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PUBLIC HEARING

before

ASSEMBLY ENERGY AND NATURAL RESOURCES COMMITTEE

on

ASSEMBLY BILL 2342

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

ASSEMBLY BILL 2499

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

August 1, 1986
Burlington County
Office Building
Mount Holly, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Maureen Ogden, Chairwoman
Assemblyman Robert D. Shinn, Jr.

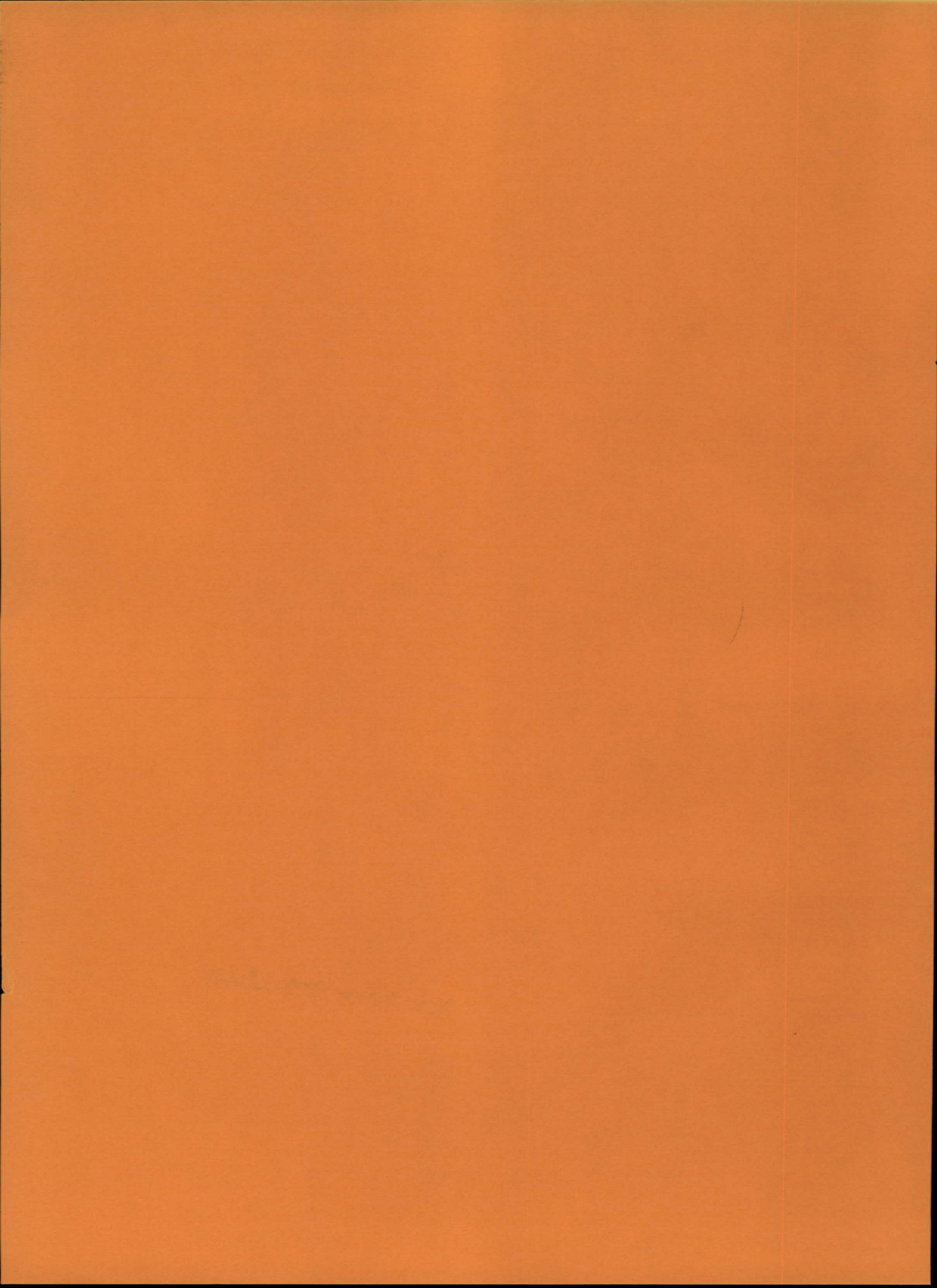
ALSO PRESENT:

Assemblyman John S. Penn
District 16

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

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Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey





New Jersey State Legislature

ASSEMBLY ENERGY AND
NATURAL RESOURCES COMMITTEE

STATE HOUSE ANNEX, CN-068

TRENTON, NEW JERSEY 08625

TELEPHONE: (609) 292-7676

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, July 22, 1986

NOTICE OF PUBLIC HEARINGS

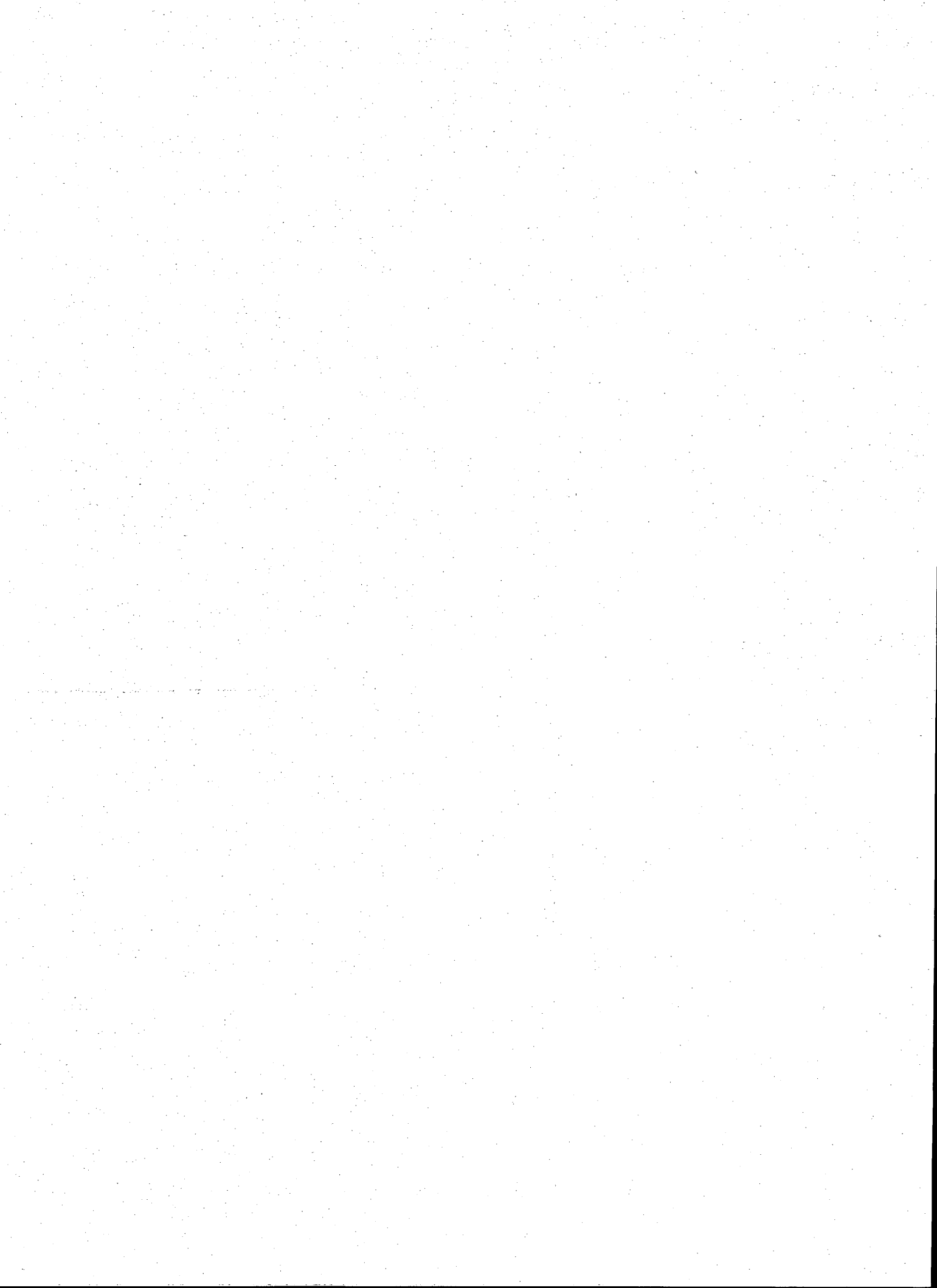
The Assembly Energy and Natural Resources Committee will hold two additional hearings on pending legislation regulating the State's freshwater wetlands;

Wednesday, July 30, 1986, 7:30-10:00 P.M. in the Municipal Building, Council Chambers, Lincoln Park, Morris County; and

Friday, August 1, 1986, 10:00 A.M. in the Freeholder's Board Room, Burlington County Office Building, 49 Rancocas Road, Mount Holly, Burlington County.

The purpose of these hearings is to take testimony pertaining to Assembly Bills No. 2342 and 2499.

Anyone wishing to testify at either of these hearings should contact Norman Miller, Committee Aide, at (609) 292-7676.



ASSEMBLY, No. 2342

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1986

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

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

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

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

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

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

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

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

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

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

23 b. The Legislature further finds that:

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

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

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

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

1 3. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 5. a. A person proposing to engage in a regulated activity shall
2 apply to the department for a freshwater wetlands permit, for a
3 fee not to exceed the cost of reviewing and processing the appli-
4 cation, on forms and in the manner prescribed by the commissioner
5 pursuant to the "Administrative Procedure Act," P. L. 1963, c. 410
6 (C. 52:14B-1 et seq.). An agency of the State proposing to engage
7 in a regulated activity also shall apply to the department for a
8 freshwater wetlands permit on forms and in a manner prescribed
9 by the commissioner, but shall not be required to pay a fee there-
10 for. The application shall include at least the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73 (8) Proximity to any waterway; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) A temporary or permanent injunction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 lands from damage and degradation resulting from land use activi-
14 ties, pollution, and hydrologic changes which occur in upstream
15 regions of the same watersheds of particular freshwater wetlands.
16 b. The department shall submit, within 18 months of the enact-
17 ment of this act and after public hearing, a draft report containing
18 the findings and recommendations required in subsection a. of this
19 section. The information obtained at the public hearing shall be
20 considered in the final report.

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

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

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

STATEMENT

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

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

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

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

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

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

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

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

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

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

New Jersey State Library

NATURAL RESOURCES

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

1951-1952

ASSEMBLY, No. 2499

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1986

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

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

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

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

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

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

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

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

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

18 b. The Legislature further finds that:

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

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

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

1 3. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (2) A practicable alternative does not exist.

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

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

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

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

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

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

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

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

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

3 a. Agriculture management practices recommended pursuant to
4 P. L. 1983, c. 31 (C. 4:1C-1 et seq.) on lands valued, assessed and
5 taxed pursuant to P. L. 1964, c. 48 (C. 54:4-22.1 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

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

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

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

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

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

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

NATURAL RESOURCES

Provides for the regulation of freshwater wetlands by the State.

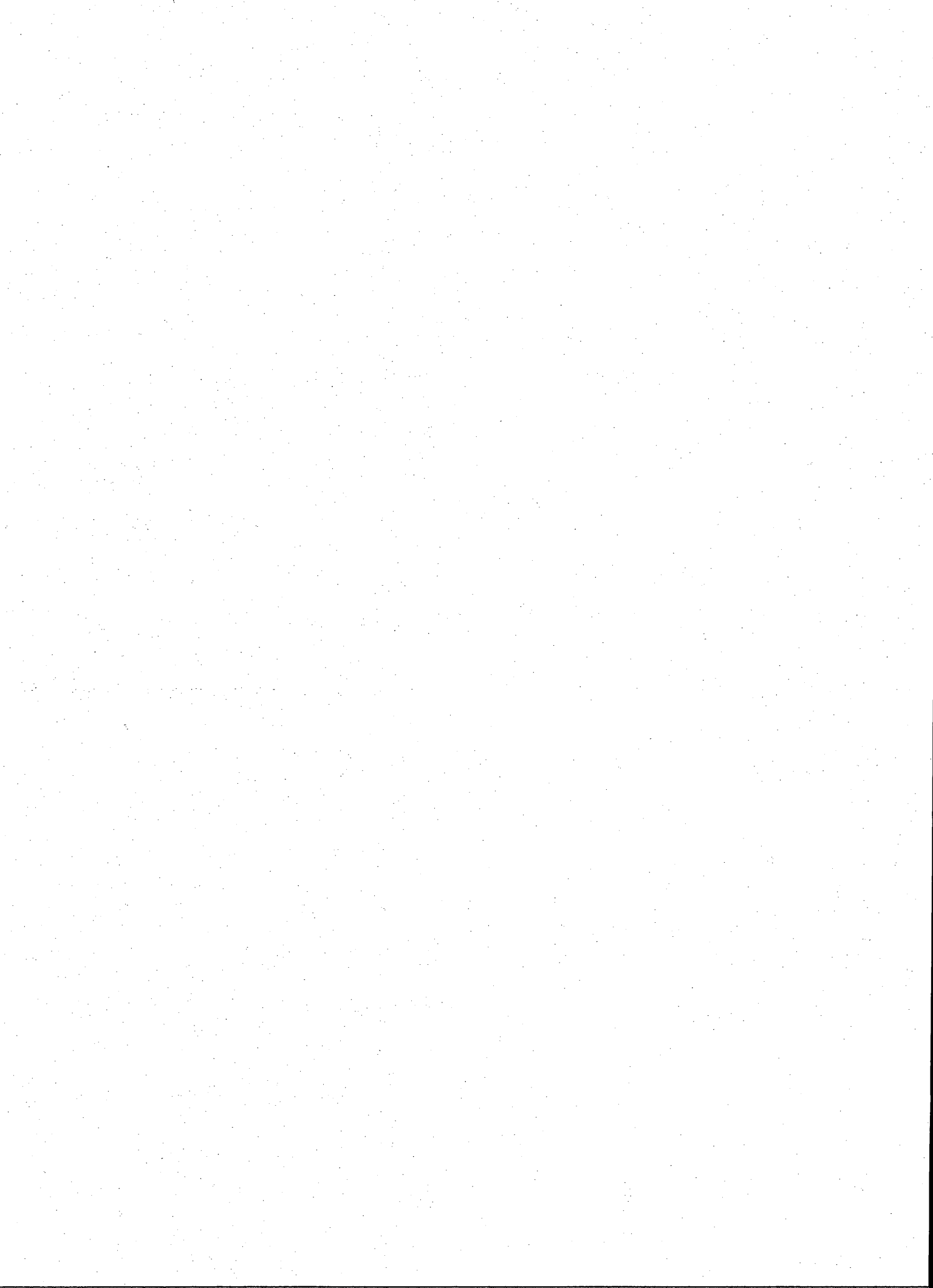


TABLE OF CONTENTS

	<u>Page</u>
Assemblyman Thomas P. Foy District 7	2
Mayor Frank Priore Parsippany/Troy Hills	4
John Serkies New Jersey Department of Commerce and Economic Development	12
Derry Bennett Executive Director American Littoral Society	16
James Sinclair Vice President New Jersey Business & Industry Association	22
Todd Bryan Stony Brook Millstone Watershed Association	33
Allan Kammerer President, Kammerer Engineering	41
Jane Nogaki New Jersey Environmental Federation	45
Robert B. Dreyer Superintendent, Middlesex County Mosquito Commission	51
Robert Anstett Citizens Conservation Council of Ocean County	58
Clifford Heath President, New Jersey Asphalt Pavement Association	60
Newland R. Smith Medford, New Jersey	62
Sean Reilly President, Land and Environment	63

TABLE OF CONTENTS (continued)

	<u>Page</u>
David Moore New Jersey Conservation Foundation	76
Thomas Wells New Jersey Conservation Foundation	79
Michael Merkle LINPRO Company	89

APPENDIX

Statement submitted by Brock Evans Vice President for National Issues National Audubon Society	1x
Statement submitted by Barbara Spiller Legislative Chairman, New Jersey Division of American Association of University Women	3x
Statement and related material submitted by Betty A. Little, Chairperson, Environmental Ethics Committee of the Presbyterian Church, Basking Ridge, New Jersey	3x
Statement submitted by David Moore New Jersey Conservation Foundation	10x
Statement submitted by Jane Nogaki New Jersey Environmental Federation	15x
Analysis submitted by Sean Reilly President, Reilly Land and Environment, Inc.	17x

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ASSEMBLYWOMAN MAUREEN OGDEN (Chairwoman): I would like to open the hearing at this time. I am Assemblywoman Maureen Ogden, Chairwoman of the Assembly Energy and Natural Resources Committee. This is the third hearing we have held on these two bills dealing with the protection of the freshwater wetlands. One of the bills is under my sponsorship -- A-2342 -- and the other bill is being sponsored by Assemblyman Jack Penn, who is sitting here -- A-2499. The proper notice has been given for this hearing. As everyone can see, this is being taped, and transcripts will be available to those who may want them.

I would also like to introduce at this time, Assemblyman Bob Shinn, who is a member of the Committee, and who represents this district, I believe -- Bob?

ASSEMBLYMAN SHINN: Yes.

ASSEMBLYWOMAN OGDEN: I don't know if you want to say a word of welcome. I am glad to be down here. As I told Bob, Mount Holly is one of my favorite towns because it is so beautiful. I am glad to have a reason to come down here and see it again.

ASSEMBLYMAN SHINN: You're welcome anytime, Madam Chairman. We are happy to have the hearing here. We welcome Assemblyman Penn down, and also all of you who are here for the hearing.

ASSEMBLYWOMAN OGDEN: Assemblyman Jack Penn is sitting to Mr. Shinn's left. David Inverso is recording this hearing, and Norman Miller, who is the Aide to the Committee from Legislative Services, is sitting to my right.

The policy we followed at the last two hearings was to first hear from anyone representing a Federal, State, or county agency and, also, to accord privilege to any elected officials. In terms of the people who have been signed up, I believe, Assemblyman Foy, that you are the ranking member here.

A S S E M B L Y M A N T H O M A S P. F O Y: Madam Chairman, members of the Committee, ladies and gentlemen of the public, officials and guests, and press: I want to first take this opportunity to welcome you, Assemblywoman Ogden, as Chairperson of the Committee, and the members of the Committee, to Burlington County, which I represent along with Assemblyman Shinn, Assemblyman Harold Colburn, Assemblywoman Kalik, and Senators Haines and Costa. We appreciate your taking the time out of your busy schedules to hold a public hearing on such an important issue, one that vitally affects the interests of many, many people in our County, as well as the other counties throughout the State of New Jersey.

So, welcome to Burlington County. If you have time, enjoy picturesque Mount Holly today, but I know you have busy schedules so come back again if you can't see everything you would like to see today.

As to the important business that is on the Committee agenda today, this public hearing on the two bills dealing with wetlands preservation, your bill, A-2342, and A-2499, Assemblyman Penn's bill, I wish to congratulate both of the principal sponsors of the legislation, particularly you, Assemblywoman Ogden, for focusing attention and debate on this important issue in the State of New Jersey. We are a small, highly urbanized State that has precious little in the way of resources left -- natural resources -- and I think the introduction of your legislation, as well as the introduction of Assemblyman Penn's legislation, has this salutary effect, if nothing else: It focuses the attention of the people of this State, and of the media of this State, on an important issue which deals with not only our present, but our future, and the kind of quality of life future generations are going to have.

Having said that, I am here basically to express my support for a bill which I co-sponsored, and to tell you why I am supporting that particular bill as opposed to supporting the

other bill. I am the co-sponsor of Assemblyman Penn's bill, A-2499. I support that bill not because I am a captive of the builders, or because I am a captive of the construction industry, or because Charlie Marciane called me up and told me to be here to say something nice about Jack Penn's bill. I support it because I have a great fear that we are engaging, in this State, in a certain amount of regulatory overkill. My concern is that whatever legislation we develop to protect our wetlands is one that is not so strangulating in terms of the development process, so choking in terms of permitting someone, or enabling someone, to obtain a permit to do certain things, that we, in effect, put ourselves out of business in the State of New Jersey.

I am not saying that is going to happen with Assemblywoman Ogden's bill, but I do believe from a comparative analysis of the two bills-- I have a comparative analysis that was prepared by the New Jersey Conservation Foundation, and subsequent additional information which was provided by Assemblyman Penn's staff, which I would like to put into the record today. I'm sure he can make additional copies available, but I think this explanation of the critique that was done by the Conservation Foundation will be a very valuable tool for the Committee in terms of the ultimate bill that is reported out, the one that is afforded to the General Assembly for voting.

So, without getting into more specifics because the bill obviously is Assemblyman Penn's -- he knows it inside and out; I know it, but can't express it as well as he can certainly -- I wish to register my support for his legislation, and to wish the Committee well in its deliberations in reporting out a wetlands bill that will be fair and balanced, and accomplish its objectives of preserving our natural resources, but at the same time will not strangle our business and development community.

Thank you, Madam Chairman.

ASSEMBLYWOMAN OGDEN: Thank you very much, Assemblyman Foy. Is Mayor Frank Priore from Parsippany here?

M A Y O R F R A N K P R I O R E: Yes, I am. Good morning. I just want to say that I missed you in Lincoln Park the other night, but I was able to travel down to beautiful Mount Holly. This is the first time I have been here, and I am very impressed with the area. It is quite beautiful, somewhat different than Parsippany, but then again I think that is what makes our State the great State it is. It is so very diverse and so very beautiful.

As you are probably all aware, there are many concerns that face local government officials in connection with the wetlands preservation argument. Parsippany/Troy Hills is a municipality with a population of over 52,000. We are, in fact, the largest in Morris County. As its full-time Mayor -- and I have a very unique position; there are only about 12 of us who are full-time in this State -- I feel I have a fairly good position from which to express some of these concerns.

Our municipality stretches about 25 square miles. We have been constantly striving to enhance the high quality of life, which I think is very evident in Parsippany. Consequently, we have always welcomed intelligent development because we have taken steps to control our growth, and have done so basically through sound planning. As a result of our controlled growth, we have been able to enjoy such benefits as job opportunities. Our unemployment, right now, is about 3%. Just about anyone who wants a job can get a job in Parsippany. We have had very much in the way of increased ratables. We are averaging about \$50 million a year in new ratables. This, of course, has not only expanded our ratable base, but has created a stable tax base. We have been able to extract millions of dollars worth of improved roads through the Municipal Land Use Law of 1976.

We have been able to expand our Police Department from where we were five or six years ago, where we were doing reactionary police work. We are now doing more and more preventive police work. Why? Because the tax base has enlarged and allows us the ability to afford to hire these new men. Our crime rate, as a result, has dipped over 50% in serious crime. Things such as break-ins and burglaries are way down.

We have been able to build a better school system. We now support a school system of over \$40 million with 13 schools. Our taxes have gone up very little proportionately because of an increasing ratable base.

But, to cite a perfect example of Parsippany/Troy Hills' desire to control its future, several years ago, back in the mid-1970s, with the help of local, State, and Federal moneys, we were able to build a \$100 million sewer system. This includes an advance waste water tertiary treatment plant, one of the most modern in the entire Northeast region. It contains, besides tertiary waste water treatment capabilities, dual incinerators, something rather unusual in New Jersey. I believe there are only eight incinerators in the entire State capable of burning sludge.

Right now, the operating costs of this facility are quite high, but the projected growth of our township has given us the opportunity to amortize the costs of the debt service for this plant over a series of years, and we have basically contained these costs by increasing new ratables. As the ratables come in, they pay a bigger and bigger share of that plant. Also, because there has been growth in our region, we have now taken in the sewerage from the municipality of Mountain Lakes, and most of Montville Township. We are under contract right now to take in the municipality of Roseland. We have taken in all of East Hanover, and we have a future capacity. We can help our neighboring communities as they grow.

But this plant was planned on the concept that our State and our region would continue to grow. Now, I think it is interesting that our State move in a fashion where there is consistency. In other words, our Governor has gone on record many times talking about a favorable business climate for industry. He has encouraged corporations to move out of New York and into our State. He has also, I think, developed a business climate that is favorable to companies staying in New Jersey and enlarging their operations.

