule, as discussed in our comments on N.J.A.C. 7:13-11.2(g)(4) should be disqualified from receiving one.

N.J.A.C. 7:13-11.2(g). The Department's comment that roadways and railroads are vital

infrastructure is a general comment and is generally true. That does not mean that all proposed roadways are vital, nor are all locations vital. Even a vital road in the wrong place causes that is incorrectly or carelessly sited can impact water quality. A vital roadway, in many cases, can be designed to avoid streams and riparian zones and still achieve its purpose. Strictly enforcing the clearing limits in *existing* Table C and strictly applying the hardship requirements help do this.

Also, the mitigation compensation should be for all cleared riparian zones, not just that in excess of the figures in Table 11.2. Ninety percent of New Jersey's waters do not meet standards. Riparian buffers are one of the best methods of protecting water quality. Removing or degrading buffers reduces protections for these waterways.

N.J.A.C. 7:13-11.2(c). The Department should not make it easier for people to build in the riparian zone. With the amount of runoff that can come off of lawns, streams require as much protection as possible not less. Further, this section will encourage people to build in the flood fringe, which could put them in harm's way. The goal of the Flood Hazard Area Control Act is to protect people from harm, not move them closer to it.

The Department should not be allowing individuals to increase the square footage of development and disturbed areas in the riparian zone during reconstruction on a permanent basis. While we may not want to refuse the rebuilding of a damaged structure in these areas, we should not be allowing the expansion into the riparian zone/flood fringe. The 2,000 square feet of disturbance should only be temporary and only for the purposes of reconstructing the damaged property.

Likewise, providing 4,000 square feet of disturbance for an accessory structure (except for a fence) is very significant. Accessory structures should be provided minimum disturbance allowances, not McMansion-sized clear cutting of vegetation. They should only be placed in a riparian zone/flood fringe only if there is absolutely no other viable location for them.

N.J.A.C. 7:13-11.2(h) This provision seems positive if it truly discourages development within the riparian zone. It is agreed that restoration/mitigation should be required for all impacts to the 300' riparian zone. The Department should require restoration/mitigation for all impacts to the riparian zone, whether that zone is 50', 150', or 300'. The location of this restoration/mitigation should be in accordance with the policy set out in our comments in N.J.A.C. 7:13-13.

N.J.A.C. 7:13-11.2(g)4. The existing rules at N.J.A.C. 7:13-10.2 prohibit an applicant from subdividing a property in such a way to recreate the need to build a road in riparian zone. This proposal allows an applicant to create an impact that currently does

not exist. This change in the rules will encourage subdivision of property that increases the impacts to the riparian zone. For the reasons provided in the beginning the Department should not be increasing impacts to the riparian zone.

Again equivalent mitigation for all riparian zone impacts should be required, not just those in excess of Table 11.2.

N.J.A.C. 7:13-10.2(j)2. The proposal to allow direct discharges into the 150' or 300' riparian zone, so as to avoid erosional features outside of the riparian zone, only moves the erosional feature. It does not necessarily prevent it. The Department should, in its stormwater rules, require green infrastructure and a requirement to infiltrate or otherwise retain 100% of the stormwater that enters a site. The Soil Erosion and Sediment Control Rules already have provisions to protect against such erosion from discharges other than to water channels. Applicants that cannot meet the necessary design conditions should be required to redesign their projects.

N.J.A.C. 7:13-11.2(m) and (n). These proposal are contrary to the obligations under the FHACA to protect human health and wellbeing. To the extent that the flood fringe and the riparian zone are co-extensive, this proposal puts people and property in harm's way. Furthermore, it impairs the functionality of the riparian zone by allowing it to be disturbed. The Department should only allow development within the riparian zone for a single family home or duplex if the refusal would lead to regulatory taking. The applicant should only be permitted to develop in this circumstance after the applicant has obtained variances so as to minimize impacts to the riparian zone. In some instances the need to develop in the riparian zone is the result of setbacks or other zoning requirements. Only after these variances are granted or denied by the municipal land use board and (if relevant) county planning board should the Department consider granting approval for development in the riparian zone.

N.J.A.C. 7:13-10.2(m)4i. This provision should remain. Municipal zoning paints with a broad brush and does not necessarily take into consideration environmental constraints on a particular property. Instead of permitting disturbances to the riparian zone, the application should first apply for a variance. This variance could request permission for different types of development, or it could be a variance to allow for different setbacks to avoid impacts to the riparian zone. Only if the variances were denied and the failure of the Department to issue a FHA permit would result in a regulatory taking should the Department issue a permit that allows for development closer to a waterway and cause disturbance to the riparian zone.

N.J.A.C. 7:13-11.2(n). We support the Department in this provision.

N.J.A.C. 7:13-11.2(f) The Department's plan to permit a free quarter acre of riparian

zone disturbance without requiring restoration is against the requirements of the FHACA, WQPA and WPCA. Implementing this provision will not assist the Department in achieving the goals of the Act and may in fact cause increased degradation of water quality and increased harm to people and property.

Further, the Department's claim that these impacts are de minimis is without scientific support within the proposal. The cumulative impacts of permitting multiple quarter clearings in the riparian zone along a waterway or watershed will almost certainly have a negative impact on water quality.

N.J.A.C. 7:13-11.2(z). We support the requirement that all temporary disturbances to riparian zones are restored to the original condition. The restoration should be with native non-invasive vegetation. Allowing an applicant to replant a functioning riparian zone with lawn degrades that riparian zone and, quite likely, the waterway.

N.J.A.C. 7:13-13.2(j). This provision is unclear. If the Department's proposal is interpreted to allow a mitigation project to provide credits for both riparian zone destruction as well as destruction under the Freshwater Wetlands Protection Act, than this is double counting. The environment is not receiving the same benefits as if the features were not disturbed.

N.J.A.C. 7:13-13.4. We support the proposition that mitigation should occur in the area of the impacts. Without this closeness in proximity, the ability to reach water quality goals will be hampered. The Department should not permit mitigation to occur on preserved public property unless that mitigation is at an enhanced ratio. An enhanced ratio will compensate the public for the cost savings the applicant receives for not having to buy mitigation property or credits.

N.J.A.C. 7:13-13.4(g). We support the Department's prohibition on taking high quality property (from an ecological or flood control perspective) and turning it into another form of high quality property as a form of mitigation.

N.J.A.C. 7:13-13.2(k). The Department's proposal to not require mitigation in a 2 to 1 ratio is backsliding. Additionally, the required mitigation must be for the same type of riparian zone. Any mitigation for a lesser type of riparian zone should be at an enhanced ratio so that the functional equivalent is provided. There should not be a 1 to 1 ratio for damaging a forest riparian zone in exchange for restoring a grassland riparian zone. These two systems do not provide the same hydrologic and ecological benefits.

Also, the Department must have in place rules and inspections to insure that the restoration/mitigation is successful and has long term viability. We appreciate the

Department's five year reporting requirements. We suggest the Department undertake periodic inspections in addition to the self-reporting. There should also be provisions for periodic monitoring after the five years in order to ensure that the riparian zone mitigation project continues to function as proposed.

We question the Department's assertion on page 156 that riparian zone mitigation is more predictable than freshwater wetlands mitigation. Has the department undertaken its own studies regarding the success rate of riparian zone mitigation? Has the department reviewed the scientific literature to determine whether this assertion is accurate? Please provide references.

N.J.S.A. 7:13-13-14.1. We recommend that the Department not issue any approval to proceed with a project until the draft conservation easement is approved by the Department and the Department receives a copy of the recorded instrument. This would eliminate the not to infrequent occurrence of the conservation easement not being recorded prior to the completion of the project and the Department having a difficult time enforcing the conservation easement against subsequent innocent purchasers.

N.J.A.C. 7:13-5.3. As the Department acknowledges "flooding and environmental conditions on a site change over time," therefore, it is inappropriate to extend a verification beyond five years.

N.J.A.C. 7:13-7.39. This provision applies to utility lines. These projects can stretch miles, cover multiple municipalities and cross numerous streams. These projects also require numerous work zones where vehicles are parked, equipment is stored and other operations are undertaken. Allowing for a permit by rule for projects that may not cross a waterbody but is developed in the riparian zone or flood fringe is inappropriate. These projects must provide detailed analysis of the impacts to the riparian zone and water quality as required by the United States Army Corp of Engineers. Therefore it is inappropriate for these large projects to qualify for a permit by rule. Permit by rule should be limited to small scale projects with truly de minimis impacts to the environment.

N.J.A.C. 7:13-7, 8, and 9. The Department is placing the burden in the wrong place. The applicant must demonstrate by clear and compelling evidence that there is not a threat to public health, safety, welfare and the environment. Unless the applicant makes this demonstration the Department must deny the application. The Department should also reserve the right to deny the permit even if the engineer makes such a finding but it is in the Department's opinion by reasonable evidence that the engineer may be wrong.

The Department's statement that "in some cases the disturbance to vegetation in

riparian zones allowed under permits-by-rules, general permits, and individual permit standards under existing FHACA Rules for various projects has been insufficient to appropriately accommodate responsible development, particularly for infrastructure projects" is contrary to the goals underlying the rules or unwillingness to comply with the law. 47 N.J.R. 1054. NJ's national ranking as number 2 in FEMA flood claims, along with the State's existing water quality impairments, demonstrates that NJ has already allowed too much development in the riparian zones. The solution is not to expand allowable impacts to the riparian zones for the sake of development, but to reduce the impacts and require strict demonstrations under the hardship rules.

The standards or required analysis applied to individual permit applications, permits by rule, general permits and permits by certifications do not require a nondegradation analysis. This is important for two reasons. First, New Jersey has two classifications of waters that are afforded nondegradation status. Those waters are FW1 and C1 Waters. Under the surface water quality standards rule requires that "nondegradation water shall be maintained in their natural state. . .[and] the Department shall not approve any activity which, alone or in combination with any other activities, might cause changes. . . in the existing surface water quality characteristics." N.J.A.C. 7:9B-1.5(d)(2). FW1 waters are "not subjected to any man-made wastewater discharges or increases in runoff from anthropogenic activities." N.J.A.C. 7:9B-1.4. Further, FW1 waters are considered Outstanding National Resource Waters (ONRW). ONRW are required to be protected and maintained. 40 C.F.R. 131.12(3). This is in agreement with NJ Surface Water Quality Standards as cited above. Second, there is also a general nondegradation policy that is applicable to all of New Jersey's surface waters. That provision requires that "[e]xisting uses shall be maintained and protected. . . (ii) [n]o irreversible changes may be made to existing water quality that would impair or preclude attainment of the designated uses of a waterway." N.J.A.C. 7:9B-1.5(d)(1). Category One waters are further protected from any measurable changes to existing water quality. N.J.A.C. 7:9B-1.5(d)(2)(iii). These requirements mimic and implement the Federal Requirements.

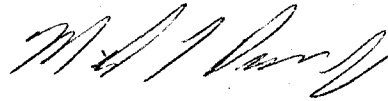
According to the EPA's Water Quality Standards Handbook "water quality standards apply broadly and it is inappropriate to exempt whole classes of activities from standards and thereby invalidate that broader, intended purpose of adopted State water quality standards." NJ standards apply to preventing degradation due to non-point source pollution. *Id.*

The proposed rules and in particular the increased amount of disturbance allowed riparian zones and the reduction in the amount of mitigation/restoration may have a significant potential to reduce water quality. The Department cannot adopt such policies under its own regulations and authorizing statutes and well as Federal Law. The Department must analyze the impacts of an individual incursion into the riparian

zone on water quality. If the Department cannot conclude that the proposed activity will have no adverse impact, the Department is required under the law to deny the permit application. This requirement is even more important for Category One waters and ONRW. The Department is required to deny a permit to any applicant that may individually or in concert with other activities causes detrimental changes in existing water quality characteristics. N.J.A.C. 7:9B-1.5(d)(2). The rule proposal provides for increased impacts to the riparian zone, reductions in the amount of mitigation required and an increase in the threshold impacts before mitigation is required. There is no analysis in the summary document regarding the impacts to surface water quality in general. Further, the rules do not require an applicant to demonstrate there are not or will not be impacts to water quality. Without requiring an analysis of the proposal on water quality, the rule proposal is ultra vires.

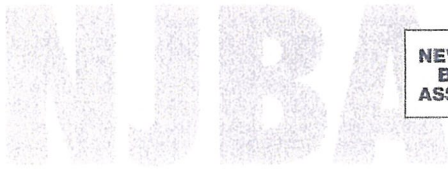
Therefore, it is respectfully requested that the Department not adopt the rules as proposed.

Respectfully submitted,



Michael L. Pisauro, Jr., Esq.  
Policy Director

Cc: Noemi de'la Puente, Executive Director, New Jersey Environmental Lobby  
Marian Glenn, President, Rahway River Watershed Association  
Heather Fenyk, Executive Director, Lower Raritan Watershed Partnership



www.njba.org  
 www.abconvention.com  
 www.njmx.com  
 www.foundationforhousing.com

July 28, 2015

Gary J. Brower, Esq.  
 Attn: DEP Docket Number 05-15-04  
 NJ Department of Environmental Protection  
 Office of Legal Affairs  
 Mail Code 401-04L  
 401 East State Street, 7<sup>th</sup> Floor  
 P.O. Box 402  
 Trenton, New Jersey 08625-0402

RE: Proposed Amendments to Flood Hazard Area Control Act (FHACA) rules; Coastal Zone Management Rules; and Stormwater Management Rules

Dear Mr. Brower:

The New Jersey Builders Association (NJBA) submits the following comments on the proposed amendments to the above referenced rules.

The NJBA applauds the NJ Department of Environmental Protection (Department) for proposing regulatory measures that would significantly benefit rebuilding efforts, which remain critically important to the State’s economic recovery, following the devastation imparted by Superstorm Sandy. Further, we recognize the tremendous work by the Department in utilizing the practical experiences learned by both the Department and the regulated community from the implementation of the 2007 FHACA rules to identify the regulatory areas necessary for amendment. The Department has conducted numerous stakeholders meetings and sought engineering solutions that safeguard the environment, public health and safety while also addressing implementation issues raised by the regulated community prior to proposing the rules. The Department is encouraged to continue such an approach with other regulatory programs.

The current Flood Hazard Area Control Act (FHACA) rules impose a 150-foot riparian zone on acid producing soils. See N.J.A.C. 7:13-4.1(c)2.iv. The impact of the 150-foot riparian zone on development activities has been to significantly impede or terminate development and redevelopment projects from moving forward. As noted in the background discussion, NJBA members have experienced practical difficulty in locating the “precise location or depth of acid producing soil deposits on a given site or along a given regulated water” to then determine the appropriate location for the 150-foot riparian zone. See 47 N.J.R. 1053. Further, the NJBA agrees with the Department’s observation that the local Soil Conservation Districts “are well staffed and effectively trained to help prospective developments avoid and mitigate impacts from exposure of acid producing soil deposits” and that there are long established, proven engineering mechanisms available to prevent impacts from such soils, as required under the Standards for

GEORGE T. VALLONE *President* • CAROL ANN SHORT, ESQ. *Chief Executive Officer*  
 DWIGHT W. PITTENGER, ESQ. *Vice President* • JOHN H. KIRKENIR *Treasurer* • THOMAS F. TROY *Secretary* • COREY T. WESCOE *Builder Vice President*  
 JEANNE TOMLINSON *Associate Vice President* • JOHN J. HEALEY 2<sup>nd</sup> *Associate Vice President*  
 MICHAEL J. GROSS, ESQ. *Environmental Counsel* • ROBERT M. WASHBURN, ESQ. *General Counsel* • THOMAS F. CARROLL III, ESQ. *Land Use Counsel*

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Soil Erosion and Sediment Control. See 47 N.J.R. 1053. Therefore, the NJBA strongly supports the Department's proposal to reduce the riparian zone along regulated waters containing acid producing soil deposits from 150-foot to 50-foot riparian zone. See 47 N.J.R. 1052-3; 1156.

The NJBA strongly supports the Department's proposed consolidation of the current Stormwater Management (SWM) rules at N.J.A.C. 7:8-5.5(h), which establish a 300-foot buffer Special Water Resource Protection Area (SWRPA) along designated Category One waters and certain tributaries, into the FHACA rules at proposed N.J.A.C. 7:13-11.2

NJBA agrees with the Department's assessment of the implementation issues and unintended negative consequences resulting from the overlap in jurisdiction between the SWM and the FHACA rules i.e. where the SWRPA and 300-foot riparian zone both apply to the same activity or project. See 47 N.J.R. 1042; 1053. The Department highlights how "the design and construction standards under the SWM rules for activities in a SWRPA in some cases differ significantly from the design and construction standards under the FHACA rules for activities within a riparian zone." See 47 N.J.R. 1043. Essentially, "while the SWM rules prevent new development within a SWRPA, the FHACA rules recognize that development within a riparian zone is sometimes unavoidable" and thus the FHACA rules seek to minimize disturbance to riparian zone vegetation or require compensation to preserve or improve the riparian zone functionality. The background summarizes that although the term "SWRPA" will not be used, the related standards will be incorporated, when appropriate, with new "uniform" riparian zone standards for regulated activity that will apply to a "uniform set of surface waters". See 47 N.J.R. 1053.

Further, the proposal mirrors the recently amended Coastal Zone Management rules to effectuate the Department's transformation goals for the Division of Land Use Regulation: electronic submittals, efficient processing of applications and elimination of unnecessary paperwork. The proposed amendments align with the Freshwater Wetlands rules regarding standards for riparian zone mitigation banks and availability of riparian zone creation and preservation as compensation options. The NJBA supports the expanded use of general permits-by-certification, additional new general permits, and proposed new nineteen permits-by-rule for activities that have *de minimis* impacts on flooding and the environment. The NJBA finds useful the "Table of Citations and Recodifications, N.J.A.C. 7:13" listing the proposed relocation and recodification of the existing FHACA rules.

The NJBA seeks clarification on the following questions, as related to the proposed rule amendments and their implementation:

1. What counts as disturbance under N.J.A.C. 7:13-11.2(e) and (f)? Are you allowed one quarter acre of encroachment into actively disturbed areas in addition to the disturbances allowed under Table 11.2? See 47 N.J.R. 1180-3.
2. What happens to a temporary condition of disturbance such as a soil pile that has vegetated naturally? Please clarify the duration and any criteria used in the application of a "temporary condition".

3. What is the duration of “actively disturbed” in terms of how far back the Department would go? NJBA notes that the proposed definition of “actively disturbed area” does not provide a timeframe. See 47 N.J.R. 1145. Will there be flexibility as to the look back time period for extenuating circumstances?
4. In light of there being no time limit for a decision on an Applicability Determination, would it be helpful to indicate when the Applicability Determination is needed by the applicant?
5. If you have over 150 acres of drainage area and there is no defined channel, please confirm if you would base the top-of-bank on a two-year storm calculation. What information must be submitted (i.e. cross section, a Manning’s normal depth analysis)?
6. In a determination of whether an area is “forested”, you must delineate that area using the methodology found in the rules. In other applications where the forested condition is not a relevant regulatory parameter, must you delineate forested versus non-forested area anyway for the application to be considered administratively and technically complete?
7. Will a checklist be provided for technical completeness?
8. If the application is technically complete when submitted, when does the 90-day clock start?
9. Who will handle mitigation issues - the permitting team or the mitigation team? What standards will the Department use in assessing requests to reduce the mitigation ratios?
10. Please confirm whether a feature has to be present for an area to be considered a “water”, even if the drainage area to a particular point is over 50 acres.

The NJBA urges the Department to adopt the proposed regulations without undue delay, as the amendments would provide much needed regulatory relief. Please contact NJBA with any questions regarding these comments.

Sincerely,



Carol Ann Short, Esq.  
Chief Executive Officer

C: Michael Gross, Esq., Giordano, Halleran & Ciesla, P.C.

# **JERRY HAIMOWITZ, PE, BCEE**

34A SOUTHBROOK DRIVE, EATONTOWN, NJ 07724, 908-429-1717

Senate Environment & Energy Committee Hearing  
October 19, 2015 10:00AM Room 1, 1<sup>st</sup> flr. Annex

It is my professional opinion that SCR 180 should be passed for the general welfare of New Jersey. This opinion is based on many details which are readily available and would take too much time to present. I wish to present four general points:

1. The NJ Water Supply Master Plan was issued in 1996. Page 13 of the executive summary states the plan is to be updated every 5 to 7 years. We have been waiting 19 years. This is important because the recent changes proposed by NJDEP decrease both the quality and quantity of water in NJ. How can we diminish our water supply when we do not know how much water we need and some parts of the State are already concerned about insufficient supply?
2. EPA states that source water protection is the most effective and usually the least costly approach to protecting drinking water quality.
3. C1 waters are our most pristine aquatic ecosystems. The proposed DEP rules would result in the significant degradation of the C1 ecosystems.
4. The proposed changes diminish the amount of public input and in some cases eliminate it. The consulting engineer hired by the developer could interpret the rules, give himself approval and there would be no DEP review.

Jerry Haimowitz  
BS Civil Engineering  
MS Sanitary Engineering  
NJ Professional Engineer  
Board Certified Environmental Engineer in Water and Wastewater  
S-4 Sewage Treatment Plant Operator  
C-4 Sewage Collection System Operator  
T-4 Water Treatment Plant Operator  
W-4 Water Distribution Operator  
N-2 Industrial Waste Treatment Operator  
(Note, licenses start at 1 as the lowest and 4 as the highest)

18x



July 28, 2015

Gary J. Brower, Esq.  
ATTN: DEP Docket No. 05-15-04  
NJ Department of Environmental Protection  
Office of Legal Affairs  
Mail Code 401-04L; PO Box 402  
401 East State Street, 7th Floor  
Trenton, NJ 08625-0402

Re: Flood Hazard Area Control Act Rules, N.J.A.C. 7:13  
Proposed amendments, repeals, and new rules

New Jersey Farm Bureau (NJFB), the state's largest agricultural organization, representing more than 10,500 farm families, affiliated agribusinesses and supporters of agriculture through the state, appreciates the opportunity to comment on the proposed amendments, repeals and new rules for the Flood Hazard Area Control Act (N.J.A.C. 7:13).

**In general, with one exception we strongly support the proposed amendments, repealed sections and new rules as a means of providing clarity for farm operators conducting normal farming practices in areas designated for flood hazard control.** This proposal streamlines the permitting process for such agricultural activities in a manner consistent with recommended practices from the USDA-Natural Resource Conservation Service, and harmonizes the project review process for agricultural practices with those set forth by local and state soil conservation districts.

In particular, the proposed rule revisions will provide much-needed relief in instances where farm fields greater than 50-acres in size drain into a single-source ditch or other adjacent water feature. Heretofore, farmers in this circumstance seeking to conduct sediment and debris-clearing activities have, for the most part, been required to obtain an individual permit for such work, an unduly burdensome process that carries with it significant expenses related not only to the individual permit fee itself, but also the associated engineering and site plan development planning work.

Currently, this requirement is a significant impediment for farm businesses seeking to carry-out these activities. There exists a demand for work by farmers, but projects are being impeded by the onerous fee structure associated with individual and general permit issuances. This proposal would encourage these on-farm Best Management Practices (BMPs) by making these activities eligible for permit-by-rule or permit-by-certification consideration, provided that certain criteria are met including that any such activities are carried out in accordance with NRCS and/or the local soil conservation district.

Our support for the proposed rule revisions notwithstanding, we are compelled to comment on several items with which we have outstanding concerns.

## **Permit-by-Certification Fee**

In our view, however, the proposed \$1,000 fee for farmer-applicants for activities covered under a permit-by-certification is excessive.

The practices in question (ditch clearing, bank stabilization etc.) are common farming practices intended to help manage runoff and maximize productivity in farm fields. Additionally, such practices must be carried out in accordance with an NRCS-approved plan or under the guidance of a local soil conservation district. Therefore, we believe that these practices should be encouraged. We fear that the proposed \$1,000 fee will have the opposite effect, acting as a deterrent for farm operators otherwise interested in conducting these activities in a responsible manner.

We are, however, sensitive to the administrative cost constraints in all levels of state government, including DEP, so we would therefore propose a fee-structure specific to agricultural applicants that softens the blow for farm businesses while enabling DEP to recoup the administrative costs necessary to administer the permit application process. Specifically, **we would suggest a \$250 fee for all applications in an Agricultural Development Area (ADA) as designated by the State Agricultural Development Committee (SADC) or comprehensive county/municipal farmland preservation plan.** Additionally, the \$250 fee should likewise apply to any parcel permanently preserved as farmland, most, if not all, of which are already included in the aforementioned ADAs throughout the state.

## **Allowance for Minimal Clearing of Vegetation As-Necessary for the Implementation of Agricultural Conservation Practices Under Certain Permit-by-Rule Categories**

NJFB would suggest also that permits-by-rule #55 (N.J.A.C. 7:13 – 7.55), #56 (N.J.A.C. 7:13 – 7.56) and #57 (N.J.A.C. 7:13 – 7.55) be revised to include an allowance for minimal clearing of vegetation if necessary for the implementation of an agricultural conservation plan or practice.

As currently written, this rule proposal would render ineligible for permit-by-rule consideration any agricultural conservation projects that include minimal clearing of vegetation (i.e. drainage pipe construction) for permits-by-rule #55, #56 and #57. Instead, such projects would require permit-by-certification submission, a process that carries with it a permitting fee and online application submission requirement.

In our view, minimal clearing as a component of a conservation plan approved by NRCS or a local soil conservation district should be permissible under these permit-by-rule categories.

## **Intersection with Threatened/Endangered Species Mapping (N.J.A.C. 7:13-6.7(b)4)**

NJFB is concerned about the impact of the proposed condition at N.J.A.C. 7:13-6.7(b)4, which provides that: the regulated activity shall not destroy, jeopardize, or adversely modify a

present or documented habitat for threatened or endangered species, and shall not jeopardize the continued existence of any local population of a threatened or endangered species.

Will the Landscape Project be the basis for such determinations? NJFB has long voiced its concerns about the overuse of this software, originally intended as an advisory tool but too often misused as a mechanism for excessive land use regulation.

