Public Hearing

before

SENATE COASTAL RESOURCES AND TOURISM COMMITTEE

SENATE BILL No. 1475

(Revises provisions of the "Coastal Area Facility Review Act" to provide for the regulatory review of certain developments in the coastal area)

LOCATION: Room 319
State House
Trenton, New Jersey

DATE: January 29, 1993
1:15 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Joseph M. Kyrillos, Jr., Chairman
Senator Andrew R. Ciesla, Vice-Chairman
Senator James S. Cafiero
Senator Joseph A. Palaia

ALSO PRESENT:

John Hutchison, III
Office of Legislative Services
Aide, Senate Coastal Resources
and Tourism Committee

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey 08625

New Jersey State Legislature

SENATE COASTAL RESOURCES AND
TOURISM COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 984-7381

NOTICE OF PUBLIC HEARING

The Senate Coastal Resources and Tourism Committee will hold a public hearing on **Friday, January 29, 1993 at 1:00 PM in Room 319, State House, Trenton, New Jersey to consider the following bill:**

S-1475 Kyrillos/Bennett	Revises provisions of the "Coastal Area Facility Review Act" to provide for the regulatory review of certain developments in the coastal area.

The public may address comments and questions to John Hutchison, III, Committee Aide, or make bill status and scheduling inquiries to Sharon Constantini, secretary, at (609) 984-7381. Those persons presenting written testimony should provide 15 copies to the committee on the day of the hearing.

Issued 1/22/93

SENATE, No. 1475

STATE OF NEW JERSEY

INTRODUCED JANUARY 25, 1993

By Senators KYRILLOS, BENNETT and Palaia

AN ACT concerning the protection of the coastal area, providing for the review of certain developments therein, amending and supplementing P.L.1973, c.185, amending R.S.12:5-3, P.L.1975, c.232, P.L.1985, c.398 and P.L.1986, c.145, amending the title of P.L.1973, c.185, and repealing parts of the statutory law.

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

1. The title of P.L.1973, c.185 (C.13:19-1 et seq.) is amended to read as follows:

AN ACT [to provide for the review of certain facilities] concerning the review of certain developments located in the coastal area [and making an appropriation therefor].

(cf: P.L.1973, c.185, title)

2. Section 1 of P.L.1973, c.185 (C.13:19-1) is amended to read as follows:

1. This act shall be known and may be cited as the "Coastal Area [Facility] Development Review Act."

(cf: P.L.1973, c.185, s. 1)

3. Section 2 of P.L.1973, c.185 (C.13:19-2) is amended to read as follows:

2. The Legislature finds and declares that:

a. New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area [, that certain portions of the] ;

b. The natural resources of the coastal area are extraordinary in their biological productivity and beauty, and that these resources provide the foundation of a thriving commercial and recreational fishing industry, as well as the cornerstone of a summer tourism industry which generates billions of dollars in annual economic activity to the economy of this State, the coastal area provides recreation for millions of residents and visitors, and that for these reasons, the coastal area constitutes a priceless environmental resource worthy of stewardship and protection;

c. The coastal area [are now suffering] continues to suffer from serious adverse environmental effects resulting from existing [facility activity impacts that would preclude or tend to

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State;] development that prevents the normal functioning of the ecology of the coastal area, and that[, therefore, it is in the interest of the people of the State that all of] the coastal area should be dedicated to those kinds of land uses which [promote the public health, safety and welfare, protect public and private property, and] are [reasonably] consistent [and compatible] with the [natural laws governing] continued natural functioning of the physical, chemical and biological environment [of the coastal area .] , as well as the public health, safety and welfare, and the protection of public and private property;

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

d. The Legislature further recognizes the legitimate economic aspirations of the inhabitants of the coastal area and wishes to encourage the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides adequate environmental safeguards for the construction of any [facilities] developments in the coastal area [.]; and

e. It is therefore in the public interest and in furtherance of the general welfare of the people of this State to establish a system of enhanced regulatory review of development in the coastal area, and that this system of review embrace types of residential, commercial, industrial and public development that have heretofore not been subject to regulation pursuant to the provisions of this act.