I think we have to ask ourselves, do the two bills which are before us complement the Governor's agenda? Obviously, the people of our State overwhelmingly liked what Governor Kean was doing. They reelected him by the largest mandate in the history of the State. I think if you compare the Ogden bill to the Governor's agenda, you will find that the bill works in opposition to that agenda. I don't think there are provisions in that bill to entice new business into New Jersey. I do not think there are things in that bill that provide for the smooth expansion of businesses.

I would agree -- I would definitely agree -- that development at any price is not sound development. I personally do not support that type of growth philosophy. I think this type of thinking leads to short-term planning, which we don't need in New Jersey. But what I am advocating is support for the Penn bill. I think environmentalists and developers need to work together. I don't think, though, we need a bill that causes the State to lose opportunities.

Some of these opportunities I would like to talk about for a moment. You know, in the State of New Jersey, there is a crying need for trash transfer stations, for new dump sites, for resource recovery. Parsippany is one of the very few communities in our State that has stepped forward and said, "Look, we realize the crisis that is pending." Right now there are four counties, including Morris County, that are under

court order to site a facility immediately. In fact, I think we are six months overdue. Now, if you look at Edgeboro Township and that dump, that dump will close, according to Commissioner Dewling, in around seven months. Parsippany/Troy Hills stands ready to site a transfer station at its borders. One of the problems, though, in the expeditious completion of that transfer site, is the fact that the property that it is scheduled for is regulated by DEP and by the Army Corps, and presently there is no way to fast track those approvals. I think the Ogden bill further complicates that approval process. We can't even help ourselves in a most critical time in trying to conquer something I think is going to be a crucial emergency in New Jersey -- this whole issue of trash.

But, forgetting that, and going back again to the business climate, I just don't think that this particular bill does much to encourage the Governor's agenda.

There are a couple of things I would like to point out with regard to, I think, the shortcomings of the Ogden bill. I believe there are redundant regulations. You've got the Army Corps of Engineers and, of course, there is a requirement that would probably require somewhere around 40,000 permits to be given by DEP in the very first year. You've got the overlapping of some municipal regulation. The thing that bothers me probably the most about this bill is what I consider excessive regulation -- the buffer requirement of between 100 and 300 feet. I don't think there is any scientific evidence that states that these upland buffer areas are necessary.

In Parsippany/Troy Hills, we have been able to build fine ratables that are compatibly built next to a wetland. In this State we have opportunities for things like mitigation and certain set-asides, and I don't think you have to pretty much put northern New Jersey out of the development business with this type of a bill.

I like the Penn bill for a lot of reasons. Of course, I think the fact that it unifies the wetland permit process is a big plus. It removes some unnecessary municipal authority. Even though I am very strong on home rule, I think there are some municipalities that are abusing the regulatory process. This removes it. And, of course, it eliminates the buffer provision, and I think that is one of the greatest strengths of this bill.

So, Assemblyman Penn, you certainly have my support on the bill. As far as the Ogden bill is concerned, perhaps with revision it might be viable. I don't think it is in its present form.

Thank you for your time.

ASSEMBLYWOMAN OGDEN: Just a moment, please, Mayor Priore.

MAYOR PRIORE: Sure.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Jack?

ASSEMBLYMAN PENN: No.

ASSEMBLYWOMAN OGDEN: Do you, Bob?

ASSEMBLYMAN SHINN: No.

ASSEMBLYWOMAN OGDEN: Mayor Priore, in your testimony, you stated that my bill is not on the Governor's agenda. Are you aware that the Governor, in two successive State of the States has called for the enactment of the Ogden/Lynch legislation?

MAYOR PRIORE: That may be, but I still think it is contrary to what he has been saying for the last five years; that is, that New Jersey should be a climate favorable to business and industry. Certainly, everything that the Governor has preached across this nation -- not only the State -- about building a favorable job climate and creating jobs-- I don't think your bill does that. When you can basically put municipalities out of the development business, when you can render almost an entire municipality useless as far as

development is concerned, I don't think that complements his agenda.

Realizing politics for what it is -- and I am a politician; I have been in government for 15 years now -- I realize that sometimes the things we say aren't always the things that ultimately complement what we are trying to do. Perhaps I can be so crass as to say that there may be some double-talk between the statements on the bill and the actual agenda, but you are not going to create more jobs. You are not going to create a favorable business climate if you regulate land so that it can't be used, not in this generation, and perhaps not in the next generation, or ever.

ASSEMBLYWOMAN OGDEN: Are you aware that the Governor was a sponsor, when he was a member of the Assembly, of the bill that set up protection of coastal wetlands in the early '70s?

MAYOR PRIORE: Yes.

ASSEMBLYWOMAN OGDEN: Are you aware of a total stop of development currently at the New Jersey shore?

MAYOR PRIORE: Am I aware of it?

ASSEMBLYWOMAN OGDEN: Yes.

MAYOR PRIORE: I am aware that there are many parts of the State that can no longer be used, and that is what I don't want to see happen in northern New Jersey.

ASSEMBLYWOMAN OGDEN: From everything I have read, there is an absolute boom at the Jersey shore. The only problem is the problem of water pollution.

A couple of other points in terms of the 40,000 permits you mentioned: Actually, the person who would be in charge of the permits estimates they would be closer to 750.

And a third point in terms of the buffer is, in my bill there is the capability of reducing them by 80%, so that they would be 20 feet, 30 feet, and 60 feet.

MAYOR PRIORE: But there is no scientific reason that says we need any buffering. The fact that the wetlands are substantial in themselves makes me think that between that and the fact that you can mitigate certain damage-- In northern New Jersey, especially in Parsippany, there has been great reliance on things like detention and retention basins, water filtration systems. I can take you through Parsippany and show you tremendous use of those types of--

ASSEMBLYWOMAN OGDEN: No, but those are not buffer systems.

MAYOR PRIORE: No, but they keep the wetlands clean and they keep the water retained on site.

ASSEMBLYWOMAN OGDEN: Basically they mitigate flooding. That is their prime purpose.

MAYOR PRIORE: There is also a water quality system built within a lot of them. The fact that most of these systems-- I'll take you to the Prudential campus and show you where every bit of water that drains through that property is put through a stone filtration system, which removes heavy metals, gasoline, and oils from the system before it enters any large wetlands area.

ASSEMBLYWOMAN OGDEN: Of course, what we are really talking about, and I think Assemblyman Penn is too, is preserving the wetlands so that they can continue this process all for free, without us having to build the elaborate system that purifies the water.

I disagree with you in terms of the buffers. We had expert testimony on Wednesday night from a consultant for developers, who said that in certain instances -- he talked about three different instances in terms of water supply, flooding, and protection of rare and endangered species -- buffers are justified. So, I think there is a lot of literature saying they are needed. There are a number of states that have buffers that have similar wetland protection programs.

MAYOR PRIORE: When was the provision that would reduce the amount of buffering from anywhere between 100 and 300 feet down to the 20, 40, and 60 feet, as you just mentioned, put into that bill?

ASSEMBLYWOMAN OGDEN: It is in this current bill.

MAYOR PRIORE: Okay. I think again, though-- I guess what I want to stress the most is, there is no one, including myself, who is against preservation of the wetlands. Parsippany/Troy Hills derives its entire water supply from deep wells. Those wells have remained, even though there has been substantial development in Parsippany. We are one of the fastest growing municipalities in northern New Jersey. Our water supply is as good today, and as plentiful today, as it was 50 years ago. And, as you know, testing of water supplies has become greater and more in-depth than it was, let's say, 50 years ago, even five years ago. We can now trace various pollutants to a degree we couldn't just a few years ago.

Because we put in these systems, because we put in adequate sewerage and other facilities, we have been able to keep our water supply more than adequate. It is excellent. In fact, we only chlorinate our water in Parsippany because the State mandates it. Up until that mandate, we didn't even bother. We now use minimum amounts of trace chlorine.

But I think going back, what we're saying here is, no one is against environmental control. We all realize there is a need for it. But when I look at the potential damage the Ogden bill could do which would render certain municipalities-- Most of Morris County has wetlands in it, and if the buffers are too extreme, then you are going to render most of Morris County unbuildable. I cannot, for the life of me, see that that complements the Governor's agenda.

That is all I have to say.

ASSEMBLYWOMAN PENN: Maureen, just one comment. I think, if I am correct, the Governor endorsed your bill of last year. He did not endorse the present bill. Is that correct?

ASSEMBLYWOMAN OGDEN: He didn't endorse the exact wording, that is correct, but he endorsed the concept.

ASSEMBLYMAN PENN: The concept of a wetlands bill.

ASSEMBLYWOMAN OGDEN: And, a strong bill.

ASSEMBLYMAN PENN: But I just say that the bill you have before us now is not the same bill you had last year.

ASSEMBLYWOMAN OGDEN: Well, it is slightly different because we tried to provide for takeover -- or delegation by EPA. Yeah, that's true.

Thank you, Mayor Priore.

MAYOR PRIORE: Thank you.

ASSEMBLYWOMAN OGDEN: We have a representative, I believe, from the State Department of Commerce and Economic Development, John Serkies.

J O H N S E R K I E S: Good morning. My name is John Serkies, and I am here to present a prepared statement on behalf of the New Jersey Department of Commerce and Economic Development.

The New Jersey Department of Commerce and Economic Development, through its Office of Business Advocacy, has closely followed the evolution of the legislative initiatives on freshwater wetlands since their inception in the summer of 1983. In so doing we have come to recognize that there is a real and pressing need for a workable and balanced freshwater wetlands protection program in New Jersey.

It has become evident that both environmental and economic interests would be better served by a program charged with carrying out clear and specific State policies regarding freshwater wetlands protection than they are, or ever could be, in the present wetlands regulatory process which exists in New Jersey.

The current approach to wetlands protection in New Jersey is most inefficient, producing excessive delays, jurisdictional battles between State and Federal agencies, and

unjustifiable regulatory restrictions based on little or no statutory authority. Under the present system, the New Jersey Department of Environmental Protection regulates freshwater wetlands under a variety of permit programs such as stream encroachment, sewer extension, water quality consistency determination, water quality certificates, and the Coastal Area Facility Review Act Permit Program. This "ad hocism" of freshwater wetlands regulation traps a permit applicant in a quagmire of uncertainty; he has no clear definition of freshwater wetlands to rely on and no published regulatory guidelines with which he can comply. The confusing regulatory permit process pits one regulatory bureau against the other and the State environmental department against involved Federal agencies leaving the applicant stranded in the lurch.

What is needed is a freshwater wetlands program which can provide predictability in the protection of that finite and valuable resource; consider the rights and interests of the property owner and balance them with public environmental interests; and, secure as expeditiously as possible the delegation of the freshwater wetlands permit jurisdiction currently exercised by the U.S. Army Corps of Engineers.

In our view, the Freshwater Wetlands Preservation Act -- A-2499, sponsored by Assemblyman Penn -- would establish a balanced, technically justifiable wetlands program for New Jersey. This proposed legislation defines State policy and standards by which the Department of Environmental Protection would administer a state-of-the-art wetlands protection program that recognizes the differences in freshwater wetlands by creating a unique program to classify wetlands based on their environmental benefits, rather than assuming all are of equal value. Such a classification system will have the DEP assess the wetlands' values so that the areas will be regulated in a manner consistent with the benefits they provide. With such a system, the DEP could much more objectively decide whether a

proposed wetlands encroachment could be allowed subject to mitigation, or should absolutely be prohibited due to the environmental sensitivity or productivity of a particular wetland. Based on such a classification, there may even be instances where wetlands encroachment subject to enhancement or restoration of the area may actually improve the overall value of the State's freshwater wetlands.

One of the most important provisions in a freshwater wetlands statute is the definition of wetlands itself. The Penn bill relies on a three-part definition which requires the presence of: (1) hydrophytic vegetation; (2) hydric soils; and (3) proper hydrology in order to be deemed a freshwater wetlands area. Thus, the three environmental parameters included in the Army Corps of Engineers' definition of wetlands, i.e., hydrology, soil, and vegetation, must all be present to identify an area as a wetland.

The need for all three in the definition is important. Although wetland vegetation is often the most readily observed parameter, sole reliance on vegetation as an indicator of wetlands can sometimes be misleading. Many plant species can grow successfully in both wetlands and non-wetlands, and hydrophytic vegetation may persist in an area for decades following alteration of hydrology. The additional presence of both wetland soil and wetland hydrology indicators provides a logical, easily defensible, technical basis for the presence of hydrophytic vegetation. The combined use of indicators of all three parameters will enhance the technical accuracy, consistency and credibility of wetlands determination.

Another important aspect of a freshwater wetlands statute is the identification of the area and activities to be regulated. At the present time, the only available maps of freshwater wetlands are the large-scale, inaccurate National Wetlands Inventory maps which have proven to be highly unreliable in delimiting the precise boundaries of freshwater

wetlands in any given situation. It is essential, therefore, that any freshwater wetlands statute enacted in New Jersey provide for the preparation of a comprehensive inventory of all freshwater wetlands to be mapped at a scale which will prove accurate in the field in establishing the boundaries of the regulated areas.

Related to the issue of delineated boundaries of regulated freshwater wetlands is the concept of a wetlands buffer zone. In our view, the Penn bill takes the proper stance with regard to this issue by not requiring any buffer zone distances from regulated freshwater wetlands. The buffer zones proposed in A-2342 appear arbitrary and without scientific justification. They hold the potential of imposing undue hardship by denying development activities in areas that cannot by any stretch of the imagination be considered "wetlands."

With respect to the types of activities to be regulated under a New Jersey freshwater wetlands statute, we would urge that they be limited to, and identical with, the types of activities that are regulated under the Federal program. We believe the Federal program has correctly determined that the discharge of dredged or fill materials into a wetland is the type of activity that properly requires regulation. Expanding the list of regulated activities to include such things as the driving of pilings, drainage or disturbance of the water level, or destruction of plant life, including the cutting of trees, would, in our estimation, only overburden the agency designated to administer the freshwater wetlands program and jeopardize the expeditious delegation of the Federal program to the State agency.

Certainly, any freshwater wetlands statute enacted in New Jersey must provide for a regulatory staff that can efficiently carry out its mandate. Efficiency requires adequate staffing which translates into the need for an

Tidal Wetlands Act in New Jersey was modeled after similar legislation passed earlier in Connecticut, and before that in Massachusetts, and some other New England states. Early in that drafting, a group of us met in Redbank, New Jersey for a long weekend to go over the document, with one common idea -- to protect wetlands. One question, early in that meeting, was should we classify the wetlands by productivity. Should there be some medium, some highs, and some lows as a way of kind of having a tiered way of regulating it. We decided not to do that for three reasons.

First of all, the classification would take a great deal of time and money, and even then would be subjective. The problem of whether a high-quality medium wetland would be high or medium led us to think that we should not try that classification. We were concerned that the classification would aim development toward the so-called "low quality" wetlands. This development would then impact on the "medium quality" wetlands, which would then become "low-quality" wetlands in future designations, and you would simply have a wave of development up into the better wetlands. Third, given the loss of total tidal wetlands in the State, we believe that all wetlands, no matter what their quality, are valuable and should be protected. Because, a low-quality wetland can still perform some of the functions of a wetland, particularly in water-retention and flood control. So we essentially decided then not to write off the so-called low-quality wetlands. In the mid-1970's, the Division of Coastal Resources tried this process in and around Atlantic City, and indeed, they did lose about 150 acres of "low-quality" wetlands by trying to classify in this way. They quickly dropped that system. So that we would favor a freshwater wetlands bill which does not attempt to classify the wetlands by value.

Our experience with tidal wetlands regulation is that mitigation doesn't work. Attempts to duplicate wetlands by

building them from upland, or filling in tidelands have proven futile. The built wetlands look like wetlands, and you can plant spartina grasses on them, and they turn nice and green in the summer. They look just like a wetland, but if you walk on them, if you test them, you find out that the species are different, the diversity is lower, and productivity decreases. The way to protect wetlands is to keep them, not develop on them and then turn around and try to build some new wetlands somewhere else.

We favor a freshwater wetlands bill that does not encourage mitigation as a wetlands preservation measure. Because of how it deals with these two issues alone -- classification of wetlands and mitigation -- we favor the Ogden/Lynch bill over the Penn bill. But the major advantage of the Ogden/Lynch bill is that it provides for a wetlands buffer, and this is an absolute must for wetlands protection.

Again, I draw on the experience and the State's tidal wetlands law, as well as CAFRA, the Coastal Areas Facilities Review Act, which incorporates the wetlands regulation. Under CAFRA, under the Coastal Resource and Development Policies, a wetlands buffer is defined as all land within 300 feet of wetlands. The actual buffer line is to be drawn somewhere within that 300 feet on a case-by-case basis. The policy states that development is prohibited within the buffer, unless it can be demonstrated that the proposed development will not have a significant adverse impact, so that that buffer line can be moved within that 300 feet. The maximum is 300, the minimum goes down to around 20 or 30, depending on whether that buffer line will prevent impact onto the wetlands. So there will be no-- It won't detract from the wetlands ability to stabilize soil, filter solids, control water turbidity, storm water storage and contribute to biological diversity and productivity.

While the State recognizes the need for a tidal wetland buffer, it does not always set a proper buffer. All

too often on sites that we have inspected after construction has taken place, the buffer is too narrow, and wetlands have been disturbed. Such disturbances include siltation. Nearly all development near wetlands causes soil disturbance, which is reflected in some slumping and washing of silt onto adjoining wetlands. This is most easily seen by noting the change in vegetation after development. Salt marsh grasses soon give way to less productive upland species. Siltation is a prime enemy of wetlands.

Second is human disturbance. It's a plain fact that once structures are placed close to wetlands, people begin to move out onto the wetlands. The grasses are trampled, the soil is compacted, and the wetlands vanish, or fill is casually tossed over into the wetlands, grass clippings, leaves and branches from residential construction, and heavier material from commercial construction. The border between upland and wetland slowly but surely moves downhill and toward the wetlands.

The best example I know of that is a development on an island in Sharp River, where a minimum buffer was set up. It has not been monitored well. The wetlands fringe of that island has been pockmarked now with paths and trails, material has been dumped, and the wetlands edge is being lost. So it's not only important, I think, to have a buffer, but to enforce it.

Third, energy flow between the upland and the wetlands is changed. In some cases, run-off water is aimed directly at wetlands; either washing them out or covering them with silt. In other cases, upland is bulkheaded so that circulation to the wetland is stopped. In either case, the system is stressed and functions badly.

A freshwater wetland act without a provision for a buffer for every wetland will not do the job. For that reason also, we favor the Ogden/Lynch bill, though I should add here

that we believe the buffer provisions need to be strengthened, and I think we've gone back and forth on the buffer strengthening before.

I want to add one more thing here, and that is that we are experienced with the administrative tidal wetlands bill. At the very beginning of this, there was this concern that there would be a massive duplication of effort and a morass of complicated, duplicated documents that had to be done in order to get a permit. And indeed I think, probably for the first three or four months, there was a great deal of confusion, because the machine was not in place.

Right now, it's my impression that the State wetlands program works very well in coordination with the Corps of Engineers, and with the Fish and Wildlife Service. The agencies conduct joint processing meetings on a regular basis. They go through the documents, and, in most cases, there is agreement on the boundary and agreement on the steps that need to be taken. In those cases where there is not, it's usually worked out at that level. So, I don't see, right now, a great deal of fear of red tape taking place in regulation of tidal wetlands.

Summing up, all in this room I think agree that wetlands need protection. Every witness today will say that, and everyone else will say that. I think tidal wetlands are protected well, but not perfectly. I think this is the time to protect freshwater wetlands. We believe that the Ogden/Lynch bill does it best.

ASSEMBLYWOMAN OGDEN: Thank you. Jack?

ASSEMBLYMAN PENN: Thank you for your comments, Mr. Bennett. I don't know if you aware that we had a meeting on -- what is it?

ASSEMBLYWOMAN OGDEN: Wednesday.

ASSEMBLYMAN PENN: Wednesday night, and at that time the Commissioner of the EPA said that neither one of the bills present before us would qualify for delegation.

MR. BENNETT: That's correct.

ASSEMBLYMAN PENN: And I think that that's an important thing that both Maureen and I would talk about. Because I think that one of the most important things is to see that we do get delegation in the State. However, I am worried about the ability of the DEP to administer the program. Do you see that-- You worked very close on the CAFRA program. Of course, the Army Corps of Engineers-- You still work with them on the CAFRA program, but the State does not have any delegation at this time. Given the complexities and the problems DEP has experienced in other programs, do you think, at this time, that they could handle the delegation if they received it.

MR. BENNETT I don't know their staffing well enough, but my instinct would be that they would need, particularly at the beginning, more people to be able to take that over. But, from the experience of the coastal -- the CAFRA program--

ASSEMBLYMAN PENN: That's what I'm asking.

MR. BENNETT They-- There was a period of time in there, when papers were shuffling back and forth as the rules and regs were being done and the policies and everything were being published. So I think that there is -- on any new program like this -- there is a gap in here, where there has been some confusion. But, on the tidal wetlands program, they are running permits through there consistently now. There are no delays that I know of. Sometimes I wish there were; I wish we had a better chance to look at some of them. There are clocks that start to run, and the clocks have been met by the review officers, so I'm confident that they can do it.

ASSEMBLYMAN PENN: That's under the Army Corps.

MR. BENNETT: No, these-- A person who needs a wetlands or CAFRA permit, which involves wetlands, needs two permits. They need a State permit and a Corps permit. The joint processing need -- well, usually, what that really means

is that the Corps and the State both know what the applicant wants. And, in most cases, the Corps line and the State line, which is the Corps line wetlands line boundary, is really set for them by the Fish and Wildlife Service. There is, in most cases, general agreement -- quote -- "This is the line." If the person wants the bulkhead back here, he doesn't need a wetlands permit, and they sign off. If it's down here, he does need a wetlands permit, and they go through the process at the same time.

One other example of an interesting one that is going on now, is a big area on the way to Atlantic City called Gateway, where the State had mapped the area as wetlands, and the Corps had mapped the area as wetlands. The maps didn't agree at all. One of the reasons they didn't agree was that there were wetlands grasses growing up in a dike area, that were being fed just enough salt water during storms to get a summer of growth. When they did the aerial photography, it looked like wetlands. They mapped it as wetlands. As the developers come in now to ask for a de-designation of that wetlands site, the Corps, the developer and the State got together, redid the maps and corrected them. So, there was one where there was a disagreement that was worked out.

ASSEMBLYWOMAN OGDEN: Are there any questions. Thank you very much, Mr. Bennett. In order of signing up here, James Sinclair, N.J. Business and Industry.

J A M E S S I N C L A I R: Good morning, my name is Jim Sinclair and I am the Vice President of the N.J. Business Industry Association. NJBIA is the largest statewide employer association in the United States, and we represent 11,000 New Jersey businesses, and those business employ more than a million people in this State.

I'd like to just briefly testify, in support of a rational process of wetlands protection. I believe that Assemblywoman Ogden should not only be complimented for her

determination to protect the freshwater wetlands and our underground drinking water supply, but also -- and probably most important for us in the Association who deal with the legislature on an ongoing basis -- for the openmindedness and fairness she has, as a Committee Chairwoman, shown to all the different views that have been put forward here. And that, I really do credit you for, because this has been a long process for you. I know, and we're at the end of the process with what many believe is a better suggestion, and your willingness to put both of those ideas together in a public platform is something that the Association appreciates.

We believe that Assemblyman Penn and his co-sponsors, and the responsible members of the State's development community, have attempted to establish a workable system of wetlands protection that does not needlessly and arbitrarily halt development. Whatever legislation this Committee develops and approves, there are certain things that the Association is very concerned about. I'll just briefly go through those.

The first one is that the Association is against duplication and redundancy in the regulatory process. The effective date for the takeover of the 404 program should also be the first date that the State program goes into effect. Developers and people caught in the regulatory process of the system shouldn't have to go to two separate agencies with two different application processes, pay two different fees, wait for two different time schedules, talk to two different sets of people to try to get a permit for this process. We're going to design a system for State takeover. There should be -- you know -- it should be a turn-key operation. That's very important to us, because it's-- We've seen where redundancy is just so unproductive for everybody.

The effective regulation of freshwater wetlands preservation is an important role for government. But what is the justification and necessity for the State taking over these

functions? I know that you've sat through a whole series of hearings on this, but our membership -- when you do come up with the final version that comes out of here -- that case has to be made to the public, especially to the business community, why the State should take over the process now. It just seems that in a lot of areas, the State is jumping in to jump in. I think this is a PR issue that needs to be addressed. We're not questioning whether or not the State should take over, but I think that there is a sales job that needs to be done.