An over-reliance on the Landscape Project that renders large swaths of privately-managed farmland ineligible for permit consideration will undercut the myriad improvements proposed herein, limiting farmer access to much-needed permits for the various agricultural activities eligible for permit-by-rule or certification consideration.

**Riparian Vegetation Replanting – Native Species Requirement (N.J.A.C. 7:13-6.7, subsection (b) 5**

The proposed rule revision requires that: “except for normal property maintenance conducted in accordance with permit-by-rule 1 at N.J.A.C. 7:13-7.1, all riparian zone vegetation that is cleared, cut, and/or removed to conduct a regulated activity, access an area where regulated activities will be conducted, or otherwise accommodate a regulated activity shall be replanted immediately after completion of the regulated activity, unless prevented by seasonal weather, in which case the vegetation shall be replanted as soon as conditions permit” (pg 584).

As a matter of clarification, the rule proposal should make clear that the requirement to immediately replant does not pertain to agricultural crops that were removed or harvested in coordination with an activity carried out in a riparian zone under a permit-by-certification. While we do not believe that such a crop replanting requirement is the intent of this rule revision proposal, language should nevertheless be added to explain this for farm operators considering a practice in a riparian zone.

This subsection of the proposed rule revision separately requires that replanting be limited to native, non-invasive vegetation, except in an actively disturbed area. While we recognize and appreciate the goal of rapid replanting and the use of native vegetation wherever practicable, we believe that some flexibility should be afforded to landscape professionals to make replanting decisions on a case-specific basis. This might include a combination of native and non-native plants in some instances, if non-natives are hardier and more conducive to erosion control, for example. Such flexibility is essential to ensure planting decisions that are reflective of on-the-ground conditions.

**Reasons for NJFB Support**

Assuming that the aforesaid concerns are taken into consideration, NJFB reiterates its general support for the proposed amendments, repeals and new rules for the Flood Hazard Control Act.

The expansion of available permit-by-rule coverage for common agricultural practices such as natural resource conservation activities, the construction of livestock fencing and fords across

waterways to manage livestock and forest management will provide welcome relief for farmland owners whose property includes areas covered by the Flood Hazard Control Act.

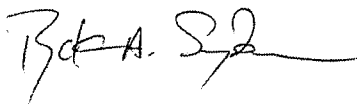
Separately, the inclusion of the permit-by-certification process for several agricultural activity areas will also provide significant relief for farm businesses, provided that the fee is reviewed and reduced accordingly. Enabling farm operators to obtain a permit-by certification will further encourage the adoption of practices - recommended by NRCS or a local soil conservation district - that enhance natural resource protection while mitigating runoff and erosion. If these changes take effect, farm businesses may revisit or explore for the first time projects that had heretofore been rendered cost-prohibitive because of the exorbitant fees associated with individual permit application submissions.

We are also compelled to comment favorably on the inclusion of language in this permit to harmonize these rules with the "approval and supervision" responsibilities already maintained by the local soil conservation districts. The status quo is unnecessarily duplicative, requiring applicants to seek review and approval from both DEP and the local soil conservation district. Clarifying the role of the conservation districts in approving and supervising certain permit-eligible activities will streamline this process, maximizing predictability and efficiency for landowner-applicants.

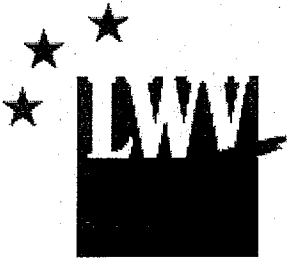
### **Conclusion**

We commend DEP for its efforts with these proposed revisions to the Flood Hazard Control Act rules. This proposal simplifies the regulatory regime for activities in riparian and other flood hazard areas while maintaining all relevant protections. For farm businesses in particular, providing this clarification will maximize natural resource conservation efforts and the implementation of Best Management Practices. Revisions in state regulations such as these by DEP constructively advance agricultural viability objectives that we all share and are incumbent upon all agencies of state government as stipulated by the legislature in the Right to Farm Act (N.J.A.C.

Thank you.



Ryck Suydam  
President  
New Jersey Farm Bureau



Monmouth County  
League of Women Voters

PO Box 414  
Oakhurst, NJ  
07755

Senate Environment & Energy Committee Hearing  
Room 1, 1st floor Annex  
October 19, 2015  
RE: SCR 180

My name is Christine O'Rourke and I am speaking on behalf of the League of Women Voters of Monmouth County. The League is a non-partisan, non-profit public interest organization with a longstanding position in support of protecting our drinking water.

Monmouth County is Critical Water Supply Area #1 in NJ due to serious depletion of the sole source aquifer we rely on. When the Manasquan Reservoir came online in 1990, our water purveyors had to severely restrict their take from aquifers and rely more on surface water supplies.

Much development in increasingly fragile areas of our water-supply watersheds has taken place since the Water Supply Master Plan of 1996. This should be updated so we can do intelligent planning and rulemaking. The increase in imperviousness and the development of natural floodplain areas, has led to badly eroded stream corridors for our "Category 1" streams supplying our reservoirs.

Our **Swimming River Reservoir**, serving northern and eastern Monmouth County, suffers from siltation and eutrophication. Every storm erodes the glauconitic soils of the watershed and carries silts and clays that encourage the growth of bacteria like E.coli to the reservoir.

Our **Manasquan River Reservoir** relies on pumps to transfer water into it. If stream flows fall below a certain level, no water can be pumped. AND pumping must halt whenever storm runoff makes the river water too turbid.

Studies show the health of a stream depends on the first 10% of its watershed –and the macroinvertebrate population this area of leaf litter, seeps and swales, provides. **It is essential we protect these areas. We need DEP regulations to prioritize the buffer protections we offer our "Category- 1" stream corridors not reduce and remove them as the current merging of the CAFRA, Stormwater, and Flood Hazard Regulations does by cutting critical buffers and allowing a patchwork of mitigation projects. To be most effective buffers need to be contiguous and undisturbed.**

We are the most densely populated state in the nation. Protecting the integrity of our streams and the quality of our drinking water should be a key priority.

**There is no resource more critical than our drinking water. We urge you to pass SCR180 and to stand by the legislative intent of the Freshwater Wetlands Protection Act of 1987.**

Louise Usechak, President  
louiseusechak@comcast.net



July 31, 2015

**VIA E-MAIL**

Mr. Gary J. Brower, Esq.  
Attention: DEP Docket #5-15-04  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
401 East State Street, 7<sup>th</sup> Floor  
Mail Code 401-04L  
P.O. Box 402  
Trenton, New Jersey 08625-0402

**Re: *Comments on Proposed Amendments -Flood Hazard Area Control Act Rules; Coastal Zone Management Rules; & Stormwater Management Rules (PRN 2015-053)***  
***New Jersey State Chamber of Commerce***

Dear Mr. Brower:

On behalf of the New Jersey State Chamber of Commerce (“State Chamber”), I am submitting these comments on the referenced rule proposal. By way of background, the State Chamber is recognized as an independent voice of business in the State of New Jersey. With a broad membership ranging from Fortune 500 companies to small proprietorships, representing every corner of the State and every industry, our members provide jobs for over a million people in New Jersey. We continue to work towards promoting a vibrant business environment and economic prosperity through vision, expertise and innovative solutions.

The Department should be commended for its efforts to streamline and reduce regulatory burdens on the business community. Overall, this rule proposal is positive and keeps to the Department’s intent on easing these regulatory burdens. The State Chamber appreciates the Department clarifying and consolidating many parts of these rules. We also thank the Department for convening stakeholder meetings leading up to this rule proposal. We firmly believe that the more transparent and inclusive the Department can be when developing regulations, the better the end result will be for the public, the environment and for the regulated community.

With that said, there are a few concerns which we raise herein:

- 1) Regarding Applicability Determinations, the State Chamber recommends that the Department adopt a uniform policy or approach to how these determinations are processed and where practicable and allowed by law, licensed professionals should be allowed to make these determinations. If this is not possible, then the Department should set a timeframe for when action is taken by the Department so as not delay projects. We recommend the Department keep the current 30 day deadline for processing applicability determinations.

- 2) The State Chamber recognizes that the Department is proposing a number of amendments to facilitate various regulated activities associated with site monitoring, investigation and remediation activities, and the placement, storage, and processing of hazardous substances, with appropriate protections to ensure that the activities will not exacerbate flooding or adversely impact the environment. We fully supports the proposed amendment to the definition of “temporary” that recognizes hazardous substance remediation activity may exceed six months in duration. This amendment will enable the responsible party to remediate the environmental media and achieve regulatory timeframes.
- 3) The State Chamber supports the Department’s investigation, cleanup, and removal of hazardous substances exemption from the flood storage displacement limitations in NJAC 7:13-11.4 10. We commend the Department for recognizing that it may not be possible or feasible to fully compensate for the volume of flood storage displacement necessitated by the investigation, cleanup, and removal of hazardous substances.
- 4) The State Chamber recommends that the Department exempt responsible parties that are conducting remediation in the channel, floodway, and flood fringe areas (riparian area) from the Subchapter 12 Activity-Specific Requirements for Individual Permits section 12.1 (g) requirements. Section 12.1 (g) conflicts with the purpose of remediating the hazardous substances in a timely and efficient manner and the flood displacement exemptions and allowances for hazardous substance remediation in a flood fringe area. For example, use of temporary sheet-piles necessary to isolate dredging or capping of contaminated sediments from flowing waters as specified in Section 12.15 should be exempt from the requirements in Section 12.1 as long as attempts are made to displace the minimum flood depth necessary during a flood event to implement the remediation. The remediation of the channel, floodway, and flood fringe is an environmental benefit.
- 5) N.J.A.C. 7:13 -1.2 Definitions: “*In-Kind*” definition, the Department should add language to this definition to allow flexibility on how the definition is applied. Specifically, minor deviations in materials and locations should be allowed since minor deviations will not have any significant effects on flooding either upstream or downstream. Determining hydraulic equivalency should be given maximum flexibility. Additionally, the Department should allow for the use of better, more improved materials when replacement is needed.
- 6) N.J.A.C. 7:13-1.2 Definitions: “*Top of Bank*” item #2: Using the limits of the two-year flood for determining the limits of the top of bank will require development of engineering calculations which would be costly and time consuming for the regulated community. A different method that does not require the use of engineering calculations should be developed. A linear regulated water that has a drainage area of 150 acres or more will likely have a discernable top of bank.
- 7) N.J.A.C 7:13-2.5 Applicability Determinations item #3: At this stage in the process, copies of signed and sealed plans should not be required. This is early in the process and by eliminating this requirement, it will help reduce project costs.
- 8) Species of Special Concern should not be used to determine riparian zone widths. The Department is proposing a definition for the term “species of special concern” at N.J.A.C. 7:13-1.2 in order to identify one of the categories of species for which wildlife passage is proposed to be required. N.J.A.C. 7:13-12.7(d)3 is new and requires that any new bridge or culvert and associated

construction, which would cause fragmentation of habitat for terrestrial threatened or endangered species and/or any terrestrial species of special concern, must incorporate a preserved or restored natural bank of sufficient width to allow the species to pass through the structure, with artificial banks. These requirements are to be utilized only in limited circumstances. The State Chamber questions the need for this added layer of regulation.

- 9) N.J.A.C. 7:13-7.1 Permits By Rule: The Department is modifying how herbicides are used when clearing vegetation in riparian zones under utility lines. If the application of herbicides is done in compliance with the Department's Pesticide Control Program and a NJDEP Aquatic Pesticide Permit, the use of herbicides should be allowed to control vegetation in a utility line ROW even if the ROW is in a riparian zone and should be authorized under a General Permit which would provide greater predictability than an Individual Permit.
- 10) N.J.A.C. 7:13-7.7 Permit By Rule 7: Placement of no more than five cubic yards of landscaping material. The Department should delete the word "landscaping" from the section. The placement of 5 cubic yards of any type of material will have deminimus impact on flooding and flexibility for homeowners and small projects should be allowed without the need for a flood hazard permit. There is no reason to limit the five cubic yards fill to landscaping materials only.
- 11) N.J.A.C. 7:13-7.5 Permits By Rule: The Department should delete reference to "by hands" only wording. Removal of debris and materials by mechanized means should be allowed as well.
- 12) N.J.A.C. 7:13-27 Permits By Rule: The Department should delete any reference to "public" entity or expand the wording to include private entity as well.
- 13) N.J.A.C. 7:13-8.9 Permits By Certification: The Department should delete reference to "public" entity or expand the wording to include private entity as well.
- 14) N.J.A.C. 7:13 – Permits By Rule #8 & 9: Exclude underground gas work in flood hazard areas and there is no corresponding Permits By Certification allowing for gas facilities in flood hazard areas without first obtaining an Individual Permit. The State Chamber recommends the Department include gas facilities in Permits By Rule and/or Permits By Certification if possible.
- 15) N.J.A.C. 7:13 –Permits By Rule #33, 34 & 35: The Department should clarify that the clearance of trees for safety reasons be allowed.
- 16) N.J.A.C. 7:13-8.15 Permit By Certification: The Department should allow for the replacement in kind for all types of infrastructure including water, wastewater and electric.

The New Jersey State Chamber of Commerce thanks the Department for the opportunity to comment and we look forward to your response.

Sincerely,



MICHAEL A. EGENTON  
Senior Vice President, Government Relations

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26x



**NEW JERSEY  
HIGHLANDS  
COALITION**

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**Judith Joan Sullivan, Esq**

**Rev. Skip Vilas**  
**Joyce Vilas**

# NEW JERSEY HIGHLANDS COALITION

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Gary J. Bower, Esq.  
NJ Dept. of Environmental Protection  
Office of Legal Affairs  
401 East State St, 7th Fl  
Trenton, NJ 08625-0402  
by email: [rulemakingcomments@dep.nj.gov](mailto:rulemakingcomments@dep.nj.gov)

July 31, 2015

**Re: DEP Docket 05-15-04**  
**Proposed recodification, repeals, amendments and new rules:**  
**Flood Hazard Area Control Act Rules; Coastal Zone Management Rules; and**  
**Stormwater Management Rules**

Dear Mr. Bower-

On behalf of the seventy-nine member organizations and the over eight hundred individual members whose interest in the protection of the natural and cultural resources of the New Jersey Highlands our Coalition represents, below are our comments on the above referenced agency rule proposals that if adopted will cause unacceptable losses to the public trust resources that the Department has a fundamental and solemn responsibility to protect, and a retreat from a program of developing flood resiliency when we look to the State for leadership.

Our comments will focus on subjects that pertain to fluvial waters, areas, and resources, which are characteristic of the Highlands. That our comments do not respond to proposed changes in areas impacted by acid producing soils or regulations specific to coastal zones, should not be taken as an endorsement of those aspects of the rule proposals.

We are sympathetic to the demands placed on the Department's resources. Staffing levels and its budget are at all-time lows. Regulated areas can come under the jurisdiction of more than one program unit, each with differing standards and rules. Reasonable requests with de minimus impacts and well-intentioned conservation projects can be overwhelmed by regulatory complexity. The need for a more streamlined, more efficient approach is well

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justified. And although it is precisely the reasoning given for the rule changes proposed on this docket, the Department goes much further.

With the deletion of the SWRPA buffers under the proposed Stormwater rule amendment (NJAC 7:8-4.2 and 5.5), significant source water protections will be dropped along with wetlands buffer standards designed to protect ecological values that promote groundwater recharge. The Highlands are the gathering grounds of headwaters that further downstream grow into the defined streams and rivers that comprise some of the State's most important drinking water resources. The uppermost origins of these riverine systems are the swales and intermittent streams that under the proposed deletion, would no longer be regulated. In the western Highlands where limestone is the predominant bedrock, important tributaries to Category-1 waterbodies are easily misidentified because only a small segment of a waterbody may actually rise to the surface—and when miscategorized as an isolated wetland feature, it lose the protection the SWRPA Rule currently enforces.

The Department justifies the proposed deletion of SWRPA buffers due to confusion between the list of regulated waters under FHACA and the regulated waters under the Department's Surface Water Quality standards (NJAC 7:9B) as shown on the USGS Quadrangle Maps or in the County Soil Surveys. These are buffer regulations promulgated to protect different kinds of resources and for different reasons---FHA riparian buffer standards were developed primarily to protect life and property during flood events, whereas buffers under SWRPA were developed primarily to protect water quality. Having parallel sets of regulations for functionally different riparian buffers is a rather simple concept. Any confusion this causes is either self-inflicted or overstated, and certainly not justification for the deletion of SWRPA buffers. More streamlined regulatory language and better cross-referencing would clear up any lingering confusion by the persistently challenged.

The new Table 11.2 (NJAC 7:13-11.2) proposes to increase the maximum area of disturbances allowed to vegetated buffers before mitigation is required and adds to the types of disturbances allowed. This proposes a wholesale increase in disturbances to riparian zones across the State. Instead of prohibiting development in the most valuable riparian zones and flood hazard areas, more disturbances will be encouraged resulting in a net loss of the functional values currently provided by riparian buffers, with adverse impacts to water quality and flood control.

A complex system of mitigation and mitigation banking (NJAC 7:13-13) sets up a system that allows new disturbances in naturally occurring, high value riparian buffers by attempting to offset the loss of ecological values by enhancing or restoring vegetated buffers along existing waterbodies anywhere within the same or an adjacent Watershed Management

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Area. Such a trading program can only result in a net loss of ecological values. Although the enhancement or restoration of previously disturbed areas should always be encouraged, they can never fully mitigate against the damage caused when a naturally occurring riparian buffer is disturbed, even when the mitigation ratio is greater than one-to-one. The administration of such a system, with the required oversight, reporting and monitoring, is complex and detailed. That much of the stated reasoning behind this far ranging rule proposal is to reduce the administrative burdens of an over worked, under staffed Department and to reduce the regulatory complexity facing the regulated community, and then to propose a sophisticated program that will carry with it the responsibility of alleviating the full measure of ecological damage that the Department now intends to allow and to fully offset the associated new risks to water quality and flooding, requires a leap of faith that the Department is in no position to ask.

The Department proposes to allow mitigation projects on public lands 7:13-13.4(c)2 if approved by the Green Acres Program (7:13-13.4(c)2). It is wrong to provide land preserved with public funds for mitigation projects unless it is at a ratio many times greater than the disturbance. Mitigation on private land requires the recording of a conservation easement, which has a certain value. Public lands are already protected, and any additional deed limitations to protect a mitigation project is only of marginal value. We object to the use of our public lands to facilitate the loss of riparian buffers in the service of private interests.

The vast body of academic, scientific and professional literature recognizes the “mitigative hierarchy” that should be followed when considering environmental impacts: *avoidance of impacts, minimizing impacts, and only lastly, compensation, or mitigation, of impacts*. The Department, with this rule proposal, intends to allow more disturbances in riparian buffers (NJAC 7:13-11.2). Only when the higher threshold of disturbance is exceeded will mitigation be required (NJAC 7:13-13). This not only reverses the traditional mitigative hierarchy model, but places “*disturbance*” as the very first step in the sequence.

Very little scientific basis is provided to justify the types of mitigation allowed, the specific ecological values that are to be replaced, or the locations that mitigation may take place. In a departure from the Department’s existing requirement that riparian buffer replacement mitigation occur in within the same waterway, mitigation under the proposed rule may occur anywhere within the same Watershed Management Area, or in an adjacent Watershed Management Area. The State is divided into twenty Watershed Management Areas, they are similar to counties in size. This is too large an area. As in the Stormwater and Freshwater Wetlands rules, mitigation should occur, if not in the same waterbody, in the same HUC 14 subwatershed. No basis is provided to support the value or merit of mitigation that has neither a hydrological nor ecological connection with the area disturbed other than to serve the convenience of the applicant. This is alarmingly consistent with many aspects of

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the proposed new Riparian Zone Protection Standards, including the expanded grandfathering provisions and exception areas, the new Permits-by-Rule and Permits-by-Certification, the repeal of SWRPAs, the repeal of prohibitions on stormwater discharges within the 150 and 300 foot riparian zone and on stormwater discharges directly into surface waters. The Department provides no basis or background documentation or scientific grounds that can show that by adopting sweeping, more lenient provisions that the Department is acting in the interest of the State or is responsive to the scope and purpose as stated in NJAC 7:13-1-1. In fact, the interests to which the Department responds throughout the rule proposal are solely those of the regulated community.

Mitigation, if it is to be successful—an outcome that by no means is guaranteed—has rules and standards and it must be undertaken by experienced professionals. The USEPA, the USF&WS, the Army Corps of Engineers, national conservation organizations, many state agencies and universities have published standards, guidelines and best management practices pertaining to riparian area mitigation and mitigation banking. Mitigation to the extent proposed in this Rule must reference a set of acceptable standards to which participants and mitigation projects must adhere and held as the benchmark to determine the success or failure of a project.

Many disturbances that currently require a demonstration that strict compliance with riparian zone limitations would create an undue hardship are proposed to be allowed with mitigation. The conditions to qualify for a hardship exemption for the few disturbances that will continue to be prohibited are relaxed (NJAC 7:13-15.1). Hardship waivers are intended to provide those who, in rare situations and because of unique circumstances, should be relieved from strict compliance to necessary regulations. If, as the Department claims, too many applicants are applying for hardship exemptions and as a result, they experience uncertainty in having to apply for a waiver, the proper response of a responsible agency would be to promptly deny the requests from those who do not qualify, not relax the rules to ease the workload of the Department and for those who are abusing the program.

Many of the bridges and dams that may be subject to regulations under this rule potentially have historical resource values. Historical resources are significant assets of the public trust and should be recognized. In the least, if there is the potential of historical value associated with any structure or natural feature as a result of a regulated activity, a provision should be added that the State Historic Preservation Office be notified so that the resource may be documented and recorded. This provision is not intended to prevent an approved regulated activity from taking place.

The Department recognizes climate change as a factor contributing to increased flooding

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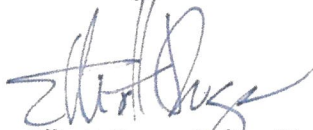
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*(Added flexibility for flood control projects, Rule Narrative, p. 198)* but the proposed rule fails to factor the projected influences climate change will have on precipitation and flood events in New Jersey. In determining flood mapping, flood elevations, and other features of floodway design standards, the Department proposes the 100-year flood as the standard. However, FEMA and many States have adopted the 500-year flood in response to the conservatively projected influences of climate change on the mid-Atlantic region. This is a gross omission that the Department must rectify. Providing flexibility for the regulated community—it is mentioned more than fifty times in the narrative section—should not be the priority of the Department, especially where public health, safety, and property is at risk.

This rule proposal has been under development for at least four years. The public has been allowed only 60 days to review and comment on a 936 page document. In the press release the Department issued with the publication of the rule proposal our organization was listed as a stakeholder in the development of the rule. We were never consulted nor did we participate in any stakeholder meetings. If we had been consulted we would have been as stridently opposed to the aspects of the rule as we are in our comments letter.

The Department's first responsibility and primary charge is to protect public property, health and safety, and the public trust resources of the State. If the Department truly wishes to make the application process less burdensome and more predictable for the regulated community, it can do so by saying "no" promptly, more clearly and by having less confusing regulations. What it is proposing in this rule, allowing more disturbances in riparian buffers and in the flood hazard area, proposing an unproven and administratively complex mitigation program, will cause the loss of the resources the Department is supposed to protect and will result in more flooding, more flood damage, and put our health and safety at further risk.

Sincerely,



Elliott Ruga, Policy Director  
New Jersey Highlands Coalition.

My name is Diane Burke and I am here to represent the efforts of the small but growing grassroots effort, Quench, determined to make sure the link between the actions we take today and a changing climate do not remain invisible because without this understanding we most certainly will enact rules which will impose future costs to the state and its residents. For that reason we are here to express support of Senators Lesniack and Smith's resolution SCR180 which determines that the DEP proposal to revise the Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules is inconsistent with legislative intent.

Within its 1000 pages of amendments, it is my understanding that the proposed DEP revisions make not a single mention of climate change despite suggesting that they include lessons learned from Sandy. No mention of the global warming sea level rise or New Jersey's unique topography which is simultaneously experiencing a gradual sinking. No mention of the climate challenge within a state which needs to prepare for an increase of extreme storm events, precipitation and surges - and the aftermath impacts including surge water contaminated with biological and chemical pollutants which will create added environmental and public health challenges.

While campaigning in Iowa, Governor Christie made some very disturbing statements. The Governor said, and I quote, that he has "worked to make the DEP much more business-friendly, worked with businesses to get rid of regulations that were no longer necessary, worked to make our permitting processes fairer, more transparent and more cooperative with our customers - the business community in New Jersey."

The Governor is wrong. Home owners, residents, consumers of drinking water, businesses which may occupy structures in flood plains, fishermen and even Mother Nature are all customers of the DEP. Placing developer interest above all the rest is a violation of the balanced intent of the Legislature. I think we should take a good hard look at the proposed revisions to assess whether their purpose is NOT to do that for which they are expressly intended - to protect our freshwater wetlands and streams and minimize damage to life and property for all New Jerseyans from flooding caused by development- but are instead intended to "streamline" the culture of cooperation with a single beneficiary in mind - a most specific business community in New Jersey.

Since water sustains life, effective management of water resources demands a holistic approach. And a holistic approach includes recognition that the challenges before us today require a review of the current science of climate change to best anticipate and plan effectively for the impacts on this most essential resource in New Jersey. Instead the proposed rule revisions reduce water resource protections established by the decades old rules even as we look toward a time when vulnerabilities will be stressed even further by this new set of challenges. Deciding to exclude a study of the science which would undoubtedly direct DEP efforts to strengthen and extend these protections, unlike the

current proposals which repeals Special Water Resource Protection Areas and establishes a system that masquerades as mitigation while bartering away protections - is a most curious oversight for a mandate designed to minimize damage.

Thank you for allowing us to bring out concerns before you today.

Diane Burke

[REDACTED]

Rumson NJ 07760

[REDACTED]

# THE FRIENDS OF LIBERTY STATE PARK

10/19/15 Friends of Liberty State Park's Statement  
to Senate Environment and Energy Committee

P.O. Box 8407, Jersey City, New Jersey 07303-8407  
201-792-1992 Sam Pesin cell 201-341-7895  
pesinliberty@earthlink.net  
www.folsp.org

LSP's future is threatened by privatization/commercialization plans from Gov Christie's NJDEP's top privatizers, Commissioner Bob Martin and his privatization czar Lou Valente. The DEP paid for the NJ Future development proposals report and I praise you for trying to obtain it on behalf of the public's right to have it for the public discussion of the park's future.