(cf: P.L.1973, c.185, s.2)

4. Section 3 of P.L.1973, c.185 (C.13:19-3) is amended to read as follows:

3. [For the purposes of this act, unless the context clearly requires a different meaning, the following words shall have the following meanings] As used in this act:

"Commercial development" means a development designed, constructed or intended to accommodate commercial or office uses. "Commercial development" shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, occupational, financial, or other commercial services;

[a.] "Commissioner" means the [State] Commissioner of Environmental Protection[.];

[b.] "Department" means the [State] Department of Environmental Protection[.];

[c. "Facility" includes any of the facilities designed or utilized

for the following purposes:

(1) Electric power generation--

Oil, gas, or coal fired or any combination thereof.

Nuclear facilities.

(2) Food and food byproducts--

Beer, whiskey and wine production.

Fish processing, including the production of fish meal and fish oil.

Slaughtering, blanching, cooking, curing, and pickling of meats and poultry.

Trimming, culling, juicing, and blanching of fruits and vegetables.

Animal matter rendering plants.

Operations directly related to the production of leather or furs such as, but not limited to, unhairing, soaking, deliming, baiting, and tanning.

Curing and pickling of fruits and vegetables.

Pasteurization, homogenization, condensation, and evaporation of milk and cream to produce cheeses, sour milk, and related products.

Coffee bean and cocoa bean roasting.

(3) Incineration wastes--

Municipal wastes (larger than or equal to 50 tons per day).

Automobile body (20 automobiles per hour or larger).

(4) Paper production--

Pulp mills.

Paper mills.

Paperboard mills.

Building paper mills.

Building board mills.

(5) Public facilities and housing--

Sanitary landfills.

Waste treatment plants (sanitary sewage).

Road, airport, or highway construction.

New housing developments of 25 or more dwelling units or equivalent.

Expansion of existing developments by the addition of 25 or more dwelling units or equivalent.

(6) Agri-chemical production--

Pesticides manufacture and formulation operations or either thereof.

Superphosphate animal feed supplement manufacture.

Production of normal superphosphate.

Production of triple superphosphate.

Production of diammonium phosphate.

(7) Inorganic acids and salts manufacture--

Hydrofluoric acid and common salts.

Hydrochloric acid and common salts.

Nitric acid and common salts.

Sulfuric acid and common salts.

Phosphoric acid and common salts.

Chromic acid, including chromate and dichromate salts.

(8) Mineral products--

Asphalt batching and roofing operations including the

preparation of bituminous concrete and concrete.

Cement production, including Portland, natural, masonry, and pozzolan cements.

Coal cleaning.

Clay, clay mining, and fly-ash sintering.

Calcium carbide production.

Stone, rock, gravel, and sand quarrying and processing.

Frit and glass production.

Fiberglass production.

Slag, rock and glass wool production (mineral wool).

Lime production, including quarrying.

Gypsum production, including quarrying.

Perlite manufacturing, including quarrying.

Asbestos fiber production.

(9) ~~Chemical~~ processes--

Ammonia manufacture.

Chlorine manufacture.

Caustic soda production.

Carbon black and charcoal production, including channel, furnace, and thermal processes.

Varnish, paint, lacquer, enamel, organic solvent, and inorganic or organic pigment manufacturing or formulating.

Synthetic resins or plastics manufacture including, but not limited to, alkyd resins, polyethylene, fluorocarbons, polypropylene, and polyvinylchloride.

Sodium carbonate manufacture.

Synthetic fibers production including, but not limited to, semisynthetics such as viscose, rayon, and acetate, and true synthetics such as, but not limited to, nylon, orlon, and dacron, and the dyeing of these semi and true synthetics.

Synthetic rubber manufacture, including but not limited to, butadiene and styrene copolymers, and the reclamation of synthetic or natural rubbers.

The production of high and low explosives such as, but not limited to, TNT and nitrocellulose.

Soap and detergent manufacturing, including but not limited to, those synthetic detergents prepared from fatty alcohols or linear alkylate.

Elemental sulfur recovery plants not on the premises where petroleum refining occurs.

Used motor or other oil or related petroleum product reclamation operations.

Petroleum refining, including but not limited to, distillation, cracking, reforming, treating, blending, polymerization, isomerization, alkylation, and elemental sulfur recovery operations.