The whole question of coming up with a piece of legislation that works, as you stated at your last public hearing, the people from EPA said that neither bill meets the criteria. Whatever bill we come up with, we'd better be sure that it's going to work. We shouldn't go through a whole process of investing resources, time and personnel into setting something up that isn't going to be assumable. So we ask that you make sure that whatever comes out is assumable of that type of program.

We also think that the question of definitions -- and definitions in its loosest sense -- is what is wetland, and that's been bandied around. We think that the definition that is used should be the workable definition. One that is used by the Federal government now, and if it's not, then there should be enough explanation to the public, especially to the development community and the people affected by this, why there should be changes. I've looked at the scientific -- I tried to do a little research on it, and there is no definitive word on what a wetlands is.

Obviously, this is a political determination we're making here. We're drawing a political determination on the definition, and we think that if we're going to do that, then we ought to use the working definition that is used by the Corps of Engineers.

The use of buffers-- When we talked to Assemblywoman Ogden in April, our feeling on buffers that are legislated and

mandated in the legislation is a very arbitrary thing. Once again, we've looked for something that justifies doing that in the literature and we couldn't find that. We think that guidelines is probably a better route to go. With guidelines, you can go to a case by case basis; with guidelines you could go to a classification of wetlands. We support a case-by-case basis, by looking at what a particular person should do on a particular site. Because all sites are different, and to put a blanket determination over everything, we don't agree with.

The grandfathering of projects: We think that this is a crucial question. We think that projects that are in the pipeline should be given special consideration. What that consideration is, that is something to be worked out. We think that there is a fairness issue there.

Mitigation: We believe that mitigation is a useful and acceptable tool that should be allowed with proper guidelines. The process of using mitigation techniques to offset the impact of necessary wetland development has been supported by the State of New Jersey for many years. We concur with the policy position of the State, as it's laid out in the Liberty State Park environmental impact statement. I think that that particular statement, and that E.I.S. lays for the reason for the State being involved in mitigation.

That's something that I referred to the Committee, and I don't have a copy of it, but it might be something that the DEP might give to you. It lays forth the philosophy of how the State was going to go about doing mitigation techniques for Liberty State Park. I think that if it's just as valid for the State for things, it is valid for individuals, within proper guidelines and proper framework.

The last item -- and that was mentioned before -- is can the Department of Environmental Protection minister to this program? We think, and we know -- and I'm sure that you know, having thought through this process -- that the proper

implementation of either one of these bills will take a substantial commitment by the State government. Members of the New Jersey Business and Industry Association are stirred by the lack of effective management of legislative activities by the departments such as DEP. In many cases, and in fact, in most recent cases, the fault is not in the management of the department, but in the lack of effective management of the general support system of government.

If insufficient revenues are allocated to carry out the program, then a resulting mess can be expected. Proper management is not just a departmental concern. If the Governor signs legislation with built-in deadlines, then someone in the Administration should ensure that the Department of Civil Service and the Department of the Treasury are required to provide the necessary logistical support in the form of resources, positions, and personnel in a timely manner.

Over the past several years, we've seen the impact of uncoordinated implementation of well-meaning programs, such as the Right to Know program, ECRA and the Toxic Catastrophe Prevention. Wetlands preservation is a major program that will add a greater burden to the Department, that already appears to be unmanageable. Please give careful consideration to the real cost of implementing this program.

In the past, we've seen a lot of people come forward and say "oh yeah, well, you know, sure the Department can do this." It's sort of the "get your foot in the door" syndrome. This is a good idea that people who want to, get forward, either the Department or the Administration, or the general public.

But when it comes time to carry out the act, we see the disaster. I'm talking now of in the last year, a backlog that has increased -- it has doubled in air permits. It now takes almost nine months to get an air permit in the State. That's totally unacceptable. In ECRA -- a thing that depends

on closing a property -- it now takes you five months even before they give you a case officer to even look at your case. This is not DEP's fault, in this case. This is because they didn't get the purse positions, and they weren't funded with -- they weren't given the proper support. So, please, whatever you do here, if you want your act to work, build that into it. Put the costs up front. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Do you have any questions.

ASSEMBLYMAN PENN: Yeah, you touched on something which I have spoken on earlier, which, again, is a great concern of mine -- whether the DEP can manage it when we give them delegation, and what the actual cost will be to the taxpayers of the State. I think that it's something which we have to have careful consideration. This is, I think, one of the major questions that I have with the whole concept. We don't want to have the same thing happen with this program, that happened to ECRA. I think another thing is that turning over the writing of the rules and regulations to the DEP also-- I think they should all be included in the bill before we go any further on it. I don't know if you have any comments or not.

ASSEMBLYWOMAN OGDEN: Actually, I was thinking along the same lines here, Jim, where you say that the DEP should develop guidelines for buffers, and determination should be made on a case-by-case basis. You know.

MR. SINCLAIR: I would also include classification in there and in my sense of the world, where I think the world should work, and it doesn't work this way. What we should have is, sort of-- This whole question of the wetlands has been kicking around for a long time, and we've see the departments come in, we see Commerce come in; we see DEP come in. It's like they're coming in for the first time, each time that they come in. Where has the thinking been going here? It seems to

me that there should be a white paper for implementation. What is the ideal way of implementing? How would they implement? What would the regulations look like? How would they judge the effectiveness of the program? That should be presented. There should be a way the government could provide legislators with information up front. Why should this be a guessing game all the time, saying "Well, we'll do this, and we guessed that they're going to do this in the way we think they're going to do it."?

From representing the private sector, I would love to see this. I would love to be able to know what is going to happen before we decide to give them a blank check. I know Senator Dalton doesn't like that terminology, but that's really what it amounts to when you draft general legislation. We run into these things.

I was at DEP when CAFRA was being implemented. It was a nightmare for me and people in the Commissioner's office. It was a real nightmare because of this trying to figure out how things are going to balance out with these different agencies. Important projects were-- You know, important public projects that everyone wanted to go through, that made sense, were stymied, because of the administrative process. It has worked itself out over the years, because now there are experts out there who make a lot of money shepherding these projects through the system.

What we shouldn't be doing is creating windfall profits for lawyers and engineers and environmental impact statement writers. What we should have is a system that makes sense, that everybody understands, and that is centralized, and that runs effectively. We all want that. This is what we would like to see in the Association.

ASSEMBLYWOMAN OGDEN: Well, I think that we in the Legislature also share your frustration with the DEP, because I often have to go to bat for constituents, particularly with

ECRA, you know, or sewage treatment plants, or something or other. I can see the problems. But, I wonder, for instance, when you say that you want the DEP to develop the guidelines, and make the determination on a case-by-case basis, then what we're doing again is that we're giving the power to DEP. That's going on a case-by-case basis, we're saying, you know-- Theoretically I can understand what you're saying, but we're also saying then it's going to slow up the response to the application, it's going to cost more money because you're going to have to have more staff in order to evaluate things on a case-by-case basis, as opposed to trying to come up with some kind of formula.

MR. SINCLAIR: I think that in this particular case, if you had-- Let me say how I would see the process here that would answer your question. Obviously, I caught myself in a bind in saying that, but I'll tell you how I think that it could be resolved. If you asked, either through a special legislative committee that was put together -- or even the if Governor established a task force, or requested that the Department, within certain parameters, and you can define the parameters-- How would you administer this program? What would be the guidelines that you would put forth to meet these parameters. How should we administratively deal with this? That came in the form of a commission report to the members of this Committee, before you adopted the legislation. Then you would know how to structure it. You would know, from a political standpoint, what it is you needed to do to fine-tune the legislation.

Unfortunately, we don't fine-tune legislation unless it's a real disaster, like ECRA or the universal labeling of the right to know. Those are things that you have to come back and go over again.

ASSEMBLYMAN PENN: Maureen?

ASSEMBLYWOMAN OGDEN: Yes

ASSEMBLYMAN PENN: I would be against any legislation, any bill that we put forth, where the last sentence said "and rules and regulations will be promulgated by the Department of Environmental Protection." That is a blank check. Our legislation should be strong enough that we do -- that it will have all the rules and regulations written into the bill. If it doesn't, it's like so many other pieces of legislation.

When ECRA was originally written, it wasn't a bad bill. When the DEP got through with it, with their rules and regs, it didn't even look like the original concept at all. And it's one of the reasons we have such a huge backlog today. You're talking six months to even get a case heard. What's going on, as Assemblywoman Ogden said, half the time we have in our office is people calling us in frustration with matters dealing with DEP. Frankly, that's one of my biggest concerns about the whole process of turning this over to them.

MR. SINCLAIR: I would ask them -- they occasionally come in and they say-- You know, you say to them in terms of how much is it going to cost you to do this. They say-- They give you a number and it winds up, in the act, somebody decides to give them half that number, or something like that. There should be a funding plan put forth of what it really takes. And there should be performance criteria for DEP. What do you expect DEP to do? You know, how soon do you expect them to process cases? How many cases are they going to have? How are they going to administer? I'd like to see that in the thing too, along with--

ASSEMBLYMAN PENN: We've had testimony that ranged from 700 permits per year to 40,000 permits per year. Somewhere in between there is probably the answer. I don't know what it is, and I don't think anybody here does. If we don't give them the money, they can't do the job.

My funding, that I had in my bill -- \$2 million -- was what I got from what the Army Corps of Engineers said it costs

them to administer the 404 program in New Jersey right now. They said that's what their -- that's what they have for the program in New Jersey. It probably is not enough, if the DEP is going to take it over. I'm sure it's not enough, because I'm sure that there is plenty of staff that worked in New York on more than just New Jersey. I want to thank you for your comments.

ASSEMBLYWOMAN OGDEN: One other point here, Jim. When you are talking about mitigation, and saying "concur with the State's policy in the Liberty State Park environmental impact statement," I frankly haven't seen that, but I would think that that would be similar to what's provided in my bill, where we do provide mitigation in terms of something that is going through the wetlands -- the road, for instance -- in the public interest. So I should think that the Liberty State Park, which is a public recreation area, you know, would be in that same category. So I think that the standards would be somewhat different there, in terms of what's gone on in Liberty State Park, as opposed to a private development.

MR. SINCLAIR: Yes, I agree with you that there is a difference between private use of land, and public uses. I realize that. I was pointing that out in that the philosophy behind, in their defending mitigation, is a philosophy that could apply to private property.

ASSEMBLYWOMAN OGDEN: I see.

MR. SINCLAIR: It's a philosophical issue. I think that because we really don't know. There are issues that I heard today, on siltation, and stopping flow into wetlands. Those are engineering and scientific issues that I think could be addressed. I mean, they are addressable issues if we know to address them.

One of the things that sort of strikes me as funny in this process is that I think there is a lot of man-made wetlands in the State that will be covered in this bill. If we

have man-made wetlands -- because they've been developed, because of some past impact of society, putting a road through or a railroad track or what-have-you -- and that's covered in the bill as a wetland that we've been protecting, than surely if we can do it by accident, then we should be able to do it by design, using mitigation as a tool. I mean, that's a personal viewpoint there.

ASSEMBLYWOMAN OGDEN: Do you have a question.

ASSEMBLYMAN SHINN: No, I think Jim made some good points. Particularly on the clarity of the legislation, relative to the intent of the legislature; something that we went round and round on in the Pinelands plan. Having an individual be able to come into a process and be successful, without having to hire a team of experts to get the same treatment; that is a very difficult task to try to bring about. I think that the more clarity we have in the legislation, relative to the regs, and I don't know exactly how to accomplish that.

MR. SINCLAIR: You'll find out right now that if you have an ECRA problem, that when you come in there they want to know who is your expert. The thing is so complex that they can't deal with the citizen dealing with the process. That doesn't seem right, I mean, especially for a small problem. It should be something that, you know, people can understand.

ASSEMBLYWOMAN OGDEN: Jack?

ASSEMBLYMAN PENN: Just one other comment. You know, we talked about for the good and welfare of the general public. Therefore, their roads and bridges and railroads and so forth are basically excluded, and mitigation is allowed in that. But, when you want to talk about good in general welfare for the public, I think what Mayor Priore said was just as important. When you talk about the ratable base, as developed in the community; that's for the good and welfare of the people in that community. Therefore, sometimes I think you've got to

look at mitigation, and you've got to see what is really the good and welfare of the people. And that's what we all have got a strong concern about. I think that's a point that the mayor was trying to make before. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much. Todd Bryan, of the Stony Brook Millstone Watershed Association.

T O D D B R Y A N: I'm only going to speak about the first one that I handed out, to save some time. My name is Todd Bryan, and I am the Executive Director of the Stony Brook Millstone Watershed Association. The Watershed Association is a private, non-profit land conservation and environmental organization that has been in operation since 1951. It's one of the oldest environmental organizations in the country. It currently supports a membership of 1600 families and corporations in the Princeton region of Central New Jersey. I'd like to point out that we're not a radical environmental organization. In fact, among our corporate supporters are AT&T, Merrill Lynch, Princeton University, and Squibb, among others.

I've been following the wetlands protection issue in New Jersey since I moved here last October. I have a rather interesting and unique perspective on this issue. I used to be the director of the Freshwater Wetlands Regulatory Program for the Rhode Island Department of Environmental Management. As such, I am intimately familiar with the administration of state wetlands regulatory programs. I'm also familiar with the Army Corps permit program.

Rhode Island is one of two states, the other being Michigan, that were selected by the Corps and E.P.A. to determine if the Federal permit program could be granted to the states. Rhode Island assumed jurisdiction of the Federal program, under a pilot basis for two years, while trying to strengthen the State's enforcement penalties to comply with the Federal standards. The State Legislature would not pass

tougher penalties, and State jurisdiction was eventually lost. The difficulties with Federal transfer have taught me a valuable lesson with regard to a strong state wetlands bill.

My experience in state wetlands administration and the state transfer of the Federal program has led me to look carefully at the two bills now before you. Based on my experience, I cannot support the bill introduced by Assemblyman John Penn, and I urge you to dismiss it. The bill introduced by Assemblywoman Ogden is far easier to administer. It will burden builders and developers, and cost taxpayers far less, and it will protect wetlands far better than the Penn bill. The Ogden bill also gives developers and builders a greater degree of certainty and predictability about the outcome of their applications. This factor alone is what builders and small developers demanded in Rhode Island.

The Penn bill gives developers many opportunities to intervene in the regulatory process, for the purpose of making deals with DEP. Large developers will eventually benefit by these tactical interventions, by tying DEP up in the courts over technical issues. They can afford to wait years to win approvals, and losses can be taken more lightly.

Small developers and builders, on the other hand, will suffer greatly under the Penn bill. The need for predictability is critical. The Penn bill does not give it. The Ogden bill does. Last year, the New Jersey Builders Association supported the Ogden bill for this very reason.

I would like now to be more specific about how Assemblyman Penn's bill will create unnecessary cost and administrative delays. I refer to each section of the bill. I have a copy of the bill in front of me, if there are any questions about it. Otherwise, I'll just read through it. Section 3.D3, under the definitions of a wetland--

ASSEMBLYMAN PENN: Just a second, can I give copies to the members?

MR. BRYAN: Sure, okay. I assume that my bill is the most recent one, but I don't think the language has changed. Some of the sections may have changed, but--

ASSEMBLYMAN PENN: Do you have the printed bill?

MR. BRYAN: No, I haven't.

ASSEMBLYMAN PENN: That's okay, go ahead.

MR. BRYAN: Under a three-part definition of wetlands, the hydrologic regime of a wetland must be determined using five-foot, piezometer readings from November to May. That's one soil sample taken every five feet along the edge of the wetlands during the six-month period. Using this process, it may take at least six months to determine whether or not a wetland even exists. It will also cost a lot of money and employ a lot of consultants.

Number 2, Section 3K: Under this section, a regulated activity means the discharge of dredged or filled material into a freshwater wetland, such that it would alter the freshwater wetland, emphasis added. According to this meaning, DEP or the applicant would have to prove that the dredged or filled material actually changed the character of the wetland before it could be considered a regulated activity. Until this could be proven, the activity would be considered unregulated. A detailed study would have to be undertaken before a permit is sought.

Section 4.1: This section allows the applicant to submit no more than a conceptual site plan, depicting the proposed development. Such a provision would result in numerous enforcement problems for DEP, and cripple the administration of the law. Without very detailed scale-drawn plans, DEP cannot enforce the permits that it issued. The site plan becomes a part of the contract between DEP and the applicant. It must be precise. This also applies to the mitigation plans that are proposed under the Penn bill.

Section 6B: Section 6B calls for a detailed cost-benefit analysis to balance the wetlands protection against the need for the activity being proposed. The applicant would have to determine not only the social and economic benefits to be derived from the proposal, but would have to weigh them against the social, economic, hydrologic and ecological benefits to be derived from wetlands protection. Such an exhaustive study would be required even by the most modest of applicants.

Section 7A: This section allows the applicant to skip the application and cost-benefit process by creating a new wetland, whose size or ecological value is equal to or greater than the one being destroyed. There are several hidden problems with this provision. First, DEP will incur enforcement problems unless wetlands creation is strictly monitored through very detailed construction plans. The Penn bill now allows conceptual plans for this work.

Second, it will be necessary to determine the wetland's true values in order to replace their ecological value. As such, a portion of Section B will be necessary anyway, entailing huge cost to both applicants and DEP.

Third, it may require the applicant to spend hundreds of thousands of dollars to create a wetland that contains all of the values being destroyed. A not-so-recent estimate of \$200,000 per acre to create a high-quality wetland, is available. Only developers with extreme wealth could possibly consider this a reasonable approach.

Section 8: Classification and ranking of wetlands for wildlife water quality recreation and, although not listed in the Penn bill, flood control, will be extremely expensive and time-consuming. Modest developers and builders would have difficulty competing with major development companies, if they had to hire consultants each time they submitted an application to DEP.

Further, classification and ranking is not a one-time affair. As wetlands change, so may their values. Development may also change a wetland's quality and value. Urban growth, downstream of a wetland, may place more emphasis on the wetland's ability to enhance water quality, for example. As population grows, urban wetlands will increase in value as recreation and open-space areas. They will also become sanctuaries for wildlife, making them critical to the region's ecological stability. And finally, degraded wetlands can be restored, thus increasing their value.

Section 15: Mapping is a next-to-impossible task in New Jersey, unfortunately. Under DEP's current riparian mapping system, the State has already spent \$13 million over a period of eight years. They have completed one-third of the State. Wetlands mapping, because of the requirement for soil testing, listed in Section 3D3, will be far more costly. And, in the period necessary to complete the project, wetlands will change. DEP will be continuously updating the maps. In the meantime, DEP will be swamped with requests for on-site determinations pursuant to Section 15C. Developers will take advantage of this opportunity to have determinations completed for speculative properties throughout the State. To complete this task in the required 20 days, DEP will have to add literally dozens of new staff, and deploy existing staff to this effort.

Summary: The Penn bill is full of provisions that will create added costs and delays for developers, particularly modest ones. It is full of provisions that would create substantial time delays and administrative costs for DEP. After all the mapping, classification and ranking, cost-benefit analysis, mitigation, and soil borings have been completed, New Jersey's wetlands will be no better protected than they are now. The Penn bill is a colossal boondoggle. It favors large developers. Small developers who support this bill are being

sold down the river by Mr. Penn. So is the public. This bill is designed to mislead, to deceive, and to divert attention away from the true wetlands protection measure, introduced by Maureen Ogden. The Penn bill should be withdrawn.

ASSEMBLYWOMAN OGDEN: Jack?

ASSEMBLYMAN PENN: Well, I-- Frankly, I find that Mr. -- what's his name -- Bryan's remarks are not true, and not called for. First of all, Mr. Bryan, are you aware of the fact that it costs -- the cost of a conceptual plan, as compared to full-detailed plans? Are you familiar with the cost?

MR. BRYAN: I'm quite aware of that.

ASSEMBLYMAN PENN: What is it? Let's say, what's the difference between the conceptual plan and a cost of a final drawings?

MR. BRYAN: It would probably be in the range of several hundred to several thousand dollars, depending on the nature of the plan -- the nature of alteration.

ASSEMBLYMAN PENN: What would be? The conceptual of the final?

MR. BRYAN: The difference in the cost of doing these things is dependent on the scale of the project. It could be several hundred dollars, or it could be several thousand dollars.

ASSEMBLYMAN PENN: You can get final plans for several hundred dollars?

MR. BRYAN: On a small project, yes.

ASSEMBLYMAN PENN: I'd like to know where you get them. You can't get final plans, and you know it, for several hundred dollars. The idea of the conceptual plan is to go in to see whether the project will fly in the first place. If it won't, why spend all the money for final drawings, when you're not going to know -- if the project isn't going to fly. That's going to save the small developer a lot of money.

MR. BRYAN: That's going to save the small developer a lot of money. The other provisions in here are going to cost him immensely.

ASSEMBLYMAN PENN: Well, let's go down to the bottom line. You're wrong.

MR. BRYAN: Let me go back to the conceptual plan again, because in your bill, you talk about no other plan but the conceptual plan. If a decision to approve or deny something-- If a decision to deny an application can be based on a conceptual plan, that's fine. But you can't base an approval on it, because you'll have tremendous enforcement problems if the developer does something else.

ASSEMBLYMAN PENN: That's not what the thing says, like-- That's not what the bill says.

MR. BRYAN: That's what it says.

ASSEMBLYMAN PENN: No, it doesn't

MR. BRYAN: I would like you to read it.

ASSEMBLYMAN PENN: It goes in for determination-- You go in for determination. Then, when your determination is made, then you go into the next stage, in order to get your final approval. You don't get your final approval on a conceptual plan.

MR. BRYAN: That's what your bill says.

ASSEMBLYMAN PENN: No, it doesn't. I'm sorry, you didn't read the bill. I have no further questions for this witness.

ASSEMBLYWOMAN OGDEN: Do you have any questions? (negative response) I have one question, Mr. Bryan. The maps are an issue, and when you were the Administrator of the Rhode Island project, what sort of maps did you use?

MR. BRYAN: We used the National Wetlands Inventory maps as a guide. We used an official site, on-site determination to make the final determination of the applicability of the law. By the way, we looked into mapping

the wetlands of Rhode Island at a scale of one inch equals 200 feet, and found that it would just be way too costly, even in a state the size of Rhode Island.

ASSEMBLYWOMAN OGDEN: Thank you.

ASSEMBLYMAN PENN: One other question. You mentioned here there were only two states that had received delegation. One was Rhode Island, which was withdrawn after two years, and the state of Michigan, all right? Are you familiar with the Michigan bill.

MR. BRYAN: Yes.

ASSEMBLYMAN PENN: Are you familiar with my bill?

MR. BRYAN: Yes.

ASSEMBLYMAN PENN: Don't you find them identical?

MR. BRYAN: No, in fact, your bill is far weaker than the Michigan bill.

ASSEMBLYMAN PENN: My bill is taken word-for-word from the Michigan bill in many places.

MR. BRYAN: It's-- I'm sorry but it's not taken word-for-word from the Michigan bill.

ASSEMBLYMAN PENN: It is.

MR. BRYAN: That's an entirely incorrect statement.

ASSEMBLYMAN PENN: No it isn't. We have a difference of opinion.

MR. BRYAN: I'd be happy point that out, but I don't think this is the place.

ASSEMBLYMAN PENN: By the way, there are three pieces of Michigan legislation that combine to make the Michigan bill.

MR. BRYAN: I'm well aware of that.

ASSEMBLYMAN PENN: I didn't know whether you were or not.

MR. BRYAN: Yes.

ASSEMBLYMAN PENN: Fine.

ASSEMBLYWOMAN OGDEN: Thank you, Mr. Bryan. The next person on the list is Mr. Allan Kammerer, representing the South Jersey Chamber of Commerce.

A L L A N K A M M E R E R: Good morning, Assemblywoman Ogden and members of the Committee. My name is Allan Kammerer, and I'm the president of Kammerer Engineering, Inc. We're consulting engineers, with offices in Medford and Salem, New Jersey. I'm here today representing the South Jersey Chamber of Commerce, as a member of the Organization of State Affairs Committee. The South Jersey Chamber of Commerce has over 1000 member firms in the South Jersey area, employing approximately 275,000 people.