The Gov's "Sustainable Parks" goal of further monetizing – privatizing – commercializing LSP is a wrongheaded philosophy - that this priceless and precious park is a "wasted, space" to give away to developers in long-term leases - and as you know the Gov insisted on language for a law that ties LSP planning, probably for bonding, with the NJ SEA.

Liberty State Park is a very special public space and an inspiring national treasure. Former Majority Leader Bernard Kenny once said that after the Gettysburg Battlefield, LSP is the next most sacred place in America. Sen Kenny stated to Gov Whitman during a previous battle, "Let this park be a symbol of the true values of our nation now and for decades to come" and he added, "Those who ensure that Liberty Park's open space is forever there, will be recognized as strong and caring leaders." I urge you all to be such leaders and strongly oppose the Governor's coming plans . [http://www.folsp.org/history/kenny\\_letter.pdf](http://www.folsp.org/history/kenny_letter.pdf) There is no better neighbor and no better tribute to Lady Liberty and Ellis Island than a free and green open space park where people of all cultures, religions and colors can enjoy themselves together.

For the park's 39 years, the overwhelming majority-the broad public consensus- has always wanted the park to be a free and fully accessible park behind Lady Liberty and NOT a commercialized, privatized park, no matter what revenue was promised from leased out land. Parks, like schools, are created with taxpayer money to serve the Public Good and the Public Interest.

Commercialization plans are an attack on the quality of life of the urban people and an attack on the park's spirit, purpose and meaning. The plans will inevitably take away scarce urban open space, and restrict public access by traffic jams and confiscation of free parking spaces, especially on summer weekends when LSP is already jam-packed.

The park in a concrete and crowded region - provides a much needed green oasis for people's quality of life - a place to refresh our spirits and benefit our mental and physical health. The park represents the same kind of a close-to-home peaceful escape for urban residents, the same way the woods and farms of western NJ provides solace for suburbanites.

The park was envisioned and championed by my father Morris and the park was funded by state and federal \$ to be a free open space family park.

- LSP already has two major admission-fee tourist commercial attractions – ferries to Lady Liberty & Ellis Island and also Liberty Science Center and that is enough for tourists who enjoy seeing a green park next to our national monuments.

- **State Parks should not have to raise revenue or pay for themselves.** Parks don't "lose" money. That's a specious argument based on a false premise. The claim that LSP operates at a loss is based on a false premise and is manipulating "SPIN" from the people who want to commercially develop the park.
- **In fact, LSP brings in \$1.5 million annually out of its \$2 million annual operations budget not counting salaries, from the Liberty Landing Marina and the two restaurants it sublets to – Liberty House and Maritime Parc – and Statue Cruises ferry lease, and special use permits (for instance charity runs and walks, commercial "shoots" etc.).** (Also LSP makes additional money from **periodic special events** such as the Veuve Clicquot annual Polo Classic, and music festivals like Star Ledger Jazz Festival, All Points West rock festival, Red Bull Air Race, Tuffmudder, etc.) **when promoters apply to LSP for events, and LSP, not a private company approves their dates and amount of events.**
- **For park improvements, there is also funding from the Corporate Business Tax, periodic Green Acres referenda, and also Natural Resource Damage (NRD) awards (from polluters needing to compensate for their damages in a region.)**
- **LSP already has economic benefits to local and state economy - adding immeasurable money to the local and state economy with its dramatic views, and Liberty Science Center and ferries to the national monuments (attracting visitors from around NJ and nation) and making JC more attractive to people and businesses considering relocating to JC or already here and LSP users also spend money at Jersey City restaurants and hotels. When the Interior natural area opens with its nature paths, eco-tourism dollars will also benefit the local and state economy.**

I feel many people would feel that minor, small scale privatization may be acceptable by such ideas as a winter temporary skating rink, a private manager of the historic Terminal for after hours events such as weddings corporate or fundraising events etc.








LSP should be compared to Central Park- not as to specific uses as each park has different characteristics (like everyone walks or bikes into Central Park) but rather the essential public, possessory interest "The People" have in the park. The real estate world sees LSP as a property which is still not ensconced with the traditions and protections of Central Park. LSP is now among the most valuable property in the U.S. There's \$\$\$ to be made. The "persona" of this park is a relatively new thing. Many still see JC and LSP as a gold mine. The DEP doesn't respect the last 39 years of the broad public consensus for a free open space park for all to enjoy. They think they have "discovered" gold in LSP -that what many have fought for is for them to profit from.

The worst threat in the DEP's plans would be a concert venue shell leased to a private company as it would do severe harm to LSP's use as a park by urban families wanting to use LSP on summer weekends for picnics, playgrounds, free recreation and relaxation.

The most important days of the year in this priceless, beloved park as very scarce urban open space in this densely populated region are summer weekends. There is a 30 year history of concert promoters wanting LSP to be a commercial concert venue.

A permanent concert shell company would have summer weekend concerts which would cause weekend traffic jams - restricting and blocking public access - and concert attendees would take away summer weekend free parking spaces with the park jam-packed on summer weekends and many LSP users arriving later in the day on hot days.

*Sam Fein, president*

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From: Howard Moskowitz [hmoskowitzlaw@hotmail.com]

Sent: Fri 10/16/2015 8:14 AM

To: OLSaideSEN

Cc:

Subject: Re Monday's hearing as to Liberty State Park

Attachments:

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Ms. Horowitz and Mr. Mollimock:

I write with regard to Monday's Environment Committee hearing as to Liberty State Park to request that, consistent with what I understand to have been past practice, the website notice be revised to reflect that members of the public, unable to personally appear, can make emailed submissions to this address.

Thank you for your assistance.

Howard Moskowitz

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Howard Moskowitz, Esq.  
118 Magnolia Avenue  
Jersey City, NJ 07306  
(201) 844-3700

32ax

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From: Howard Moskowitz [hmoskowitzlaw@hotmail.com]

Sent: Sun 10/18/2015 12:06 PM

To: OLSaideSEN

Cc: Smith B., Sen. D.O.

Subject: LSP hearing: letter to Chairman Smith

Attachments: [Bednarz Sen. Bob Smith, HM to \(10.18.2015\)-signed.pdf\(342KB\)](#)

[View As Web Page](#)

Ms. Horowitz and Mr. Mollimock:

Attached please find letter addressed to Chairman Smith and attachments thereto with regard to the Committee's October 19, 2015 hearing on Liberty State Park.

Howard Moskowitz

Howard Moskowitz, Esq.  
118 Magnolia Avenue  
Jersey City, NJ 07306  
(201) 844-3700 (phone)  
(201) 792-4230 (fax)

Howard has files to share with you on OneDrive. To view them, click the links below.

- [Bednarz W W100072 - checks Redacted.pdf](#)
- [OPRA# 174850 Response to Question 2 1.pdf](#)

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**HOWARD MOSKOWITZ, ESQ.**

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October 18, 2015

Senator Bob Smith, Chair  
Committee on Environment and Energy  
State House Annex  
155 West State Street  
Trenton, New Jersey 08608

Dear Senator Smith:

With regard to tomorrow's committee hearing as to Liberty State Park and, in particular, a report, withheld from disclosure by NJDEP, described in the Department's June 2, 2014 contract with New Jersey Future as "a public report detailing findings and recommendations for ... making ... Liberty State Park ... financially self-sustaining," due to have been submitted November 1, 2014, attached please find the following, received in response to OPRA requests:

(1) Copies of Department of the Treasury checks in the amounts of \$60,000, \$30,000 and \$30,000, all payable to New Jersey Future, respectively dated June 12, 2014, September 11, 2014 and February 13, 2015, cumulatively representing payment-in-full under the contract; and,

(2) As to each such payment, Payment Voucher submitted by New Jersey Future and NJDEP Accounting Bureau Input Form.

Permit me to call to your attention, in particular, to the third and final voucher, attachment at 5, submitted February 5, 2015, on which Peter Kasabach, NJF's Executive Director, entered "Liberty State Park Final" as the Payee Reference and "Draft Final report of status for consultant to study the Liberty State Park amenities including making the park Self-sustaining" as the Description of Item.

The "Draft Final report" oxymoron, I would suggest, is a function of Mr. Kasabach being fully familiar with the exclusion of "draft" documents from the definition of "government records" subject to disclosure under OPRA.

Very truly yours,

*Howard Moskowitz*

Howard Moskowitz

Attachments

Sent as an email attachment



## **Senate Environment Hearing Testimony October 19, 2015**

**Greg Remaud – 732-768-6033**

Deputy Director, NY/NJ Baykeeper

Co-founder w/ Audrey Zapp & past President of the Liberty State Park Conservancy

Member, Liberty State Park Public Advisory Committee

Gov. Chris Christie's backward public parks policy has been to starve parks of funding, then force them to raise revenue through leases to private developers, while private developments are subsidized by taxpayers. The incredible rank and file professional park staff – maintenance crews, office staff, and superintendents have had to do more and more with less and less. So, it's important for acknowledge their incredible fortitude under these extremely adverse conditions.

Now, Liberty State Park (LSP) is being forced to pay for itself through unreleased backroom plans rumored to include leases of park land to a private concert promoter, a hotel builder, private marina operator on south side and other commercial developers.

These new development plans are antithetical to all existing park plans and the longstanding public desire to keep the park as natural, non-commercial public open space.

I will read just a handful of comments from the over 5,000 post cards denouncing commercialization in just one of the many battles public and Friends of LSP have fought against commercializing LSP.

This development wish list was completed months ago, by consultant New Jersey Future on behalf of the New Jersey Department of Environmental Protection, but have been withheld from the public that paid \$120,000 for it. It not only re-opens flood gate of commercial development proposals that have already been rejected, but also sets stage for a no-bid contract for NJ Future's partner, NY-based Biederman Redevelopment Ventures

Sam Pesin and the Friends of Liberty State Park and others have worked hard to expose and nip "Libertygate" in the bud, before it ripens into a full-blown Wildstein. A Jersey City resident has also filed a lawsuit to force the NJDEP to release that NJ Future wish list. . Pete Kasabach has lost credibility to many. Pete Kasabach and NJ Future have taken a grant and been first rate enablers and self-appointed arbiter or what commercialization is good for LSP. Mr. Kassenbach position has evolved

w/ Christie Admin. evolved his position to include reviewing the entire park after stating that he was only looking at 5 primary areas around the CRRT.

State parks provide nearly cost-free recreation, nature education and outdoor experiences to millions of New Jerseyans, and they require only a small fraction of the overall state budget. In fact, park funding by way of Green Acres Open Space referendums are the one tax voters have supported time and again. But for some reason, that just makes them juicier targets for the Christie crew.

Liberty Park, a natural oasis with its grand historic views that draws five million visitors each year, is the primary target.

While Pete Kasabach & NJ Future are the enablers of LSP commercialization, pricey "special assistant," Lou Valente, is the architect. Valente is the parks "privatization czar." By the way, he'll pocket over \$1 million in salary and benefits, courtesy of the New Jersey taxpayer. Meanwhile, the maintenance crew at Liberty State Park has been cut from a staff of 22 in 2003 to only 10 now.

What value has this "special assistant" returned to the public? He hired a caterer at Waterloo Village and taken credit for expansion of concessions at Island Beach State Park in his six years on the public payroll, producing revenues that don't cover his salary. Now Valente is attempting to reincarnate the failed plans of the disgraced Liberty State Park Development Corporation, which was quashed by public demand in 2003. This has re-opened the floodgate of pressure on the park to accept additional commercial schemes such as a Formula One racetrack.

Also, the Christie Admin. has held up the restoration of the 230 acres in the park's interior which has been shovel ready for three years. Plans for Phase I Freshwater wetlands restoration has completed plans and \$10 million for Honeywell chromium settlement and \$1.5 mill. Freshwater Wetland Mitigation Council grant to NY/NJ Baykeeper have been in the bank. Holding up this incredibly positive project while they consider developing portions of it, and claiming its due to Hurricane Sandy is egregious. Special thanks to Senator Cunningham for repeatedly calling out Comm. Martin on this issue.

Building a concert venue and leasing this concession to a private vendor – rather than using a temporary stage managed by park staff – will ultimately cost the taxpayer more and create traffic jams. Those traffic jams will keep people from getting to their barbeques and other park activities. Hotels should be built outside the park to improve adjacent neighborhoods, not taking up public space in the shadow of the Statue of Liberty and Ellis Island. Private marina shuts out N. side of park, but south side has public boat launch and picnic areas and should always be there for the public. Liberty State Park has always been a park of the people, and should remain commercial free.

Dear Governor Christie:

The undersigned members of the scientific and academic communities, who have a working knowledge of Liberty State Park and the Hudson-Raritan Estuary and are writing as concerned individuals, ask that you conditionally veto Assembly Bill No. 3969, the "Hackensack Meadowlands Agency Consolidation Act" as it transfers the responsibility for the future development of the park.

All agree that Liberty State Park is an extraordinary and unique public resource. With the Manhattan skyline, the Statue of Liberty and Ellis Island as the backdrop, it is also one of New Jersey's most dramatic parks. Built on the former rail yards of the Central Railroad of New Jersey, the Terminal building and landscape are part of the legacy of the Industrial Revolution and the peopling of the country during the "Great Wave" period of immigration. More recently however, the "greening" of the park has become an example of the type of environmental stewardship that is possible in the urban context. Indeed the park is living up to its mission of providing *"the public with access to the harbor's resources, a sense of its history and the charge of responsibility for its continued improvement"*. It is not only the crown jewel of the NJ Division of Parks and Forestry but also one of the nation's best examples of the implementation of the Public Trust Doctrine. The principle, codified in the U.S. Constitution, which states that certain natural resources must be protected for public use.

Since the first environmental impact statement conducted in 1976, there has been keen scientific interest in the park. The site is helping to define the values of urban green-space. In particular the interior section of the park demonstrates the resiliency of the endemic plant and animal communities in spite of the stress related to past industrial land uses. Over a dozen articles published in prominent scientific journals have demonstrated the function and services of the site's novel ecosystem as well as the potential for mitigation of some of the remnant soil contamination. Scientifically, the park has become a model for the study of ecosystem function in an increasingly urban world.

The park has a long history of planning through public process. Over the last forty years there has been a governor-appointed commission, a development corporation, an advisory committee and many sub-committees for special projects. Several plans for the full development of the park have been vetted. Beginning with the Getty's plan in the early eighties, the vision of what the park should become has been established, examined and revised many times. The current master plan has several elements that need to be completed. The adaptive reuse of the CRRNJ Terminal Building and train sheds are the most costly and in need of a funding source. The ecological restoration of the park's interior section, however, has

been well planned and much of the needed funding is available through natural resource damages monies and a Wetlands Mitigation Council Grant. These plans simply have not been executed. Regardless of the reasons, (short staffing at DEP or other priorities created by Super Storm Sandy), this restoration project is long overdue.

There is also the misconception that the park amenities need to generate enough income to be "self-sustaining". This perspective disregards the fact that open space generates a significant amount of indirect and tax revenue. The National Park Service Money Generation Model, applied to Liberty State Park several years ago, demonstrated that with a visitation rate of approximately 5 million people per year the existing amenities generate over \$100 million in tax revenue per year. This one site generates approximately three times the annual operating budget for the entire N.J. Division of Parks and Forestry.

For these and many other reasons, the undersigned urge you to remove Liberty State Park from proposed legislative Assembly Bill, No. 3969. Please do not allow a newly created commission, a combination of the New Jersey Meadowlands Commission and the New Jersey Sports and Exposition Authority, with no vested interest in Liberty State Park, assume the responsibility for its future. Rather, focus on implementing the existing master plan and maintaining the open space for the people of this state and its national and international visitors.

Sincerely<sup>1</sup>,

Rutgers The State University:

Allyson Salisbury,

Beth Ravit,

Carolyn Haines,

Claus Holzapfel,

Frank Gallagher<sup>2</sup>,

Jason Grabosky,

Han Yan,

Judith Weiss,

Julia Prezley,

Karina VR Schafer

Laura Lawson,

Megan Litwhiler,

Sahil Wadhwa ,

Stephen Handel

Tony Cullen,

Rutgers Biomedical and

Health Sciences:

Peddrick Weiss,

Montclair State University:

Dirk Vanderkleid,

Huan Feng,

Jennifer Adams Krumins,

Nina Goodey,

Yu Quin,

Harvard University:

Peter Del Tredici

<sup>1</sup> The individual's institutions are referenced for identification purposes only.

<sup>2</sup> Corresponding author: fgallagh@me.com



## LEGISLATIVE VIEWPOINT

**New Jersey State League  
of Municipalities**

222 West State Street, Trenton, New Jersey 08608  
PHONE (609) 695-3481 • FAX (609) 695-0151  
EMAIL [league@njslom.org](mailto:league@njslom.org) • [www.njslom.org](http://www.njslom.org)

Michael J. Darcy, CAE  
EXECUTIVE DIRECTOR

Michael F. Cerra  
ASSISTANT EXECUTIVE DIRECTOR

Jon R. Moran  
SENIOR LEGISLATIVE ANALYST

Loretta Buckelew  
SENIOR LEGISLATIVE ANALYST

Edward W. Purcell  
LEAGUE STAFF ATTORNEY

September 16, 2015

Re: SCR-180

Dear Chairman Smith and Members of the Senate Environment and Energy Committee:

The purpose of this letter is to reiterate and clarify a concern the League raised regarding the Proposed Flood Hazard Act Rules, Coastal Zones Management Rules and Storm water Management Rules. Specifically, on July 31<sup>st</sup> the League transmitted a letter to DEP regarding issues related to the National Flood Insurance Program (NFIP). The League took no position on the remainder of the proposal. We have attached a copy of that letter herein.

As explained in the letter, the League asked the Department to either amend the regulations to better align with the NFIP or, alternatively, that language be added to state specifically that such projects must still comply with local ordinances that represent the federal flood reduction standards. Currently, 550 New Jersey municipalities participate in the NFIP. Thus, clarity regarding the NFIP standard and the State standard is of the utmost importance to ensure that coastal residents remain insured.

We welcome any further questions this Committee has on this issue.

Very truly yours,

Michael F. Cerra  
Assistant Executive Director

MFC/sc



New Jersey State League  
of Municipalities

222 West State Street, Trenton, New Jersey 08608  
PHONE (609) 695-3481 • FAX (609) 695-0151  
EMAIL league@njslom.org • www.njslom.org

Michael J. Darcy, CAE, EXECUTIVE DIRECTOR

Michael F. Cerra, ASSISTANT EXECUTIVE DIRECTOR

Gary J. Brower Esq.  
Attn: DEP Docket Number 05-15-04  
New Jersey Department of Environmental Protection  
Office of Legal Affairs  
Mail Code 401-04L 401  
East State Street, 7<sup>th</sup> Floor  
P.O. Box 402  
Trenton, N.J. 08625-0402

Re: Proposed Flood Hazard Area Control Act Rules; Coastal Zone Management Rules;  
and Stormwater Management Rules

Dear Mr. Brower,

Please accept these comments on behalf of the New Jersey State League of  
Municipalities (League) in regards to the above captioned rulemaking.

The League requests that minor amendments be made to ensure that these regulations  
do not fall below the standards required by the National Flood Insurance Program  
(NFIP).

NFIP provides subsidized flood insurance to protect property owners. As a condition of  
eligibility however, participating municipalities must adopt local flood plain  
management measures to reduce or avoid flood damage. Properties located in a  
participating municipality, which do not have flood insurance, are denied both direct  
federal financial assistance, *see* 42 U.S.C. § 4012a(a), and federally related financing  
by private lending institutions, *see* 42 U.S.C. § 4012a(b). At present 550 New Jersey  
municipalities participate in this program.<sup>1</sup>

Participating municipalities must enforce their local flood plains management measures.  
Indeed, if “communities do not adequately enforce their floodplain management  
regulations, they can be placed on probation and potentially suspended from the  
[NFIP]” pursuant to 44 C.F.R. § 59.24(b). National Wildlife Federation and Public  
Employees for Environmental Responsibility v. Federal Emergency Management

<sup>1</sup> <http://www.fema.gov/cis/NJ.html> (accessed 7/9/15)

Agency, 345 F. Supp. 2d 1151, 1157 (U.S. Dist. Ct. W.D. Wash. 2004). In sum, the ability of a municipality to enforce these provisions is very important.

The proposed regulations define the measurement of minimum elevation of the lowest floor in a V zone as the lowest walking surface. *See* proposed regulations 7:13-8.8, 7:13-9.5. The NFIP, however, defines the measurement of the minimum elevation of the lowest floor in a V zone as the lowest horizontal structural member of the lowest floor. CRF 60.3(e)(4). Here, the state standard is below the federal standard. Put another way, the state is proposing a standard which is less than the standard that municipalities must enforce.

This may be an issue for some municipalities in reviewing applications to develop properties within V zones. These proposed regulations create “prior approvals,” which are necessary preconditions to final local approval. By creating a lower state standard, these regulations put great pressure on local building officials to correctly evaluate these proposed projects. This would create unnecessary friction between the regime of the state and the regime municipalities which must enforce.

Consequently, we would ask that these regulations be amended so that they are better aligned with the NFIP. Alternatively, we would ask that these regulations specifically state that regardless of any state approval granted, these projects must still comply with federal flood reduction standards. An example of such language can be found in New Jersey’s CAFRA regulations at N.J.A.C. 7:7E-3.25(f).

Very Truly Yours,



Edward W. Purcell Esq.  
Associate Counsel  
New Jersey State League of Municipalities

cc.

- Michael Darcy, CAE, League Executive
- Director Michael Cerra, League Assistant Director
- Michael Moriarty, Director Mitigation Division, FEMA
- John Miller P.E., N.J. Association for Floodplain Management

Reply Reply to all Forward | [Icons] | Close | Help

From: Jamesgsanderson@[Redacted]

Sent: Thu 10/22/2015 6:51 AM

To: OLSaideSEN

Cc: [Redacted]

Subject: Privatization of Liberty State Park

Attachments:

[View As Web Page](#)

The privatization of Liberty State Park is a bad idea and I oppose it.

LSP is one of the few oases of green space in a sprawling metropolitan area full of freeways, overcrowded neighborhoods and businesses. It is a sanctuary for everyone to enjoy, a place where rich and poor alike can find some peace and quiet amid the oppressive hubbub of urban life. It is the jewel adjacent to two of our national treasures: the Statue of Liberty and Ellis Island. Now, New Jersey plans to give up this precious resource to commercial development. I envision that, under privatization, it could become just one more piece of overdeveloped real estate, with an admission fee that will limit access to only the well-off members of society.

Once this gem is sold off and privatized, we can't get it back. Some things in New Jersey are "worth it" for the state to maintain and Liberty State Park is one of them.

James G. Sanderson

[Redacted]  
[Redacted]  
2 [Redacted]

40x

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From: ALICIA WALTY-RICHMOND [g ] Sent: Tue 10/20/15  
To: OLSaideSEN  
Cc:  
Subject: Re: Alicia Please Email great statement to Committee Re: LSP plse email Sen.Mon hearing & 11/1Protest  
Attachments:

[View](#)

I am sending this on to you, to realize why Liberty State Park is a memory for us to remember how our ancestors reached the USA. It is part of us and we visit often to remember our relatives that arrived on our shore. We often wonder what would have happened if she did not travel here and give us a wonderful life for all of us. Alicia Walty Richmond

On Sunday, October 18, 2015 3:48 PM, Sam Pesin <pesinliberty@earthlink.net> wrote:

Alicia

Thanks very much for writing a strong and wonderful statement. Please cut and paste your statement to the Senate Environment Committee at [olsaidesen@njleg.org](mailto:olsaidesen@njleg.org)

I'm taking off from school to go to Trenton to speak for 5 minutes to state Friends position in person. thanks!  
Sam

At 03:10 PM 10/18/2015, you wrote:

I am opposed to the commercialization of Liberty State Park. The DEP MUST release the NJ Friends of Liberty State Park Report to the people for ALL to see. I am grateful to ALL those that came forward to support us. This is a witch hunt as we plan to continue to band together and fight for LIBERTY PARK and all the people who travel to the park from all over USA as well as the WORLD. They come to see the STATUE OF LIBERTY and see WHERE their relatives ARRIVED in USA. LSP has a History with all of us as well as all the people of the WORLD. My Grandmother arrived in USA from COUNTY CORK, IRELAND in the late 1800 and worked very hard by working for families as there were no programs at that time to assist people. I am not alone in the ties to Liberty State Park as well as so many people throughout the Country of the USA. Our relatives gave us an opportunity to live and work in this Country by WORKING VERY HARD FOR US, AND FOR INSTILLING

414

THESE TRAITS IN US.

Sincerely, Alicia Walty

Richmond  
Grandmother, Ellen Theresa Courtney Walty  
MY TRUE HERO

On Sunday, October 18, 2015 11:19 AM, Friends of Liberty State Park <pesinliberty@earthlink.net> wrote:

[Homepage](#) [About](#) [Events](#) [Volunteer](#) [Donate](#) [Park History](#) [Contact](#)

Dear Liberty State Park supporters,

For 10/19 added LSP agenda item for Senate Environment Committee meeting, please use this e address to express your opposition to LSP commercialization and express that the DEP must release the NJ Future Report to the public (the development search report). Your emailed comments will be on the Committee's record and will also help the citizen's lawsuit to get the secret report released. The open Senate hearing is Mon, Oct 19 - 10 AM Committee Room 1, 1st Floor, State House A, Trenton. Please keep a copy of your email as a basis for a future email in our grassroots movement which will be crucial for when the DEP announces its official public comment period/public hearing for the plans they decide to push forward to give developers longterm leases for parts of LSP.