Organic dye and dye intermediate manufacturing.

Hydrogen cyanide or cyanide salts manufacture or use.

Glue manufacturing operations.

Manufacturing, fabricating, or processing medicinal and pharmaceutical products including the grading, grinding, or milling of botanicals.

(10) Storage--

Bulk storage, handling, and transfer facilities for crude oil, gas

and finished petroleum products not on the premises where petroleum refining occurs.

Bulk storage, handling, transfer and manufacturing facilities of gas manufactured from inorganic and organic materials including coal gas, coke oven gas, water gas, producer, and oil gases.

(11) Metallurgical processes--

Production of aluminum oxide and aluminum metal and all common alloys, such as those with copper, magnesium, and silicon.

Production of titanium metal, salts, and oxides.

Metallurgical coke, petroleum coke, and byproduct coke manufacturing.

Copper, lead, zinc, and magnesium smelting and processing.

Ferroalloys manufacture such as, but not limited to, those combined with silicon, calcium, manganese and chrome.

Integrated steel and iron mill operations including, but not limited to, open hearth, basic oxygen, electric furnace, sinter plant, and rolling, drawing, and extruding operations.

Melting, smelting, refining, and alloying of scrap or other substances to produce brass and bronze ingots.

Gray iron foundry operations.

Steel foundry operations.

Beryllium metal or alloy production, including rolling, drawing and extruding operations.

Operations involving silver, arsenic, cadmium, copper, mercury, lead, nickel, chromium, and zinc including, but not limited to, production, recovery from scrap or salvage, alloy production, salt formation, electroplating, anodizing, and metallo-organics compound products preparation.

Stripping of oxides from and the cleaning of metals prior to plating, anodizing, or painting.

(12) Miscellaneous--

Operations involving the scouring, desizing, cleaning, bleaching, and dyeing of wool.

Wood preserving processes which use coal or petroleum based products such as, but not limited to, coal tars and/or creosotes.

Manufacture, use, or distillation of phenols, cresols, or coal tar materials.

Manufacture of lead acid storage batteries and/or storage batteries produced from other heavy metals, such as nickel or cadmium.

Installation of above or underground pipelines designed to transport petroleum, natural gas, and sanitary sewage.

Operations involving the dyeing, bleaching, coating, impregnating, or glazing of paper.

Dyeing, bleaching, and printing of textiles other than wool. Chemical finishing for water repelling, fire resistance, and mildew proofing, including preshrinking, coating and impregnating.

Sawmill and planing mill operations.

Marine terminal and cargo handling facilities.

d. "Person" means and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals and governmental agencies.

e.] <u>"Development" means a subdivision or resubdivision of a parcel of land into two or more parcels, or the construction,</u>

relocation, reconstruction, or enlargement of any building or structure, and shall include residential, commercial, industrial, and public development;

"Dwelling unit" or "dwelling" means a house, townhouse, apartment, condominium, cabana, hotel or motel room, a room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact;

"Governmental [agencies] agency" means the Government of the United States, the State of New Jersey, or any other [states, their] state, or a political [subdivisions] subdivision, authority, [agencies, or instrumentalities] agency or instrumentality thereof, and shall include any interstate [agencies.] agency or authority;

"Industrial development" means a development which involves a manufacturing or industrial process, which shall include, but need not be limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes utilizing mineral products;

"Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency;

"Public development" means a development that is publicly financed and designed to provide a public benefit, which includes, but need not be limited to, solid waste facilities, wastewater treatment plants, roads and highways, airports, and bridges;

"Reconstruction" means the repair or replacement of a building, structure, or other part of a development;

"Residential development" means a development which provides one or more dwelling units;

(cf: P.L.1973, c.185, s.3)