I respectfully submit the following statement, relative to Assembly Bill 2499, the Freshwater Wetlands Act. The South Jersey Chamber of Commerce favors programs which enhance environmental quality, and protect our natural resources in New Jersey. The Chamber has analyzed Assembly bill 2499, with respect to its impact on economic growth in South Jersey, and supports this measure in concept. However, we would like to take this opportunity to strongly suggest several areas of revision to Assembly Bill 2499. In our opinion, if these recommendations are not amended into the bill, Assembly Bill 2499 would have a negative impact on future growth in the South Jersey area, both for private and municipal development. The following items address our concerns, and we offer these recommendations for your review.

Pages one, two and three: The bill's language should definitely specify what "large contiguous freshwater wetlands" means. We feel that the five-acre wetland criterion, for size only, is not an easily defensible position from a water-quality management standpoint. Undisturbed vegetated wetlands of this size can contribute to water quality management, based on vegetation classification and other specific criteria, which are site specific. We recommend this additional criteria be specified and included in addition to the area requirement.

Page three, paragraph A: The exclusion of cultivated hydric soils from wetlands classification should be given very strong support. It has been our experience that in many cases, the water tables in such areas have been previously modified by ditches, drainage tile or runoff diversions, or a combination of there. Drained hydric soils should be noted in this section, and we refer to item "D" below, with regard to that.

B: The utilization of 12-inch seasonal high water table for wetland delineation is inconsistent with the hydrophytic vegetation portions of the legislation. Depending on the texture of the soil, seasonal high water tables of the 18 inches for 12 inches.

C: The definition of "hydric soil" should be amended to include: "As verified in the field, and plotted at a minimum scale of one inch equals 100 feet." Soil survey mapping by the soil conservation district should not be binding on an applicant.

D: The grouping of definitions for hydric soils should include "drained hydric soil." Although the actual soil morphology found in the field may indicate the presence of a hydric soil, wetland hydrology is no longer an influencing factor on the soil, due to ditching, underdrains, or drainage diversions which have lowered the seasonal high water table to 18 inches or greater from the ground surface. Drained hydric soil should be exempted from wetlands classification.

Page 5, A: The legislation should provide a mechanism for an applicant to apply for a wetland delineation permit, without a conceptual site plan depicting the layout of a regulated activity. Frequently, this is necessary for land value appraisals, or land development feasibility purposes. The approach appears to be consistent with the other sections of the bill, in that there is not a provision for buffer based on the intensity of the land use proposed on the conceptual site plan. This would streamline the permitting process and minimize financial burden imposed on all applicants.

B: We recommend that wetland mapping be done on a site-specific basis by the owner or developer of a site. Mapping of all wetlands by county or state agencies and associated public hearings should be opposed.

Page 8, paragraph 7: The following sentence should be added to amend the paragraph dealing with off-site wetland creation or substitution. "Off-site creation or substitution of wetlands shall be permitted when the applicant provides, in perpetuity, a substitution site in the major aquifer recharge area, or in the same watershed where the regulated activity will occur. Appropriate restrictive covenants shall be prepared by the applicant, and favor the state."

Page 8, paragraph 9: We strongly oppose the regulation of freshwater wetlands by the DEP, due to the amount of extensive site reconnaissance, which is required. We urge a permitting process which would be overseen by an expanded soil conservation district staff. County-wide review and permitting would allow the field inspectors to become very familiar with the soils, vegetation and the wetlands system in their respective county. We also feel that this would be the most expedient and cost-effective approach from a management standpoint.

Page 10: Violation of the wetlands legislation should additionally provide for the restoration of a wetland which has been illegally altered. This would be consistent with the section allowing the creation or substitution of the wetlands.

Page 12: We oppose the mapping of wetland area by State and county agencies. Page 12, paragraph 13: It is our recommendation that the individual wetland inventories be filed with the county reviewing agency as public documents.

Page 13, paragraph 8C: It is our feeling that there is an inherent problem with the provision for compensation of lost value due to wetland determination on any specific parcel. This is not consistent with the permitting processes

which have been regulating floodways, nor is it consistent with flood plain zoning districts, which are established in many municipalities. Such a policy could conceivably have retroactive consequences on any land previously regulated by the DEP or a municipality. The bill does not make appropriation for the purchase of the wetland, nor is there any mention of ownership or property owner associated liability.

We recommend that the bill include section 11C of Assemblywoman Ogden's bill 2342, which exempts areas regulated as a coastal wetland, pursuant to Public Law 1970 c272. This provision avoids the duplication of regulations. It is our understanding that the reason this provision was not included was an oversight by the sponsors. The South Jersey Chamber of Commerce would be happy to work with you to implement our recommendations into Assembly Bill 2499. We thank you for the opportunity to present this statement.

ASSEMBLYWOMAN OGDEN: Thank you, Mr. Kammerer. Jack, do you have any questions?

ASSEMBLYMAN PENN: Thank you very much. This is the type of input that we were looking for, with recommendations and so forth to the bill. This is important, I think, that all your suggestions, and so forth, will be taken under advise in the Committee. I think they are good, and I think this is one of the things that both Assemblywoman Ogden and I looked for to come out of these hearings. I see a lot of work and effort, and these constructive criticisms are greatly appreciated. Thank you very much.

MR. KAMMERER: Thank you.

ASSEMBLYWOMAN OGDEN: Bill?

ASSEMBLYMAN SHINN: I thought the comments were good. Good testimony. Thank you.

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

MR. KAMMERER: Thank you.

ASSEMBLYWOMAN OGDEN: Next we have spokesmen from the Bordentown Waterfront Preservation Society, Jim Parker and David Babington. No? They're not here. Jane Nogaki, is she here, from the Coalition against Toxics and N.J. Environmental Federation? Sorry if I mispronounced your name.

J A N E N O G A K I: It was perfectly correct. Just read phonetically, Jane Nogaki. My name is Jane Nogaki and I'm a member of the steering committee of the New Jersey Environmental Federation, and I'm also a member of a local citizens' group from southern New Jersey, called the Coalition Against Toxics. The Federation was founded in 1985 by a group of leaders from community, environmental, and labor organizations across New Jersey, who have a vision of a broad and permanent organization that can win concrete improvement in environmental clean-up and protection.

In contrast to the Stony Brook Millstone Watershed Association, which has a long history of conservation, the people that are in our group -- although some of them are traditional, environmental types like Audubon club members and Sierra Club members -- most of the people in our groups are citizens who have become victims of pollution, one way or another; who got involved in environmental issues because of poor water quality in their neighborhood; or they live near a toxic dump; or they've been sprayed by pesticides and object to it. These are the kind of people that are in the Federation. They're working really hard to get better protection in law, and to get the DEP to enforce the laws that we already have.

So we have adopted freshwater wetlands legislation as one of our campaigns, and we do support the Ogden/Lynch version of the bill. I'll get to those reasons in a minute. Again, I want to thank you for coming to Mount Holly for this hearing, because it gives people in South Jersey the opportunity to testify.

We particularly are feeling the punch of development in South Jersey. We're enjoying the economic benefit, the boom time that we're in right now, but at the same time, we're very vulnerable because of our soil conditions and water quality conditions. A good deal of South Jersey still relies on septic tanks for wastewater disposal, and our aquifers are very vulnerable to water pollution. We do have many, many acres of freshwater wetlands that deserve our protection.

Therefore, we support the Ogden/Lynch bill. We think that it is the more protective of the two bills. We think that the Penn bill (A2499) contains inadequate protections, although the first page is good. The stated purpose of the bill is written very well. We feel that the inadequate protections would be a disservice to the residents of New Jersey.

These are some of the reasons why we feel the Penn bill is inadequate. Because, it uses too narrow a definition of wetlands. The Ogden bill, by contrast, uses a widely-accepted definition of wetlands; the same definition used by Federal agencies in their administration of their Section 404 Wetlands Fill Permit Program.

Another inadequacy in the Penn bill is that it regulates only the disposal of dredged and filled material, and not the whole range of activities that can occur in a wetland; the idea that it would allow so-called "enhancement" or "creation" of other wetlands to mitigate for loss of primary wetlands. I'm not a wetlands specialist. I'm new to this game, but I've read one book on it, called "Protecting Inland Wetlands," that was composed by an organization called ANJEC, the Association of New Jersey Environmental Commissions. One thing that it stresses is that what a wetland does is to recharge water in an ecologically-sound manner, and filter out impurities from water. It's difficult to match this. It's impossible to match this, scientifically, by some man-made creation, although you can do stormwater management, and you can do filtration systems.

To get the whole package to work the way it does in nature really has not been duplicated, and we've never seen any scientific evidence that you could get a created wetland back to an original state. I think the key here is genetic diversity. We novices to this field are familiar with the plant -- it's a very tall, reed-like grass -- I think it's called fragmities. We're beginning to think that it might become the national plant of South Jersey, because it is evidence of disturbance along the roadside and the wetland. A lot of people that are new to ecology think, well look, there's all this vegetation growing along there. You know, it's okay. It's growing back, after it's been cleared along a roadside or along a waterway. But we know that the fragmities is not native to the Pine Barrens. It's an introduced species. It's an evidence of disturbance, and it's not a natural replacement for what was there before.

Other people, that are much more knowledgeable about this than I, have written about the importance of genetic diversity. It has to do with insect life, with plant life, with water quality. It's something that really can't be duplicated, and it's why wetlands protection is necessary in the first place. So, we feel that this whole "enhancement" or "creation" of other wetlands ideas is really indefensible. I don't think there is any point to it.

That isn't to say that if there was some really-needed project -- a highway or a transit line, or something that couldn't be put anyplace else -- it doesn't mean to say that these mitigation factors wouldn't enter in there. But generally, to offset otherwise avoidable development, I don't think there is any philosophical justification.

Finally, because of the lack of buffer zone provisions, we feel that the Penn bill is inadequate to protect wetlands from adjacent development. We feel that wetlands can only serve their recharge and purifier capacity when they

themselves are protected by a buffer zone. This has been shown in all the efforts that went into the Pinelands development, which Assemblyman Shinn is really familiar with.

Some boundaries have been set around wetlands in the Pinelands, and they have proven very effective. They are easy for towns to understand and abide by the Municipal Land-Use Law. For instance, we live in a township called Evesham, and the southern half is in the Pinelands Protection Zone. I live in such an area. When development comes into my area, developers know that they have to stay 300 feet away from the stream. It may sound arbitrary, but it's done a good job of protecting those wetlands.

We also have a virgin soil ordinance, which means that you can't put a septic system in ground that has less than four feet groundwater, and you can't add fill to achieve that four feet. It's got to be the natural level. That's the other major protection we have. The combination of those two things, the 300 feet and the virgin soil ordinance, are doing a good job of protecting surface water and ground water. If we lost that buffer, and if we lose the virgin soil ordinance, those protections go away.

We in Evesham have those protections, but right next door to use is a town called Berlin. They're still ecologically in the Pine Barrens, but they didn't make the border. The cutoff comes along the Evesham line. Their town doesn't have these protections. So I can see, very close at hand, right next door in the town next to me, where these very specific buffering zones should be written down, so that it is easy for townships to implement them when they're working with developers in their towns.

To build onto that Pineland example: The Pinelands law does protect how much of the land mass of South Jersey -- is it a fifth, an eighth?

ASSEMBLYMAN SHINN: In South Jersey:

MS. NOGAKI: Yes.

ASSEMBLYMAN SHINN: A fifth of the State.

MS. NOGAKI: A fifth of the State. It's a very large core protection area, but our fear is that that great start in protecting the Cohansey aquifer, is going to be impacted by development going on all around it. Part of the plan was to protect the inner core, so therefore, the areas around it will absorb some of that building, with the credits, and so forth. That's a good idea, but we're also realizing at the same time that without adequate buffering, the impact on the aquifer is going to be overburdened. It can only stand so much. So, we would like to see the protections that were implemented by the Pinelands extended to the other areas. Particularly in South Jersey, where the soil, for the most part, is very sandy and very permeable.

So, the need for the legislation is very clear to us as citizens. The road to the passage has been long. I mean, this has been in the works for several years now. We think that in the interest of moving things along, we would like to see Assemblyman Penn withdraw his bill, and work with Assemblywoman Ogden to get a bill that would work to protect these wetlands, which is the whole purpose of the whole wetland legislation. I thank you for hearing our point of view.

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

ASSEMBLYMAN PENN: Just one. You're not the only people with septic tanks. I live in Central Jersey. I've never had anything but a septic tank in my life, so I know what your problems are.

MS. NOGAKI: It's rough.

ASSEMBLYMAN PENN: Well, you know. A lot of people will tell you that they're actually better than sewers. In the last town -- one of the towns -- we were up there when they put in a sewer program. The citizens sued against the sewer,

saying that actually a good, working septic system actually was far more desirable than the sewer. I think that as far as-- That there is a-- We're seeing, coming out of these hearings, and so forth-- Of course, you haven't had an opportunity to hear all the different experts, but we had what I thought was a very good proposal. I'd like to say, even what Jason Cartell presented at our last hearing, that dealt with a system of buffering that would deal with the classification of wetlands. It's a good thing, and I think that it's something that we're looking into. Out of this, all this information will come in.

My bill has 52 co-sponsors on it. I'm only one of the people on my bill. As a matter of fact, my prime co-sponsor is Assemblyman Cavanaugh, with myself on it. We are hoping to work with Assemblywoman Ogden, so that we will come up with some sort of comprehensive wetlands bill that will allow the information input that we've gotten from these hearings be taken back and imparted.

Hopefully, we're going to come out with the wetlands legislation that'll do what we want it to do in the State of New Jersey, and try to meet as many of everyone's needs as we possibly can. Because, there are, as you heard even here today, wide disparities of what people think. It's the old thing about not in my back yard, not here, or not there. You mentioned in here something about being involved in a toxic thing? Well, I happen to have a county where I have four toxic sites being proposed. The hearings up there, which had been going through, are pretty difficult, because no one wants a toxic site, or a burning site, or an implant in our town. You don't want one in your town either. That's another issue that we're going to be addressing another day. I want to thank you for your comments.

MS. NOGAKI: Thank you.

ASSEMBLYWOMAN OGDEN: Any other questions?

ASSEMBLYMAN SHINN: No, just that the testimony is very good.

ASSEMBLYWOMAN OGDEN: Thank you very much. Is Mr. Robert Dreyer here, from the Middlesex County Mosquito Commission?

ROBERT B. DREYER: Members of the Committee, I thank you for the opportunity to be here. My name is Robert Dreyer. I've been the Superintendent of the Middlesex County Mosquito Commission for more than 20 years and I am very much aware of the value of wetlands and the long overdue need to protect them.

For the past several years our plans and estimates submitted to the Director of the New Jersey Agricultural Experiment Station and the Board of Chosen Freeholders have included the lament that most of New Jersey's major highways pass through Middlesex County and it therefore continues to be one of the most rapidly developing counties, both industrially and residentially, in New Jersey and New York Metropolitan area. And, quote, "the environment has been a victim of this quest for development. Our land, water, and air have been polluted. With few exceptions, the county's major streams, brooks, and rivers have been neglected. Many waterways that must carry increased runoff from developed areas have become even less functional because of diking, filling, and sedimentation that has come from excessive erosion following man's activities. Lakes and ponds have become overgrown with aquatic vegetation accelerated by agricultural, industrial, and domestic waste in addition to tons of eroded soils. In an effort to curb sediment and flooding problems, many municipalities are encouraging or requiring the construction of water retention or detention ponds, but we are finding that most of these facilities become additional mosquito breeding sites. Unfortunately, the result is that our Commission must now service more than 10,000 known mosquito breeding sites

within the county." Close quote. The vast majority of these areas will be classified as wetlands under the Ogden Bill.

We have never believed that the repeated application of pesticides would be the sole solution to our mosquito problems. A rather sophisticated program of integrated pest management techniques has therefore been developed to provide mosquito control in response to the public need. Water management has been emphasized by our agency for many years and accounts for approximately 40% of our year round efforts. In fact, the Mosquito Commission has become the janitor of our abused streams, ditches, and wetlands.

When a fresh water wetlands bill is passed many of the impacts that have been caused by man's activities will remain and the need for maintenance and repair will continue.

It is because of the lack of reasonable provisions for governmental agencies, such as public works departments, health departments, and mosquito commissions, with legal responsibility to protect the health and safety of the public, to carry out preventative maintenance and repair in wetlands regardless of size, quality, function, or location that we oppose A-2342.

Under this bill, non-functional streams, ditches, culberts, and water management facilities with silt, fallen trees, shopping carts, and other debris could not be touched in a wetland or buffer zone without lengthy delays and unacceptable expense and paperwork to obtain a permit. In the case of an emergency -- 12.a.1 -- after the public's health and safety have been jeopardized, a public agency would still need to make application to DEP for a permit and hold a hearing. Then, dependent upon who in DEP is liberally construing the regulations in favor or disfavor of what or whom a permit may be issued. We believe that the excessive regulation proposed in A2342 will encourage many to ignore the law especially if enforcement is as limited as it has been with the stream encroachment laws.

Without question, many of New Jersey's freshwater wetlands have been and are continuing to be rendered non-existent or non-functional. It is short-sighted planning and poor oversight that have allowed them to become building sites, dump sites, and catch-alls for pollution and debris.

From our point of view, the polluted, artificially elevated, deteriorated waterways and flood plains resulting from these activities have become areas of major concern. More than 50% of the mosquito breeding sources in Middlesex County have been artificially created. Our agency has been sounding warnings about encroachment, mismanagement, and the lack of restorative maintenance in our waterways for years. But, few have listened and we have had to pay the price through increased mosquito control in these areas. In the long run, everyone in New Jersey will pay the price in many subtle and not so subtle ways if we don't stop undue encroachment in our wetlands and if we fail to recognize that these important functional systems do, and will continue to require on-going preventative maintenance and care.

An acceptable wetlands bill for New Jersey must recognize the variable size, quality, function, and location of wetlands, as well as the multiple needs and desires of our millions of citizens. It should not unduly limit all levels of government in the State to unilateral, liberally construed regulations of one division of one department in the State Government which operates under a law virtually without limits. There are other competent professionals who have concerns and legal responsibilities for the proper management of our environment for the health, safety, and benefit of the general public.

A-2499 has already been labeled by some as the builders dream bill. A-2342 appears to be the preservationists dream bill. One not restrictive enough, the other too restrictive. A compromise is needed that will assure the

presence of quality wetlands for future generations. However, we cannot and should not ask this generation to pay the price for all past and potential future indiscretions.

Again, thank you for the opportunity.

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

ASSEMBLYMAN PENN: Yeah. I think that you are saying, you control the mosquitoes through -- now through -- a matter of keeping the streams flowing and keeping the-- Mosquitoes breed more in stagnant types of water. Is that a fair statement?

MR. DREYER: That's correct. It's not all, but--

ASSEMBLYMAN PENN: Yeah, a great many of them. So, that in order to keep this management and the streams flowing and working in the manner in which they should, they have to be serviced from time to time, and the debris removed. That's what you said.

MR. DREYER: That's correct.

ASSEMBLYMAN PENN: Okay. And if you didn't have that, would it mean that you'd have to use a lot more pesticides and spray into those waters? That would have to be done in order to control those mosquitoes?

MR. DREYER: Yes, certainly. And, in fact, it increases and becomes worse again -- as I've indicated -- because of man's activities. This aggravates -- pollution in the silt, and the trash and so on -- it aggravates the capability of an area to breed mosquitoes. A good, clear, high quality wetland, in many cases, will not breed mosquitoes at all. But, we don't have too many of those, regrettably, in Middlesex County, although we're anxious to see them protected.

ASSEMBLYMAN PENN: But right now, you do service, through your Mosquito Commission -- and I suppose similar to the one we have in my county, Somerset County -- continue to keep as many of the streams open, and moving, and the water not stagnated. And that's what you do right now.

MR. DREYER: That's correct. But we're becoming less and less able to do that because of permit procedures slowing us -- not slowing us down -- but absolutely shutting us down. And I may just comment that we're somewhat concerned about what the stream encroachment people would require -- I'm a little confused there -- as opposed to what may be required under any wetlands bill. I sometimes in my office refer to that division as the Division of Environmental Destruction. They sometimes -- they often would require for restorative maintenance 100 year storm design. And we have actually thrown out many projects and refused to do them because of that. In fact, in the last six months, we've withdrawn applications on two because where our restorative maintenance was proposed on relatively small streams, they would require that we put a large trapezoidal channel and build haul roads into the area and so on. We disagree philosophically with that approach. We do recognize wetlands, and if they are properly managed -- this is our main concern -- that they won't breed mosquitoes. But they do have to be managed, and on a preventive maintenance basis.

ASSEMBLYMAN PENN: I think that it would be, probably, a good recommendation for this Committee that this type of maintenance be excluded from any wetlands bills so they can continue and limit the use of pesticides. Is that, in some ways, what you're saying?

MR. DREYER: With some limits, yes I would say that. I think we have to have parameters for limitation. On the other hand, in some large areas, I am not opposed, and never have been opposed, to some regulation. I am very much opposed to regulation that says that if there's wetlands vegetation we can make up the rules and decide whether or not you're going to be able to do something. And, most of the municipal engineers, public works department that we work with are, I can tell you, totally frustrated with attempting to get things through DEP.

I have mayors and public officials calling me all the time and saying can you clean this out or you clean that out. And I say, if you can get the permits from DEP and Army Corps, and if it impacts considerably on mosquito control, then we will consider the project. And, nine times out of ten they drop them, because they don't want to undergo that expense and time.

ASSEMBLYMAN PENN: Thank you very much.

ASSEMBLYWOMAN OGDEN: Mr. Dreyer, when you talk about water management, are you talking just about clearing the waterways, or are you also talking about draining?

MR. DREYER: Well, I'm talking about an overall concept. Again, the term is water management. We don't always have to drain, and in many cases we would prefer not to drain for mosquito control. As things turn out, most of the time that is what happens, because people are interested in flood control, property owners are interested in getting water off of their property, and those kinds of things are forced upon us. If we get into a flood plain area, the Division of -- the Division in DEP -- to get a stream encroachment permit requires certain size structures. There are very healthy and can be very healthy impalliments (sic) and wetlands that don't breed mosquitoes, or that don't breed mosquito species that need to be sprayed or worried about. For example, some large lily pad areas that are permanent kinds of large impalliments (sic) would create only culex teratans, which is a mosquito that feeds almost exclusively on frogs, and we would never spray that kind of a site. Nor would we ever propose to drain it.

From the standpoint of water management overall, there are things that we really should be doing or could be doing that we can't do because of outside pressures. And maybe, ultimately in the long run, with water -- with the wetlands regulations -- we will be able to. And I will just cite that in the salt marsh areas we can do open marsh water management, which is a system that's been developed between mosquito

control and fish and game people that actually enhances the overall productivity of the marsh from the standpoint of wildlife and the overall estuary as far as its nutrient and so on into the bays and so forth.

Now, that kind of water management can be done; an oasis kind of system. We don't always have to drain out; we could drain in or flood in many cases. But, regrettably, we're not often able to do that, particularly in metropolitan areas.

ASSEMBLYWOMAN OGDEN: Just two points I'd like to make Mr. Dreyer. I, basically, am in agreement with you that maintenance or repair of active irrigation or drainage ditches should be exempt, and in the previous legislation it was. The reason this time that it's put in a general permit category was looking, again, to the delegation of the 404 Program, and not having an exemption for them that we figured that we had to go that route. But, you know, I would like to see us work out something that would go back to the exemption.

And then, the last point, in terms of the stream encroachment permit, that my legislation directs the DEP to take all those programs that are involved in any way with wetlands. And one of the real problems with them has been that they haven't had proper guidelines. That they wanted to protect wetlands, but have done it in a way without certain standards. So, that's been frustrating to them, and equally or more so frustrating to the applicant. So, what my legislation does is to direct the DEP to put all those programs together, and just to have one freshwater wetlands permit.

MR. DREYER: I think an important point was made today when someone said that the regulations should be in the legislation. If you have a building code, you don't send the building inspector out to review a project with arbitrary decisions to make. It's either a two-by-four or a two-by-six that's required. When we get into the administration of regulations by DEP, we have that kind of syndrome.