**On Sunday, Nov 1st "Solidarity Protest Bike Ride and Bands Against Privatization" event #SaveLSP**

**Please stand up for LSP to protest the coming commercialization plans by coming out and spreading the word. Social media invite post is here.**

**Nov 1 is the day after Halloween - costumes welcomed - sponsored by Friends of LSP in the historic CRRNJ Terminal Concourse at 1 Audrey Zapp Drive. All ages welcomed to the afternoon concert but bike riders are asked to be at least 10 years old. GREAT KITE FLYE Display! food trucks & facepainters.**

**The Bike Ride is supported by Bike JC and Grove Street Bicycles.**

427

**The Bike Ride registration starts at 10:30 and Bike Ride starts at Noon - 10K total for 2 la from Terminal Concourse to LSP's S. side behind Lady Liberty.**

**Then kicking in is "Rock Against Privatization" from 1pm to approx 5 pm with 4 great ba DEVI, Karyn Kuhl Band, the Sensational Country Blues Wonders and the Milwaukeees(wl will be added to our soon to be revised flyer). Dancing Tony of Rock-It Docket will be runn the concert.**

**To volunteer, please email Sam at [pesinliberty@earthlink.net](mailto:pesinliberty@earthlink.net)**

Rain may cancel the bike ride but the 1pm concert and rally is rain or shine in the covered histor Concourse. For rain info for bike ride, please call 201-792-1993.

**This CROSSROADS FIGHT IS JUST BEGINNING FOR LSP'S FUTURE!**

**Let's give a strong message on Nov 1 to the Governor and DEP about wanting a free and g urban state park for us and future generations to enjoy.**

**Please go to Friends' homepage to subscribe to our periodic emails and to follow us on soci media.**

**PLEASE SPREAD THE WORD ABOUT NOV 1st PROTEST EVENT**

**#SaveLSP**

**Hope you will "follow" Friends of Liberty State Park on social media.**

The Friends are now on Facebook Twitter and Instagram.

**Please encourage others to like and follow us on social media.**

**Friends Garden Program welcomes volunteers every Saturday from 9 am to Noon with no experience necessary. Many bulbs are ready to be planted. For info, please check our gardening webpage for individuals and groups.**

**Location for Noon bike ride start/finish & 1- 5pm great Bands rockin!**

**Thanks for all your support of Liberty State Park !!!**

Sam Pesin, president Michel Cuillerier vice president Eliza Wright vice president

Dorcey Winant, secretary Tom Pfister, treasurer

Trustees: John Tichenor (co-founder & 1st pres.), Gladys Vasques Gail& Karen Zavian

43x

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Friends of Liberty State Park | P O Box 3407 | Jersey City | NJ | 07302

Sam Pesin

#SaveLSP

president of The Friends of Liberty State Park [www.folsp.org](http://www.folsp.org)

cell 201-341-7895 (after 4:30 weekdays) or texting anytime to cell 201-341-7900

home office landline 201-792-1993

44x

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From: Carlos Tamulonis [stuff21@gmail.com]

Sent: Mon 10/19/2015 9:42 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park

Attachments:

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To whom it may concern,

As a resident of Jersey City and a frequent visitor to Liberty State Park, I urge those responsible to cancel any potential or actual plans for private development in Liberty State Park. The park is a rare haven in the NYC metro area for those seeking open space, peace and quiet. I often run in the park and I am always struck by how wonderfully serene it is. There's nothing like it in all of NYC or Hudson county.

Furthermore, I urge the DEP to release the NJ Future Report to the public.

Keep the cars and concrete out of Liberty State Park!

Carlos Tamulonis

[Redacted signature block]

45x

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From: Bob [bobamongus@aol.com]

Sent: Mon 10/19/2015 5:38 PM

To: OLSaideSEN

Cc:








Subject: LSP

Attachments:

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I am opposed to commercialization & privatization of Liberty State Park.  
Urban park space needs to be preserved.  
Parks need not be self-sustaining anymore than schools or libraries  
or police or fire departments.  
Robert Walden  
North Bergen, NJ

46x

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From: Robert and Margaret Curtis [rdc\_mmc@yahoo.com]

Sent: Mon 10/19/2015 4:38 PM

To: .OLSaideSEN

Cc:









Subject: LSP Commercialization

Attachments:

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Please stop this political land grab.  
Have you no shame?  
Robert Curtis, WNY resident.

47X

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From: richard winant [rmw18@me.com]

Sent: Mon 10/19/2015 12:29 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park

Attachments:


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I support the release of a tax payer funded report the deals with public resources. The last time "private public" planning was used  
The Development Corporation took over planning for the park. The promised funding for the park was minimal. Let's see what the current plan says in the light of day, not the back room

Thank you,

Dr. Richard Winant  
Sent from my iPhone

48x

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From: Julie Harari [julie@harariville.com]

Sent: Mon 10/19/2015 12:03 PM

To: OLSaideSEN

Cc:

Subject: LSP is not for sale

Attachments:

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I strongly support efforts to maintain Liberty State Park as an open and public asset for area residents and visitors alike. Any plans to privatize or develop the land must be done with full public discourse and transparency. The report completed by NJ Future should be released and allowed for public review and input. Efforts to undermine the preservation of this local treasure are in contrast to the very principles on which the land trust was established.










Personally, our children, now 20 and 22 years old, enjoyed many days at 'Playground Heaven' within view of the Statue of Liberty and Ellis Island. We have biked together from our home along the waterfront and celebrated family, school and community events at the picnic area marveling at the many flags and nationalities on display. Long days spent wandering through the Liberty Science Center certainly influence our son to pursue a lifelong dream of being an Aerospace Engineer, receiving his diploma with honors this past Spring.

Why shouldn't all families benefit in the same way ours has by enjoying the openness and the views afforded by Liberty State Park? What better way to instill hope and opportunity in an area already overbuilt and overcrowded.

We'll be there November 1st to show our support!

Respectfully,  
Julie Harari

494

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From: CVTab@aol.com [CVTab@aol.com]

Sent: Mon 10/19/2015 11:41 AM

To: OLSaideSEN

Cc: pesinliberty@earthlink.net

Subject: Liberty State Park

Attachments:

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Please keep Liberty State Park commercial free.

It has much greater value to the local area, the state and the nation as a destination for historical and recreational purposes than it does for commerce.

Carmine Tabone  
Jersey City New Jersey

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From: cocoton@aol.com [cocoton@aol.com]

Sent: Mon 10/19/2015 10:26 AM

To: OLSaideSEN

Cc:

Subject: Commercialization LSP

Attachments:

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Dear Committee members,

I am writing you in opposition to **any** new commercial venues within the boundaries of Liberty State Park.

The vast majority of Jersey City and northern New Jersey stand in a united front that would oppose commercializing the park. The park is a vital green space for this high density community. With limited options for open space, the park makes the density in Jersey city palatable in the same way Central Park makes Manhattan livable.

I frequent the ENTIRE length of the park on my bike and as a runner and without fail on any given day, families will fill the picnic tables and lawns. Sports enthusiasts will kayak, bike, run & rollerblade through it's pathways. Loved ones visit the 9/11 memorial and visitors from around the world stop to see Ellis Island & The Statue of Liberty. They enjoy the park AS IT IS. Please keep is free & safe from commercialization.

Sincerely,

Marlene Sandkamp

9 [Redacted]  
[Redacted]

5/4

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From: Debra Hachen [debra.hachen@gmail.com]

Sent: Mon 10/19/2015 8:48 AM

To: OLSaideSEN

Cc:

Subject: Opposition toLSP commercialization

Attachments:

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Please register my opposition to proposed commercialization of Liberty State Park. This public treasure should be preserved for all citizens especially those in our urban setting who have little access to such extensive green spaces. As a regular user of the park for recreation and group activities I urge you to oppose the commercialization of more of the park.

Rabbi Debra Hachen

2  
J [REDACTED]

Sent from my iPhone  
Typed by thumb

524

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Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

From: Frank Gallagher [gallagher@SEBS.Rutgers.edu]

Sent: Mon 10/19/2015 7:52 AM

To: OLSaideSEN

Cc:

Subject: Liberty State Park

Attachments: [open letter-final.pdf\(290KB\)](#)

[View As Web Page](#)

Honorable Senators: there are two issues I would like to bring up. As the former Assistant Director for the state Park service it appears that the awarding of a none competitive contract to "New Jersey Futures" disguised as a grant is a clear violation of procurement procedure. It also appears that it was done to secure the services of a strongly pro-development firm. The second issue speaks to the real value of the park. Towards that end over twenty scientist have signed the attached letter which was sent to the governor's office in January. Please accept this email and the attached letter as testimony for today's hearing.

Frank Gallagher, Ph.D.

Director, Environmental Planning and Design

Department of Landscape Architecture

School of Environmental and Biological Sciences

Rutgers the State University

[REDACTED]  
New Brunswick [REDACTED] 4

[REDACTED]  
[REDACTED]  
Gallaghergreen.com

*Planting a tree is one of the very few human actions which can really be called altruistic. A person plants a tree for his children, his grandchildren, or even for their children, but not for himself.*

**Seymour, 1983**

537

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From: Martin Greenberg [marty226b@gmail.com]

Sent: Mon 10/19/2015 8:01 AM

To: OLSaideSEN

Cc:

Subject: No privatization in Liberty State Park

Attachments:

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Please put a stop to the total idea that a state park must pay for itself. It is outrageous to think that a private business would be allowed to develop land on public land that is a jewel - especially where it is - alongside urban centers, and integral to American history. And please release the NJ Future Report to the public. We are entitled to review the intentions. Thank you, Martin Greenberg [Redacted]

54x

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From: Lenore Holz [lenore.holz@gmail.com] Sent: Mon 10/19/2015 12:45 AM
To: OLSaideSEN; Smith B., Sen. D.O.; Greenstein, Sen. D.O.; Bateman, Sen. D.O.; Codey, Sen. D.O.; Thompson, Sen. D.O.; Weinberg, Sen. D.O.
Cc:
Subject: Comments for Senate Environment Committee, October 19
Attachments:

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Dear NJ Senate Committee,

For October 19th Senate Environment Committee meeting regarding Liberty State Park agenda item, my comments are:

I oppose any and all privatization and commercialization.

Our park is a rare and beautiful open, green urban oasis.

LSP is for everyone to enjoy, but especially the working poor and middle classes, not for one percent elites to "develop."

NO PART of LSP is for sale or lease. STOP trying to buy it. We will not allow it.

As officials elected by the taxpayers of New Jersey, we expect you to serve us, not wealthy special interests.

We demand you protect and conserve our air, water, soil, the flora and fauna of each bio region, as well as our parks.

I'll be watching very closely, keeping score, and I'll be considering your behaviors at the polls.

I'll also be informing my friends, family, and networks of your behaviors.

The DEP must release the NJ development search report to the public.

We elected you. You serve us. We demand transparency.

Sincerely,
Lenore Holz

[Redacted signature area]

554

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From: mfmahony2@aol.com [mfmahony2@aol.com]

Sent: Mon 10/19/2015 12:20 AM

To: OLSaideSEN; mfmahony2@aol.com

Cc:

Subject: Commercialization of Liberty State Park

Attachments:

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To Senate Environmental Committee:

Liberty State Park began its history as a grass roots effort for a "people's park." It is the only relatively undeveloped area on this part of the waterfront. Please let it remain as such with out the commercialization that will mar its beauty and lead to overbuilding and less open space.

It is unfair of the DEP to proceed without making public the NJ Futures Report.

Mary Mahony

[Redacted signature block]

56x

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From: Elaine Hansen [yogashunya@icloud.com]

Sent: Sun 10/18/2015 10:34 PM

To: OLSaideSEN

Cc:

Subject: Opposition to Private Commercialization of Liberty State Park without public disclosure

Attachments:










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To the New Jersey Senate Environmental Committee:

We love our free and open Liberty State Park. Please know that many in Jersey City will strongly oppose any attempts from government or private business to commercialize any part of Liberty State Park without full disclosure of plans in public meetings and opportunity for discussion.

Thank you for your consideration,  
 Elaine Hansen  
 Jersey City, New Jersey

57x

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From: oonajackson@gmail.com [oonajackson@gmail.com]

Sent: Sun 10/18/2015 11:12 PM

To: OLSaideSEN

Cc:

Subject: LIBERTY STATE PARK -NO to commercialization

Attachments:

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The historic neighboring community of the Van Vorst Park Association, has discussed this matter at its general meetings and **STRONG OPPOSITION** to the commercialization of Liberty State Park has been clearly voiced. The current practice of hosting of events; while preserving the park for future generations forever, remains the acceptable compromise for our Jersey City community.








We also request the immediate release of the NJ FUTURE REPORT to the public.

Sincerely,

Oona Jackson Moore  
Van Vorst Park Association President

Sent from my iPhone

58x

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From: lynnfmbklyn@verizon.net [lynnfmbklyn@verizon.net]

Sent: Sun 10/18/2015 10:03 PM

To: OLSaideSEN

Cc:

Subject: LIBERTY STATE PARK- DEVELOPMENT SEARCH REPORT

Attachments:

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Dear Senators,

We are expressing our increasing concern about future plans for our cherished Liberty State Park. Ongoing talk about increased commercialization and privatization of the park are unnerving and inappropriate for this rare urban open space that needs to remain available to the public as a park. The DEP must release the NJ Future Report (Development Search Report) to the public. We have a right to review its contents and to comment on them.

Thanking you for your consideration,

Lynn Albin & Michael Puder

59f

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From: Chris Wreck [k2hve@msn.com]

Sent: Sun 10/18/2015 9:44 PM

To: OLSaideSEN

Cc: Chris K2HVE

Subject: LSP Development

Attachments:

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To the Committee,

To allow the Development and Privation of LSP would do great harm to the most visited Park in NJ. Please release the report and stop this outrageous plan to destroy this beautiful park. There is already too much industry nearby already. If anything we need to expand the park perimeter. Thank you for your consideration in this matter.

Christopher A Wreck


607

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From: Laura [laurahalstead23@yahoo.com]

Sent: Sun 10/18/2015 9:30 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park - Commercialization

Attachments:

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I am writing to express my concern regarding recent discussions to privatize Liberty State Park. As a local Jersey City resident this is the only available natural space for which to escape the hustle and bustle of urban life. The park is used extensively by local residents and out of town visitors for recreational bike rides, runs, walks, picnics and fishing. For many of us it is our backyard since we don't have one of our own.

The DEP should release the development report to the citizens of New Jersey. We must understand what is being discussed behind closed doors as this directly affects our community's access to open land.

Regards,

Laura Halstead

6/1+

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From: Patrick Conlon [patrick@bikejc.org]

Sent: Sun 10/18/2015 9:13 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park Is NOT For Sale

Attachments:

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Let it be known that as a tax payer and voter of New Jersey I stand completely opposed to any commercial and private sell off of a single square foot of Liberty State Park and whatever backroom plans that are in negotiations should immediately be released to the public. Keep all developers OUT of the peoples park!!!

Patrick Conlon

[Redacted signature]

624

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From: Doug Rose [drose@mchomeloans.com]

Sent: Sun 10/18/2015 8:23 PM

To: OLSaideSEN

Cc:

Subject: LSP Commercialization

Attachments:

[View As Web Page](#)

I appose commercialization of the park, release the report

Doug

[Redacted]

Please pardon typos Sent from my T-Mobile 4G LTE Device

This e-mail, along with any attachments, is considered confidential. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

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From: boldforce@aol.com [boldforce@aol.com]

Sent: Sun 10/18/2015 7:05 PM

To: OLSaideSEN; Smith B., Sen. D.O.; Greenstein, Sen. D.O.; Bateman, Sen. D.O.; Codey, Sen. D.O.; Thompson, Sen. D.O.; Weinberg, Sen. D.O.

Cc:

Subject: Liberty State Park Hearing for 10/19

Attachments:

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NJ Legislators,

I live in Clifton and I opposed privatization in Liberty State Park. I feel the NJ Future Liberty State Park report should be released to the public.

Thanks for your attention,

Thomas Pfister

64x

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From: Tony Sandkamp [sandkampwoodwork@aol.com]

Sent: Sun 10/18/2015 6:27 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park ; opposition to commercialization

Attachments:

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Dear Committee members,  
I am writing you in opposition to any new commercial venues within the boundaries of Liberty State Park. The vast majority of Jersey City and northern New Jersey stand in a united front that would oppose commercializing the park. The park is a vital green space for this high density community. With limited options for open space, the park makes the density in Jersey city palatable in the same way Central Park makes Manhattan livable.

Best Regards  
Tony

Tony Sandkamp  


654

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From: Douglas Fleisher [lawflash@gmail.com]

Sent: Sun 10/18/2015 6:16 PM


To: OLSaideSEN

Cc:





Subject: Liberty State Park

Attachments:

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Please help release New Jersey future report so citizens and park users can discuss the future of the park Douglas J Fleisher of Union City 

667

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From: Jeremy Jacobsen [harsimusjeremy@gmail.com]

Sent: Sun 10/18/2015 5:59 PM

To: Jeremy Jacobsen

Cc:

Subject: Liberty State Park

Attachments:

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Dear Honorable Senator:

I am writing on behalf of my organization, Harsimus Cove Association (a Downtown Jersey City neighborhood association) to express our community's concern about any moves on the state level that may result in the commercialization of Liberty State Park (LSP).

Our organization has traditionally recognized an overwhelming need to increase, rather than decrease, the amount of pristine open green space within the physical boundaries of Jersey City. Our neighborhood's residents make extensive use of LSP and enjoy it in its current state. Our organization past positions have urged that LSP be kept free of commercial development.

Accordingly, HCA strongly urges you to oppose any action that would allow for development on any park land or any further commercialization of LSP, a treasured asset which has always rightly preserved as an area free from these types of uses.

Additionally, we urge you to take appropriate steps to ensure immediate release the NJ Future Report to the public for purposes of transparency around the decision making process.










Thank you.

--

Best regards,

Jeremy Jacobsen, President  
Harsimus Cove Association

67x

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From: weber [m.moultrie@aol.com]

Sent: Sun 10/18/2015 4:48 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park

Attachments:

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Please do not privatize Liberty State Park our children's and family need somewhere to go relax and enjoy life.

Michele Moultrie

Sent from AOL Mobile Mail

684

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From: dmp33@aol.com [dmp33@aol.com]

Sent: Sun 10/18/2015 4:23 PM

To: OLSaideSEN

Cc:

Subject: Commercializing of Liberty State Park

Attachments:

[View As Web Page](#)

Please leave the most beautiful park in the state of New Jersey as it is.

Please no more commercialization. We didn't have a say in the 9/11 monument so let us have a say in this.

Please release the development report to the public. This park is a gem and used and appreciated by many.

Sincerely,  
Dolores Plutnicki  
Bayonne, N J

Sent from my iPad

69x

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From: Helen Weinberg [mzkidney.240@gmail.com]

Sent: Sun 10/18/2015 4:05 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park

Attachments:

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Public funds were used for the NJ Future report. This report should have been made available to the public ages ago. The idea of changing Liberty State Park with any concept is simply wrong headed. Open space at this park is the only right decision to make.

Sincerely yours,

Helen Weinberg  
Jersey City, NJ

70x

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From: Barbara Moss [blmoss@optonline.net]

Sent: Sun 10/18/2015 3:25 PM

To: OLSaideSEN

Cc:

Subject: LSP

Attachments:

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I oppose the LSP commercialization and request that the DEP release the NJ Future report to the public.

Barbara Moss

---

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[www.avast.com](http://www.avast.com)

7/1x

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From: moher1@aol.com [moher1@aol.com]

Sent: Sun 10/18/2015 3:07 PM

To: OLSaideSEN

Cc:

Subject:

Attachments:

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Please release the report commissioned to privatize Liberty State Park.

The representatives of the PEOPLE should oppose all such efforts. This park has had broad and deep public support for decades. It must not be despoiled for private gain. Although open space should not have to justify itself in economic terms, if the impact of the park on surrounding lands were included in an economic analysis, it would surely show that LSP more than pays for itself.

Sincerely,  
Maureen Crowley

  
Je 

72+

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From: howpat97@aol.com [howpat97@aol.com]

Sent: Sun 10/18/2015 1:41 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park

Attachments:

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Please don't privatize Liberty State Park. It is the only nice place we have in the area.

Patricia Olsen

73x

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From: CandymanB@aol.com [CandymanB@aol.com]

Sent: Sun 10/18/2015 1:37 PM

To: OLSaideSEN

Cc: pesinliberty@earthlink.net


Subject: saving Liberty State Park

Attachments:










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Hello. I presently live in South Jersey now, but when I lived in Bayonne, my family and I went to Liberty State Park all the time. When my children were growing up the play ground was a constant weekend visit. There were nature walks, picnic areas, and then there was the waterfront. Our whole family loved the waterfront the best. Rides to the Statue of Liberty, the many shows and exhibits that were in the Train Depot. Even the Train Depot itself was worth a Sunday outing. When my children went away to college, my wife and I continued to Visit Liberty State Park. A walk on the waterfront and watching all the boating activity, including the Cruise Ships leaving in the waters separating New Jersey and New York City was a constant Sunday draw. There were free concerts several times a week that we were available to go to. Liberty State Park should be left as a Park for the multitudes that use it. One thing that many people went to this great park for was the quiet and gentle breezes that became a refreshing break from the heat during the summer. Seemed to be serene and cooler at Liberty State Park waterfront, and this is something that will be diminished with it's privatizing. This Park was built and designed for the public to use and enjoy. Would be a shame to spoil that use.

Robert Bloom

  
[CandymanB@aol.com](mailto:CandymanB@aol.com)

74x

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From: Lisa Simms [njtfl@juno.com]

Sent: Sun 10/18/2015 12:57 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park is not for sale!

Attachments:

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### **Liberty State Park is not for sale!**

Liberty State Park is one of our nation's and world's most special public spaces, a national and international treasure. The park must be a fully accessible open space park forever. The overwhelming majority – the 39 year broad public consensus - has always strongly wanted LSP to be a free and green open space park behind the Statue of Liberty and Ellis Island and not a commercialized, privatized park, no matter what revenue was promised from leased out land. Commercialization and privatization plans are an attack on the urban people's quality of life and an attack on the spirit, purpose and meaning of Liberty State Park. LSP should be fully accessible public land and not turned into any more of a commercial site and rented out with long-term leases – which will inevitably take away priceless urban open space, and restrict public access by traffic jams and confiscate free parking spaces, disturb serenity, especially on summer weekends when LSP is jam-packed and it's already hard to find free parking spaces - for instance from a leased permanent concert venue shell.

LSP is New Jersey's park and it is America's park and it is the People's Park! The park is a beautiful green open space with inspiring views, and the park should remain so, as a deserved gift to future generations. LSP is an iconic American landmark and symbolizes democracy as much as Lady Liberty and Ellis Island do. There is no better neighbor and no better tribute to Lady Liberty than a free and green, pristine open space park with its panoramic views where people of all cultural backgrounds, religions and colors can enjoy themselves together. The park is a powerful spiritual public resource and an inspiring public space with deep emotional force for New Jerseyans and all Americans to enjoy.

LSP is sacred public land because it is next to the world's greatest symbol of democracy and freedom and it also is sacred because it is very scarce urban open space in a concrete and crowded region. The park is essential for the quality of life of the urban people who need a place to refresh their spirits and mental health. The park provides a much needed and wanted green haven, oasis, refuge, sanctuary, and escape for the urban people who use the park for a wide variety of unstructured recreation, relaxation and reflection in this peaceful and pastoral urban waterfront park next to the national shrines to democracy in the harbor. The park was envisioned and funded by state and federal \$ to be a free and green open space park. The broad public consensus has always been for a classic park in the Frederick Law Olmsted tradition of democratic urban public parks like Central Park (though LSP is very different from Central Park as everyone walks into Central Park; LSP is on the waterfront and next to Lady Liberty and Ellis Island, and LSP has the dramatic views of the Manhattan skyline).

Commercialization/privatization plans are an attack on the quality of life of the urban people and an attack on the park's spirit, purpose and meaning. The plans will inevitably take away priceless

75x










urban open space, and restrict public access by traffic jams and confiscate free parking spaces, especially on summer weekends when LSP is jam-packed and it's already difficult to find free parking spaces for people wanting to enjoy the park as a park. The Gov's "Sustainable Parks" goal of further monetizing – privatizing – commercializing LSP is an obscene and warped philosophy for this priceless public land and it casts aside 39 years of the broad public consensus for a free and green park - no matter what revenue was promised. Parks, like schools, are created with taxpayer money to serve the Public Good and the Public Interest.

--

**Lisa Simms**

**Jackson, NJ**

764

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From: ALZ [alz@comcast.net]

Sent: Sun 10/18/2015 12:22 PM

To: OLSaideSEN

Cc:

Subject: Senate Environment Committee: Oppose LSP Commercialization

Attachments:

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To the Senate Environment Committee,

I strongly oppose the commercialization of Liberty State Park.

Commercialization/privatization plans are an attack on the quality of life of the citizens of Jersey City and the densely populated surrounding area, as well as an attack on the park's spirit, purpose and meaning.









The plans will inevitably take away priceless urban open, green space, and restrict public access because of traffic jams and the lack of free parking, especially on summer weekends when LSP is jam-packed and it's already difficult to find free parking spaces for people wanting to enjoy the park as a park.

The Governor's "Sustainable Parks" goal of further monetizing – privatizing – commercializing LSP is an obscene and warped philosophy for this priceless public land and it casts aside 39 years of the broad public consensus for a free and green park - no matter what revenue was promised. Parks, like schools, are created with taxpayer money to serve the Public Good and the Public Interest. Parks in other parts in New Jersey are not expected to be money-making endeavors, why should a park that already brings in money from a marina and restaurants (that use up precious green space) have to turn a profit?

The citizens of New Jersey have worked for years to make what was basically a toxic dump into a park that everyone can enjoy as a green open space. It is criminal that private interests, now led by our Governor want to once again steal the park for their own interests/uses.

Andrea Zuckerman  


77x

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From: jjjtobias@aol.com [jjjtobias@aol.com]

Sent: Sun 10/18/2015 12:10 PM

To: OLSaideSEN

Cc:

Subject: Liberty State Park

Attachments:

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Senator,

I am vehemently opposed to Liberty State Park commercialization. The DEP must release the NJ Report to the public which outlines the development search report. My mother, Louise Greene, was born (1916) and raised in Jersey City and is a charter member of the Friends of LSP. I grew-up in Jersey City and remember when LSP was literally a dumping ground.