And the other one that bothers us a great deal -- we who have to put our boots on -- and we work all the time with the environmental commissions, and in fact, we have never had a serious problem with environmental people; we've certainly had disagreements, but we've been always able to work them out -- and that is that DEP, like many others, I guess, have this syndrome that the way you work is you put your suit and tie on and go into an air conditioned office and look over plans and so forth. And I've seen in many cases people submitting things just leave things off of plans, because they know those people will never be out in the field. And I think that any kind of legislation that's going to require review in wetlands, should require that the reviewer have a pair of boots. (laughter)

ASSEMBLYMAN PENN: I agree with you. I think we all agree on that.

ASSEMBLYWOMAN OGDEN: Is Mr. Peter Brown here from Ducks Unlimited? (no response) I guess not. Robert Anstett from the Citizens Conservation Council of Ocean County?

ROBERT ANSTETT: Hi. I have a prepared statement, and I'll read it. It's a fast one. It's going to shift the emphasis from what we've heard here this morning, I believe. I have a few comments regarding some of the things that were said so far this morning by other people making statements.

Regarding the statement by the Mayor of Parsippany/Troy Hills, who has left, I feel that when the Governor made a statement in his State of the State address, in 1986, that he meant what he said. And, regardless of the fact that it had to do with the Ogden/Lynch wetlands legislation and it was of last year, I still would like to go on record as saying that the groups that I represent in making this statement today would like to be known as groups that indicate that the Governor meant what he said.

I represent today the Citizens Conservation Council of Ocean County, the Barnegat Bay Preservation Coalition, and the Ocean County Coastal Zone Environmental Coalition.

Another statement I'd like to bring up is something that came to me before I read this prepared one, is that in making a poll of the 10 districts of southern New Jersey, I found an indication of cosponsors to the Assemblyman Penn Bill almost unanimous. There was no sponsorship and support of the Ogden/Lynch legislation in all of the 10 districts in southern New Jersey. I believe there were three Assemblypeople that had no action on legislation. That surprised me. Usually, in my own county I have two legislators of different parties, and both of them are cosponsors of the Penn Bill.

Being an ardent environmentalist, I can't really relate to that, because I've gotten mail that 102 environmental organizations in this State are staunch advocates of the Ogden/Lynch legislation. So, with that in mind, I've prepared a statement with the essence of trying to shift the emphasis toward what I presumed would be some of the comments this morning.

It is not accurate to label this legislation as pro-environmentalists and anti-development or anti-growth. We suggest the developer, as an individual special interest, at best, as opposed to, not environmentalists, but the fortress of the common man in this State. And that massive scream of pain and anguish is from the general citizenry. And it proclaims ever louder to the State Legislature that it wants a better control of urban sprawl, specifically in terms of freshwater wetlands laws. The League of Women Voters, a member of our Council, reporting on a recent poll in Ocean County, found that 71% of our residents are insisting on more stringent regulations on growth patterns. And we believe this Ogden/Lynch legislation will succeed in doing that.

I'll digress slightly to indicate that our Council is made up mostly of citizen groups: rod and gun clubs, Veterans of Foreign Wars, League of Women Voters, U.S. Oil Conservation District, the Extension Service is an advisor. I'm a recycler for the last 15 years, running the program in Brick Township.

I represent the ethic and the anguish of working people within a 30,000 member coalition, including the county VFW, and that group's representative, Jim Leonard, crystallized our warning and our charge to pass this Ogden/Lynch legislation by writing -- And it's a poem, and perhaps it'll change the emphasis here: "Cry Halt," it's called:

"Cry halt you silent masses to the defilers of our land. Cry halt to the polluters who rob its beauty grand. They've leveled our forests, polluted our streams; they say it fulfills our country's dreams. They found virgin land, untouched since time began, sea bound streams aflowing since before the age of man. They have devised many schemes they say will improve on God's plan.

"Cry halt you silent masses. Stop these polluters, you meek. Cry halt to the defilers. The battle is on for the bogs, the marshes, and the creek."

If there are any questions, I thank you for the opportunity to come here.

ASSEMBLYWOMAN OGDEN: Thank you. Any questions?

ASSEMBLYMAN PENN: Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. ANSTETT: Thank you.

ASSEMBLYWOMAN OGDEN: We would like to have a copy of your poem, because I think it's very good.

MR. ANSTETT: Give credit to Jim Leonard. I didn't make copies for the Committee.

ASSEMBLYMAN PENN: We'll get some made.

ASSEMBLYWOMAN OGDEN: We have Mr. Clifford Heath, who is President of the New Jersey Asphalt Pavement Association.

C L I F F O R D H E A T H: I had the occasion to go before Assemblyman Franks about six months ago, and for a while I thought perhaps we had reviewed and reenacted some of those commentary about the frustration we all deal with in the regulatory process in New Jersey. And, we don't fault the

Department, necessarily, for it. Perhaps we have encumbered them and given them so much responsibility in recent years that they haven't been able to grow into the size necessary to in an expeditious way process all the applications. We are involved as an asphalt pavement association with the air quality area, and the gypsy permits, and all the other.

Today I want to just quickly review our position. And we do support the Penn Bill, 2499. I'm here also on behalf of the Associated General Contractors of New Jersey. And they prepared a statement for me, and our Association, the Pavement Association, concurs completely.

We favor the bill because we believe it's a practical approach to the problem of balancing environmental concerns with those of the business community. We'll be faced with either bill with some regulations and some effect on our industry as the people responding to the growth in New Jersey; the highways that are needed, the local roads that are needed, are all coming about as a consequence of the development in New Jersey. And we all are aware of the road conditions, the clogged highways, the back roads that are currently getting a complete -- really a complete -- design surplus beyond what they were designed for initially.

The Penn Bill, we feel, directs the Department of Environmental Protection to develop a classification system which would prioritize wetlands' value so they are regulated consistently with the benefits they provide.

We also feel it precludes duplication in the permit process, and this is a very real concern by many of the groups that you've heard here today, and many, perhaps, have been at the other public hearings -- the duplication between our State government and also the Corps 404 Program.

The bill doesn't require the buffer zones, because we do feel that the wetlands themselves, as previously stated here, do provide and act as buffer zones between dry land and water courses.

It would exempt the minor maintenance, reconstruction, and repair activities for roads. I smile, maybe you realize how we feel about that. We certainly don't want to inhibit in any way necessary road development in the State. It's necessary to get our people from their jobs. We all know that the jobs today are out on the countryside. People live in the country, and they now work in the country, and they're finding it increasingly difficult to get from the place of their home to the place of their business.

Provide a grandfather clause, which we feel also is very important, which allows the applicants who have already gone through extensive reviews some period of time. And we have stated in here at least six years after enactment of the Act that their plans would stay in place, and their review would continue.

For these reasons, and many other reasons, the Associated General Contractors, the Asphalt Pavement Association, respectfully ask the Committee's favorable consideration of A-2499 as the better alternative wetlands legislation. And, we thank the Committee for the opportunity to present our views. Someone alluded previously to how many years; my notes and my file is about that thick in the back, and I think we've been three years at least since my first notes in 1983, and I commend your patience. After watching Channel 13 last night, and the Rhenquist things, I do appreciate what it must be like to sit here day after day and listen to these hearings. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you, Mr. Heath. Are there any questions?

ASSEMBLYMAN PENN: No.

ASSEMBLYWOMAN OGDEN: No. Thank you. Mr. Newland Smith, of Medford. Is he still here?

NEWLAND R. SMITH: Newland Smith. We live in the State which is most densely populated. We live in an area--

ASSEMBLYWOMAN OGDEN: Mr. Smith, would you come up here just for purposes of the recording for the full, complete hearing? (witness moves up to microphone)

MR. SMITH: We live in the most densely populated State. In South Jersey, we are in an area where the population is growing very rapidly. We need a balance between our necessary growth and our appropriate growth, and the preservation of resources today which will be available to the people we bring in with new growth. We are under severe pressure for water in South Jersey right now with the present level of population. If we do not stringently preserve wetlands we reduce the availability of water in the future for the population which we bring into this community today.

General welfare is a complicated proposition. Of course a tax base is a part of it. But, resources tomorrow are also a necessary part of it. And, I feel that the general opinion of people who have worked at it is that more stringent requirements are needed to preserve water supply and other aspects of natural resources for the population we are bringing in now. Our population is very heavy, it is growing. We need to preserve what we have for the people who we bring in. And, both of these bills will be considered; modifications will occur in either one which prevails. I hope that the modifications will be made on the Maureen Ogden bill, rather than on the Penn bill. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Are there any questions? (negative response) Thank you very much, Mr. Smith. Sean Reilly, I know that I see your maps there, and even though we saw your tape before, since we have some time, if you'd like to make another presentation, I'd be glad to have you do so.

S E A N R E I L L Y: Madame Chairman, thank you for the opportunity again, and Assemblyman Shinn and Penn. I decided this morning to take this opportunity to try to--

ASSEMBLYWOMAN OGDEN: First I should ask you, Sean, you are representing your own organization, or--

MR. REILLY: Yes. No, I'm Sean Reilly, President of Land and Environment. I've been retained by the Builders League of South Jersey to conduct an analysis of all the wetlands legislation, and all of its impacts with respect to administration. The Builders League of South Jersey, just for your information, membership builds most of the housing and development in southwestern New Jersey. Their members do.

What I want to do this morning is cut away from the rhetoric and the flamboyant statements on being supportive or against one bill or another, and deal with some hard issues that we have spoken with many times upon many times before. But, I want to make sure there's a clear understanding of what the issues are we're dealing with. I'm going to start with something as basic as wetlands -- the perception of wetlands -- and what (word inaudible).

(At this time, witness is using charts and posters for visual aid) I've taken two posters here put out by the New Jersey Conservation Foundation which show wetlands. This is their public relations program to show what wetlands are. And, I must say at the outset, wetlands are an important resource that must be managed carefully. There's no debate about that. What we're looking for here is an administrative structure to regulate those wetlands. These wetlands that you see here everybody understands as wetlands, without dispute -- swamps and bogs -- and this particular piece shows virtually every scene is a water scene, with birds and special rare plants, and animals in wet wetlands.

Now, just for perspective, when we're talking about wetlands, I took the National Wetlands Inventory prepared by the U.S. Fish and Wildlife Service, and I opened it to the page on Burlington County, for example. And the two pages before that deals with New Jersey. It shows what percentages of the

counties are covered by wetlands. And, Burlington County, Ocean County, Atlantic County, much of southern New Jersey is 25% or more covered by wetlands. Now, it's not this kind of wetlands. Just to make it clear, I went to the next page, and it says in Burlington County, it has 136 thousand plus acres of wetlands. And I quote, "67% of this wetlands acreage..." -- that's more than two thirds -- "it is what's called pollustrian wetlands." There's no water. Virtually no water at any time of the year is standing on the surface of three quarters of the wetlands in Burlington County. And the chart before that indicates that that basically holds for the entire State of New Jersey.

And I'll give you a color-coded version of this which shows that we have, for the purposes of my discussion as it starts out here, wet wetlands, like this, one-third, and two-thirds what I call dry wetlands, in that the water's below the surface, but it's not on the surface for at least two-thirds of the wetlands throughout the entire State.

So, to set the stage, we're not talking about, generally for the most part, development encroaching on wet wetlands. These are in the heart of streams. The what I call dry wetlands, or upland wetlands, fan out from the stream corridors, and development, generally, is impinging on the edges of those kinds of wetlands.

Now, one last use of this, the Army Corps now has a set of guidelines called the 404 B-1 Guidelines. And, Administrator Daggett, the other evening in Morris County, indicated that both bills will have to comply explicitly with every word in the 404 B-1 Guidelines. I have them here before me. Now, very few people, I would think have read the 404 B-1 Guidelines. They read like an environmentalists credo of anyone in this room who has testified in favor of protecting wetlands. The 404 B-1 Guidelines, essentially say this: That no wetlands in the State of New Jersey -- actually this is the

country -- can be filled unless it's of water dependent use, or needs access to wetlands. That means under the Army Corps regulations that either Assemblyman Penn or Assemblywoman Ogden's bill is going to have to comply with, not a single acre of either this type of wetland or the other two-thirds of non-standing water wetlands can be filled unless it's a water dependent use.

Now, generally the development we're talking about that comes in to DEP for regulation right now, is housing, shopping center, 7-Elevens, commercial centers, and other public uses, 99 plus percent of which are not water dependent. Under the Army Corps regulations, which are going to be taken over by one of these two bills, none of that area can be filled unless you can show for that particular use that there is no other site within a general marketing region for this particular activity, and this activity is so important to the public purpose that it has to be built. Then, you can fill in some wetlands, and that would be debated under these regulations -- perhaps you can fill in some wetlands -- and then you're going to have mitigate for those wetlands.

I wanted to make it crystal clear that the system that is in place today -- now this system wasn't in place in 19-- I've seen all the graphics from 1900 forward, where we've lost a lot of wetlands -- this system basically came into place beginning in 1975, and really got its strength from 1980 to 1984. In '84 it really locked in, when the Army Corps had to settle out of court that they would administer these regulations in an extremely tight fashion. The only place there's a window that Army Corps will allow you to fill wetlands without having to be water dependent, if it's less than one acre, and if it's a wetlands which is detached from flowing water, or the stream is so small that the flow of water is less than five cubic feet a year. And that's one acre. If you had 100 acres with a little stream, you would be able to fill up to one acre of wetlands adjacent to that stream.

If it's an isolated wetlands, they don't give a number of how much you can fill, although I suppose it's one acre, basically, they'll let you fill of an isolated wetland. And right now, the New Jersey Department of Environmental Protection, has a lock on that, in that they have to sign off on the oral report permit. So, up to now, DEP wasn't even signing off on the one acre. Commissioner Dewling just signed the letter which said, we will endorse only one acre of fill and no more in these very limited circumstances.

So, now we're down to what I'm trying to hone in on, is a realistic picture of the amount of fill of wetlands that could possibly go on under the 404 B-1 Guideline all by itself. It would be no more than one acre per job, and only those jobs that were not affecting the beautiful flowing waters that we saw here. Only the dry upland wetlands.

Now, that sets the stage for the regulatory picture we're talking about. The next issue I'd like to talk about specifically, given this regulatory picture, is the issue of duplication. As the legislation is proposed -- your bill, Maureen -- there is a possibility as it is currently worded of when this bill goes into effect, an applicant having to apply for this one acre of fill to Army Corps, and DEP, and a local municipality which has an ordinance. Now, we've spoken on this before; you've indicated you don't want to see that duplication. I'm going to presume -- I'm going to drop this issue -- that that's going to be worked out. Nobody wants one, two, three different sets of duplication. It's nonsense; it doesn't make any kind of sense for good government. If we're following these guidelines, one agency is plenty.

The next issue is buffers. This is perhaps the most serious, long term debated issue in the entire bill. A buffer, which I thought we had compromise on a while back -- and I said many times before, I have found nothing of any merit--

ASSEMBLYWOMAN OGDEN: We did have a compromise, Sean. It was your suggestion that we support it.

MR. REILLY: I know, that's why I said that. And I appreciated coming to resolution on that. We're back, however, to square one, with a three to four hundred foot buffer, which is very different than what our compromise was, and that's why I'm still talking about the issue.

Jason Cortell, a consultant, spoke the other evening in Morris County about buffers. And a question was raised about, if this table was a hundred foot buffer, and this is wetlands, the concept is there is a need for this hundred feet, or three hundred feet, or four hundred feet to protect this wetlands. Now, in the real world, you're protecting it from development. And development has to occur one to four hundred feet that way under the current proposed buffer. In the real world, the only thing that that development is going to do to this wetland is send storm water to it. People aren't going to trample between that 100 feet and here -- if it's a shopping center or whatever. There's a parking lot, and a building, or an office building and a housing development, and there's a distance here. Storm water that comes across this buffer for the reasons that were mentioned this morning, storm water is not going to flow evenly like in a sheet flow across one to four hundred feet, and empty out all its pollutants in the grasses or forest or whatever is there before it gets to the wetlands, which serve that same buffering effect for the wet water in the stream. It comes through a pipe. So, no matter how big this buffer is, storm water, under DEP regulations goes into a storm water pond, sediments are dropped out, perhaps even oil is required to be skimmed, it goes into an overflow pipe, which will run right through a four hundred foot buffer, right through the wetlands, and into the stream.

So, it makes no difference what this buffer is, in terms of net quality impact on the wetlands, unless this --

this really is getting to the extreme -- you're trying to protect the wetlands from noise, shadow, or car fumes. And there is a point that you have to have a break point on what reasonable governmental regulation.

Just for graphic purposes, we indicated one of the major problems with buffers in a bill, is that even if you promise not to build on a wetlands; you have a consultant come out and map it. The Army Corps or DEP comes out and certifies there is the wetlands, no doubt about it. Every application for more than two homes that comes before 567 municipal planning boards, has to come to DEP for a buffer analysis. So, if it's a 7-Eleven, it's a three house subdivision, or a hundred house subdivision, an office building, it has to go to DEP from the municipal level, to determine where the buffer is.

Now, what I did here was -- again for dramatic purposes -- is I took the most extreme buffer. Four hundred feet is this pink; the green is wetlands mapped by the National Wetlands Inventory, and the soils map. I traced the combination of the two onto this map. And some of these are the farmed soils which have no vegetation on it, but they're hybrid soils, and upon the farm being sold, they would become regulated wetlands. And I put a 400 foot buffer.

The reason I did that is let us say, as under the bill, a rare plant is found in those wetlands. If a rare plant is found in this wetlands, it is entirely feasible that this watershed is the habitat for that rare plant. And that means, under the bill, there's the strong possibility of a 400 foot buffer for all wetlands in that water shed, because a rare plant has been found there. This is what it would do to the development zone in Medford Township, which is specifically designed to be outside of pinelands north of Route 70. The green is wetlands, the pink is buffer. It basically decimates that land use plan.

It was said before that this system is helpful to the small builder because it is very predictable. Well, it sure is, it tells him forget about using the land. At least if there was a buffer there would have to be some kind of negotiation opportunity so you could determine whether or not you can even use that land. It is essential to have a buffer that good? But as I stated earlier on, even in the Pinelands Commission, the buffer was dreamed up, literally, by the Committee and the Pinelands Commission. They hired a consultant to define with a 300 foot buffer -- and when I say dreamed up, that was a little too cavalier; it was decided maybe we ought to have a protection zone around wetlands. How big should it be? Let's start with 300. A consultant was hired and he said, I don't know, 300 is pretty good. We have no evidence to say whether it's good or not. So, enough said about the buffer. The buffer, I think, is an issue which has got to be compromised down to almost nothing. I wouldn't say there are no cases where you wouldn't want to have a buffer. Jason Cortell mentioned one case: prime trout production waters.

Now generally, North Jersey -- the irony is -- prime trout production waters in North Jersey are the rocky slopes with no wetlands on either side. So, you generally have a wetlands in South Jersey where there's no prime trout production water. But there really would be some circumstances where the environment is so unique, perhaps this kind of a situation where you want to have a buffer from this pristine water. But, maybe the bill should say that where there's a unique environment, we would like this kind of a buffer, only if the township allows clustering. It puts it on the township which may be wanting to preserve this area to say, fine, rather than strip away this buffer from the applicant, we'll allow him to cluster his development away from the edge.

Of course, you can't do clustering with a shopping center, but at least with some uses you could.

ASSEMBLYWOMAN OGDEN: Sean, you've already spoken for 15 minutes. You spoke at a previous hearing through your tape, and we have one more speaker. So, out of fairness to everyone, could you please finish in five minutes?

MR. REILLY: Yes, thank you. I'll go straight to the heart of my administrative analysis which Mr. Sinclair spoke of earlier. I thought this was going to be helpful in terms of being used, except the print looks like it's going to be too small.

Now, the analysis you're going to see right now I've submitted to you, Mrs. Ogden, and basically it says if we have these two bills, and DEP is going to have to regulate all these activities in the bill, how many permits is DEP going to get a year? Now, I'll give you this information and you can hand these out to the audience if they would like to look at them. This is certainly subject to not a conclusive discussion this morning, but at least it's food for thought, and I encourage some debate. I sent these to -- or I should say, my figures, in a previous memorandum -- were reviewed by DEP. And I must say the responses were woefully inadequate.

Now, I'm going to summarize this sheet real quickly. What I've shown here is New Jersey has 567 municipalities. What I've tried to show here is the activities in a planning board, a zoning board, a building department, a road department in each town, and all of those activities which would have to either have a wetlands determination or a buffer determination. What I've come out with, on the left column, you see DEP actions. It totals three actions a year per town, for things they see now. An office or apartment building near wetlands, for two developments for a 100 homes, or 50 homes, or whatever -- but two developments with wetlands and buffers. Twelve hundred applications per year. That's in between two answers we've gotten from DEP; one that there'll be three or four hundred permits, another form Mr. Weingart which said there could be one or two thousand permits.

However, you've got 567 towns, with not only the 404 B-1 Guidelines going to be administered, but according to the Ogden legislation, things which are added, add about -- I don't know what percentage -- two to three or four times the regulated activities that the 404 B-1 regulates. Such as the placing of obstructions -- whether or not they interfere with the flow of water. That means a fence, a telephone pole. The destruction of plant life, including the cutting of trees except when performed to the minimum extent feasible for land surveys or slope borings.

There are so many miniscule activities that that definition, which basically says if you wanted to put a 100 pound rock in a wetlands that's an obstruction that doesn't interfere with flow, it needs a DEP decision. This paragraph right here is what gives the developing community the chills, because it all will depend on how DEP determines regulated activities, and even if those activities, such as a fence or a telephone pole, have to get a general permit, you still have to get a permit. That means it must go to DEP and get a permit and come back.

Now, if there were a few of those a year, that's one thing. What I've tried to tally is I've even cut -- one criticism of my first analysis was I didn't subtract the Pinelands towns, I didn't subtract the HMDC -- Hackensack Meadowlands towns -- from my analysis. So, subtract the 52 Pinelands towns and 30 some, whatever it is, Hackensack Meadowlands, and gave a few more away, and I came up with 400 towns. If in 400 towns the planning board only had two applications a month, which had some kind of wetlands or required a buffer, and one big one a year. The zoning board had one big one a year -- I guess I've got about a minute left -- and the building department had -- for instance a lot owner comes in and says, I want to build a house. Now under this legislation there are sever penalties for building in a

wetland. If I'm the building department officer, he's going to say, have you flagged the wetlands on this property. So, that means the homeowner better go do it or somebody's going to get sued -- the homeowner or the building official -- if he doesn't know where the line is. And if he wants to fill in to build his one house, he has got to go to DEP to seek a permit.

So, I tallied this up. And it comes out to eight activities per month in a town. When you multiply that by 400 towns, at twelve months a year increments per month, you get 38,400 activities. Now, when I saw that I said, that's ridiculous. The Army Corps is getting now 1200 applications per year, and DEP is saying, you know, 1000 or something. However, what we're not looking at is that DEP only sees certain things now, only if you need sewer extension does DEP get to see the activity.

So, I'll leave this for your perusal, but when you add up the columns, there's a very strong logic, I think here, that I have not been excessive in any in the activities that a town might undertake. Additional very important issues are, existing projects in a town which are being built, which have all the approvals from DEP and the town and everybody, even Army Corps, where the next phase of development comes in -- phase three -- and they have to go back to DEP, under your legislation, Maureen, they would have to start from scratch, redefine the wetlands under this bill, and redefine the buffer. That would stop those developments in their tracks. You would have, in essence, a construction stop order at that phase.

And, finally, projects with preliminary approval, which are all finished. Have gone through Army Corps, have gone through DEP, gone through the planning board, are ready to put a shovel in the ground, have got to stop, back up, redo the wetlands, redo the buffers. And, remembering my initial comments, none of those developments could get more than an

acre of fill. It's not a big insult to the environment if they got one acre of fill, yet they're going have to get through that kind of a hoop.

When you get down to the end -- one minute I'll give myself, Maureen -- this graph translates these numbers into cost. In this bill, and supported by DEP for reasons -- I can't fathom why DEP would support this, because DEP is always underfunded, as was stated by Mr. Sinclair. Legislature gives them tons of tasks, which are nice and spicey and look good for the legislators solving of toxic waste and whatever, but never give enough money. ECRA is a classic example. Five hundred thousand dollars DEP says will fund 25 people. I called Army Corps Philadelphia, and Army Corps New York, and this corroborates what Assemblyman Penn found-- I got here and even cut it back a little bit -- 1.5 million Army Corps spends a year with about half of its staff in the two offices regulating twelve or thirteen hundred permits -- I should say applications. Only half of which or less are wetlands.