It was the vision of Mr. Pesin to create an open space area where ALL could enjoy a unique and visually spectacular view of the Hudson River shore line and New York Harbor. Before that time, no one cared or gave a second thought to that space.








Now that downtown Jersey City is becoming popular and the victim of gentrification by out-of-towners and real estate mongers, LPS and its essence is at risk.

Senator, I urge you to help us save Liberty State Park.

Respectfully,

Joanne Greene Tobias

78x

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From: Alex Schkrutz [aschkrutz@gmail.com]

Sent: Sun 10/18/2015 11:45 AM

To: OLSaideSEN

Cc:

Subject: LSP commercialization

Attachments:

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I'm opposed to any further commercialization of the park, enough inroads have been made already!

79x

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From: Robin Shay [vinostalgia@gmail.com]

Sent: Sun 10/18/2015 11:40 AM

To: OLSaideSEN

Cc:

Subject: Liberty State Park - Opposition to privatization

Attachments:


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To the Senate environmental committee,

I would like this email to state, on record, my official opposition to any privatization plans for liberty State Park.










I am a business owner and resident of downtown Jersey City and use the park for recreational purposes. My family and I would like it to remain free and available to the public. I reside at 232A 4th st and I would like to request that the DEP make the "development report" public and share, in a fully transparent manner, future plans for privatization of this public space.

Thank you,

Robin Shay  


Sent from my iPhone

80+

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From: Jack DeLima [Jacdlma1@aol.com]

Sent: Sun 10/18/2015 11:30 AM

To: OLSaideSEN

Cc:

Subject: Liberty state Park










Attachments:

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Dear sir, please keep our park. My family has been using this beautiful park for years. My daughter learned how to bike ride there. My son and I kite fly and take some of the prettiest scenic pictures. It belongs to all of us. Let's keep it that way.

Jack DeLima

8/4

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From: JEANPUBLIC1@YAHOO.COM [JEANPUBLIC1@YAHOO.COM] Sent: Wed 10/14/2015 9:50 AM

To: OLSaideSEN

Cc:

Subject: [BULK] SCR180 HEARING MONDAY

Attachments:

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I ASK FOR THE MEMBERS OF THE COMMITTEE TO VOTE FOR SCR 180. I BELIEVE THE OLD PROTECTIONS ARE BETTER THAN WHAT IS NOW PROPOSED BY NJ DEP TO ASSAULT NAUTRE AND CLEAN WATER. SO PLEASE VOTE FOR SCR180. I ALSO ASK THAT LIBERTY STATE PARK REMAIN OPEN SPACE FOR USE IN NATURE APPRECIATION, NOT PUT CONCRETE DEVVELOPMENT FOR PROFITEEERS IN THAT SPACE. PROTECTION OF OPEN SPACE IS ESSENTIAL FOR QULAITY OF LIFE IN NJ. SO MUCH IS CONCRETE ALREADY.



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From: Bill [bill\_wolfe@comcast.net] Sent: Wed 10/21/2015 6:57 AM  
To: OLSaideSEN; Smith B., Sen. D.O.  
Cc: Duhon, Kevil  
Subject: SCR 180 - written comments # 11  
Attachments:

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the eleventh and final installment.

## **NJ Flooded Again – Christie DEP Proposes to Weaken Flood Protection Rules**

June 1st, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

**Reckless and Irresponsible Proposal Would Increase Flood Risks**

**DEP Makes It Easier To Develop Closer To Streams**

**Delegated federal Clean Water Act requirements triggered – EPA asked to review**

83x

Hurricane Irene flooding – Delaware River (South Union Street). Boat washed up in road, over bridge across Swan Creek, in background, Lambertville

North Jersey was hammered by flash flooding on Sunday and more flooding is expected today.

So it was absolutely perfect timing for the Christie DEP to propose major weakenings of current flood protection rules.

Ironically, the DEP rule proposal explains why we need strict flood protection regulations:

The FHACA Rules are intended to help prevent and ameliorate the destructive impacts of flooding by establishing standards for disturbance to the land and vegetation in flood hazard areas. New Jersey periodically experiences severe flood events due to its climate, topography, and location along the Atlantic seaboard. Given the State's dense population and extensive level of existing development within flood hazard areas, this periodic flooding causes severe, repetitive, and deleterious social, economic, and environmental impacts. Flooding has and continues to be the most frequent, destructive, and costly natural hazard in New Jersey and is responsible for the large majority of disaster-related damage reported in the State. The most recent case in point is Superstorm Sandy, an historic storm that caused unprecedented flooding damage in New Jersey.

Of course, the Christie DEP – still in denial on climate change – failed to note that scientists warn that “extreme weather events” like major storms and flooding will increase in frequency and intensity, and so too will repetitive flood damage.

84x

So, a reasonable person would conclude that existing flood protections should be strengthened (see Obama Executive Order).

But the Christie administration is not reasonable – they seek “*regulatory relief*” under Gov. Christie’s Executive Order #2.

DEP press release even admits this (and it misleading, because Senator Buono refused to sign the report and was removed, and Van Drew and Burzichelli are hardly “democrats”, so it was not “bi-partisan”)

In 2011, Governor Christie launched the bi-partisan Red Tape Review Commission which worked in conjunction with the Legislature to **streamline regulatory processes across state government by eliminating burdensome red tape**, thus promoting a more vibrant New Jersey.

I am reviewing the rule in detail, so for now, will merely list the extensive rollbacks in current protections. This is complex, involving 3 sets of different rules (**a 936 page proposal!**).

The over-riding policy objective of prior rules was to keep all kinds of development as far away from a stream as possible and preserve as much natural vegetation as possible in order to reduce flood risk and protect water quality.

The entire thrust of the Christie DEP proposal is exactly the opposite.

Shamefully, the DEP is using inconsistencies between those 3 rules as an excuse to WEAKEN protections across the entire state.

**The most significant of these are the elimination of current Category One waters 300 foot vegetated buffer protections in the stormwater rules. DEP will now rely exclusively on the stream encroachment program, which lacks protections for headwater streams flowing in less than 50 acre drainages.**

**The DEP has also eliminated virtually all current buffer protections and replaced those prohibitions on disturbance of the buffers with a mitigation scheme.**

**DEP proposed to eliminate the current strict “hardship waiver” requirements for disturbance inside 150 feet on C1 streams that get 300 foot buffers under stream encroachment rules. This essentially guts all buffer protections and allows more development in stream buffers.**

**DEP proposes to eliminate all buffer protections for small headwater streams in less than 50 acre drainage area. These are MOST ecologically sensitive and critical areas from water quality protection and flood prevention perspectives.**

Other weakenings include:

- weaken “hardship exception” waivers. DEP says its too hard to get a hardship waiver – need to make waiver easier
- DELETE current requirements for the placement, storage or processing of solid waste in a riparian zone

85x

- ELIMINATE current requirements for the placement, storage or processing of hazardous substances in riparian zones
- ELIMINATE current requirements for storage of unsecured materials in riparian zones – increases flood risks
- new “flexibility” to weaken current requirements for restoring impaired streams to a natural condition
- As sea level rise & flood risks increase, DEP will reduce the number of walls and bulkheads that need engineering certification
- proposes 19 new permits-by-rule (PBR) There is no DEP or public review of a PBR. New “certification” permits too
- reductions to list of waters that receive a riparian zone & list of waters regulated
- effectively deregulates (via Permit by rule) stream “cleaning” & forestry activities
- increase allowable stream buffer disturbance for roadways, private driveways, and railroad projects
- there is NO limit on disturbance of riparian zone vegetation provided the disturbance is justified by stream “stabilization” or “restoration”
- increase the amount of disturbance for storm water outfalls from 1,000 square feet to 2,000 square feet used within the riparian zone
- provides a 50% increase in stream buffer disturbance for utility line stream crossings
- significant increase in allowable stream buffer disturbance for single-family home or duplex in a riparian zone
- provide new disturbance for reconstruction or expansion of existing homes (previously not allowed)
- increases in allowable buffer disturbance for addition to a private residence or construction of a garage, barn, or shed
- new allowable disturbance for alteration, expansion, or repair of individual subsurface sewage disposal systems
- **elimination of any disturbance limits for “hazardous substance remediation,” “solid waste facility closure,” “trail or boardwalk,” “footbridge,” “removing sediment and/or debris from a regulated water,” and “removing existing fill and/or an existing structure**
- delegates review of certain storm water outfall construction projects to the local Soil Conservation District for review under weaker Soil Erosion & Sediment Control Act standards
- **eliminates current buffer width and disturbance restrictions and allows NEW SEPTIC SYSTEMS to be built just 50 feet from a stream.**

**This is a shockingly reckless and irresponsible move given NJ’s flood risks and persistent flooding.**

The proposal also may violate certain delegated federal Clean Water Act requirements, so I’ve already written to EPA Regional Administrator Enck to request EPA review and oversight of the proposal.

We also will demand legislative oversight hearings before Senator Gordon’s Senate Regulatory Oversight Committee.

That should be interesting, because Gordon has sponsored legislation to strengthen flood protections and update badly outdated flood risk maps.

86x

Gordon also differed with Senator Cardinale's attack on C1 stream protections and his "drainage ditch" characterization on legislation to promote "stream cleaning".

More to follow as this develops.

Lambertville – New Hope bridge

Categorie

87x

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From: Bill [bill\_wolfe@comcast.net] Sent:
To: OLSaideSEN; Smith B., Sen. D.O.
Cc: Duhon, Kevil
Subject: SCR 180 - written comments # 10
Attachments:

Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise testimony.

Because my blog "Wolfenotes.com" was cited in testimony by another witness as source material, I submit to the record. The below is the tenth of several installments.

Legislators Urged To Block Christie DEP Flood Hazard Rule Rollback

June 26th, 2015 Bill Wolfe Edit Leave a comment Go to comments

Radical New Mitigation Scheme Not Authorized by Legislature

Elimination of Flooding, stream buffer and water quality protections inconsistent with legislative intent

Conservation, Coastal, and Watershed Groups Are AWOL – Why?

Last night, DEP held the final public hearing on a radical proposal that would weaken protections from pollution – for a general overview and first cut summary of all the flagrant rollbacks of the DEP proposal.

• NJ Flooded Again – Christie DEP Proposes to Weaken Flood Protection Rules

I attended and testified at the first public hearing which was held last week at the DEP building in Trenton.

I talked about the history of the Category One buffer program that the Christie DEP was repealing.

I explained why the developers hated it, and highlighted how it protected about 2,000 miles of stream buffers (do the math and figure out how many acres of ecologically sensitive land were protected taxpayers).

The C1 program killed numerous large corporate office park and housing developments, from Vauxhall to Clinton to Berwind in Hopewell, and many more across the State. It seems like Conservation groups don't understand how and why some of their land deals came about.

In fact, the Christie DEP's own scientists recommended that the C1 program had a strong scientific basis and was expanded to 121 miles of new "exceptional value" streams

88x

The C1 program, which prohibits buffer disturbance, would be repealed and the existing "stream encroachment program standards on destruction of riparian buffer vegetation and disturbance would be weakened and replaced by a mitigation scheme and scam oriented mitigation bank.

DEP research suggests that wetlands mitigation does not work, see:

- **Study Shows New Jersey's Freshwater Wetlands Mitigation Program Missed Opportunity Acreage.**

Despite this failure, the DEP failed to provide a scientific basis for the new proposed stream bank/riparian scheme. Nor is such a scheme legally authorized in Legislation.

I am told that only 4 Sierra Club members and 3 residents testified in opposition to the proposal last night similar low turnout at the 1st hearing in Trenton.

There has been only one news story, a *NJ Spotlight "he said she said"* by Scott Gurian.

As usual, the subscription service to the legal community "Law360" is competent and understands the published a story under this headline:

### **NJ DEP Looks To Ease Permitting In Flood Hazard Areas**

The lack of opposition by environmental groups (other than Sierra, Clean Water Action, Stony Brook V ANJEC) is deeply disturbing – no, the silence is disgusting.

The failure to publicly denounce this Christie DEP rollback is tacit support of the proposal.

Even worse. the silence might reflect economic self interests, because some conservation groups (like NJCF) and watershed groups that do stream bank and riparian restoration work could receive huge funds from the radical new mitigation scheme.

That work could generate mitigation credits that would be bought, sold, and traded by a mitigation bank. there will be a ton of new money invested in stream bank and riparian restoration work, including consultants like Audubon do.

In an effort to get some public awareness of just how bad this rule proposal is, today I urged legislative oversight hearings to get the facts out to the public and the press.

If you read nothing else, just get the regulatory history I highlight in the first 5 bullets.

Senators should be very interested in this DEP rule, given their sponsorship and votes in favor of **a bill update flood hazard maps that passed yesterday** (Assembly **version passed**) and is now on Gov. C.

**From:** "Bill" <bill\_wolfe@comcast.net>

**To:** senbsmith@njleg.org, senweinberg@njleg.org, sengordon@njleg.org, sengreenstein@njleg.org, sen

**Cc:** kduhon@njleg.org

**Sent:** Friday, June 26, 2015 1:11:17 PM

**Subject:** Flood Hazard Act – DEP Rule proposal – request for Legislative oversight

Dear Senators –

89x

As you may know, on June 1, 2015, DEP proposed sweeping new rules under the Flood Hazard Contr

<http://www.nj.gov/dep/rules/notices/20150601a.html>

The rules are designed, according to DEP, to “relieve regulatory burden” in accordance with Governor Orders #2 (regulatory relief) and #3 (reduction of burdensome Red Tape).

The proposal is a radical departure from almost two decades on regulatory policy and practice. It is fat increase flood risks and reduce water quality.

Among many other things, the proposal would

- 1) **repeal and eliminate** the “Category 1” 300 foot stream buffer program incorporated in the DEP stream management rules that were adopted during the McGreevey Administration;
- 2) **systematically roll back regulatory protections** enacted during the Corzine Administration, which expanded the scope of the Category One stream buffers in the DEP Flood Hazard Act stream encroachment program;
- 3) **create a radically new stream mitigation program** and mitigation bank that would provide relief buffer protections.

The mitigation scheme lacks legislative authorization and is inconsistent with legislative intent under the Flood Hazard Act;

- 4) **propose numerous new technical loopholes** that would promote new development in flood hazard areas, eliminate current protections for stream buffer and riparian vegetation; reduce water quality; put more in harms way; and reduce or eliminate DEP and/or public reviews; and
- 5) **ignore climate change impacts and risks**, which include increased frequency and severity of extreme weather, including rainfall and flooding events. Climate impacts magnify flood risks caused by hydrologic changes caused by NJ’s high degree of development and impervious surfaces. The rule also ignores prior FEMA Emergency Flood Rule enacted in the wake of Sandy.

Below is my first round of comments on the DEP proposal.

Given the above fatal flaws, I urge you to conduct legislative overnight hearings on the rule proposal before it adopts the rule.

Should DEP adopt the rule, I would urge you to review and reject the proposal as inconsistent with the Constitution pursuant to your Constitutional legislative veto powers.

I am available to discuss at your convenience.

Respectfully

### DEP Comments – Round 1

Dear DEP – below please find Part 1 of my written comments. These comments are in addition to my comments at the public hearing. I reserve the right to revise and extend those comments until the close of comment period.

90x

### 1. Delegation to local Soil Conservation Districts

Throughout the subject proposal, the Department would delegate certain powers, functions, and technical decisions, to local Soil Conservation Districts authorized by the Soil Erosion and Sediment Control Act.

The proposal states:

“The Department is proposing to delete all standards and requirements related to acid producing in the FHACA Rules, as well as to delete reference to acid producing soil deposits from the riparian special area in the CZM rules, and to instead rely on local Soil Conservation Districts to mitigate impacts resulting from exposure of such deposits, as required under the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.” e.g. See: N.J.A.C. 7:13-11.2(j)1)

The Department may not delegate these powers by law.

The Flood Hazard Act circumscribes the Department’s delegation powers, limiting them to certain quasi-governing bodies, and establishes delegation standards and a review process:

*NJSA 58:16A-55.6. Delegation of power to approve or disapprove application to county governing body.*

*The Department of Environmental Protection may delegate its power to approve or disapprove an application made to it pursuant to this act and its power to enforce any aspect of this act to a county governing body which agrees to accept such designation and in the department’s judgment is capable of utilizing the rules, regulations and standards adopted by the department for the administration of the program. The department shall review this delegation at least biannually and may revoke such delegation in the event of a failure to properly administer such delegated powers. The county governing body may charge the cost of promulgated by the commissioner pursuant to P.L. 1975, c. 232 (C. 13:1D-33), when such power is delegated to it.”*

The proposed delegation to local Soil Conservation Districts is not only not authorized by the Flood Hazard Act but is expressly inconsistent with the delegation provisions of the Act.

### 2. Deference to Local Soil Conservation Districts

The Department is proposing new requirements for a stormwater outfall structure. They include a new section of the Department as “Added deference to local Soil Conservation District for stability issues”.

This policy lacks any asserted legal and scientific basis and is unsound public policy, and is therefore arbitrary, capricious and an abuse of discretion.

### 3. Mitigation scheme and creation of mitigation bank

The proposal includes a new SUBCHAPTER 13. RIPARIAN ZONE MITIGATION, which is sweeping and hugely significant in substance, both economically and environmentally.

A change in regulatory policy of this magnitude requires express statutory authorization by the Legislature.

The Flood Hazard Act (Act) does not authorize the Department to enact regulations that would create a mitigation bank.

The Act lacks any provision for “mitigation” or a “mitigation bank”.

In contrast, the Act clearly establishes standards and authorizes the Department to enact regulations to legislative standards via a traditional regulatory permit program.

The Act does not specifically – or implicitly – authorize a mitigation program and mitigation bank – nor authority the Department relies on as the legal basis for the proposal.

Because such a program is a radical departure from many years of DEP regulatory policy and practice, proposal is ultra vires, not legislatively authorized, and contrary to law and the express framework and Act.

The mitigation scheme and mitigation bank are also inconsistent with legislative intent.








The proposal must be withdrawn.

#### **4. Request for Attorney General's Opinion and OLS opinion**

In my prior career with the Department, the Department's Rulemaking guidance required that the Att OLS conduct a legal review prior to proposal.

On issues of significant regulatory policy change and/or significant economic and/or environmental in and OLS would conduct heightened scrutiny pre-proposal review to ensure an adequate legal and tech proposal.

I request that the AG's Office and OLS conduct a thorough review and issue a written legal opinion w legal basis for the subject proposal, as well as the legal adequacy of the flaws identified in comments #

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From: Bill [bill\_wolfe@comcast.net]  
 To: OLSaideSEN; Smith B., Sen. D.O.  
 Cc: Duhon, Kevil  
 Subject: SCR 180 - written comments #8  
 Attachments:

Sent: Wed 10/21/2015 6:49 AM

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the eighth of several installments.

## Legislators Seek To Veto Christie DEP Flood Hazard & Coastal Rule Proposal

October 4th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

**Senate Resolution Declares Rules “Inconsistent with Legislative Intent”**

**A Long List Of Regulatory Rollbacks**

**We await text of SCR 180 and Senate Committee oversight hearings**

This necessarily will be a long post – it analyzes DEP’s 900+ page rule proposal – so please, grab a cup of coffee and hit the head now. As usual, I left the best for last.

Back in June, upon initial review of the DEP rule proposal, **we requested a legislative veto in an email to legislators.** We concluded:

Among many other things, the proposal would

- 1) **repeal and eliminate** the “Category 1” 300 foot stream buffer program incorporated in the DEP storm water management rules that were adopted during the McGreevey Administration;
- 2) **systematically roll back regulatory protections** enacted during the Corzine Administration, which incorporated and expanded the scope of the Category One stream buffers in the DEP Flood Hazard Act stream encroachment permit program;
- 3) **create a radically new stream mitigation program** and mitigation bank that would provide relief from current stream buffer protections.

93x

The mitigation scheme lacks legislative authorization and is inconsistent with legislative intent under the Flood Hazard Act;

4) **propose numerous new technical loopholes** that would promote new development in flood hazard areas; reduce or eliminate current protections for stream buffer and riparian vegetation; reduce water quality; put more people and property in harms way; and reduce or eliminate DEP and/or public reviews; and

5) **ignore climate change impacts and risks**, which include increased frequency and severity of extreme weather, including rainfall and flooding events. Climate impacts magnify flood risks caused by hydrological changes caused by NJ's high degree of development and imperious surfaces. The rule also ignores prior FEMA objections to DEP's Emergency Flood Rule enacted in the wake of Sandy.

Since then, NJ legislators introduced a Senate Resolution (SCR 180 – Lesniak, Smith) that would veto DEP's proposed rollbacks of Flood Hazard, Coastal Zone Management, and Stormwater rules, see *NJ Spotlight* story:

• **PROPOSED DEP RULE CHANGES STILL CATCHING FLAK, THIS TIME FROM LAWMAKERS**

Although announced as introduced in the Senate over a week ago, the Resolution appears to not have been drafted yet. A copy is not available yet on the Legislature's website.

The **DEP rule proposal** is complex and comprises more than 900 pages, so it is a technically difficult Legislative resolution to draft. Adding to the challenge is the fact that legislators and OLS professionals are better versed in the broad brush language of legislation than the fine print of regulatory proposals.

How the resolution is drafted, e.g. what DEP provisions are targeted by Legislators, raises important political and policy concerns.

So we thought we'd draft an outline of the major provisions of the DEP rule we see as "inconsistent with legislative intent". This is just an outline – we omit the specific regulatory citations, although these can readily be determined by reviewing the Table of Citations **on page 27** and in **Table 11.2 on page 690**.

It will be very interesting to see how many of what we see as major flaws are targeted by the Resolution.

**D) Clean Water – Water Pollution Control Act**

The most significant controversy will be over proposed changes to various stream buffer rules that would allow more disturbance to those buffers by development, which would generate additional non-point source pollution and negatively impact water quality.

**A. Legislative intent**

The fundamental goals and policy of the federal **Clean Water Act**, upon which NJ is delegated authority and State law is based, are:

94x

The objective of this chapter is to **restore and maintain the chemical, physical, and biological integrity of the Nation's waters.**

With respect to the subject DEP rules, it is important to note that one of the original fundamental goals of the Clean Water Act included control of non-point source pollution:

(7) it is the national policy that programs for the **control of nonpoint sources of pollution be developed and implemented in an expeditious manner** so as to enable the goals of this chapter to be met through the control of **both point and nonpoint sources of pollution.**

It is also important to note that although Congress recognized State interests, that those State interests were: a) subordinate to national policy, b) that State's were expected to consult closely with US EPA, and that c) the linkage between land use – exclusively a state prerogative and limited federal role – and water resources was specifically identified:

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States **to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources,** and to consult with the Administrator in the exercise of his authority under this chapter.

#### **B. How DEP rule is inconsistent with legislative intent**

The proposal has numerous weakenings of existing rules that would exacerbate current poor water quality.

1. The proposal would repeal the current 300 foot "Special Water Resource Protection Areas" (SWRPA) C1 buffers in the storm water rules (@ NJAC 7:8), including their regulatory prohibitions and strict restrictions on disturbance, and replace them with "riparian zones".

The proposal would then weaken the current standards for allowable disturbance in "riparian zones".

Here is how DEP justifies that (@ [page 9-10](#))

The Department is proposing various changes to the riparian zone requirements. **First, the total amount of riparian zone vegetation allowed to be disturbed for roadways, utility lines, buildings, and other construction activities is proposed to be increased** to better reflect the Department's experience in permitting these activities. **Second, the Department is proposing to increase the area of riparian zone vegetation that can be disturbed** for activities that do not adversely impact riparian zone functionality, such as disturbance to lawn, gardens, and other actively disturbed areas; work within roadway and utility line easements; and construction adjacent to a bulkhead or revetment along tidal waters and impounded fluvial waters. **Third, allowances for riparian zone disturbance associated with a number of construction activities not addressed in the existing rules, which therefore require a hardship exception, such as site remediation projects, landfill closures, trails, boardwalks, footbridges, and subsurface sewage disposal systems, are being proposed,** which will facilitate these projects and reduce the number of

95x

hardship exceptions requested. **Fourth, the Department is proposing changes that will obviate the need for an applicant to obtain a hardship exception where an applicant demonstrates that a given project cannot feasibly meet the limits on riparian zone disturbance.** The rules will require that the applicant provide **riparian zone mitigation for all vegetation removed in excess of the limits.** The proposed amendments additionally expand the locations where restoration and enhancement may be conducted to provide applicants with **additional opportunities for riparian zone mitigation** as well as to promote restoration and enhancement in degraded areas that may not be in close proximity to the disturbance requiring mitigation.

DEP admits that the rule will weaken buffer protections and make it easier to develop closer to streams. As far as I'm concerned, that's enough. Case closed. There is no legislative intent to promote development closer to streams. Period.

But it's even worse: under the waiver and mitigation scheme, in effect, there would no longer be enforceable restrictions on buffer disturbance. A waiver and mitigation scheme would replace the current prohibitions in the stormwater rule C1 SWRPA buffers and weaken the current riparian zone limits set out in current Table C.

This would be a radical regulatory policy shift and it works only to increase buffer disturbance and further reduce water quality.

2. The proposal would make a series of smaller technical changes to current rules whose cumulative impacts will reduce already poor water quality, including:

- weaken "hardship exception" waivers. DEP says its too hard to get a hardship waiver, that they need to make granting a waiver easier
- DELETE current requirements for the placement, storage or processing of solid waste in a riparian zone
- ELIMINATE current requirements for the placement, storage or processing of hazardous substances in riparian zones
- ELIMINATE current requirements for storage of unsecured materials in riparian zones
- providing new "flexibility" to weaken current requirements for restoring impaired streams to a natural condition
- As sea level rise & flood risks increase, DEP will reduce the number of walls and bulkheads that need engineering certification
- proposes 19 new permits-by-rule (PBR) There is no DEP or public review of a PBR.
- proposal of new "certification" permits
- effectively deregulates (via Permit by rule) stream "cleaning" & forestry activities
- increase in allowable stream buffer disturbance for roadways, private driveways, and railroad projects
- there is NO limit on disturbance of riparian zone vegetation provided the disturbance is justified by stream "stabilization" or "restoration"
- increase the amount of disturbance for storm water outfalls from 1,000 square feet to 2,000 square feet used within the riparian zone
- provides a 50% increase in stream buffer disturbance for utility line stream crossings
- significant increase in allowable stream buffer disturbance for single-family home or duplex in a riparian zone
- provide new disturbance for reconstruction or expansion of existing homes (previously not allowed)

96x

- increases in allowable buffer disturbance for addition to a private residence or construction of a garage, barn, or shed
- new allowable disturbance for alteration, expansion, or repair of individual subsurface sewage disposal systems
- elimination of any disturbance limits for “hazardous substance remediation,” “solid waste facility closure,” “trail or boardwalk,” “footbridge,” “removing sediment and/or debris from a regulated water,” and “removing existing fill and/or an existing structure
- delegates review of certain storm water outfall construction projects to the local Soil Conservation District for review under weaker Soil Erosion & Sediment Control Act standards
- eliminates current buffer width and disturbance restrictions and allows NEW SEPTIC SYSTEMS to be built just 50 feet from a stream.

### 3) New Mitigation scheme and creation of mitigation bank

The proposal includes a new SUBCHAPTER 13. RIPARIAN ZONE MITIGATION, which is sweepingly broad in scope and hugely significant in substance, both economically and environmentally.

A change in regulatory policy of this magnitude requires express statutory authorization by the Legislature.

The Flood Hazard Act (Act) does not authorize the Department to enact regulations that would create a mitigation scheme or a mitigation bank.

The Act lacks any provision for “mitigation” or a “mitigation bank”.

In contrast, the Act clearly establishes standards and authorizes the Department to enact regulations to enforce these legislative standards via a traditional regulatory permit program.

The Act does not specifically – or implicitly – authorize a mitigation program and mitigation bank – nor does any other authority the Department relies on as the legal basis for the proposal.

Because such a program is a radical departure from many years of DEP regulatory policy and practice, the Department’s proposal is ultra vires, not legislatively authorized, and contrary to law and the express framework and provisions of the Act.

The mitigation scheme and mitigation bank are also inconsistent with legislative intent.

## II) Flood risk – Flood Hazard Control Act

The most significant controversy will be focused on proposed changes that would allow more development in flood hazard areas.

### A. Legislative intent

The legislative intent of the Flood Hazard Area Control Act is to prevent and reduce risks to people and property from flooding by regulating development. The Legislature declared:

It is in the interest of the safety, health, and general welfare of the people of the State that legislative action be taken to empower the Department of Environmental

974

Protection1 to delineate and mark flood hazard areas, to authorize the Department of Environmental Protection to adopt **land use regulations for the flood hazard area, to control stream encroachments**, to coordinate effectively the development, dissemination, and use of information on floods and flood damages that may be available, to authorize the delegation of certain administrative and enforcement functions to county governing bodies and to integrate the flood control activities of the municipal, county, State and Federal Governments.

### **B. How DEP rule is inconsistent with legislative intent**

The proposal is inconsistent with legislative intent because several provisions would allow more people and property to be placed in flood hazard zones, thereby increasing flood risk.

For the general thrust of that, we'll keep things brief and note Jon Miller, head on the Association of NJ Flood Plain Managers, comments from the prior round of rule changes, which are still apt (actually, any Senate Resolution SCR 180 should include these prior rules as well)

Sea level rise, driven by global climate change and by geological, climatic, and human factors particular to our region, poses a growing risk to New Jersey, threatening property, infrastructure, ecosystems, and livelihoods. Intensifying development in increasingly vulnerable coastal areas will magnify this risk. **The proposed rules do not consider the effects of sea level rise; incorporating sea level rise into the permitting process is critical if it is to meet its goal of not putting the inhabitants of the New Jersey shore at risk.** The Department should address this issue when revising the rules. ...

The consolidation and simplification of the rules is supported; however, there is concern with respect to increased development in high risk areas. Public safety, property protection, and reducing risk which strengthens local and State economies are paramount. **This position is also supported by the New Jersey Legislature through the enactment of CAFRA, at N.J.A.C. 13:19-2, and the Wetlands Act of 1970 at N.J.S.A. 13:9A-1 and 2. The legislative intent of these laws is violated by intensifying density and uses in coastal high hazard areas.** The proposed rules do not consider increased risk in coastal development in the impact assessment, whether to the financial interests of local, State, or Federal taxpayers and to the NFIP and other disaster assistance programs well utilized after Superstorm Sandy.

### **III) Stormwater Management**

The most significant controversy is likely to focus on proposed repeal of what are known as "Special Water Resource Protection Areas", commonly known as the 300 foot wide buffers, along Category One Waters (C1), first adopted by DEP in 2003/04 as water quality "best management practices".

#### **A. Legislative intent**

Stormwater has water quality, flooding, and habitat impacts.

The DEP storm water management rules are designed to prevent, reduce and mitigate those impacts. DEP adopted these rules pursuant to the authority of

98x

Statutory Authority: N.J.S.A. 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq., 13:19-1 et seq., 40:55D-93 to 99, 58:4-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq. and 58:16A-50 et seq.

The legal eagles at OLS can read all that statutory law – but I suggest a shortcut would be to read the DEP rule proposal basis and background document. DEP website has rule adoption archives.

### **B. How DEP rule is inconsistent with legislative intent**

Back in 2003, the DEP adopted major upgrades to storm water management rules. One of the most significant provisions of these new rules were new water quality requirements: a 300 foot buffer along designated Category One (C1) “exceptional value” waters (see NJAC 7:8-5.5(h))

The objective of these rules was to strictly limit disturbance by “major development” in order to preserve stream vegetation, which provides the following benefits, according to both the US Army Corps of Engineers and the DEP: (@ page 1-5)

1. Reduce adverse effects to water quality by removing nutrients and pollutants from surface runoff;
2. Reduce concentrations of nutrients and pollutants in subsurface water that flows into streams and other open waters;
3. Moderate storm flows to streams, which reduces downstream flooding and degradation of aquatic habitat;
4. Stabilize soil (through plant roots), which reduces erosion in the vicinity of the open water body;
5. Provide shade to the water body, which moderates water temperature changes and provides a more stable aquatic habitat for fish and other aquatic organisms;
6. Provide detritus, which is a food source for many aquatic organisms;
7. Provide large woody debris from riparian zones, which furnishes cover and habitat for aquatic organisms and may cause the formation of pools in the stream channel;
8. Provide habitat to a wide variety of aquatic and terrestrial species;
9. Trap sediments, thereby reducing degradation of the substrate that provides habitat for fish and other aquatic organisms (for example, some fish species depend upon gravel stream beds for spawning habitats); and
10. Provide corridors for movement and dispersal of many species of wildlife. In addition, vegetated buffers next to streams provide flood storage capacity and groundwater recharge functions.

(Source: Federal Register Volume 64 No. 139 Page 39274, July 21, 1999)

The SWRPA buffers were designated a “best management practice” (BMP) for water quality protection.

Under the Clean Water Act and various EPA implementing regulations, states are required to adopt anti-degradation policies, implementation procedures and “best management practices”.

The Clean Water Act does not mandate 300 foot buffers. Nor does it mandate 300 foot buffers in EPA’s water quality standards, municipal storm water, or “TMDL” programs.

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EPA did not put a gun to NJ DEP's head and require that they adopt 300 foot buffers. Traditionally, most BMP's and non-point source pollution controls are not mandatory at the State level and are not federally enforceable.

Instead, NJ DEP chose to adopt 300 foot buffers as mandatory water quality BMPs in NJ's state storm water management regulations.

Then, DEP chose to justify these BMPs as federally mandated State anti-degradation implementation procedures.

Finally, DEP chose to demonstrate compliance with federally mandated municipal storm water permit rules by including a link in State municipal storm water permit rules to these mandatory storm water water quality BMPs.

For all these reasons, the 300 foot buffer water quality BMPs are federally enforceable. The State of NJ has used them to demonstrate compliance with federal Clean Water Act requirements.

The selection of all these are under the control of the States – but once designated by regulation, become federally enforceable. Even DEP agrees with this interoperation (see page 58 which responded to my comment):

According to Section 4.5 (“Protection of Water Quality in High- Quality Waters”) of the Environmental Protection Agency’s Water Quality Standards Handbook, which is available at <http://www.epa.gov/waterscience/standards/handbook/>, the Federal Water Quality Standards do “not mandate that States establish controls on nonpoint sources” **but requires the implementation of best management practices where established.** The adopted riparian zone requirements are considered a best management practice that is designed to address nonpoint source pollution and their implementation is, consistent with Federal regulation.

The C1 buffers are BMPs are “established” and they are State SWQS implementation procedures for attaining the anti-degradation policy for C1 waters. They may not be repealed without EPA prior approval.

Additionally, C1 buffers are linked to and satisfy State compliance obligations of EPA’s municipal stormwater permit program.

Specifically, the NJDEP municipal storm water permit requirements specifically mandate compliance with the storm water management water quality rules.

Accordingly, the C1 buffers are federally enforceable and may not be eliminated without EPA prior approval.

Unfortunately, EPA folded and did not assert these federal regulatory oversight powers in their letter to DEP, **which was more saber rattling than serious federal oversight.**

**Therefore, it becomes even more important for the NJ Legislature to step up where EPA failed and strike these rules down.**

#### IV) Coastal protections – Coastal Area Facilities Review Act (CAFRA)

100x

The most significant controversy is likely to focus on proposed changes to allow more development in previously prohibited areas (like shellfish growing waters) and promoting development in designated flood hazard areas (like on piers over the Hudson river)..

#### A. Legislative intent

The primary objective of CAFRA is to protect coastal resources by regulating development in the coastal zone. The Legislature declared:

The Legislature finds and declares that New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fast land drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an **exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area, that certain portions of the coastal area are now suffering serious adverse environmental effects resulting from existing development activity impacts** that would preclude or tend to preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State; and that, therefore, it is in the interest of the people of the State that all of the coastal area **should be dedicated to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area.**

It is further declared that the coastal area and the State will suffer continuing and ever-accelerating serious adverse economic, social and aesthetic effects unless **the State assists**, in accordance with the provisions of this act, **in the assessment of impacts, stemming from the future location and kinds of developments within the coastal area, on the delicately balanced environment of that area.**

#### B. How DEP rule is inconsistent with legislative intent

(see Jon Miller's comments above)

#### V) Federal Flood Insurance Program Compliance and Eligibility

The issue here is that the proposal does not meet minimum National Flood Insurance Program (NFIP) requirements and thereby jeopardizes eligibility for NFIP and federal funds.

#### A. Legislative intent

The Flood Hazard Area and CAFRA would establish an overall intent, but I could not find a State law that was specific to the federal Flood Insurance Program (NFIP).

However, especially given NJ's status as a coastal state and national leader in flood damage and repeat flood damage claims, particularly after the devastation wrought by Sandy, it would seem obvious that the Legislature intends to meet the minimum requirements of the NFIP and maintain municipal eligibility for participation in the NFIP.

#### B. How DEP rule is inconsistent with legislative intent

101x

The rule does not meet minimum NFIP requirements and FEMA and the League of Municipalities have objected to the proposal on that basis (see this for details).

The most egregious provision is to allow new development on piers over the Hudson River in mapping high hazard areas.

It will be interesting to see if the Legislature finds that DEP's failure to include more conservative flood elevation requirements, above and beyond the 1 foot of "freeboard" adopted during the Corzine administration, is inconsistent with Legislative intent because it would allow development at hazardous elevations and put people and property at risk, especially given projected sea level rise and storm surge.

#### **VI) Failure to consider risks and impacts of climate change and sea level rise**

This is a key issue that will test whether the Legislature is serious in reforming policy or is more interested in politically embarrassing the Governor

**The DEP's proposed rule does not consider climate change, projected sea level rise, and more severe storms and storm surge.**

There is no specific law that mandates that DEP consider climate change and base flooding and coastal management regulations on climate change.

The Legislature recognized the reality of climate change in the Global Warming Response Act and funded various related climate mitigation programs in the RGGI law.

DEP has already adopted climate change related permit requirements that would require that 500 year flood elevations be considered in CSO planning and engineering.

It would be scientifically justified to consider more conservative rainfall events and flood elevations in flood hazard and coastal rules.

President Obama issued an Executive Order on Climate Adaptation in federal programs and most all coastal states have adopted climate adaptation plans.

Back in 2004, DEP regulated greenhouse gases as "air pollutants" – more than a decade before EPA.








NJ's 2014 Hazard Mitigation Plan recognizes climate change risks – but that plan lacks enforceable implementation requirements.

DEP clearly has the authority to consider climate change –

Will the legislature find their failure to do so inconsistent with legislative intent?

The whole world's watching.

102x

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From: Bill [bill\_wolfe@comcast.net]  
 To: OLSaideSEN; Smith B., Sen. D.O.  
 Cc: Duhon, Kevil  
 Subject: SCR 180 - written comments #9  
 Attachments:

Sent: Wed 10/21/2015 6:51 AM

[View As Web Page](#)

Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the ninth of several installments.

## Christie DEP Denies Rollback in Stream Buffer Protections

September 27th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

### Bergen Record Story Gives DEP Platform To Lie

**DEP proposal opposed by EPA, FEMA & League of Municipalities, hardly a tree hugging trio!**

[Updates below]

It's a cool Sunday morning, perfect for a bike ride, so I'm headed out right now and have no time to write an extended rebuttal of today's DEP statement about the Flood Hazard rule proposal.

I've already written about this several times, so I'll keep it very short and sweet today and do a more detailed post early next week or in advance of the Legislative oversight hearings on SCR180 (introduced, but text not posted yet)

Here's what DEP said about "some" criticisms of their rule proposal in the *Bergen Record story*:

“After hearing some of the criticism we’ve heard of the proposed rule, we’re **wondering if they’re actually reading it**,” Considine said. “**They say the 300-foot riparian zone has been eliminated from the proposed rule. It hasn’t. It’s retained** and it’s far above and beyond any requirement of the Clean Water Act. Headwaters will not be deregulated, as they’ve said.”

**Haven't read it?**

**I WROTE** the DEP's original category one buffer rule and was the primary architect of the program under DEP Commissioner Campbell.

103x

Before I get to DEP, let me just say that this is awful reporting, just awful.

First of all, the headline makes the issue appear to be partisan. There is little substance of what the rule does to enable a reader to understand the controversy. The reporter allowed DEP to use vague qualifier like "some" criticisms without being precise, which is just sloppy and lazy. WHOSE criticism? WHAT criticism? BE SPECIFIC!

Below is the text of the current DEP proposal – it **doesn't "eliminate" the C1 buffers, it REPEALS them and it weakens their protections.** The headwaters arguments are more complex for now.

Bottom line: There are good policy and scientific reasons why the C1 buffers in the storm water rules (designed to protect water quality from runoff) are different from the riparian zone buffers in the stream encroachment rules (designed to protect people and property from flood risk).

**The two rules have different objectives, so of course they have different technical requirements!**

**That's not duplication – and DEP's proposal is not streamlining its a rollback.**

If DEP wanted to "harmonize" or "consolidate" or "unify" the two sets of different rules, they could have simply picked the most stringent protections in the two rules. Instead they did the opposite: they eliminated the strongest protections and weakened the weakest ones.

DEP explains this in a circuitous way in the proposal – Note the use of the word "**repeal**" (see [DEP proposal at page 10](#))

#### **Repeal of SWRPA in the Stormwater Management rules**

The SWM rules at N.J.A.C. 7:8-5.5(h) establish a 300-foot special water resource protection area (SWRPA) along Category One waters and certain tributaries. The FHACA Rules establish a 300-foot riparian zone along Category One waters and a slightly different set of tributaries. Where these buffers both apply to the same activity or project, implementation issues have arisen because of the differences in the regulatory requirements.

Also keep in mind that while the rollbacks to the buffer protections are the worst part of the rule proposal, there are many other terrible provisions weakening flood and coastal protections, ignoring climate change risks, et al – these have been opposed by EPA, FEMA **and even the League of Municipalities, hardly a tree hugging trio!**

[**Update #1:** for those that don't hit all the links, let me make it easier for you by providing the on-point text of the DEP's historic position, from the [2008 adoption of the current Flood Hazard rules: \(@ page 54-55\)](#)

RESPONSE: While the commenters do not identify specifically those sections of the rules they believe are inconsistent, the Department assumes the commenters are referring to the established riparian zone, and **does not agree that the rules duplicate, or are inconsistent with, other existing Department rules.** As the Department stated in its summary of the proposal of the new Flood Hazard Area Control Act rules at 38 N.J.R. 3951, the Stormwater Management rules establish a

104x

300-foot Special Water Resource Protection Area along Category One waters “only when a major development, as defined at N.J.A.C. 7:8-1.2, is proposed.” In contrast, the Flood Hazard Area Control Act rules apply to “any activity that requires approval under this chapter, which includes a larger set of activities than that which is regulated under the Stormwater Management rules.” Further, the Flood Hazard Area Control Act rules establish a 150-foot buffer and a 50-foot buffer along waters that do not receive such protection under the Stormwater Management rules. The Stormwater Management rules also include specific standards related to the quality of stormwater runoff from developed sites at N.J.A.C. 7:8-5.5, which is not included in N.J.A.C. 7:13. While both N.J.A.C. 7:8 and N.J.A.C. 7:13 derive authority from the Water Pollution Control Act, N.J.A.C. 7:13 also derives statutory authority from the Flood Hazard Area Control Act. It is appropriate, therefore, for the Department to establish additional standards under N.J.A.C. 7:13 which are designed to preserve channel integrity and prevent flooding. **The Stormwater Management rules and the Flood Hazard Area Control Act rules are intended to work in unison to ensure that development will not cause or exacerbate flooding, erosion or ecological degradation of New Jersey’s surface waters. Consequently, the Flood Hazard Area Control Act rules neither duplicate nor are inconsistent with the Stormwater Management rules.**

**Update #2:** When Gov. Christie bragged about dismantling over-reach by former DEP Commissioner Lisa Jackson, here is what he was referring to with respect to the Flood Hazard rules (from the Lisa Jackson DEP Public Notice on proposal of this rules)

Unless properly controlled, development within flood hazard areas can increase the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff and obstructing the movement of floodwaters. In addition, structures that are improperly built in flood hazard areas are subject to flood damage and threaten the health, safety and welfare of those who use them. Furthermore, healthy vegetation adjacent to surface waters is essential for maintaining bank stability and water quality. The indiscriminate disturbance of such vegetation can destabilize channels, leading to increased erosion and sedimentation that exacerbates the intensity and frequency of flooding. The loss of vegetation adjacent to surface waters also reduces filtration of stormwater runoff and thus degrades the quality of these waters.

In light of the concerns described above, **the proposed new Flood Hazard Area Control rules incorporate more stringent standards for development in flood hazard areas and adjacent to surface waters in order to mitigate the adverse impacts to flooding and the environment that can be caused by development. Consequently, a large number of significant changes are being proposed to the construction and environmental standards of the rules.** For example, under the proposed rules, any flood storage that is lost due to most new construction activities must be compensated by the creation of an equal volume of flood storage either onsite or in close proximity to the development. This will preserve existing flood storage and help mitigate increases in flooding over time. Furthermore, the 25-ft and 50-ft stream buffers under the existing rules are proposed for expansion to 50-ft, 150-ft and 300-ft, depending on the environmental resources of each stream. Many other changes are also being proposed to protect the public from the hazards of flooding, prevent

105x









unnecessary impacts to stream corridors, and facilitate projects that would benefit the environment and not contribute to flooding.


The Department is also proposing related amendments to the Coastal Permit Program rules, N.J.A.C. 7:7, and to the Coastal Zone Management rules, N.J.A.C. 7:7E, in order to ensure better consistency with N.J.A.C. 7:13 as regards development in flood hazard areas and preservation of vegetation and habitat along surface waters. For example, the new construction and environmental standards of the Flood Hazard Area Control rules are proposed for incorporation into the coastal rules, and the proposed stream buffers described above would be extended to include most tidal waterways. In addition, flood hazard area application fees and review procedures are proposed to be relocated into the Flood Hazard Area Control rules from the Ninety-Day Construction Permits rules, N.J.A.C. 7:1C, so that all fees and application review standards are located in one rule.

The proposal is scheduled to be published in the New Jersey Register dated October 2, 2006. The proposal can be viewed or downloaded at [www.njflood.org](http://www.njflood.org).

PS – the DEP link is stale, DEP has taken down the proposal – you need to go to a law library and get the 10/2/06 *NJ Register*

106x

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From: Bill [bill\_wolfe@comcast.net]

Sent: Wed 10/21/2015 6:47 AM

To: OLSaideSEN; Smith B., Sen. D.O.

Cc: Duhon, Kevil

Subject: SCR 180 - written comments #7

Attachments:

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the seventh of several installments.

## **We Dedicate This Week To Stopping the Christie DEP Rollbacks Of Protections of Category One Streams and Reservoirs**

October 11th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

**Senate To Hear Resolution To Veto Christie DEP Flood Hazard Rule Rollbacks**

**Can Legislative Democrats Block Gov. Christie's Avowed "Dismantling"?**

107x

Headwaters of the Alexauken Creek, a designated Category One Water in West Amwell, NJ

The Senate Environment Committee announced that they will conduct a hearing next Monday, October 19, 2015 on SCR 180, the Senate Resolution to veto the Christie DEP's proposed flood hazard rule as "inconsistent with legislative intent".

This is a rare exercise of the Legislature's Constitutional power to veto Executive Branch regulations.

Ironically, newly founded NJ 101.5 talk radio and precursor to Tea Party right wing outrage, the press ginned up public opposition to the Florio administration's "runny egg rule", and the NJ Constitution was amended to grant this new legislative power to prevent regulatory over-reach:

6. No rule or regulation made by any department, officer, agency or authority of this state, except such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations. **The Legislature may review any rule or regulation to determine if the rule or regulation is consistent with the intent of the Legislature as expressed in the language of the statute which the rule or regulation is intended to implement. Upon a finding that an existing or proposed rule or regulation is not consistent with legislative intent, the Legislature shall transmit this finding in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation. The agency shall have 30 days to amend or withdraw the existing or proposed rule or**

108x

**regulation. If the agency does not amend or withdraw the existing or proposed rule or regulation, the Legislature may invalidate that rule or regulation, in whole or in part, or may prohibit that proposed rule or regulation, in whole or in part, from taking effect by a vote of a majority of the authorized membership of each House in favor of a concurrent resolution providing for invalidation or prohibition, as the case may be, of the rule or regulation.**

A simple majority of both Houses of the Legislature is sufficient to block any proposed rule, so there is no need for a “super majority”, like that necessary to over-ride a Gubernatorial Veto of legislation.

Governor Christie has used the veto power to block numerous legislative initiatives – and the Democrats have been unable to muster the super majority required to over-ride. Republicans have remained loyal to the Governor, regardless of the public interest.

The Legislative Veto of the Governor’s regulations changes the politics of all that – The Democrats have majorities in both houses, so Democrats don’t need ANY Republican votes to veto the DEP’s propose rules.

Politically and environmentally, this Resolution is incredibly important.

But the Resolution is even more critical, because the DEP’s proposed rule would repeal that Category One Waters 300 foot buffer established during the McGreevey Administration – and because DEP Commissioner Martin has openly pledged to rollback additional land use and water quality protections – this Resolution is vital to water quality, land use, and ecosystem protections.

I also have a personal dog in this fight, because I was involved and led the DEP team that created the Category One waters program at DEP in 2002 – 2004.

Therefore. this week, in the run-up to Monday’s Senate hearing, we dedicate ourselves to showing readers, the public, and policy makers exactly what is at stake in DEP’s proposed rules to repeal the Category One buffers rules and rollback stream buffer protections.

We will get out in the field to show the beauty of C1 waters that are at stake.

We explain the regulatory nuance in plain language.

We begin on Monday, in Clinton NJ, where the C1 waters designation and buffer program really began.

As **DEP noted:**

On April 22, 2002, Governor James E. McGreevey announced that the State intended to strengthen water quality protections provided to six streams and nine reservoirs as the start of a broader initiative to provide New Jersey residents with clean and plentiful water. Governor McGreevey’s announcement included the identification of each of the waterbodies to be proposed. These 15 “high quality waters” covered approximately 200 stream and reservoir miles. The Department also indicated its intent to upgrade Sidney Brook and South Branch Rockaway Creek, two of the waterbodies identified by Governor McGreevey, in response to rule petitions for Category 1 upgrades in a notice published in the New Jersey Register on October 21,

109x

2002 (34 N.J.R. 3651). The Governor's Office issued a press release on October 21, 2002 announcing that Commissioner Campbell had signed the proposed regulation necessary to complete the upgraded antidegradation designation.

In part, it was a response to the controversial battle over a development known as Windy Acres:

COMMENT 110: The commenter believes that the existing categorization of the South Branch Rockaway Creek provides sufficient protection of the wood turtle and re-categorizing the stream is both unwarranted and unnecessary. Proposed amendments to N.J.A.C. 7:9B-1.15(f) would upgrade the surface water classification of the South Branch Rockaway Creek to Category 1(C1) from its headwaters to Cushetunk Lake. This stream runs through proposed Windy Acres Development and is the stream to which the proposed Clinton East advanced wastewater treatment plant will discharge. The reclassification of this stream centers on protecting the State threatened wood turtle, which has been found in the South Branch Rockaway Creek. (634c,3015b)

To frustrate public awareness of all this, the DEP has scrubbed its website of all the links to the C1 history and C1 regulatory documents (e.g. see that DEP killed all the C1 links to Oradell Reservoir et al I posted in response to Senator Cardinale's attack on C1 streams and all the C1 links in this post are dead).

But that will not dissuade us, because we've written numerous times about C1 buffers and know enough of the history to find the links in the public domain to document the history.

Curiously, DEP forgot to take this DEP Report down, An Evaluation of NJDEP's Category One Antidegradation Designation Process which traces the C1 program history and shows DEP scientists support for the C1 program and recommendations to designate 121 new stream miles C1:

**In 2002, the Department began an intensive effort to identify additional waters that warranted enhanced protections afforded by this designation.** The Department adopted new C1 designation categories: Exceptional Ecological Significance, Exceptional Fisheries Resource(s), and Exceptional Water Supply Significance in order to clarify the data requirements necessary for a waterbody to be designated as C1 waters.