Assemblywoman Ogden and Assemblyman Penn have dollar amounts in their bills. Assemblyman Penn's is 2 million. This is a bit dramatic, but, this is only a partial graphic depiction of what it would take in budgetary terms to fund enough staff to handle a low of 14,000 permits, and a high of about 50,000 permits of buffers as well as the 404 B-1.

I'll wrap it up with that little bit of drama. However, I challenge anybody who's in this debate to sit down and come up with an honest administrative number for the categories I have here. I'm willing to even throw categories out, if it appears that I've overestimated. I've even gone so far as to say, well maybe it's only 200 towns a year. Make believe there are no permits for 367 towns, but 200 towns come up with these numbers. You still come up with 25 - 30,000 buffer and DEP permit actions. Unless everybody out there cheats and doesn't go to DEP, and there's no enforcement. Then you'll have only a couple permits.

Thank you for your time.

ASSEMBLYWOMAN OGDEN: Are there any questions, Jack?

ASSEMBLYMAN PENN: No.

ASSEMBLYWOMAN OGDEN: Bob?

ASSEMBLYMAN SHINN: One brief question. What was the compromise you reached with Mrs. Ogden in the previous legislation?

MR. REILLY: The buffer was going to be five times the width of a wetlands, or 100 feet, whichever is less. And that could be further reduced upon showing there would be no negative impact on the wetlands. No water quality impact itself.

ASSEMBLYMAN PENN: Can I ask one question. What did you think and what was your analysis of -- and you touched on it -- Mr. Cortell's proposed buffer program?

MR. REILLY: If you're going to have a buffer -- which I'm not standing here supporting, actually -- Mr. Cortell and two of his three categories were very good. Flood plains, special waters, and special water quality -- in essence, the State qualifications of streams are by quality. It's either high, medium, or low quality, and they've got flood plains. His third category -- and being from Massachusetts I'll give him a break, maybe they have different lists or process in Massachusetts -- there is no habitat list of rare and endangered species in New Jersey. And his third category was habitats of rare and endangered species or possible habitats of rare and endangered species. Well, in speaking with one of the personnel, Mr. Hampton, of DEP on the rare and endangered species plant list, New Jersey has 250 rare, endangered, or threatened species of plants. So, that's 250 environments that should have -- on the list of -- this plant likes this kind of soil, this kind of shade, this kind of other plants around it, this kind of water. That's just the plants. Then you have animals -- I don't know how many, 20 or 30 maybe. You'd have

to have all those environments listed. Then what you'd have to do is go out and look at this wetland here, and you would have to describe explicitly its environment. Then go to the State's environment list and see which one matched up and say, whoops, this one looks like it could be the same as that. It is such an extraordinary task you'd have to do, I, as a consultant wouldn't even want to touch it. I mean, it would take too long, would be too complex, and really shooting in the dark.

ASSEMBLYMAN PENN: Okay, thank you.

ASSEMBLYWOMAN OGDEN: Thank you, Sean. I think you really should support my bill, Sean, because your analysis would make it the full employment act for all environmentalists.

MR. REILLY: It certainly would. It certainly would.

(laughter)

ASSEMBLYWOMAN OGDEN: Our last speaker is Mr. David Moore of the New Jersey Conservation Foundation.

D A V I D M O O R E: Good morning. Thank you very much for providing the opportunity to address you this morning. We have prepared a statement, which I'll hand out, however, in the interest of time, I think I would much rather summarize what the statement says and perhaps respond just a little bit to some of the testimony you've already heard.

The New Jersey Conservation Foundation is a non-profit membership organization with about 4000 members in the State. We've been interested in the freshwater wetlands issue for a long time, as most of you know. A good deal of our testimony addresses the differences and the problems between the two bills. I'm sure Mr. Penn has heard more than he wants to hear already, so I'm not going to dwell on that. However, since Assemblyman Foy did put an analysis that we prepared in the record, in a minute I'd like to ask Tom Wells, who's Assistant Director at the Foundation to just outline a response to that.

One thing that has become clear and that has been mentioned several times this morning, that neither piece of legislation is ready or able for the 404 assumption. I think Mrs. Ogden has demonstrated time after time that she has been willing to make compromises, and indeed the number of compromises that have been made already are such that assumption is not even possible even for her legislation.

The need, I think, to consolidate permits within DEP and to provide for 404 assumption everybody agrees with. Certainly we do. I think that's been a major problem for everybody, and it's also been brought up by Mr. Dreyer, I think it was, this morning, that the Stream Encroachment Act often destroyed as many wetlands as it attempted to preserve, and it too needs to be incorporated into this process. I certainly fully support that.

With response to the argument that's been put forward with respect to development and the cost, I think Parsippany is a good case in point, and I'm sorry the Mayor isn't here. While we all agree, I think, also that development is needed, and wetlands protection is needed, Parsippany is sort of a good place to look at, particularly with the issues that the Mayor brought up this morning. In previous announcements in the press he has said that Parsippany is in a state of crisis with respect to its road system, because development has preceeded a pace there without the necessary infrastructure to match. Indeed, he is depending on a sizeable amount of wetlands to be developed in order to provide the ratables to solve his road crisis.

If that occurs, the public is going to pay in a different way, because while Parsippany is at the upper end, it certainly is in the mainstream of the Passaic River Basin, and wetlands destruction there is going to add immeasurably to the need for flood control further downstream.

So, if you follow the complexities that are involved here with private and public finance, the end result is that the public is going to be paying several times over in order to subsidize the development the Mayor would like to see on wetlands. Indeed, even the proposal he spent some time on with respect to a transfer station is not only located in one of the best wetlands in the eastern United States, it is also one that has been targeted by utilities and indeed his sewer system runs through it. But it also happens to be a State Park, and the parcel in question had been under active acquisition and negotiation by Green Acres for several months prior to the county's announcing its decision to locate there. Certainly, there must be alternative sites for transfer stations other than in a prime place like Troy Meadows.

Wetlands protection is critical to New Jersey's environment and to its economic future. Not only will the quality of life be maintained with wetlands protection, but also the stability of our economic system. One other point I want to make, and that is that it's clear also that New Jersey's economic future depends a great deal on how it is developed from here on out. It's very clear to me, and to a lot of other people, that the kind of sprawl that we've experienced in this State is economically counterproductive. It's not good for us in any way, socially, or environmentally, or economically.

But, we have to understand that even if this State developed -- continued to develop -- the way it did in the '60's, which was the highest growth period in history, only about five or six percent of the open space that remains in the State would be used up over the next 20 years, if that rate of growth continued. So, it doesn't make any sense at all for that kind of growth to occur in sensitive areas or even near sensitive areas. We have farmland to preserve, we have wetlands to preserve. There is plenty of land that is left

over that is open where development could be placed, either concentrated or sprawled, without getting into the wetlands issue.

One other small point, and that's with respect to buffers and their justification. I think Mr. Reilly referred to the Pinelands as being an outright guess, and while it is true that scientific opinions differ on the distances -- and that's one of the reasons why we get into all of this discussion -- the fact of the matter is that some sort of a buffer is required. All of us, I think, among experts, can agree on that. In the Pinelands case, there happens to be some justification with respect to groundwater quality in that in order to avoid the introduction of nitrates into surface waters, and wetlands, and streams, 300 feet is really a minimum distance. In fact, that's the basis for the acreage requirements -- 3.2 acres per unit -- that came up as a result of septic discharges. So, there is justification there. It's not seat-of-the-pants requirement as Sean had indicated. And the best ichthyologists in this country have yet to agree on a distance because it's so dependent upon individual wetlands and circumstances and the kinds of activities that go next to them.

I mentioned before that we'd like to respond to the record with respect to what Assemblyman Foy has put in the record. And I'd like to have Tom review those points with you now.

T H O M A S W E L L S: Good afternoon. I'll try to be as brief as possible. What Mr. Moore referred to was a rebuttal to an analysis that we had prepared concerning the two bills that was put into the record by Assemblyman Foy.

The first item is our contention that because -- well, I'll just read it straight. The Penn bill requires the State Wetlands Act will only become effective after the State has assumed responsibility for Section 404 Wetlands Permit Program. Innumerable provisions in the Penn bill are too weak

to allow for EPA delegation of the Program. Thus, it would put the State in the Catch 22 position where there would be no wetlands program. Mr. Penn's rebuttal to that is, "To date I have not been informed by the U.S. EPA that my bill is not satisfactory for delegation." So, it was obviously prepared before the testimony by Christopher Daggett on Wednesday. So, I feel--

ASSEMBLYMAN PENN: What page are you on?

MR. WELLS: I'm on the first page of our analysis.

ASSEMBLYMAN PENN: Okay. You're reading my rebuttal. What I have here is different than what-- That's why. Go ahead.

MR. WELLS: Okay. Well, this was the one that was put in the record this morning.

ASSEMBLYMAN PENN: Yeah, I have a copy of it here.

MR. WELLS: Okay. And it says, "To date I have not been informed by the U. S. EPA that my bill is not satisfactory for delegation." So, our comment still stands.

ASSEMBLYMAN PENN: Okay. You're using the last -- just the last -- part of it, then. You're not reading the whole comment.

MR. WELLS: Right. Well, that's the essential element.

ASSEMBLYMAN PENN: All right.

MR. WELLS: There's no way that it could stand-- Or that, our comment would change in this case, because EPA has said, conclusively, that your bill would not provide for delegation.

ASSEMBLYMAN PENN: Said both bills.

MR. WELLS: Right. But, Mrs. Ogden's bill is not linked -- does not link the State programs effectiveness to a takeover to the federal program.

The next comment is the definition in the Ogden bill is not what is used by Army Corps, rather is contained in the Federal Clean Water Act. The Federal Clean Water Act, and the

regulations that implement that Act, the definition is what is in the Ogden bill. And, it controls assumption. If you don't use that definition, you don't get assumption.

To further your comment, "My bill provides specific terms, the precise working definition of freshwater wetlands that the Army Corps uses in the field." That's not so, because you, in your definition, isolated wetlands of five acres or less are excluded from the definition of wetlands. The Army Corps has no such exclusion to the definition. There's also an exemption for soils that have been disturbed and no longer contain hydrophilic vegetation in your definition. That's also not part of the Army Corps. As well as soils with seasonable high water tables of greater than 12 inches below the ground. That's not part of the Corps definition either.

Then your analysis goes on to say that your bill regulates the identical types of development that are regulated under the Army Corps program. These have been shown to be ineffective in addressing things such as dredging of wetlands, drainage projects, and a lot of other uses. Since the only thing that your bill and the Army Corps regulate is a disposal of dredge and fill material into wetlands.

ASSEMBLYMAN PENN: That's the only thing the 404 Program regulates.

MR. WELLS: Right, and it's been proven ineffective by Fish and Wildlife Service studies.

ASSEMBLYMAN PENN: But, in order to be -- to have assumption, that has to be a minimum. You must have it in the bill.

MR. WELLS: Right. It has to be a minimum, and we're--

ASSEMBLYMAN PENN: And we're saying is that has to be in the bill in order to have delegation.

MR. WELLS: Right. I agree.

ASSEMBLYMAN PENN: Okay.

MR. WELLS: But we're suggesting that we need more than what's in the bill. That's why the State is-- One of the things Mr. Sinclair brought up this morning was that we should be able to justify why we're doing this. And one of the reasons why we're doing this is because wetlands have been destroyed by more than just disposal of fill into wetlands. And therefore, we need to make the range of activities more inclusive.

Flipping to the second page, starting at the beginning of your statement: "Consistent with the Army Corps 404 B-1 Guidelines, my bill calls for the applicant to be prohibited from discharging dredge and fill material into wetlands unless there is a practical alternative. Otherwise, the applicant must prove that the proposed activity is water dependent, or be denied a wetlands permit." Your bill does state those requirements. But then it goes on to say, "The permit requirements of Sections 5 and 6 of this Act--" This is one page -- well, it's in Section 7a of your bill. "The permanent requirement shall be satisfied by the creation of new freshwater wetlands or the enactment or the enhancement of or expansion of existing wetlands to produce substitute wetlands whose size and ecological value is equivalent to or greater than that of the predeveloped wetlands." So, in effect, you're substituting mitigation for meeting either the practical alternatives test or the water dependency test, which is not acceptable to the Corps, EPA, or New Jersey's environmental community.

Dropping down to the next section, it says, "There has been no clear scientific justification for buffer zones around freshwater wetlands." There was significant testimony put in the record both by developers consultant, Mr. Cortell, and also by other environmental organizations as to the fact that there is justification for buffer zones -- scientific justifications.

Then, skipping the next section and going on, "In addition, other states that have adopted freshwater wetlands also do not require buffer zones" And the example given are Connecticut and Maine. I would refer you back to our column in which we provided our comments which state that buffer conditions are already in place in the Pinelands, the State's coastal zone, and in Massachusetts, Rhode Island, New York, and New Hampshire. So, Connecticut and Maine are by far a minority.

The next section talks about enforcement provisions. And, I'm glad that you're -- that comment says that you would consider changes if the Army Corps delineates that your enforcement provisions are not adequate. Clearly, in Mr. Daggett's testimony that he gave on Wednesday night, he referred to some of the minimum requirements for enforcement provisions, which are much more extensive than what are contained in your bill.

The next comment about classification of wetlands. Your comment says, "The coastal wetlands rating system was disbanded more than 10 years ago, and today's wetlands experts agree that wetlands are not equal value and should be classified accordingly." First of all, as Mr. Bennett stated in his testimony, there was a decision made in not putting a classification system into the coastal wetlands act when it was passed in 1970. Later on in the decade, in the later '70's, a system was tried, which was certainly more recent than 10 years ago, and it was rejected because so-called low value wetlands were being destroyed. I have a copy of the study that DEP did, that I'd like to put into the record regarding the non-utility of the classification system of coastal wetlands.

The last comment we had was on, actually, on mapping and notification. And the comment was that some states, including New York State, have mapped the wetlands. Indeed, the state that has taken over the federal program, Michigan, has not mapped its wetlands independently. It uses the

National Wetlands Inventory, and they're not even completed for the State yet. They already have assumption.

The kind of mapping that's called for in your bill would cost many millions of dollars has been stated previously. But, just to give you an example, the riparian mapping that's done on riparian lands throughout the State has cost over \$13 million and has taken eight years to do. And it only relates to a third of the State, whereas the mapping would be done in this bill would have to take into consideration almost the entire State. And we feel it would be an unnecessary expenditure for the public to have to go out and do that detailed mapping, when many of these areas will not even be targeted for development.

The next comment on exemptions mentions that your bill does not exempt regional jurisdictions in New Jersey in order to set forth a comprehensive statewide wetlands program that would encourage acceptance of delegation by the Army Corps. On this point we agree. I would say that the Ogden bill definitely needs to be amended to incorporate the HNDC and the Pinelands. But in that process I think that it should be explicitly stated that the Pinelands Commission would be the agency that would administer the program in its jurisdiction, only under somewhat revised requirements so that we would meet the minimum requirements of EPA.

I also agree with your next comment that perhaps some projects should be -- that are in the pipelines, or have received approval under current regulations -- be allowed to continue subject to receiving permits necessary under today's regulatory climate. Although I would take exception with the exemption in your bill that calls for projects that have merely applied for preliminary approval getting a six year grandfather. While those that have received it, perhaps under certain limited exceptions or criteria, should get some sort of favorable consideration, I don't believe that project that have

merely been applied for should get a six year grandfather from the bill. I think it just invites a whole rash of new applications to avoid consideration under the bill.

The last comment you make is that your bill exempts certain maintenance and repair activities on roads and utilities that would cause no adverse impact on wetlands. Whereas, the Ogden bill requires these minor activities to obtain a permit. These activities were submitted to EPA by Mrs. Ogden, and it was determined by a response by EPA that allowing those exemptions to remain in the bill would bar transfer of the federal program to the State. And that's why they were put into the category of general permits.

That's all I have.

ASSEMBLYMAN PENN: One-- I believe when Mr. Moore was testifying -- and I'm happy to see Mr. Moore here; he's a well-known environmentalist, and your comments are appreciated -- however, I've just got one question here. Didn't you say each wetland is different, in your testimony? I-- Each wetland is different, and therefore, each buffer should be different? In other words, you weren't talking about a blanket buffer over the whole State? My interpretation of your comments was that a case by case situation on buffers would be desirable. Is that correct?

MR. MOORE: I think you're putting words in my mouth, but as a practical matter, I wish that would be able to be so. One of the reasons why it is very difficult to do it that way is that in order to achieve some sort of stability and some surety in the process, that both the building community and the environmental community would like to see, some standardization is necessary. And while I think you're absolutely right that each wetland is different in some way from the next, in order to avoid arbitrary and capricious actions on the part of either the development community or the regulatory community, some standardization is necessary.

ASSEMBLYMAN PENN: But, so that a classification system might be desirable -- classification of wetlands?

MR. MOORE: I don't think a classification system is appropriate at all. And the reason for that is severalfold. One of them is that some of the areas that we classified, when we did do that kind of thing years ago, as degraded wetlands, are now first class places. That has happened as a result of pollution control activities and control of water quality. Hackensack Meadowlands, for example, although a saline system was written off years ago. The Division of Fish, Game, and Wildlife at that time figure they wouldn't spend any more time there at all. Today that's not the case at all. They're trying to preserve areas there. The Great Swamp, in your own neck of the woods, was also written off years and years ago. In fact, they were going to put a jetport there. That's certainly not the case today.

The other difficulty is with respect to classification if we do allow development of degraded areas, what's to prevent lower quality wetlands that might be developed as a result of the mitigation processes that would occur under anybody's bill from being turned into developments just because they were low quality by virtue of the fact that they were newly created, and/or not appropriate. In addition to that, if we develop all the low quality wetlands or even a major portion of them, we won't have anything to mitigate except good ones. There are all kinds of reasons. In addition to which, we don't have the technology to be able to do that anyway.

ASSEMBLYMAN PENN: Well, I think there's an assumption -- I think it's a false assumption -- that builders want to build in wetlands. That's not the case, you know. As a matter of fact, that's probably the most undesirable place to build. Builders do not want to build in wetlands. It's more expensive, and I think that the testimony on Wednesday night, two or three, and other builders, got up and testified to that fact.

What I think they're saying is that they want a right to know whether the land, number one, is buildable, and number two, whether mitigation under certain circumstances is possible or desirable. I think they want the same thing that the people who build roads and highways want. In other words, when they build roads and highways, there seems to be really not an awful lot of regard -- from point "a" and point "b", and you try to go around as much wetlands as you can. But I think that's probably -- and I think the testimony the other night was that we've lost more wetlands to roads and highways than we've ever lost to builders.

And another thing that is exempted in both my bill and Mrs. Ogden's bill, but was brought up -- and the only reason I'm bringing it up is because it was brought up by somebody, I think from your coalition, a Mr. Goldberg, or Mr. Goldberger -- regarding farmland, where he said that 70 some percent of the wetlands in Hunterdon County were destroyed, and I think he said 90 some percent of Burlington County were destroyed. And when I pressed him on it, he said it was destroyed by farmers. In other words, he's saying that farmland and farming of land destroys wetlands. I think if you look back over the transcript you'll see that he and I went into that at one time. And he had a chart -- I don't know if he has his chart with him or not today, but he came out with these facts.

I just want to know how you, coming from a farm district yourself, how you feel about this?

MR. MOORE: I think you're right in this, and he is right too. Agriculture has destroyed wetlands. There's no two ways about that. And, in fact, outside of New Jersey is probably the largest single source of the problem. Indeed the federal government is busy on one hand paying farmers to save them in some areas of the State, and also paying farmers to destroy them.

However, when in a changing system, as we have in New Jersey, and agriculture unfortunately becomes less important, as it has in many places, there is the opportunity for those lands to recover from agricultural changes. And indeed they have done so. The Great Swamp is a good case in point. That was nearly all in agriculture at one point or another in the past. And indeed, parts of Troy Meadows were too. However, they were very simple forms of agriculture, the recovery rate is reasonable. It's taken them 70 or 80 years, but they've come back.

The wetlands that have been destroyed in some of the urban centers in New Jersey are not coming back. And I think that's the difference.

ASSEMBLYMAN PENN: But, if you follow Mr. Goldberg -- Mr. Goldberg is it? -- Mr. Goldberg's reasoning, and what he had on his chart, he really shows that the farming community has destroyed more wetlands than any other group in the whole State. If you look at his scenario that he presented before us. And yet, under both my bill and Maureen Ogden's bill, we exempt farming. And I just-- So, I point that out, because that was a point that he made that I thought was a very interesting point that he had presented before us this time. And that's why I bring up there are a number of exceptions, and that is one particular exception.

MR. MOORE: Yes, I agree. And, I should also point out that we have, in all this legislation, also tried to provide exemptions for other places where there are public purpose conflicts, including highways and and other similar things. And, there's no question about the need for agricultural protection, and the fact that it's very important to New Jersey's future to have agriculture.

I should also point out, though, that it's no longer necessary today to do the kinds of destruction that were done in the past by agriculture, and it is being avoided now, as it was not in the past.

ASSEMBLYMAN PENN: Well, following along that line of reasoning a minute, don't you think that the developments that have been built, let's just say since 1980, that there has been far more consideration of the environment? In other words, we have water retention ponds that are being built in many -- and again this may be because they are required on the local level -- they have been to keep the runoff from the buildings onto the property, and have them filtered out before they go into streams. There seems to be -- and I've looked at a lot of developments that have been presented over the past few years -- and most of them seem to be far more conscious of the activities of the wetlands, and of the building, and of the total environment than they were before then.

MR. MOORE: I don't think there's any question about that. I think you're absolutely right, but we have a long way to go.

ASSEMBLYMAN PENN: But I think there has been a strong movement in that direction.

MR. MOORE: Absolutely.

ASSEMBLYMAN PENN: Okay.

ASSEMBLYWOMAN OGDEN: Bob?

ASSEMBLYMAN SHINN: No, I don't think I have anything.

ASSEMBLYWOMAN OGDEN: Thank you very much, Dave and Tom. We have one other request from Mr. Merkle of LINPRO Company. Mr. Merkle, if you'll be really brief, because I have a meeting in the middle of the afternoon back in my office.

M I C H A E L M E R K L E: Thank you. I really hadn't intended to do anything other than observe today, but listening to a lot of the comments, I'd like to leave you with one experience that, within the last 18 months I personally, with the LINPRO Company, have had as it relates to what was a supposed wetlands, and it turned out not to be wetlands.

We are in the process of developing a 200 acre tract that's in southern New Jersey, and I had some responsibility

for the company in acquiring this tract. And one of the things that we paid a lot of attention to ahead of time was to make sure that we purchased a parcel that did not include wetlands because we didn't want to get into any of the inherent hassles that one ends up with when you are involved with wetlands.

We entered into an agreement to purchase the tract, and in so doing, knew when we entered into the arrangement that there was a problem with the State's 208 mapping as it related to sewer service area. The mapping was incorrectly made back in the late 1970's. Both the Department of Environmental Protection and the Delaware Valley Regional Planning Commission both acknowledged that that error was made, but required that we go through a map change process that can take anywhere from 3 to 4 months to maybe 18 months. In our case, it took us 12 months to get through that process. The bulk of the time lost to get through that process related to a problem that cropped up with wetlands.

When we purchased the tract, as we do with any other tract of land, we review the National Wetlands Inventory maps for wetlands. There were two small areas designated on those maps within this 200 acres, but when you walked the site in the field, both of those small areas were out in the middle of farmed fields with groundwater table that were in excess of 10 feet, and nothing but soybeans growing on the sites. And we also had the soils checked, and it didn't fit any of the soil types that were required for wetlands. So, we felt comfortable that we could get beyond these mappings. We submitted to the Department of Environmental Protection to have the sewer service area changed, and the 208 map brought up to date. And they told us that we would have to go to the Army Corps of Engineers to have the Corps issue a determination as to whether or not we had wetlands as the maps indicated.

We contacted the Corps; went through their process. They spent several days on the site; took what might have been

close to 100 borings on the site, and determined that they had no interest and in fact we had no wetlands. We took that determination, which was issued in writing, back to the Department of Environmental Protection and the people in the Department literally told us that they did not like that determination, and were then going to bring in the U. S. Fish and Wildlife Service. I had heard previous horror stories about other developers that had involvement with the U. S. Fish and Wildlife Department, and as a result of that decided to get personally involved with them when they came down to the tract to make their investigations to hear first hand what they had to say as it related to this wetlands issue. As soon as I met the person, adjacent to the site, he told me we had wetlands -- he was going to find tons of wetlands -- and we just weren't going to build on it, and described a tract to me that sounded like it was under water. And I have walked every stitch of these 200 acres, and knew in fact that it was high and dry.