Yes, I'm proud to say I did that.

So, stay tuned.

**And all hands on deck in Trenton on Monday October 19 for the Senate Environment Committee hearing on SCR 180!**

110x

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From: Bill [bill\_wolfe@comcast.net] Sent: Wed 10/21/2015 6:46 AM  
To: OLSaideSEN; Smith B., Sen. D.O.  
Cc: Duhon, Kevil  
Subject: SCR 180 - written comments #6  
Attachments:

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the sixth of several installments.

## **Sidney Brook: NJ's First Stream Designated "Category One" Based on "Exceptional Ecological Significance"**

October 12th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

**And They Put A Gas Pipeline Through It**

11/1x

Sidney Brook Watershed (Source: NJ Water Supply Authority) – I used this because DEP has taken down all their C1 maps

On Sunday night, I decided to write a series of posts this week – with photos – of some of the\*original designated “Category One Waters” I worked on at DEP from 2002 – 2004 to illustrate what’s at stake in the upcoming Senate debate on SCR 180, a Resolution that would veto the Christie DEP proposed Flood Hazard rules (aka “stream encroachment”).

[The Resolution either still is not drafted yet or just not posted to the Legislature’s website. That is unusual. News reports were that it was introduced in the Senate more than 2 weeks ago.]

Among other things, that DEP proposal would *repeal* the Category One buffers (aka “Special Water Resource Protection Areas”) and replace them with “riparian zones” of the same width, but with far less regulatory protections.

There are approximately 2,000 stream miles of Category One Waters, including all major reservoirs – including many in the 400,000 acre Highlands Planning Area – so this repeal would represent a HUGE threat to water quality on a statewide basis.

The DEP explained the basis for the designation: (@ page 60)

The Department applied an integrated ecological assessment and determined that Sidney Brook qualified as a waterbody of “exceptional ecological significance”. Therefore, the application of Category 1 designation to this waterbody is appropriate. The exceptional in-stream habitat, the overall condition of the aquatic community as measured by macroinvertebrates, the presence of fifteen different fish species including adult Brook Trout and the presence of bog and wood turtles were factors in this determination. Another indicator of the stream’s exceptional ecological

112x

significance is the presence of stable banks with infrequent erosion, little sediment deposition, no channelization, and healthy riparian corridor including riffles, boulders, runs and pools.

Adding to that history is the fact that the C1 designation was in a response to a petition for rule making, filed by attorney Tom Borden on behalf of concerned citizens in Clinton Township. Wow! Democracy and activism having a direct impact on government regulation – can you even imagine that today?

I had not been to the brook is over a decade, and lost track of the Milligan Farms site and the controversial development and wastewater discharge to the brook that spawned the petition for C1 designation rule making. That C1 designation forced DEP to revoke the NJPDES surface water discharge permit and the developer abandoned the development project.

The Milligan Farms and Windy Acres development project kills are great examples of what I've described as "*The Power of a C1 Designation*".

So, on a gorgeous early fall day today, I headed out for Sidney Brook, NJ's first stream designated Category One based on "exceptional ecological significance".

The development project was stopped and the lovely rural landscape was preserved:

The stream was flowing reasonably well given the dry weather – and the vegetation was not disturbed:

113x

But as I walked further, I was aghast at what I saw: **the Sidney Brook natural buffer was disturbed by a natural gas pipeline! How's that for "exceptional ecological significance"?**

114x

Elizabethtown Gas "Natural Gas Regulator Station"

Only in NJ at the DEP.

In a future post, I will explain how loopholes in the C1 regulations allow this abuse to happen.

Really, if this is the way the public and local officials have defended and DEP has implemented the C1 buffer protection program, I almost think maybe the program deserves to be repealed.

**COMING TOMORROW: WE DO BETTER AT THE PAULINS KILL.**








115x


\* – There were C1 waters designated before 2002, but they were limited to “trout production” (TP) waters with naturally reproducing populations of trout. In 2002, DEP dramatically expanded the regulatory basis for C1 designations to include “exceptional” ecological, water supply, recreational and aesthetic characteristics.

Because the policy of C1 designation is to “maintain existing water quality”, DEP then required 300 foot buffers around C1 waters as an “anti degradation implementation strategy” as a water quality “best management practice” (BMP) in the storm water rules.

I was a prime architect of that regulatory strategy at DEP, building on Tom Borden’s pioneering work with the Sidney Brook petition.

1/6x

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From: Bill [bill\_wolfe@comcast.net]  
To: OLSaideSEN; Smith B., Sen. D.O.  
Cc: Duhon, Kevil  
Subject: SCR 180 - written comments #5  
Attachments:

Sent: Wed 10/21/2015 6:44 AM

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the fifth of several installments.

## **An Ode On The Paulins Kill – An “Exceptional” Resource**

October 13th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

lower PK, with Kittatiny Ridge peeking through

117x

*As doth eternity: Cold Pastoral!*

*When old age shall this generation waste,  
Thou shalt remain, in midst of other woe  
Than ours, a friend to man, to whom thou say'st,  
"Beauty is truth, truth beauty,—that is all.*

*Ye know on earth, and all ye need to know." ~~~ Ode on a Grecian*

Urn (Keats)

We respect our readers' sense of truth and beauty – and strive for both.

After our disappointment at Sidney Brook yesterday, we headed north to the Paulins Kill for salvation.

The DEP designated portions of the Paulins Kill a "Category One" (C1) water on January 6, 2003.

Remarkably, that critical regulatory fact is ignored by the Christie DEP and their friends in Sussex County in the "Paulins Kill Restoration Plan (2012)" – a truly remarkable omission given the non-point source pollutant focus of that plan.

C1 waters are those that have "*exceptional ecological, water supply, fisheries, recreational or aesthetic characteristics*". ( see NJ Surface Water Quality Standards (SWQS) @: NJAC 7:9B)

More importantly, under the Clean Water Act and NJ's Surface Water Quality Standards, C1 waters are protected from *any* "measurable change" to "existing water quality" (EWQ). Keep those two phrases in mind.

EWQ is defined to include the physical, chemical, and biological integrity.

Look how broadly DEP's federal EPA approved SWQS regulations define "measurable change" – models, predictions, "might adversely impact":

"Measurable changes" means changes measured or determined by a biological, chemical, physical, or analytical method, conducted in accordance with USEPA approved methods as identified in 40 C.F.R. 136 or **other analytical methods (for example, mathematical models, ecological indices) approved by the Department, that might adversely impact a water use (including, but not limited to, aesthetics).**

No measurable change in EWQ would mean that **DEP could require that EWQ be characterized PRIOR to any discharge of a pollutant or land disturbance. That would require collection of at least 4 quarters of site specific physical, chemical, and biological data to be statistically and scientifically representative of seasonal fluctuations.**

**This could authorize DEP to require that a permit applicant develop a site specific calibrated model to assess pollutant runoff from land disturbance and the resulting impact on EWQ.**

**This also means that based on that baseline characterization of EWQ, DEP could deny permits or approvals for any activity that causes or contributes to things like:**

- erosion or scouring or temperature increase (i.e. a measurable physical change); or
- increase in suspended or dissolved solids, salts, or any chemical pollutant (i.e. a measurable chemical change); or

118x

- harm to any aquatic species or aquatic dependent species (individual or population; plant or animal) that lives in the waterbody or its buffer (i.e. a measurable biological change).

Now how radical is that?

THIS IS WHY I'VE BEEN URGING PIPELINE OPPONENTS TO FOCUS ON DEP ISSUANCE OF A WATER QUALITY CERTIFICATE.

ironwood is my second favorite tree

To assure that level of protection of existing water quality protection from any activity that generates storm water and creates non-point source pollution, one tool DEP developed is the 300 foot wide buffers along C1 waterbodies as a storm water water quality "best management practice".

But the 300 foot buffer requirements are just one tool –

DEP has multiple additional tools to enforce the SWQS for C1 waters of no measurable change in EWQ, such as: wetlands permits, water quality certifications, stream encroachment permits, Municipal Stormwater permits, water quality management plans, NJPDES permits, **and direct enforcement authority.**

For example, how would it be possible for a pipeline contractor to construct access roads, equipment staging areas, and cross C1 streams without creating a measurable change" to EWQ or disturbing vegetation and soils in the 300 foot C1 buffer?

**So, here are the critical questions activist must focus on:**

119x

1. is DEP requiring the numeric and statistically representative characterization of the physical, chemical and biological parameters of "Existing Water Quality" BEFORE granting any permit that might impact EWQ?
2. Is DEP enforcing the C1 standard of "no measurable change" to EWQ in issuing planning and permit approvals?
3. Because the C1 policy is a federally approved, federally funded, and federally enforceable State Surface Water Quality Standard standard under the Clean Water Act, is US EPA Region II monitoring and supervising DEP's planning, permitting, and enforcement of the C1 standard?

The answer to all of the above is a resounding NO.

And now for some more beauty:

ironwood graces the PK

**We conclude with the backstory of Paulins Kill:**

In spring & summer of 1994, after I blew the whistle on DEP and Gov. Whitman's corrupt strategy to cover up mercury contamination of freshwater fish, while DEP managers and the AG's Office were trumping up their various charges and trying hard to force me out of the Department, DEP Commissioner Bob Shinn did the equivalent of banishing me to Siberia.








I was ordered out of my 7th floor Trenton Office and told to report to Green Acres field office in Hamilton.

When I reported to work, Green Acres Administrator didn't know what to do with me. I had no knowledge or experience in land acquisition.

So, he gave me a State car and a clip board with various tax maps and forms and told me to drive up to the Paulins Kill every day and inventory properties.

I had no idea what I was doing at the time and enjoyed the daily hikes – but that effort contributed to the Paulins Kill Trail.

12/1x

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From: Bill [bill\_wolfe@comcast.net]

Sent: Wed 10/21/2015 6:41 AM

To: OLSaideSEN; Smith B., Sen. D.O.

Cc: Duhon, Kevil

Subject: SCR 180 - written comments #3

Attachments:

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the third of several installments.

## Christie DEP Flood Credit Trading Scheme Is an Illegal Tax On Development

October 15th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

**Flood Risks Are Not Property and Not DEP's To Tax, Bank, and Trade**

**The Legislature has Not Authorized A Flood Credit Trading Scheme**

**DEP Monetizes Flood Risk**

*ul·tra vi·res/ ,əltrə 'vīrēz/*

adjective

beyond one's legal power and authority

The State Department of Environmental Protection (DEP) is not authorized to levy taxes, print money, create banks, or regulate financial products and services.

The Legislature has passed no such law delegating such broad and sweeping powers to DEP.

But that is precisely what DEP has done in **a proposed regulation** that would establish a flood credit mitigation and trading scheme and flood credit bank. Look how DEP explains that huge policy expansion – buried in the fine print of a 900+ page rule proposal, justified as just some kind of minor bureaucratic “alignment”

The rules will require that the applicant provide riparian zone mitigation for **all vegetation removed in excess of the limits.**

122x

**Reflective of the alignment of the land use regulatory programs**, riparian zone creation and preservation are proposed to be added as compensation alternatives, as these are compensation options for disturbance to freshwater wetlands and transition areas under the FWPA rules. Also, standards for riparian zone mitigation banks are proposed, similar to freshwater wetlands mitigation banks under the FWPA rules. (page 10)

Standards for riparian zone **mitigation banks** are also proposed to be adopted, which will **encourage the development of banks** similar to the freshwater wetlands mitigation banks. A definition for "mitigation bank" is proposed at N.J.A.C. 7:13-1.2, which mirrors the existing definition in the FWPA rules and proposed definition in the CZM rules, and which establishes the type of operation that may be undertaken **to provide compensatory mitigation** for disturbances to riparian zone vegetation under the FHACA Rules. (page 128)

**"Mitigation bank"** means an operation in which riparian zone vegetation is created, restored, enhanced, or preserved by a mitigation bank operator, for the purpose of providing compensatory mitigation for disturbances to riparian zone vegetation.

**"Credit purchase"** means the purchase of credits from a mitigation bank, as that term is defined at N.J.A.C 7:13-1.2, as a substitute for performance of creation, restoration, enhancement, or preservation by a permittee.

### **Just Write A Check To Destroy Stream Buffers and Increase Downstream Flood Risks**

Here's how this scheme would work:

Right now, it is illegal for a developer to cut down a forest and build within 300 feet of a Category One stream. DEP can't issue a permit for that.

Under the proposal, the developer would now be allowed to do so by merely providing "compensation" and purchasing credits from the DEP created bank.

Meanwhile, not only is the environment destroyed, downstream properties face increased flood risk.

In proposing this scheme, **without even an assertion of legislative authorization**, DEP has used environmental regulatory power to require the flood hazard permit applicant to purchase credits, in certain cases.

DEP, by regulation, has created flood mitigation credits. Those credits are a fungible commodity that will have significant economic value.

DEP, by regulation, has created a market for valuing, banking, and transacting financial trades of this new economic commodity. DEP regulations provide oversight and enforcement power over this financial scheme.

In essence, DEP has used environmental regulatory powers, delegated by the Legislature to reduce flood risks and protect water quality, to extract a tax on development, while increasing flood risks and creating more water pollution.

123x

Make no mistake, the cost of a mitigation credit is no different, functionally, than a tax.

Disturbance of stream vegetation creates flood risks to people and property. DEP should set standards to prevent it and not issue permits that would allow it.

**It is bad enough that DEP is allowing huge increases in allowable destruction of stream vegetation. But it is an outrage for DEP to monetize flood risk and create a market trading scheme. That is not only illegal, it is immoral.**

**This is so over the top it is remarkable. Not since the Big Map has DEP so over-reached.**

Perhaps DEP Commissioner Bob Martin didn't get the memo from Gov. Christie regarding "no new taxes" and the Executive Order #2 mandate to provide "regulatory relief".

The DEP proposal is not only blatantly illegal and immoral, it makes a mockery of Gov. Christie anti-tax and anti-red tape claims.

### **Easy Fodder for legislative Veto**

On Monday, the Senate Environment Committee will hear a Resolution, SCR 180, to begin the process of legislatively vetoing this DEP proposed rule.

The first step in analyzing whether a proposed regulation is "inconsistent with Legislative intent" is to determine the specific legislative provision that provides authorization for the regulation.

In this case, because the proposed trading scheme lacks any legislative authorization – something the lawyers call *ultra vires* – **by definition the DEP rule can not possibly be consistent with legislative intent and therefore must be inconsistent because there is no legislative intent!**

### **The NJ Experience with trading schemes**

Trading schemes have proven extremely controversial in New Jersey and nationally.

Most recently, Gov. Christie sees a hidden bureaucratic tax in the greenhouse gas "cap and trade" program:

**Finally and importantly, RGGI does nothing more than tax electricity, tax our citizens, tax our businesses, with no discernable or measurable impact upon our environment.**

While Gov. Christie may have acted unilaterally to exit from RGGI, the entrance was authorized by the Legislature.

So let me provide a few examples of how – **in all cases** – the legislature made findings, established policy, and passed laws that authorized various forms of trading BEFORE they were implemented via regulation.

### **Power Plant Emissions Trading in the Regional Greenhouse Gas Initiative (RGGI)**

Although DEP negotiated and Gov. Codey signed the original Memorandum of Understanding with Northeastern States to create the Regional Greenhouse Gas Initiative (RGGI),

124x

it took the Legislature to **pass a law** to authorize DEP to create a regulatory program to implement RGGI. The legislature found:

The Legislature finds and declares that New Jersey should implement cost-effective measures to reduce emissions of greenhouse gases, and that emissions trading and the auction of allowances can be an effective mechanism to accomplish that objective.

### **“Transfer of Development Rights” (TDR)**

Here’s the State Agricultural Development Committee’s **website**:

On March 29, 2004, the New Jersey Legislature enacted the State Transfer of Development Rights Act. This legislation made New Jersey the first state in the nation to authorize statewide comprehensive TDR enabling legislation.

The State TDR Act provided municipalities statewide with the ability to participate in both intra-municipal and intermunicipal development potential transfers. This bill also formalized the planning process required to enact TDR and mandated a list of planning documents required prior to adopting a TDR ordinance. To assist municipalities in planning for TDR, the Act also authorized the State TDR Bank Board to provide Planning Assistance Grants.

State TDR Act (N.J.S.A. 40:55D-13.7 et. seq.)  
Requirements for TDR Establishment

NJ State TDR Bank Regulations (N.J.A.C. 2:77)

### **Pinelands Development Credits and Bank in the Pinelands Act**

Here is authorizing language from the **Pinelands Protection Act**:

13:18A-30. “Pinelands Development Credit Bank Act”; short title

This act shall be known and may be cited as the “Pinelands Development Credit Bank Act.” L. 1985, c. 310, s. 1, eff. Aug. 28, 1985.

13:18A-31. Legislative findings

The Legislature finds and declares that, pursuant to the provisions of P.L. 1979, c. 111 (C. 13:18A-1 et seq.), the comprehensive management plan for the pinelands area has been adopted and is now being implemented; that this plan includes a program for the allocation and transfer of pinelands development credits; and that the intent of the pinelands development credit program is to provide a mechanism to facilitate both the preservation of the resources of this area and the accommodation of regional growth influences in an orderly fashion.

The Legislature further finds and declares that the concept of transferable development credits is innovative and, as yet, unprecedented on a regional scale; that in order to realize the full measure of the benefits of such a program, steps must be taken to assure the marketability of these credits; and that the best means of providing this assurance is through the establishment of a Pinelands Development Credit Bank

125x

empowered to purchase and sell pinelands development credits and to guarantee loans secured thereby, all as hereinafter provided.

### **Highlands TDR and Development Credit Bank in the Highlands Act**

The Highlands Act was based on the Pinelands Act. Here is the enabling authority in the Highlands Act

(1) The council may use the State Transfer of Development Rights Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51) for the purposes of facilitating the transfer of development potential in accordance with this section and the regional master plan. The council may also establish a development transfer bank for such purposes.

### **Wetlands Mitigation Trading, Mitigation Bank, and Mitigation Council in the Freshwater Wetlands Protection Act**

DEP is proposing a huge expansion of the Freshwater Wetlands Act legislatively authorized mitigation scheme to all waters of the state.

Here is DEP's authority under the Freshwater Wetlands Act -notice this says nothing about flood mitigation:

#### **§ 13:9B-13. Mitigation of adverse environmental impacts**

a. The department shall require as a condition of a freshwater wetlands permit that all appropriate measures have been carried out to mitigate adverse environmental impacts, restore vegetation, habitats, and land and water features, prevent sedimentation and erosion, minimize the area of freshwater wetland disturbance and insure compliance with the Federal Act and implementing regulations.

b. The department may require the creation, enhancement, or restoration of an area of freshwater wetlands of equal ecological value to those which will be lost, and shall determine whether the creation, enhancement, or restoration of freshwater wetlands is conducted onsite or offsite. The department shall accept and evaluate a proposal to create, enhance, or restore an area of freshwater wetlands only after the department has evaluated the permit application for which the proposal is made, and shall evaluate the proposal to create, enhance, or restore an area of freshwater wetlands independently of the permit application. The department's evaluation of a proposal to create, enhance, or restore an area of freshwater wetlands shall be conducted in consultation with the United States Environmental Protection Agency.

c. If the department determines that the creation, enhancement, or restoration of freshwater wetlands onsite is not feasible, the department, in consultation with the United States Environmental Protection Agency, **may consider the option of permitting: the creation of freshwater wetlands or the enhancement or restoration of degraded freshwater wetlands offsite on private property** with the restriction on these freshwater wetlands of any future development; the protection of transition areas or upland areas offsite, on private property, that are deemed by the department to be valuable for the protection of a freshwater wetlands ecosystem, with

126x

the restriction on these areas of any future development; or the making of a contribution to the Wetlands Mitigation Bank. The contribution shall be equivalent to the lesser of the following costs: (1) purchasing, and enhancing or restoring, existing degraded freshwater wetlands, resulting in preservation of freshwater wetlands of equal ecological value to those which are being lost; or (2) purchase of property and the cost of creation of freshwater wetlands of equal ecological value to those which are being lost. The applicant may also donate land as part of the contribution if the Wetlands Mitigation Council determines that the donated land has potential to be a valuable component of the freshwater wetlands ecosystem. The department shall permit the donation of land as a part of the contribution to the Wetlands Mitigation Bank only after determining that all alternatives to the donation are not practicable or feasible.

DEP's website explains this:

The **Wetlands Mitigation Council** (Council) serves as an oversight committee **for monetary contributions or donations of land to satisfy mitigation requirements**. No monetary contribution or land donation can be accepted to satisfy a mitigation requirement unless it is first approved by the Council.

The **Council is established by statute under the Freshwater Wetlands Protection Act** and is comprised of seven members ...

#### **Proposed Flood Credit Trading Scheme Lacks Any Legislative Authorization**








The Flood Hazard Act, and the other statutes pursuant to which the proposed rule is proposed, say nothing about any DEP powers to create a mandatory riparian mitigation program, create mitigation credits or a mitigation bank, or a mitigation trading scheme. **Read it yourself.**


The only "bank" the law mentions is a stream bank!

DEP has made the whole thing up out of whole cloth, a huge statewide expansion of regulatory power **based on the Wetlands Mitigation scheme that was authorized by Legislation.**

The Legislature must veto the DEP's proposed rule as inconsistent with legislative intent on this basis alone.

127x

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From: Bill [bill\_wolfe@comcast.net]  
 To: OLSaideSEN; Smith B., Sen. D.O.  
 Cc: Duhon, Kevil  
 Subject: SCR 180 - written comments #4  
 Attachments:

Sent: Wed 10/21/2015 6:43 AM

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the fourth of several installments.

## **Christie DEP Allows Huge Increases In Stream Buffer Disturbance For Development**

October 13th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

**Increased Disturbance Only a Floor – Limits Can Be Waived Completely**

**You Will Be Shocked By New “Limits” for Pipelines**

[Update below]

Forget that the Christie DEP proposes to repeal the Category One stream buffer protections and replace them by much weaker “riparian zone” rules – or even eliminate them entirely with a waiver and mitigation scheme.

Let’s look today only at the proposed increases in allowable disturbance of a riparian zone under existing stream encroachment regulations (see [Table C on page 88](#)) and compare them to the proposed new allowable disturbances (see [Table 11.2 on page 690 – 691](#)).

Pipeline opponents might want to look closely at current maximum disturbance for a utility line stream crossing of 12,000 square feet in Table C and compare that with the proposed new scheme in Table 11.2 below.

The proposed new scheme would set a vague “limit” of 30 square feet of disturbance per linear foot of utility line – but how would that be measured? Just the segment through the riparian zone? Or the total length? For a pipeline perpendicular stream crossing across 600 feet of riparian zone

128x

that's 18,000 square feet (current in 12,000 a 50% increase). But I think pipeline ROW's are wide than 30 feet, no? Assume that would trigger a waiver and mitigation scheme, not a permit denial.

Proposed new rules also would allow **6,000 square feet of disturbance for access to the project, per stream crossing on C1 designated streams with 300 foot buffers.**

Finally, the proposal would allow **unlimited riparian disturbance for activities called "reconstruction, upgrade, expansion, or maintenance". Just Think of what Penn East's lawyers will do with that!!!**

The pipeline rollbacks alone are sufficient to strike these proposed rules down as inconsistent with legislative intent. And abuses like that are across the board for virtually all regulated activities.

**Here are current limits on riparian zone disturbance:**

129x

Now here are the Christie DEP proposed **ACROSS THE BOARD INCREASES** (see Table 11.2, on page 690):

130x

131x

At least 4 critical things jump right off the page:

- 1) **The allowable disturbances are no longer “maximums” – they are in fact floor minimums, and can be increased or waived completely**
- 2) **the allowable square feet of disturbance increases across the board for each activity**
- 3) **new activities are allowed to disturb riparian buffers**
- 4) **some limits on disturbance are waived completely**

DEP issues thousands of stream encroachment permits every year – what these proposed increases in allowable disturbance and waivers mean in the real world is that NJ will lose thousands of acres of environmentally sensitive riparian zones.

That means more flooding and more water pollution.

Period.

That alone is sufficient to strike these proposed rules down as inconsistent with legislative intent.

Unless DEP can show where the Legislature has enacted a policy directing them to do so.

These Tables should be downloaded, printed out, and on the desk of every legislator and environmental reporter **well before Monday's Senate Env. Cmte. hearing.**








132x

**[Update: 10/14/15** – the proposed allowance of 30 square feet of disturbance for each linear foot of pipeline is not a standard or a limit, and it literally invites pipelines and utilities into riparian zones.

In theory, it would allow a pipeline to route through a buffer – parallel to the stream – for miles. That's why my original post included an illustration of a 20 mile long pipeline, which could disturb 72 acres. I deleted that because I thought it might not be realistic.

But the Elizabethtown Gas pipeline looked like it ran through the buffer of Sidney Brook for as far as the eye could see from the ground (maybe 3,000 feet). If that all were in buffer, that would be well over 10,000 square feet for that small segment alone. It was tough to see where the stream and the buffer were from the ground. Look:

133x

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From: Bill [bill\_wolfe@comcast.net]

Sent: Wed 10/21/2015 6:40 AM

To: OLSaideSEN; Smith B., Sen. D.O.

Cc: Duhon, Kevil

Subject: SCR 180 - written comments #2

Attachments:

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Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the second of several installments.

## **In the Weeds: Why A Category One Stream Buffer Has Far More Protections Than A Riparian Zone**

October 16th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

### **Christie DEP Rollback Strategy Is Hidden In Plain Sight**

#### **DEP proposal is no minor "alignment", it's a big U-Turn**

This is the final post in our [series on the Christie DEP's proposed "overhaul" of the flood hazard rules](#), in anticipation of the Senate Environment Committee hearing on Monday 10/19/15 to consider SCR 180, a Resolution that would veto these regulations as "inconsistent with legislative intent".

I had planned to include 2 additional posts: one on the reservoir designations and drinking water protections and the other on the Hunterdon County Delaware River tributaries that are ground zero in the PennEast pipeline debate. I will address each in future posts.