The bottom line on that site visit was, that by the time we got done at the end of the day, and walked the entire 200 acres, the gentleman was extremely upset, but agreed that we had no wetlands. He then issued a letter to the Department of Environmental Protection, and then finally, after the course of about 12 months, this map change went through. We went through with the determination that we had no wetlands, and finally did get our sewer approval so we could get the tract off the ground and get construction underway.

The reason for mentioning what I went through in this 12 month period, and the horrors of DEP, and having gone through the Corps determination and followed their regulations to the T and we're told we didn't have any wetlands, then to go back to DEP and have DEP say, we don't like their determination -- it was just as simple as that -- we don't like their determination. And then have to go through U.S. Fish and Wildlife Service who told me they were going to find wetlands

no matter what the cost was, and we convinced them that we did not have wetlands, and eventually got their approval. This related to one of the earlier points of discussion where there was talk about the buffers and discretion on the part of the Department of Environmental Protection. That just scares the heck out of me, when I'm going through something like this, and they just point blank say they don't like one determination and want to go to another.

If in fact there are going to be buffers -- and listening to both sides of the coin here -- it would surprise me if we don't end up with some kind of compromise bill that has some type of buffers in there. I would hope that we would try to tie those down, so we in the development community, if we've got buffers to deal with, know what they are. Please don't leave it to the discretion of the Department.

One other area that was touched on that kind of worries the heck out of me and the rest of my partners, has to do with some kind of grandfathering for existing approvals. If you take this 200 acre tract as an example, we've gone through the Army Corps of Engineers as it relates to wetlands and been told we don't have any; gone through Fish and Wildlife and been told we don't have any. And as a result of that expended, I guess close to \$10 million putting improvements into the ground in anticipation of a development schedule that would take at least the next five to six years to complete. But we have a substantial investment in the ground and would hope that whatever legislation comes out does afford us some kind of protection as it relates to that investment, especially in light of the fact that we've gone through the Corps, DVRPC, Fish and Wildlife, and DEP, and based on current day regulations -- and everybody seems to rely on the Corps regulations -- they tell us we do not have wetlands. The prospect of being faced with another bill that might put us in the position where somebody changes the rules of the game and we do end up with wetlands is really scary.

One last thought. I think it is extremely important to the development community to have one place you've got to go to get the permit, have the guidelines laid out, and then be able to obtain your permit. Even if we come out with regulations that we don't particularly care for, at least if we know what the ground rules are, the smart builders and developers will work within the constraints of those guidelines, like it or not. And, they'll know what guidelines they've got to follow in getting into a new development, and know that they're going to be able to get into the development and come out of the other end of it, hopefully profitably, because the rules will stay the same. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Jack?

ASSEMBLYMAN PENN: I just have one question for you. Do you feel that any of the problem with the situation of your determination of wetlands, do they seem to you with the maps that are presently used-- In other words, the scale of one inch which equals 2000 or 2400 feet, which is a pencil line on a drawing, which Fish and Wildlife would seem to think -- I mean, that 200 acres would just be like a pencil line on their map.

MR. MERKLE: I think that the scale of the maps may in fact be a problem. I'm not sure I personally could justify the expense of going to larger scale maps, but if you use the wetlands inventory maps and you had specific guidelines and reasonable definitions as to what were wetlands, what's not wetlands, and a reasonable process you could go through to have a determination made that in fact those maps are incorrect -- which they were incorrect in our case, and everyone has agreed to that -- you probably could live with that. I mean it would be great to have maps that are clear and concise, and you knew that was gospel and you were wasting your time trying to attack a possible error in the map. But with the expenses involved--

ASSEMBLYMAN PENN: Well, you're with a sophisticated company, so I'd like to ask you this one question. I have been told by an engineer that they could rescale the existing maps. Though they might not be exactly accurate, as they used them in the field, they could be updated. And that could be done for far less expense, they say, with computer techniques today, you could take and rescale all the existing maps and come up with new maps that would be scaled at one inch equals 200 or one inch equals 500, or something of that sort. Have you ever heard of anything of that sort?

MR. MERKLE: That may very well be do-able. If it is do-able, I'd like to see it. One of the problems you have with existing maps is that the width of your pencil point, sometimes depending on the size of your tract, could be another 40 or 50 acres, and when you go up to meet with the Department of Environmental Protection, they've got some of the widest pencils I've ever seen, and it sure in heck never gets drawn in our direction.

ASSEMBLYMAN PENN: All right.

ASSEMBLYWOMAN OGDEN: I think another point, too, Jack, is that if you're going to use a computer to basically enlarge it, and there's a fault in the original map, that fault is going to be compounded.

ASSEMBLYMAN PENN: Well, what I am saying is that it's going to take field work. But, overall to be able to sit down and look at a map that's been rescaled in that manner, it might be a lot easier to-- I know if you and I sat down and worked on a map at that scale, it would be a lot easier to work with.

MR. MERKLE: One of the things you have with a smaller scale map is there's a lot of discretion of where you draw that line when you go to actual construction drawings, and most people build off of plans that are one inch equals 50 feet or one inch equals 40 feet, and when you take a line that's one inch equals 2000 feet, you can do a lot of damage if you really

don't want somebody to get something approved in drawing it the other way. It's real easy to do, and at that scale you just can't see it.

ASSEMBLYWOMAN OGDEN: But I think the answer to your problem, as you demonstrated, was that you used those maps, or whatever scale the map is at, as basically a guideline, and then you go into the field itself to verify that what the map says actually exists where it does.

MR. MERKLE: Yes.

ASSEMBLYWOMAN OGDEN: I think even the smaller scale, for instance, in the Soil Conservation Service -- they have to get out there, because it can vary from 50 to 100 feet, and they have to go out and actually look at what's growing there, and what the water table is.

ASSEMBLYMAN PENN: That's why I think an inventory of the maps as the work's done will be an important thing to do, and put on file at each county until eventually it was worked at a workable scale. Anytime you buy land, you have a survey done, and you go out and look at it. We purchased a piece of land last year that referred to from the corner of a hanger out at the airport to the middle of New Durham Road, neither of which existed anymore. So, that was the legal description of what was on-- So, we had to actually have it remapped. I'm sure you've run into the same thing also, when you talk about chains and links and that sort of thing in your description.

ASSEMBLYMAN SHINN: I think the comment's good, and we've had a lot of mapping problems in the history of our development. I think that one of the better comments was the boots that the map needs you to get the boots on, and the boots investigation tells you the changes that have occurred, and if you really have, in fact, wetlands area. Or if not, maybe new wetlands. But that leads you to indemnification of a wetland, and I think the clarity of that is very important so that you don't need an expert or someone who is subjective telling you

whether you have one or not, that you can come to that conclusion before you make an investment in a piece of land. I think that's important -- that process.

ASSEMBLYMAN PENN: We're going to put money for boots in the bill, I think, that's no question. (laughter)

ASSEMBLYWOMAN OGDEN: Mr. Merkle, I'd like to thank you very much.

MR. MERKLE: Thank you very much.

ASSEMBLYWOMAN OGDEN: And I'd like to, at this time, conclude our third and last hearing on the two bills -- Assemblyman Penn's bill and myself. I'd like to thank everyone who is here today, who has stayed through this hearing. For those who have just been listeners, for those who have been participants, I thank you for the time and effort that you've put into the testimony that you've given. And for the record, I thank all of those who have come to the past few meetings and their conscientious and concerned involvement in the process.

I believe that these three hearings held in three different parts of the State have been of great help to both Assemblyman Penn and myself. And it's my hope that now we are going to be able to take our two bills and to work with other members of the Committee. Certainly there's certain areas that we agree on. We don't want unnecessary duplication. We are seeking delegation of the Army Corps 404 Program. There still are some areas of disagreement between the two of us, but with the input that we've had, we've certainly had new ideas presented to us, new possibilities that would point the way towards compromise, and it's my hope that we are going to be able to achieve this, maintaining always the goal of protecting the remaining freshwater wetlands in the State of New Jersey.

So, I thank everyone for coming today, and your participation. Thank you.

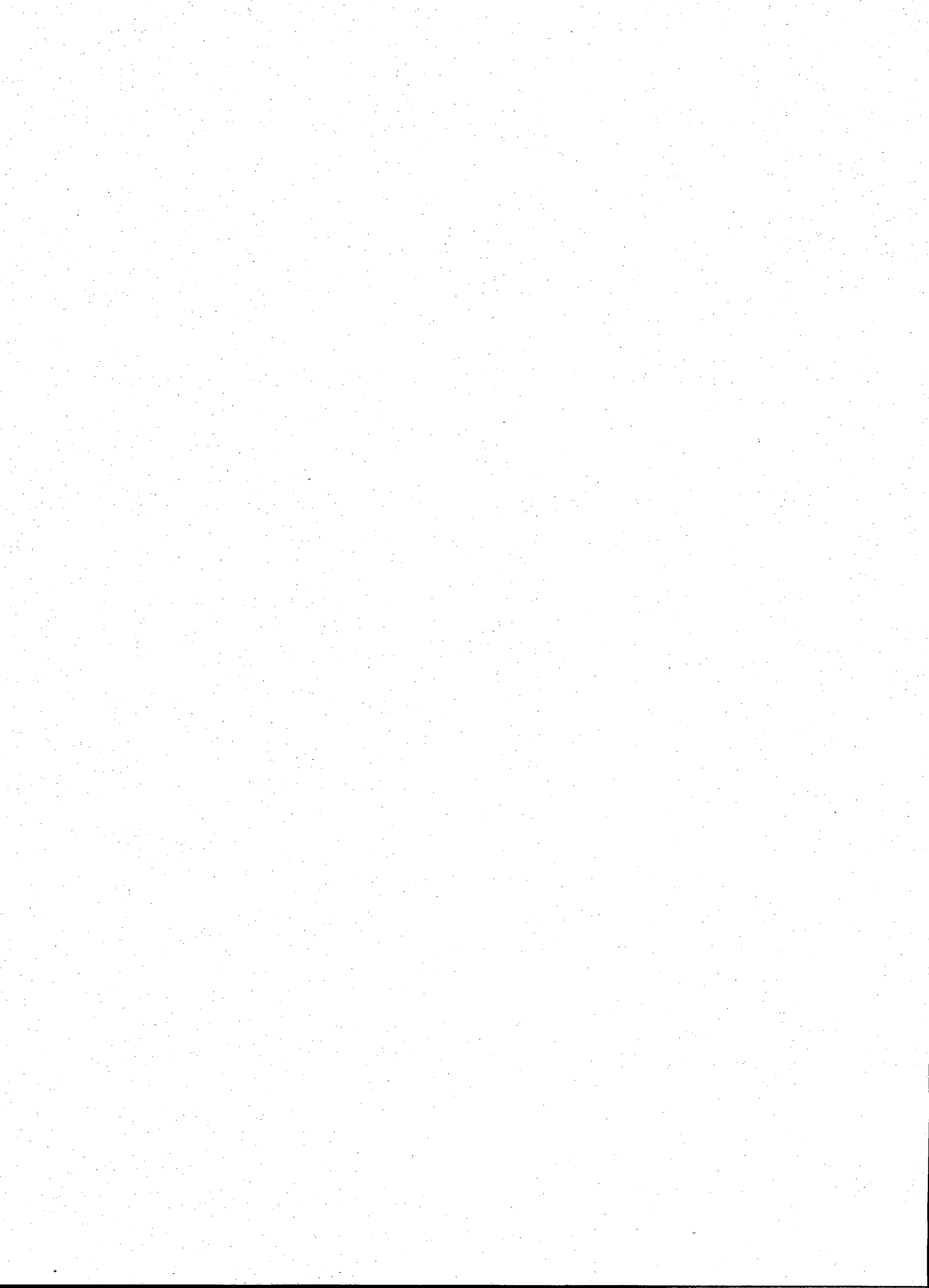
ASSEMBLYMAN PENN: I'd just like to say one thing, Maureen. I'd like to thank you very much. I think what you've

done has been very fair. The meetings have been good, and I think we got a lot of input and a lot of different areas have been opened up to us. And I just want to thank you and complement you on the manner with which you've conducted these hearings. Thank you very much.

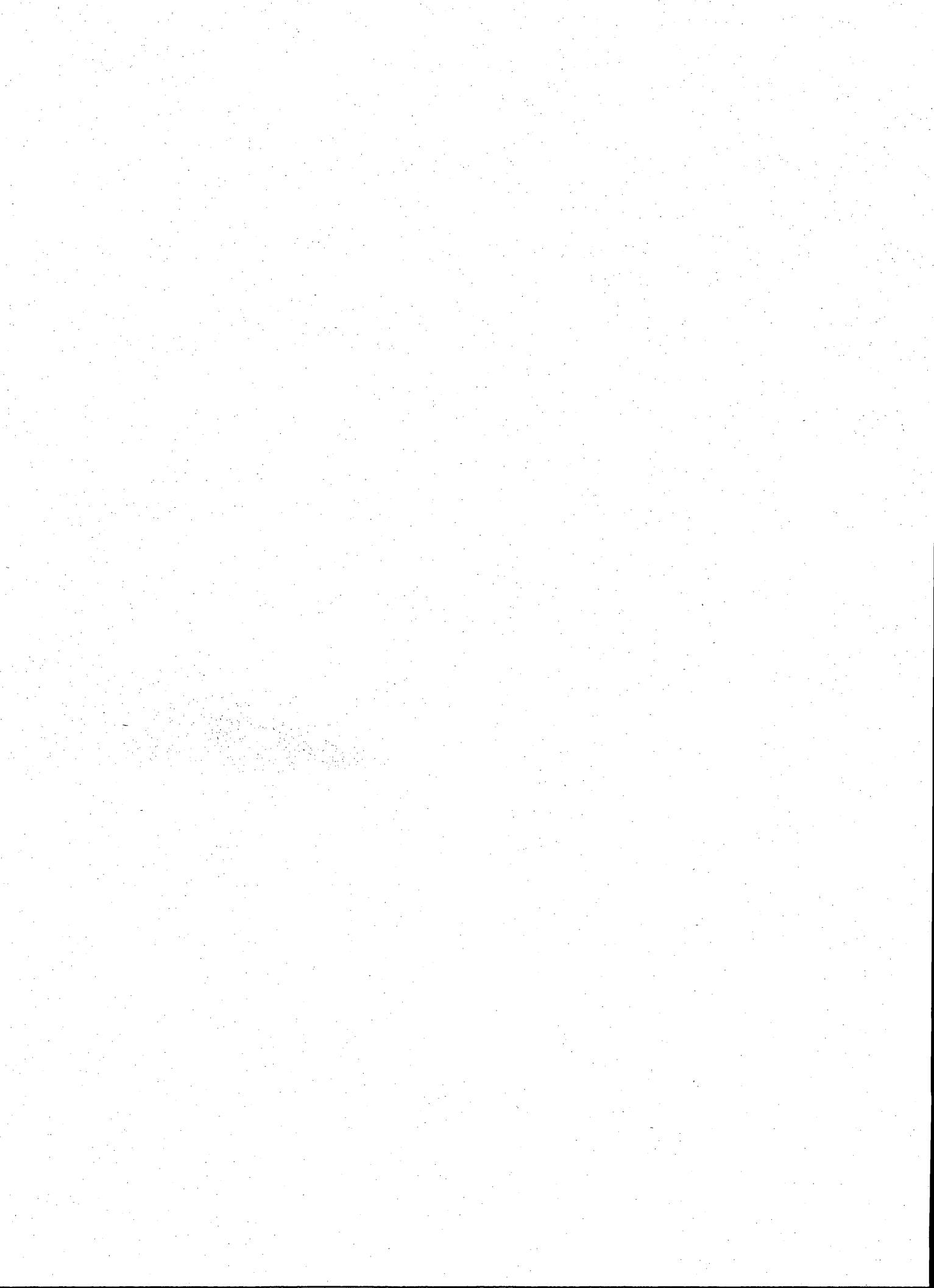
ASSEMBLYWOMAN OGDEN: Thank you, Jack.

ASSEMBLYMAN SHINN: I'd like to thank you both, and everyone that participated, number one for coming to the County, number two for the way you've handled both bills. I think it's a healthy situation when both bills get heard at the same time, the public can comment on each bill, and I'm sure with a lot more work we can almost make everyone that's intensely interested in this subject mildly unhappy. (laughter) And that's a sign of success, believe it or not. So, thank you for coming, and appreciate the quality of testimony.

(HEARING CONCLUDED)



APPENDIX





National Audubon Society

NATIONAL CAPITAL OFFICE
645 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003 (202) 547-9009

July 24, 1986

The Honorable Maureen Ogden
Chairman, Natural Resources Committee
New Jersey State Assembly
Trenton, NJ 08625

Dear Mrs. Ogden:

I am writing on behalf of the National Audubon Society to express our interest in the Wetlands Bill (No. 2342) presently before the Assembly of the State of New Jersey. We are impressed with the quality of this bill and are encouraged at the prospect of New Jersey's freshwater wetlands finally receiving the legislation necessary for their protection. The National Audubon Society fully supports this bill and requests that it be accorded the thoughtful consideration it deserves.

The New Jersey legislators acting on this bill do not need outside observers to tell them the details of why wetlands are so vital to the well-being of the local environment. The facts concerning wetlands are widely known and should not need further review or explanation at this point in the debate. Realistically, the advisability of protecting the remaining wetlands in New Jersey cannot be questioned and does not call for greater evidence. This statement is simply intended to express the interest of the National Audubon Society and to present our position on wetlands, focusing on those in the state of New Jersey.

While the National Audubon Society is concerned with many different aspects of environmental issues, the most basic interest of ours is the preservation of wildlife and wildlife habitat. Since freshwater wetlands are of such great importance for the sustenance of many species of waterfowl, fish, amphibians, and assorted land vertebrates, we are determined to preserve such habitats wherever and whenever possible. Indeed, the National Audubon Society feels the passage of a bill such as No. 2342 in New Jersey is justified solely due to the positive effects it would have on the populations of threatened water-dependent species.

Additionally, however, preserving the remaining wetlands has considerable and favorable impact on human habitation as well. The quality and quantity of freshwater supplies in some regions are directly tied to wetlands. This is because wetlands naturally purify water and because they often release a steady flow of groundwater, even during periods of extended aridity.

Also, wetlands can be of vital importance to forest ecosystems and provide a unique habitat for many types of plant life. And, of course, the preservation of wetlands offers the auxiliary benefits of saving the scenic beauty of the environment for the enjoyment of all and providing recreation opportunities for residents and visitors alike.

For all these reasons, National Audubon supports the preservation of wetlands around the country, and for those same reasons we are very excited about the prospect of saving the irreplaceable freshwater wetlands of New Jersey. The bill proposed by Assemblywoman Maureen Ogden, if passed and properly enforced, would allow this.

Many states of the Northeast, including New York, Rhode Island, and Massachusetts, have made great progress in protecting their remaining wetlands. New Jersey, as many of us know firsthand, is a beautiful and scenic state in its own right in many parts and still possesses substantial amounts of wetland areas. However, it is also true that the state has not always succeeded in fully avoiding the scourges of pollution that a manufacturing society such as our own generally wreaks on its environment. And this is seen in the considerable loss of inland wetlands New Jersey has already experienced. It would be appropriate for New Jersey to follow the prudent example of nearby states and do all that is possible to preserve the wetland areas within her boundaries that have not yet been destroyed.

Two specific issues concern National Audubon and should be briefly examined. First, it should be emphasized that all wetlands, including "low quality" wetlands, are worth saving. They are all of value, even if some have degenerated more than others. The quality of all wetlands, especially of the most inferior, will certainly improve with firm enforcement of the Clean Water Act. Only those wetlands that are overdeveloped to the point of destruction could be considered of such poor quality they are not worth saving -- and that overdevelopment will not happen in the first place if the wetlands are adequately protected.

The second point concerns the envisaged buffer zones. They are of real importance and ought not be discarded. They form an integral part of the 'wet' land itself, for many of these areas experience periodic flooding. If such expansion is not allowed for, development in the immediate vicinity of the wetland areas would be at risk and the wetlands themselves could be very negatively affected.

The National Audubon Society supports this bill for New Jersey's wetlands and hopes it will be made into law. We feel that the passage of No. 2342 would reflect positively on the whole state, and that it would be to the benefit of all New Jersey's residents.

Respectfully submitted,



Mr. Brock Evans
Vice President for National Issues

2x



New Jersey Division, Inc. (201) 228-5244

July, 28, 1986

TO: Assemblywoman Maurine Ogden

FROM: Barbara Spiller, Legislative Chairman, NJ Division AAUW

RE: Support for Assembly No. 2342

Since its earliest beginning, the American Association of University Women has been concerned with questions of public health and safety. In our study, "This Beleaguered Earth" we identified the value of wetlands as part of an eco-system. The NJ Division has taken a leadership role in the Association to work for national and state policies which are preventive in nature and place emphasis on protection of the commons. Recently, we acted as consultants to the AAUW National Legislative Committee in writing a position paper, "Water and Air for the 21st Century" which details our concerns as members of an Association.

In the mid 1970's this Division conducted an "Environmental Quality Survey" through its 19 branches in the Passaic River Basin and presented its finding to Congress asking to change national policy relative to the flooding on the Passiac River. We supported then, and support now, government policy directed towards protection of wetlands not only in the Passaic River area but in other parts of the state, such as the Pine Barrens.

Of the current bills that have been introduced, Assembly No. 2342 appears to provide the greatest protection. The authors, Assemblywoman Maurine Ogden and Assemblyman John Bennett are both long known to AAUW membership for their concern for the environment.

In light of the recent report of the U.S. Department of the Interior, "Wetlands of New Jersey", National Wetlands Inventory, July 1985, we feel that it is critical to pass such a law as Assembly No. 2342 and conduct an educational program which will make its passage effective.

THE PRESBYTERIAN CHURCH

*One East Oak Street
Basking Ridge, New Jersey 07920*



JUL 29 1986

Office Telephones:
766-1616, 1617

Pastors
J. Calvin K. Jackson
James E. Morris
Kevin S. Keaton

Honorable Maureen Ogden
New Jersey Assembly
266 Essex Street
Millburn, NJ 07041

July 26, 1986

Dear Assemblywoman Ogden,

Please enter this letter and attached material into the record of your recent hearing on Assembly Bill # 2342.

After reviewing this bill, the Environmental Ethics Committee, Mission Council, Presbyterian Church, Basking Ridge, N.J. determined that it is the best available legislation. The situation is critical to even the most casual observer. We have worked for some months to support the preservation of but a single wetland area, Pennbrook Golf Club and we see how necessary it is for government to take immediate and positive action.

We have also determined that an educational program is needed to provide for the preservation of both private and public wetland.

We have been successful in placing environment on the agenda for New Jersey Churches and on September 20, 21 and 28, 1986 will be coordinating a program which has as one of its objective to raise the consciousness of the public about wetlands.

Sincerely,

Betty A. Little, Chairperson
Environmental Ethics Committee

4x



FIRST ANNUAL REPORT OF THE ENVIRONMENTAL ETHICS COMMITTEE,
MISSION COUNCIL, PRESBYTERIAN CHURCH, BASKING RIDGE, NJ
1985-86

The major work of the year has been the development of our paper, "Water-Our Responsibility" which was written in the spring, reviewed with the Congregation at workshops in the summer, and finally reviewed and revised by the Mission Council and Session. Guidelines for the paper's use were developed with the Mission Council. Both the paper and guidelines were accepted by Session on November 4, 1986.

Using this paper as a guide and reviewing New Jersey's new planning policy, the Committee developed and submitted a resolution to the New Jersey Council of Churches for their annual meeting. It is the first time that this Council will be setting priorities based on resolutions from its constituent churches. The resolution was reviewed by both the Committee on Government and Committee on Research and Church Development Committee of the NJ Council of Churches and was incorporated into a larger resolution on housing and land use at their annual meeting. This is the first time the Council has taken a major position on the environment and was approved without dissent by the delegates.