Today, we go deep into the weeds to explain why a Category One (C1) stream buffer (known as a "Special Water Resource Protection Area" (SWRPA) has far more regulatory protections than a "riparian zone".

Yes, we know that many consider this worse than root canal. But the reason we must do this is because the DEP proposal would repeal the C1 SWRPA and replace it with a "riparian zone".

#### **Different Legal Bases and Water Resource Objectives**

134x

Before we get into the weeds, we note the biggest difference between a SWRPA and a riparian zone:

A SWRPA is designed to **protect water quality** from non-point pollution runoff from development by preserving the natural vegetation along a waterbody, which filters pollutants before they enter the water.

A “riparian zone” is designed to **reduce the risks of flooding** by keeping development out of floodplains and reducing the volume of development in the floodplain that is at risk of flooding. These rules are related to water quantity.

Accordingly, the SWRPA protections are codified in the DEP’s storm water management rules (NJAC 7:8) and are linked and apply to the Surface Water Quality Standards’ “Category One” “exceptional” quality waters (see DEP FAQ on C1 buffers).

The “riparian zone” requirements are codified in the Flood Hazard rules NJAC 7:13 (aka as “stream encroachment”) and apply more broadly to almost all waters that present a flood risk (inland and coastal).

### **The Christie Rollback Agenda Revealed**

To complicate matters, in 2008, DEP amended the Flood Hazard Rules by including the SWRPA rules in them – combining the water quality and flood risk objectives. New rules added hundreds of miles of new C1 streams, but they also **significantly reduced the scope of the C1 program and ecological protections**, making it far **more difficult to designate** additional C1’s. (see **this rule adoption**)

DEP is now using the overlap and inconsistencies between the two sets of different rules as a pretext to repeal the SWRPA protections, a longstanding desire of the development community.

**As I’ve written**, this rollback objective is revealed beyond a shadow of a doubt in the regulatory history (i.e. DEP rule proposals, public comments, and DEP response to public comments documents); in Governor Christie’s **DEP Transition Report** and in **Executive Order #2**.

The rollback strategy is openly presented in the DEP Transition Report (see **“Omnibus Rulemaking”** on page 13)

- **Reexamine buffer requirements** in urban/disturbed areas and Planning Areas 1 and 2 designated for growth under the State Development and Redevelopment Plan (hereinafter referred to as the State Plan) as applied to wetlands, **C-1 waters and potential Threatened and Endangered species habitat under Flood Hazard, Stormwater, and Wetlands rules.**

### **Different Regulatory Standards and Protections**

We will first present a list of key regulatory protections that SWRPA have, that riparian zones do not.

For those that would like to verify that, below I provide the full text of the SWRPA regulations @ NJAC 7:8-5.5(h), with **boldface** of the key provisions:

18 5x

**1. Disturbance is not allowed in a SWRPA area in the zone from 300 – 150 feet, unless an applicant can make a rigorous science based demonstration to DEP that the “functional value and overall condition of the special water resource protection area will be maintained”.**

There is no similar regulatory protection in the riparian zone.

**The riparian zone provides the opposite:** there are allowable disturbances for various activities explicitly provided to accommodate development.

**2. There is a flat out prohibition on disturbance of the SWRPA inside the zone of 150 feet to the stream, including a prohibition on location of storm water infrastructure.**

The riparian zone does not include this restriction and provides the opposite: it allows stormwater infrastructure and development to occur inside this zone.

**3. The SWRPA rules do NOT include a waiver provision.** This effectively would force an applicant to prove an unconstitutional taking without compensation to a court of law.

The riparian zone explicitly provides a waiver and the proposal would weaken the waiver demonstration requirements.

**4. The SWRPA rules do not allow mitigation to offset disturbance.**

The riparian zone proposal allows mitigation to offset buffer disturbance.

**5. Repeal of the SWRPA protects effects other important DEP rules and federal requirements.**

The SWRPA requirements are linked to the DEP Municipal storm water permit requirements. This means that DEP permits can be used to require towns to adopt stream buffer ordinances that are consistent with the SWRPA 300 foot buffers.

The SWRPA are explicitly linked to the DEP Surface Water Quality Standards. This is a regulatory bridge between land use and water quality and it enables enforcement of SWQS on non-point sources of pollution.

The SWRPA are an EPA approved water quality “best management practice” (BMP) and are a key component of NJ’s “anti degradation policy” and “anti degradation implementation procedure” required under the federal Clean Water Act.

This provides a hook to federal review, federal funding, and EPA oversight in a host of federal Clean Water Act programs, including Section 303(d) TMDL, MS4 Municipal storm water permitting, Surface Water Quality Standards, NPDES, Section 319 NPS programs, Section 404 and 401 Water Quality Certification, and Section 208 Water Quality Management Planning.

**Repeal of the SWRPA provisions from the storm water rules has HUGE regulatory significance.**

For the wonks, here is the regulatory text of SWRPA @ NJAC 7:8-5.5(h):

136x

(h) Special water resource protection areas shall be established along all waters designated Category One at N.J.A.C. 7:9B and perennial or intermittent streams that drain into or upstream of the Category One waters as shown on the USGS Quadrangle Maps or in the County Soil Surveys, within the associated HUC 14 drainage. **These areas shall be established for the protection of water quality, aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries significance of those established Category One waters.** These areas shall be designated and protected as follows:

1. The applicant shall preserve and maintain a special water resource protection area in accordance with one of the following:

i. **A 300-foot special water resource protection area shall be provided on each side of the waterway**, measured perpendicular to the waterway from the top of bank outwards or from the centerline of the waterway where the bank is not defined, consisting of existing vegetation or vegetation allowed to follow natural succession is provided.

ii. **Encroachment within the designated special water resource protection area under (h)1i above shall only be allowed where previous development or disturbance has occurred (for example, active agricultural use, parking area or maintained lawn area). The encroachment shall only be allowed where applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable.** In no case shall the remaining special water resource protection area be reduced to less than 150 feet as measured perpendicular to the top of bank of the waterway or centerline of the waterway where the bank is undefined. All encroachments proposed under this subparagraph shall be subject to review and approval by the Department.

**2. All stormwater shall be discharged outside of but may flow through the special water resource protection area and shall comply with the Standard For Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey,"** established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (see N.J.A.C. 2:90-1.3).

3. If stormwater discharged outside of and flowing through the special water resource protection area cannot comply with the Standard For Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., (see N.J.A.C. 2:90-1.3), then the stabilization measures in accordance with the requirements of the above standards may be placed within the special water resource protection area, provided that:

i. **Stabilization measures shall not be placed within 150 feet of the waterway;**

ii. Stormwater associated with discharges allowed by this paragraph shall achieve a 95 percent TSS post construction removal rate;

137x

iii. **Temperature shall be addressed to ensure no impact on receiving waterway;**

iv. **The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable;**








v. A conceptual project design meeting shall be held with the appropriate Department staff and Soil Conservation District staff to identify necessary stabilization measures; and

vi. **All encroachments proposed under this section shall be subject to review and approval by the Department.**

4. A stream corridor protection plan may be developed by a regional stormwater management planning committee as an element of a regional stormwater management plan, or by a municipality through an adopted municipal stormwater management plan. If a stream corridor protection plan for a waterway subject to this subsection has **been approved by the Department**, then the provisions of the plan shall be the applicable special water resource protection area requirements for that waterway. **A stream corridor protection plan for a waterway subject to this subsection shall maintain or enhance the current functional value and overall condition of the special water resource protection area as defined above in (h)1i. In no case shall a stream corridor protection plan allow reduction of the Special Water Resource Protection Area to less than 150 feet as measured perpendicular to the waterway subject to this subsection.**

5. This subsection does not apply to the construction of one individual single family dwelling that is not part of a larger development on a lot receiving preliminary or final sub-division approval on or before February 2, 2004, provided that the construction begins on or before February 2, 2009.

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From: Bill [bill\_wolfe@comcast.net]  
 To: OLSaideSEN; Smith B., Sen. D.O.  
 Cc: Duhon, Kevil  
 Subject: SCR 180 - written comments  
 Attachments:

Sent: Wed 10/21/2015 6:38 AM

[View As Web Page](#)

Dear Chairman Smith:

I understand that there is a 7 day written comment period on SCR 180 and therefore would like to revise and extend my testimony.

Because my blog "*Wolfenotes.com*" was cited in testimony by another witness as source material, I submit the below for the record. The below is the first of several installments.

## The Case For A Legislative Veto of Christie DEP Flood Rules

October 18th, 2015 [Bill Wolfe](#) [Edit](#) [Leave a comment](#) [Go to comments](#)

### DEP justification based on “experience”, not published data

I can't end this series without presenting and rebutting DEP's arguments in support of the proposal.

In a prior post, I explained why a C1 buffer (SWRPA) has far stronger protections than a “riparian zone”.

Today, we consider the opposite: DEP's arguments about how some riparian zone rules are broader than C1 SWRPA.

### DEP's Arguments Are Not Fact Based and Their Conclusions Are Ludicrous

Back in 2003, in the original DEP C1 buffer regulations, the McGreevey DEP was required to justify the 300 foot buffer width based on **published scientific research and data** about various buffer widths and pollutant removal rates.

In contrast, the current Christie DEP proposal is based on DEP's claim of “**experience**”, which is simply asserted without supporting evidence, published data, or science:

The Department is proposing various amendments and new rules **reflecting the experience it has gained in regulating riparian zones** to assure protection is sufficiently robust, while adding flexibility in how the necessary protection can be achieved and making it easier to conduct necessary activities in a manner that will have minimal impacts on these important near- water areas. (proposal, @ p. 42)

139X

Note that DEP's "experience" is limited in scope to the "riparian zone" provisions of the FHA.

DEP failed to mention their "experience" with the C1 SWRPA program and regulations. That "experience" is documented in a November 2012 DEP technical Report titled:

• *An Evaluation of NJDEP's Category One Antidegradation Designation Process*

**That Report found that the C1 buffer were scientifically justified and recommended designation of an additional 121 miles of C1 waters.**

There was no discussion in that report of any need for "alignment" or "streamlining" of the C1 buffer regulations – just the opposite – **DEP scientists recommended that the Department expand the C1 SWRPA program.**

That Report is a critical part of the DEP's "experience", but it was ignored in the DEP's proposed rollback.

The DEP claims – again without supporting evidence – that their proposal will "**strengthen**" and provide "**better**" protections:

Repealing the special resource protection area provisions (SWRPA) from the SWM rules and amending the standards for the 300-foot riparian zone in the FHACA Rules will appropriately regulate development near Category One waters and their tributaries and **more effectively protect and promote the many benefits of near-stream vegetation .....**

The Department anticipates that the proposed standards for development within a 300-foot riparian zone **will provide better protection of vegetation** along surface waters, thereby **strengthening the attendant benefits to water quality and flood protection.** ~~~DEP Environmental Impact of Proposed Flood Rule – at page 493-494

It doesn't get more bizarre and Orwellian than that.

DEP asserts this claim, despite: 1) repealing strict restrictions on buffer disturbance, 2) weakening existing standards to allow more destruction of vegetation & more development closer to a stream, 3) allowing mitigation and credit trading to evade disturbance standards; and 4) by providing more variances and lax waivers from standards.

DEP claims that doing all that will **strengthen benefits to water quality and flood protection.**

**If DEP can say something like that, they have absolutely zero credibility.**

The DEP's Orwellian conclusion is based on 2 claims:

- 1) the "riparian zone" rules regulate more streams than C1 SWRPA rules;
- 2) the "riparian zone" rules regulate more activities than C1 SWRPA rules;

DEP wrote:

140x

Whereas the SWRPA applies only when a proposed project is deemed a major development, the requirements for development within the **FHACA 300-foot riparian zone apply irrespective of the size of development**. Furthermore, while the SWRPA applies only to features depicted on a USGS or soil survey map, a FHACA 300-foot riparian zone exists along a **broader set of surface waters**. (proposal at p. 493)

These claims are technically accurate but the conclusion is absurd. Let me briefly explain.

The C1 SWRPA protections apply to “major development”, defined as

**“Major development” means any “development” that provides for ultimately disturbing one or more acres of land or increasing impervious surface by one-quarter acre or more.**

It is technically correct that the riparian zone rules apply to more activities, smaller than an acre of disturbance. [Note: the 1 acre land “disturbance” to trigger major development is not buffer disturbance, but disturbance for the entire project. In contrast, some “riparian zone” “standards” allow disturbance of almost an acre of the C1 buffer! And far more for linear development like pipelines.]

But what are the factual implications of this distinction? DEP has permit data to answer that question.

Regardless, if DEP were sincerely seeking to “enhance protections” of buffers, all they would need to do would be to apply the broader scope of riparian zone regulated activities to the stronger SWRPA rules.

If DEP had valid arguments, they would be able to show, with actual permit based data, how many projects regulated under “riparian zone” rules are not regulated under C1 SWRPA rules and how many acres of buffer are disturbed as a result.

But DEP produced no data to back this conclusion up – they only waived the magic wand of their “experience”.

The “broader set of surface waters” claim is more complex, but even if true the same argument applies: if DEP truly wanted to enhance protections then they would apply the alleged broader “riparian zone” definition to mapping a C1 SWRPA water.

DEP has sophisticated GIS mapping technology and a robust stream network data layer.

DEP can use this GIS technology to illustrate with maps – and calculate in square feet or acres – the difference between stream miles and buffers regulated under C1 SWRPA versus stream miles and buffer acres regulated under the riparian zone rules.

But DEP did not conduct this technical mapping exercise to support their conclusion.

Plus, DEP’s conclusion failed to consider all the many weaknesses in riparian zone rules that will allow far more buffer disturbance – the “net negative impact” of the rule is obvious.

**Senate Hearing**

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The Senate Environment Committee meets Monday morning (10/19/15) at 10 am in the Legislative Annex in Trenton to hear SCR 180 (Lesniak/Smith), a Resolution to begin the process of vetoing the Christie DEP's proposed massive "overhaul" of the Flood Hazard, coastal, and storm water management rules.

I've done my level best – short of self immolating on the State House steps – to make the case as to why this DEP proposal is a huge rollback of current protections and why that is inconsistent with legislative intent.

I've been deeply disappointed by the passive public stance of my so called colleagues, who all backed the dramatic expansion in buffer protections enacted by the McGreevey DEP in 2002 – 2004.

Granted, 25 NJ environmental groups were unified and all quietly submitted formal written comments to DEP opposing the proposal.

But there is a big difference between signing on to written comments and actually investing resources and mounting a public opposition to the DEP rules.

Very few groups showed up at the public hearings to testify, there was very little press coverage, and instead of using their resources to build public awareness and garner media coverage and pressure Democratic Legislators to step up and over-ride Gov. Christie self avowed rollback agenda, **the have not only been silent, but spent the last weeks on the most lame, frivolous and inane self serving stunts and diversions.**

The last few weeks have been a bizarre spectacle – truly "NJ's Best" (Dodge confab): from road rally's (Highlands Coalition), to oyster bars (NY/NJ Baykeeper), to events with boaters (ALS), to champagne toasts with Governor Christie's Lt. Governor ( NJEF/Clean Water NJ) . These are real events that actually happened. I'm not making this shit up.

Meanwhile, the biggest land use and water quality battle in over a decade has gone totally un-engaged and unreported.

**The DEPs proposed rule impacts hundreds of NJ towns, over 2,00 stream miles, more than 150,000 acres of ecologically sensitive lands, all drinking water reservoirs, thousands of homes, and billions of dollars in property value.**

So, it all boils down to Monday.

Preliminary political signals going into the hearing do not look good for the Resolution being released by the Committee on Monday.

In addition to the silence from the environmental groups – with the exception of an "Action Alert" from Sierra Club that was forwarded to me – to wit:

1) the actual text of SCR 180 has not been publicly released and posted on the Legislature's web site. In fact, I just learned that, contrary to a [September 25, 2015 NJ Spotlight story](#) that said the Resolution had been introduced on September 24,, the Resolution is "pending introduction and referral":

142x









“These so-called rule changes would eliminate important protections for our waterways, degrading water quality, endangering fish habitats, and increase the risk of flooding,” said Sen. Raymond Lesniak (D-Union), **who introduced the resolution yesterday in the Senate.**

2) the press has done no set up stories, but somehow has found space to cover 3 set up stories on the Liberty State Park oversight that was added to the Senate Environmental Committee’s Monday agenda.

So, here are the recent posts since DEP released the rule proposal on 6/1/15 – where I’ve tried to provide sufficient information and analysis to make the case:

- [NJ Flooded Again – Christie DEP Proposes to Weaken Flood Protection Rules \(6/1/15\)](#)
- [Legislators Urged To Block Christie DEP Flood Hazard Rule Rollbacks \(6/26/15\)](#)
- [Media Coverage is Part of the Problem \(Part 289\) \(9/8/15\)](#)
- [Christie DEP Denies Rollback in Stream Buffer Protections \(9/27/15\)](#)
- [Legislators Seek To Veto Christie DEP Flood Hazard & Coastal Rule Proposal \(10/4/15\)](#)
- [We Dedicate This Week To Stopping the Christie DEP Rollbacks Of Protections of Category One Streams and Reservoirs \(10/11/15\)](#)
- [Sidney Brook: NJ’s First Stream Designated “Category One” Based on “Exceptional Ecological Significance” \(10/12/15\)](#)
- [An Ode On The Paulins Kill – An “Exceptional” Resource \(10/13/15\)](#)
- [Christie DEP Allows Huge Increases In Stream Buffer Disturbance For Development \(10/13/15\)](#)
- [Christie DEP Flood Credit Trading Scheme Is an Illegal Tax On Development](#)
- [In the Weeds: Why A Category One Stream Buffer Has Far More Protections Than A Riparian Zone \(10/16/15\)](#)

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From: Bill [bill\_wolfe@comcast.net]

Sent: Wed 10/21/2015 6:17 AM

To: Smith B., Sen. D.O.

Cc: Duhon, Kevil; Enck.Judith@epa.gov; OLSaideSEN

Subject: SCR 180 - EPA letter to NJ on storm water rules

Attachments:

[View As Web Page](#)

Dear Chairman Smith:

The below letter to EPA Regional Administrator Enck is provided for your information.

As I testified on SCR 180, the DEP's proposed revocation of the SWRPA C1 buffer language in the storm water management rules at **NJAC 7:8-5.5(h)** would impact other regulations because that provision is explicitly linked to other DEP regulations.

Specifically, the SWRPA is linked to and implements the federal EPA approved anti-degradation policy in the Surface Water Quality Standards (**NJAC 7:9B-1 et seq**).

The SWRPA provision also linked to and implements the federal EPA mandated Municipal Stormwater Permit Program (MS4) regulations at NJAC 7:14A-25.6, which requires that NJPDS MS4 permits "*shall require compliance with the applicable design and performance standards established under N.J.A.C. 7:8 for major development as defined in N.J.A.C. 7:8-1*"

Those are direct federal hooks to federally mandated and delegated programs for which EPA has State oversight responsibility under the Clean Water Act.

There are additional federal hooks, but they are programmatic and technical, not regulatory, e.g. NJ DEP's EPA approved TMDL's include "load allocations" from non-point sources that consider pollutant removal from vegetated buffers and SWRPA BMPs.

Additionally, as a State adopted non-point source BMP, various EPA Surface Water Quality Standards and TMDL Guidance documents strongly suggest that a State adopted non-point source BMP become federally enforceable. I'd be glad to provide text and details on this, but it is beyond the scope here.

Because DEP Deputy Commissioner Cantor testified that I had sent a "misleading email to EPA" regarding these matters, I ask that this entire correspondence be entered into the record on SCR 180.

Although it is not a federal issue, the SWRPA regulatory provision is linked to and impact municipal storm water ordinances, including requirements to adopt stream buffer ordinances that comply with the SWRPA provisions. I urge you to consider the testimony from ANJEC in that regard.

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Finally, the NJ Appellate division rendered an opinion in " IN THE MATTER OF NJDEP ADMINISTRATIVE ORDER NO. 2007-01 and ADMINISTRATIVE ORDER NO. 2008-02. (2009), see:

<http://www.leagle.com/decision/In%20NJCO%2020090806243/IN%20THE%20MATTER%20OF%20NJDEP%20ADMINISTRATIVE%20ORDER%20NO.%202007-01>

That decision goes into some detail on the SWRRPA provisions and validates my testimony regarding the significant change in regulatory standards that would result from repeal of the DEP's proposed repeal of the SWRPA provision.

I am available to clarify and expand on this at your convenience.

Respectfully,

Bill Wolfe

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**From:** "Bill" <bill\_wolfe@comcast.net>  
**To:** "Judith Enck" <Enck.Judith@epa.gov>  
**Sent:** Tuesday, October 20, 2015 5:14:36 AM  
**Subject:** EPA letter to NJ on storm water rules

Dear Regional Administrator Enck:

Yesterday, the NJ Senate Environment Committee heard a Resolution, SCR 180, that would initiate the process for a legislatively veto of DEP's proposed revisions to the NJ Flood Hazard, Stormwater Management and Coastal Zone regulations proposed in the June 1, 2015 NJ Register., see:

<http://www.nj.gov/dep/rules/proposals/20150601a.pdf>

During testimony, DEP Deputy Commissioner Ray Cantor stated that DEP officials had multiple conversations with EPA officials and resolved a misunderstanding. Cantor stated that EPA had withdrawn their prior concerns stated in EPA R2's July 30, 2015 comment letter on the DEP proposal, see:

<http://assets.njspotlight.com/assets/15/0831/1743>

Mr. Cantor cited a quote to that effect from an unnamed Region 2 official that was quoted in a recent "Inside EPA" story.

**FYI, the Chairman rejected that source and urged Mr. Cantor to provide a letter from EPA withdrawing their prior concerns.**

I urge you to reject any request to withdraw EPA concerns if made by NJ DEP officials and to stand by and even expand the basis for the prior concerns expressed in the July 30, 2015 comment letter.

As you know, NJ relied on the 300 foot buffers codified in the State storm water rules (@ NJAC 7:8-5.5(h) and known as a "SWRPA" as federally approved "anti - degradation implementation

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procedures" to protect federally approved State designated Category One (C1) Waters from an "measurable change in existing water quality" (see **NJAC 7:9B - 1.5**).

C1 waters are codified in New Jersey's EPA approved State Water Quality Standards (NJAC 7:9B-1 et seq.)

The NJ State storm water regulations at NJAC 7:8-5.5(h) are linked to State antidegradation designations and anti-degradation policy in State SWQS NJAC 7:9B-1.5 for "Category One" water.

**Thus, a revision to NJAC 7:8-5.5(h) constitutes an indirect revision to State SWQS at NJAC 7:9B.**

The NJ DEP proposed a repeal of NJAC 7:8-5.5(h) and replacement with a far weaker regulatory regime under State Flood Hazard Act known as a "riparian zone" NJAC 7:13.

The Clean Water Act requires that any revisions to State SWQS standards require EPA approval.

There is an additional federal oversight hook because the NJ DEP SWRPA provisions of the State storm water management rules are linked to the EPA approved Municipal Stormwater Permit Program.

NJ DEP MS4 regulations require that MS4 permittees meet the water quality BMPs and design and performance standards in the storm water management rules NJAC 7:8.

Specifically, NJ DEP MS4 permit regulations provide at **NJAC 7:14A-25.6 Content of NJPDES permits for small MS4s provides:**

***b) The Statewide Basic Requirements (SBRs) are as follows:***

***ii. The program under (b)3i above shall require compliance with the applicable design and performance standards established under N.J.A.C. 7:8 for major development as defined in N.J.A.C. 7:8-1, unless:***

- (1) Those standards do not apply because of a variance or exemption under N.J.A.C. 7:8; or*
- (2) Alternative standards are applicable under a water quality management plan adopted in accordance with N.J.A.C. 7:15.*

[...]

**2) Adopt and reexamine a municipal stormwater management plan in accordance with N.J.A.C. 7:8;**

**(3) Adopt and implement a municipal stormwater control ordinance or ordinances in accordance with N.J.A.C. 7:8.** The ordinance(s) shall control stormwater from non-residential development and redevelopment projects.

[http://www.state.nj.us/dep/dwq/7\\_14a/sub25rule.pdf](http://www.state.nj.us/dep/dwq/7_14a/sub25rule.pdf)

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The NJ DEP's June 1, 2015 regulatory proposal would repeal the SWRPA waters **and regulatory text @ NJAC 7:8-5.5(h)** (see below) and replace the SWRPA buffers with "riparian zones" regulated under the "stream encroachment" regulations adopted pursuant to the Nj Flood Hazard Act.

The "riparian zone" has far less protections than the C1 "SWRPA" - DEP's proposal acknowledges this regulatory fact:

*Therefore, while N.J.A.C. 7:8-5.5(h) prevents certain types of new development from occurring within SWRPAs, the FHACA Rules recognize that development within riparian zones is sometimes unavoidable, and therefore establishes requirements necessary to ensure that disturbance to riparian zone vegetation is avoided where feasible, minimized to the extent practicable, and, where disturbance to riparian zone vegetation would adversely impact the environment, appropriate compensation is provided in order to ensure the continued preservation and/or improvement of riparian zone functionality. (p. 59 60)*

<http://www.nj.gov/dep/rules/proposals/20150601a.pdf>

I urge EPA lawyers and water program officials to conduct a detailed comparison between NJ DEP "SWRPA" buffer requirements codified at NJAC 7:8-5.5(h) with the DEP's "riparian zone" requirements in the DEP's June 1, 2015 proposal.

The proposed repeal of C1 SWRPA buffers and replacement with "riparian zones" reduces protections which allow more disturbance and development in the buffers. This would violate the State antidegradation policy for C1 waters that protects "existing water quality" from an "measurable or calculable change".

FYI, I've conducted a cursory comparison in this document, which includes the full regulatory text of SWRPA @ NJAC 7:8-5.5(h)::

## **Why A Category One Stream Buffer Has Far More Protections Than A Riparian Zone**

<http://www.wolfenotes.com/2015/10/in-the-weeds-why-a-category-one-stream-buffer-has-more-protections-than-a-riparian-zone/>

Respectfully,

Bill Wolfe

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