We have written a number of letters to the Bernards Township Committee, the Somerset County Freeholders, and the NJ Department of Environmental Protection, expressing our concern for water resources. Department of Environmental Protection. Currently we are working with a state Senator on the development of laws which will fulfill the policy objectives in our position paper.

We have added two new members: Martha Campbell, Liaison to the Government Committee, Elizabeth Presbytery, and Tim Scherman, an English teacher at Delbarton School who has become our secretary.

Initiatives

*Letter to Bernards Township Committee re: concern for wetlands of Pennbrook Golf Course and desire to protect these as part of the hydraulic system which provides water supply and flood control.

*Letter to Somerset County Freeholders suggesting acquisition of fragile parts of Pennbrook land.

*Letter supporting changes in Bernards Township municipal law to provide protection for fragile wetlands such as Pennbrook. This ordinance #760 was adopted.

*Attendance along with a representative from the Committee on Government of the NJ Council of Churches at an

information session conducted by the NJ DEP in Trenton with a representative from the Committee on Government, NJ Council of Churches regarding a request by Fairfield to allow filling of flood-prone lands. If established, this 'right to fill' would also have applied to Bernards Township.

*Letter to NJ Department of Environmental Protection re:Fairfield 'fill rights' request which would permit wetlands to be filled that are now protected by law, asking that basic documents (maps, hydraulic studies, etc.) not available at the information session be made available so that an evaluation of the significance of the request could be made. The letter requested a public hearing before any decision is made to change the contract between the government and the people regarding the 'right to fill' flood areas.

*Studied Chapter 398, 1985 (formerly Senate Bill 1464) which is the new state development planning process law and submitted a proposed resolution to the New Jersey Council of Churches where it was favorably received.

Presentations of Our Paper

*Social Issues Committee, Elizabeth Presbytery, NJ.

*Liberty Corners Presbyterian Church, NJ---Forum.

*Government Committee, NJ Council of Churches.

Correspondence

We have been in correspondence with individuals and churches in a number of states including New Mexico, New York, Missouri, Pennsylvania, and Virginia and have received a positive response to our paper.

At the request of Dean H. Lewis, Director, Advisory Council on Church and Society, Presbyterian Church USA our paper will be listed in "Church and Society Resources" for churchwide distribution.

Educating the Committee

*Visit to Stellar Niagara and Love Canal, Niagara Falls, NY, to learn about The Niagara Frontier, a reconciliation effort funded in part by the Presbyterian Church USA.

*Attended Groundwater Seminar conducted by the Environmental Policy Institute at Rutgers, New Brunswick.

*Attended Environmental Congress, NJ Environmental Commissioners Association, Princeton, NJ.

*Visit to Presbyterian Church USA, National Council of Churches and others church representatives at 475 Riverside Dr., New York City, NY to develop our position paper.

*Visit to Eco-Justice Project, Ithaca NY.

*Studied new state development planning process (NJ Senate Bill 1464) for NJ. Replaced by Chapter 398, 1985.

*Attended NJ Council of Churches Annual Meeting May 3, 1986 as a delegate with Les Reynold, Chairman Social Issues Committee of the Elizabeth Presbytery who is also a member of this church and an advisor to our committee.

Educating the Public

*Sermon and three workshops to discuss our position paper.

*Distribution of our paper "Water---Our Responsibility" and a press release to the Presbyterian and religious press.

*Bulletin board displays about our activities.


*Shelf in the church library with books and materials.

*Snail display in the library (ecology).

*Recycling display (in cabinet opposite library) on proposed recycling plant for Somerset County.

*We are planning two forums for fall 1986 in which we expect to involve the Education and Mission Councils of this church, the Somerset Fellowship of Churches, the Elizabeth Presbytery, and the NJ Council of Churches (as indicated in our charter).

Respectfully Submitted



Betty A. Little, Chairperson
Environmental Ethics Committee

Mission Council, Presbyterian Church, Basking Ridge, NJ
5/6/86



THE SOMERSET HILLS FELLOWSHIP OF CHRISTIAN CHURCHES

FOR IMMEDIATE RELEASE

SOMERSET FELLOWSHIP OF CHRISTIAN CHURCHES SUPPORTS "PARTNERS FOR ENVIRONMENTAL QUALITY"

BASKING RIDGE, NJ—"Partners for Environmental Quality" will be the theme of a two weekend event in September being coordinated by the Environmental Ethics Commission, Mission Council, Basking Ridge Presbyterian Church and co-sponsored by the Somerset Hills Fellowship of Christian Churches.

On Saturday September 20, 1986, the Somerset Hills Fellowship of Christian Churches will host a luncheon at Ridge Oak Community Center, Felmeth Hall, at 11:45 a.m. at which William Gibson, Ph.D. Coordinator of the Eco-Justice Project of Ithaca, NY, a national eucumenical effort, and Rev. Paul L. Stagg of the New Jersey Council of Churches will present a number of challenges relating to "What Churches Can Do and Can't Do About Environmental Quality".

Delegates from each member church of the Fellowship are being invited to participate in a field trip, attend the luncheon and answer the challenges. The field trip will begin at Alley Rd. and North Finley Avenue behind the Presbyterian Church in Basking Ridge at 9:30 A.M. and conclude at 11:30 A.M. Participants will visit several sites in the area to discuss environmental problems. The field trip is being organized by the Environmental Ethics Committee of the Basking Ridge Presbyterian Church and the Passaic River Coalition. It will be conducted by car. There is no charge.

Both the luncheon and the field trip are open to the public. There is no charge for the trip but those interested should register with Robert Waldner 766-5446. The luncheon is \$2 for reservations call: Sally Howey 766-4116 or Gertrude Arnold 221-0639.

Each church in the Fellowship is invited to celebrate its concern for the earth through displays, sermons, prayers or other programs on either Sunday September 21 or 28.

For Further information contact: Ronnie Kleinhans 766-1988

Honorable John H. Ewing
Legislative Office
115 Morristown Rd.,
Bernardsville, NJ 07934

July 21, 1986

Dear Senator Ewing,

Many people are disturbed about the loss of open space in New Jersey, particularly the loss of wetlands.

The value of wetlands and the rate at which New Jersey is losing these lands to development are well documented in a recent study conducted by the U.S. Fish and Wildlife Service, "Wetlands of New Jersey" July 1985..

Wetlands provide water supply, pollution abatement, flood control, wildlife habitat, and recreation and are a benefit to all the people of the state. We must act now if we are to protect what remains of these areas.

The paper, "Water-Our Responsibility," which is our charter, and has been accepted by the Session of this church, places high priority on protection of common resources. Once destroyed these areas are lost to this and all future generations.

After studying wetland protection proposals, this committee had decided to support legislation which:

1) Defines Wetlands Clearly using federally accepted and scientifically tested definitions.

2) Provides a Buffer Zone between the wetlands and development areas preserving Wetlands as a natural and interrelated system.

3) Provides for Prompt Regulation and minimizes the use of variances which would allow wetlands to be destroyed.

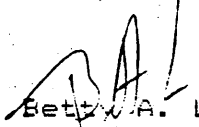
4) Preserves Wetlands to Protect Public Health and Well Being, assures the continuation of natural habitats in New Jersey, and prevents the utilization of these lands for dumping of waste products or intensive development.

At this time, the Odgen bill #A-2342 (Lynch #S-2003) appears to most nearly meet the criteria above. The existence of a number of pieces of legislation in this field indicates that both developers and environmentalists recognize the value of wetlands and the need protect them.

Since Governor Thomas Kean has indicated his longterm concern for the environment and all of this legislation has been introduced by Republicans, my committee urges you to work within the party to reconcile differences and develop acceptable legislation as soon as possible.

Your assistance in this matter will be greatly appreciated.

Sincerely,


Betty A. Little, Chairperson
Environmental Ethics Committee
Mission Council
Presbyterian Church
Basking Ridge NJ, 07920.

cc. Assemblywoman Maurine Ogden

New Jersey Conservation Foundation

300 Mendham Road, Morristown, N. J. 07960

201-539-7540

Testimony of the New Jersey Conservation Foundation
Concerning Freshwater Wetlands Bills A-2342 (Ogden) & A-2499 (Penn)
Delivered Before the Assembly Energy & Natural Resources Committee
August 1, 1986, Mt. Holly, N.J.

Good morning. I welcome the opportunity to speak to you today on behalf of the New Jersey Conservation Foundation, a founding member of the Freshwater Wetlands Campaign, a broad coalition of organizations throughout the state that have joined together to promote the enactment of strong legislation to protect freshwater wetlands.

Three years ago Assemblywoman Ogden and Senator Lynch introduced identical bills to provide protection for our state's dwindling freshwater wetlands. These legislators have been patient with development interests and demonstrated a willingness to incorporate legitimate developer concerns and compromises in their legislation. In return the development community has sought to create diversions to delay the process, and block the passage of reasonable wetlands legislation.

The Penn bill is a prime example of the development community's tactics of delay and disruption of the legislative process. It requires that the state takeover the federal wetlands fill permit program before the state act becomes effective, but its provisions are insufficient to meet US EPA requirements for transfer of the federal program to the state. Therefore, the Penn bill's provisions, weak as they are, will never take effect.

For example, EPA's 404 state program transfer regulations require that a state proposing to takeover the federal program in state regulated waters must have authority over these waters including wetlands as defined in Section 233.3. The definition of freshwater wetlands in the Penn bill begins with the EPA definition found in Section 233.3, but then goes to exclude isolated wetlands of less than 5 acres, cultivated or disturbed wetland areas where wetlands vegetation has been removed, and all soils with a seasonal high water table greater than 12" below the ground surface.

Although these exclusions alone would bar transfer of the federal program to the state I would like to illustrate one other example, among many, of where the legal authority contained in the Penn bill is too weak for the state to takeover the federal program. Section 233.28 of EPA's transfer regulations describes extensive enforcement provisions, which a state must have in order to takeover the federal program. These include authority to issue cease and desist orders and to initiate civil and criminal court proceedings seeking fines of between \$5,000 and \$10,000 for each day a violation continues. The Penn bill would not provide authority to NJ DEP to issue cease and desist orders or to initiate criminal proceedings and would limit the range of fines to between \$250 and \$3,000.

In addition to its insufficient enforcement provisions and definition of freshwater wetlands the Penn bill also falls far short of EPA transfer regulation requirements regarding permit

criteria and exemptions. The Penn bill is so fundamentally flawed as to be useless in seeking assumption of the federal program.

In contrast the Ogden/Lynch bill would require only minor amendments to conform to EPA requirements, thereby creating a single wetlands permit system. We urge the committee to incorporate the required amendments.

Another problem with the Penn bill is that it would regulate only the discharge of dredge and fill material, similar to the current federal program, which has been totally ineffective in preventing wetlands destruction related to activities other than filling. In contrast, the Ogden/Lynch bill would regulate the whole range of activities that are harmful to freshwater wetlands, similar to the state's existing coastal wetlands program.

In addition, the Ogden/Lynch bill calls for buffer areas to protect freshwater wetlands ecosystems from potentially significant adverse impacts of activities proposed adjacent to wetlands. Wetlands buffer provisions are already in force in the Pinelands, the state's coastal zone, and in Massachusetts, Rhode Island, New York and New Hampshire. The Penn bill provides no protection for wetlands from potentially harmful adjacent activities.

We have heard the charges leveled against the Ogden/Lynch bill, particularly those of Mr. Sean Reilly. His analysis of what he calls "overkill provisions" in the Ogden bill concludes incorrectly that NJ DEP would be subject to approximately 40,000 wetlands reviews in the first year of the program. Of this total he estimates that 34,000 wetlands reviews will be required as a result of an estimated average 60 local, county and regional land use agency actions in each of New Jersey's

567 towns. Mr. Reilly has failed to subtract the 100 or more towns or portions of towns subject to the control of the Pine-land Commission, the Hackensack Meadowlands Development Commission, and the Coastal Wetlands Act, all of which are exempt from the Ogden bill. He has also failed to consider that only one wetlands review would be required for a project that may involve several levels of governmental review. He includes wood-cutting, mowing and building a duck blind within the range of activities which would require land use agency approvals, although these activities are not generally regulated by land use agencies.

The Reilly analysis also fails to acknowledge that DEP must forward copies of the National Wetlands Inventory to all municipalities prior to the effective date of the Ogden legislation. Although there will be areas requiring a jurisdictional determination by DEP, there will also be areas where an applicant could proceed with confidence that he or she is outside DEP jurisdiction. In short, the assumptions in the Reilly analysis are so severely flawed as to render it meaningless. Independent analyses conducted by NJ DEP Divison's of Water Resources and Coastal Resources estimate the number of permit actions per year under the Ogden bill to range between 500 and 2,000.

It is interesting to note that Mr. Reilly advocates the deletion of a buffer provision in the Ogden/Lynch bill this year, when it was he who proposed the buffer provision, which was incorporated in last year's compromise bill that passed the Senate, but was not acted upon by the Assembly. Apparently he found buffers to be a legitimate part of wetlands legislation last year, but not this year.

The philosophy behind the Ogden/Lynch bill is that the state's remaining freshwater wetlands must be protected from development, and only in cases where wetlands loss is found to be unavoidable as a result of an overwhelming public need, should a wetlands permit be granted. The purpose is to persuade the real estate development community that wetlands are bad investments, and that development projects in wetlands will routinely be denied. The ultimate objective is to halt the growing speculation and destruction in freshwater wetlands.

In contrast, the Penn bill would promote continued destruction of freshwater wetlands, by allowing developers to mitigate the loss of natural wetlands by agreeing to create artificial wetlands or enhance existing wetlands. In a recent decision overturning a Corps of Engineers wetland fill permit the US EPA stated that the science of mitigation is "uncertain and high-risk." Under the Penn bill developer speculation in freshwater wetlands would continue unabated, with mitigation requirements factored in as the cost of doing business. The result is that all the state's natural wetlands in path of development would be destroyed, in return for mitigation of questionable value.

In general, the Penn bill creates the illusion of wetlands protection, but the reality is clearly one of continued wetlands destruction.

We realize that there are likely to be some amendments in the committee process, but we urge you to support only legislation that contains the fundamental provisions of the Ogden/Lynch bill.

NEW JERSEY ENVIRONMENTAL FEDERATION

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SUITE 319
NEW BRUNSWICK, NEW JERSEY 08901
201-846-4224

My name is Jane Nogaki and I am a member of the steering committee of the New Jersey Environmental Federation. The Federation was founded in 1985 by a group of leaders from community, environmental, and labor organizations across New Jersey who have a vision of a broad and permanent organization that can win concrete improvement in environmental clean-up and protection.

Our Federation has adopted wetland protection as one of its issues to work on in 1986. Enforcement of existing environmental laws such as the Clean Water Act and the Safe Drinking Water Act is our other major campaign for 1986.

I'd like to thank the members of the Assembly Natural Resources Committee and its chairman, Assemblywoman Ogden, for holding a public hearing in Mount Holly. Holding a public hearing in southern New Jersey gives us local citizens an opportunity to comment on the Freshwater Wetlands Act. We in southern New Jersey are particularly interested in the preservation of freshwater wetlands because of the many acres of them that we have, and the threat of loss that we face because of the pressure of the building boom that we are now experiencing.

The New Jersey Environmental Federation joins the Freshwater Wetlands Campaign in supporting the proposals of the OGDEN/LYNCH version of the Freshwater Wetlands Bill (A-2342/S2003). The OGDEN/LYNCH bill contains features which will serve to preserve and protect the freshwater wetlands of our state. We think that the Penn Bill (A-2499) contains inadequate protections for these wetlands and would be a disservice to the residents of New Jersey.

Why is the Penn Bill inadequate?

Because it uses too narrow a definition of wetlands. The OGDEN bill by contrast uses a widely accepted definition of wetlands, the same definition used by federal agencies in the administration of their section 404 wetlands fill permit program.

Because it regulates only the disposal of dredged and fill material, and not the whole range of activities which may harm the public values that wetlands provide.

Because it would allow so-called "enhancement" or "creation" of other wetlands to mitigate for loss of primary wetlands. We don't believe wetlands can be created or mitigated to replicate the diversity of original unadulterated wetlands, nor have we seen any evidence this could be true. The Ogden bill by contrast sets permit criteria that would allow only unavoidable destruction of wetlands.

Because it has no buffer zone provision, the Penn bill is inadequate to protect wetlands from adjacent adverse land uses. Wetlands can serve the recharge and purifying capacity that they perform only if they are buffered adequately from being overburdened by adjacent development. The Ogden bill does have provisions to buffer wetlands, and we feel those provisions are critical to wetland protection.

As you know a large number of acres of inland wetlands have come under the supervision of the Pinelands Commission and are protected by the Pinelands Act. These protected acres form a core in the center of southern New Jersey that will serve to maintain the quality of the cohansey aquifer, a huge aquifer that underlies much of southern New Jersey and is the source of drinking water for thousands of families. But the aquifer is threatened by adverse impacts of development just beyond the boundaries of the Pine Barrens protection zone. Unless freshwater wetlands outside the Pinelands Protection are protected by state legislation, the good work started by the Pinelands legislation will have been for naught.

The need for the legislation is clear. The road to passage of the legislation has been long. In the interest of moving things along in a way that will benefit all the residents of New Jersey, we suggest that Assemblyman Penn withdraw A-2499 and instead work with Assemblywoman Ogden to fashion a bill that will protect New Jersey's valuable wetlands.

Thank you for hearing our point of view.

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WETLANDS LEGISLATION
ADMINISTRATIVE ANALYSIS

MUNICIPAL ACTIONS

<u>DEP ACTIONS TODAY</u>	<u>MONTHLY</u>	<u>WETLANDS ACTIONS</u>	<u>BUFFER</u>
	<u>Planning Board:</u>		
0	2 houses with wetlands	1	1
0	15 houses or offices with wetlands (septics)	1	1
0	7-11 no wetlands	0	1
2	100 homes wetlands/buffers	(1 2/yr.	1)
	<u>Zoning Board:</u>		
1	Office or apartments with wetlands	(1 1/yr.	1)
	<u>Building Department:</u>		
0	Individual lot/house	1	0
0	Fence (utility company)	1	0
0	Utility pole	1	0
0	Parking lot addition	1	
	<u>Road Department/Parks Department:</u>		
0	Repair of roads/building additions	1	0
	Mowing/Clearing		
	<u>Complaints:</u>		
0	{ Clearing	1	0
	{ Filling		
	{ Structures		
	{ Digging		
<hr/>			
3.0/yr./town X 400 towns		8/mo. X 12 mo. =	3/mo. X 12 mo. =
1,200 DEP Wetlands Actions/Yr. Today		96/yr. X 400 towns =	36/yr. X 400 towns =
		38,400 actions/yr. statewide	14,400/yr. statewide

STATE AGENCY ACTIONS
(21 Departments)

<u>DEP ACTIONS TODAY</u>	<u>ANNUALLY</u>	<u>WETLANDS</u>	<u>BUFFER</u>
21/yr.	* 1/yr./agency	21	0*

*Institutions not covered under buffer definition Section 6.b of S-2342.

EXISTING PROJECTS WITH LOCAL PRELIMINARY APPROVAL

0	2/town X 400 towns = 800/yr. wetlands or buffers	*	*
		800 Actions - One Time Only	

EXISTING JOBS BEING BUILT IN PHASES

0	For 100 towns: 3/town wetlands or buffers = 300/1st yr.	*	*
		300 Actions - One Time Only	

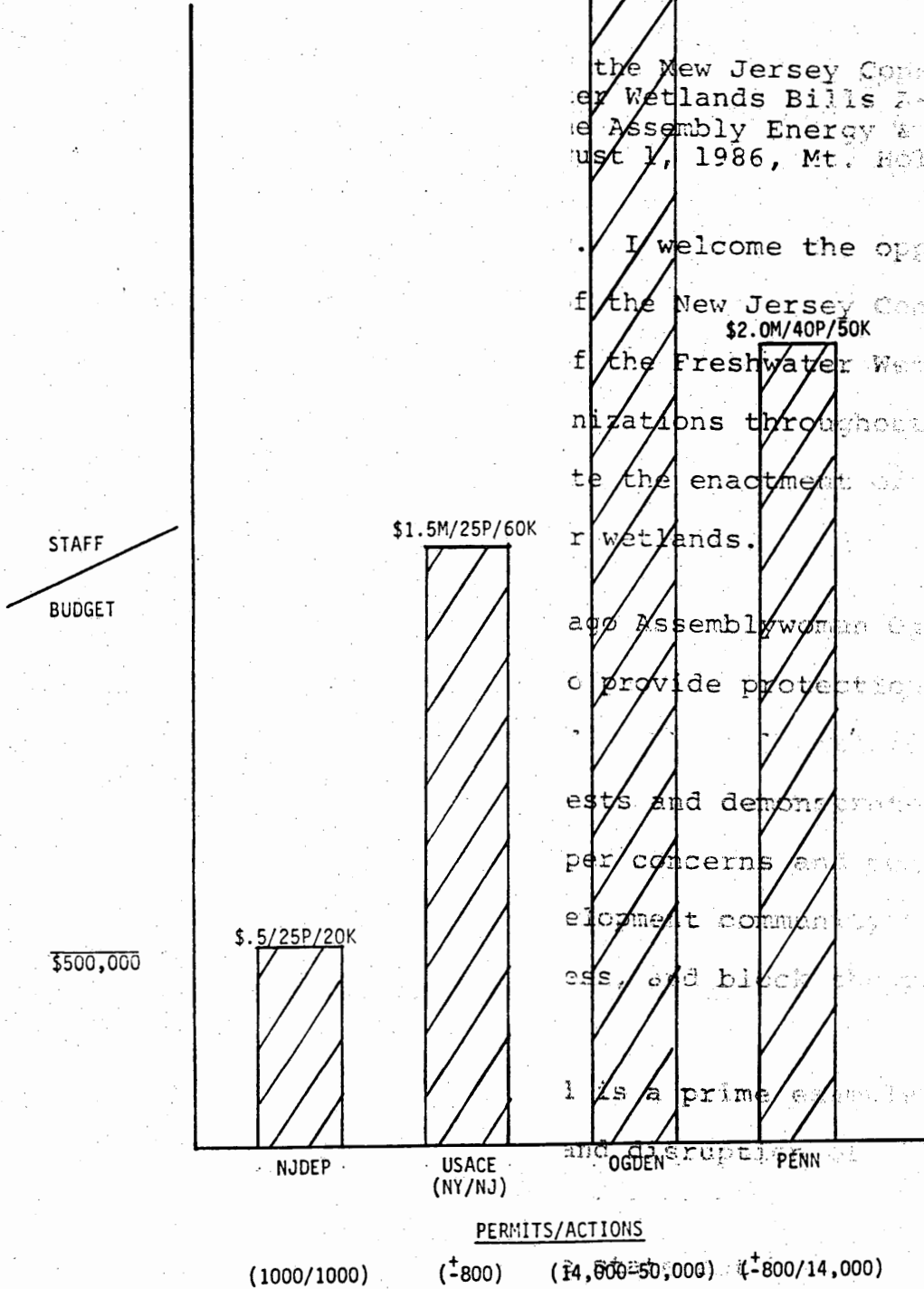
COUNTY ACTIONS
(21 Counties)

<u>DEP NOW</u>	<u>MONTHLY</u>	<u>WETLANDS</u>	<u>BUFFER</u>
	<u>Road Department & Facilities:</u>		
0	Road repair	.5/mo.	0
0	Stormwater facility repair	1/mo.	0
	<u>Parks Department:</u>		
0	{ Pond work	.5/mo.	
	{ Road work		
	{ Clearing		
	{ Out buildings		
<hr/>			
1,221 Wetlands Actions/Yr.		2.0/mo. X 21	0/mo.
		42/yr.	0/yr.
		38,463	14,400
		<u>ACTIONS</u>	<u>ACTIONS</u>

17x
TOTALS

COMPARATIVE ANALYSIS OF
ADMINISTRATIVE COSTS OF
FOUR WETLANDS REGULATORY PROGRAMS

CONSEILVILLE
 \$3.5M-20.0M/175P/20K
 stown, N. J. 07960



the New Jersey Commission
 on Wetlands Bills 7-238
 the Assembly Energy & Nat
 1, 1986, Mt. Holly.

I welcome the opport
 of the New Jersey Commission
 of the Freshwater Wetlands
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ago Assemblywoman Gagli
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is a prime example
 and disruption PENN

PREPARED BY: REILLY LAND & ENVIRONMENT, INC.

10x