5. Section 4 of P.L.1973, c.185 (C.13:19-4) is amended to read as follows:

4. The "coastal area" shall consist of all that certain area lying between the line as hereinafter described and the line formed by the State's seaward (Raritan Bay and Atlantic ocean) territorial jurisdiction on the east thereof, the State's bayward (Delaware Bay) territorial jurisdiction on the south and southwest thereof, and the State's riverward (Delaware River) territorial jurisdiction on the west thereto. Beginning at the confluence of Cheesequake Creek with the Raritan Bay; thence southwesterly along the center line of Cheesequake Creek to its intersection with the Garden State Parkway; thence southeasterly along the Garden State Parkway to Exit 117 at State Highway 36; thence northeasterly along State Highway 36 to the intersection of Middle Road (County 516); thence easterly along Middle Road to the intersection of Palmer Avenue (County 7); thence northeasterly on Main Street to the intersection of State Highway 36; thence easterly on State Highway 36 to the intersection of Navesink Avenue; thence southerly on Navesink Avenue to the intersection of Monmouth Avenue at Navesink; thence westerly

on Monmouth Avenue to its intersection with Browns Dock Road; thence southerly on Browns Dock Road to its intersection with Cooper Road; thence southwesterly on Cooper Road to the intersection of State Highway 35; thence southerly on State Highway 35 to its intersection with State Highway 71; thence southeasterly on State Highway 71 to its crossing of the Central Railroad of New Jersey tracks , now the Consolidated Rail Corporation (Conrail)/New Jersey Transit Corporation (NJ Transit); thence southerly along the Central Railroad of New Jersey tracks (now Conrail/NJ Transit) to its intersection of 6th Avenue (County 2); thence westerly on 6th Avenue (County 2) to the intersection of State Highway 33; thence westerly along State Highway 33 to the crossing of State Highway 18; thence southerly on State Highway 18 to its intersection of Marconi Road; thence southeasterly on Marconi Road to Adrienne Road, continuing south on Adrienne Road to Belmar Boulevard; thence easterly on Belmar Boulevard and 16th Avenue to the intersection of State Highway 71; thence southerly on State Highway 71 to the intersection of State Highway 35; thence northwesterly along State Highway 35 to State Highway 34 at the Brielle Circle; thence northwesterly along State Highway 34 to the Garden State Parkway at Exit 96; thence southwesterly along the Garden State Parkway to the intersection of the Monmouth, Ocean County boundary; thence westerly along [said] that boundary to the intersection of the Central Railroad of New Jersey tracks (now Conrail); thence southwesterly along the tracks of the Central Railroad of New Jersey (now Conrail) to its junction with the tracks of the Pennsylvania Railroad near Whiting; thence easterly along the tracks of the Pennsylvania Railroad to its intersection with the Garden State Parkway near South Toms River; thence southerly along the Garden State Parkway to its intersection with [County Road 539 at Garden State Parkway exit 58; thence northerly along County Road 539 to its intersection with Martha-Stafford Forge Road; thence westerly along Martha-Stafford Forge Road to its intersection with Spur 563; thence northerly along Spur 563 to its intersection with County Road 563; thence southerly along County Road 563 to its intersection with County Road 542 at Green Bank; thence northwesterly along County Road 542 to its intersection with Weekstown-Pleasant Mills Road; thence southeasterly along Weekstown-Pleasant Mills Road to its intersection with County Road 563 at Weekstown; thence southeasterly along County Road 563 to its intersection with Clarks Landing Road leading to Port Republic; thence easterly along Clarks Landing Road to its intersection with the Garden State Parkway; thence southerly along the Garden State Parkway to its intersection with] the boundary of the Bass River State Forest; thence southerly, and thence westerly, along the Bass River State Forest to its intersection with the Garden State Parkway in Bass River Township; thence southerly along the Garden State Parkway to its intersection with Alt. 559, and thence northwesterly along Alt. 559 to its intersection with County Road 559 at Gravelly Run; thence northwesterly along County Road 559 to its intersection with U.S. 40 and S.R. 50 at Mays Landing; thence westerly along

combined U.S. 40 and S.R. 50 to its intersection with S.R. [50] 40; thence westerly along S.R.40 to its intersection with S.R.50; thence southerly on S.R. 50 to its intersection with Buck Hill Road near Buck Hill; thence westerly along Buck Hill (River Road also Head of River Road and Aetna Drive) Road to its intersection with S.R. 49; thence southeasterly along S.R. 49 to its intersection with S.R. 50; thence southeasterly along S.R. 50 to its intersection with County Road 585 (now County Road 610); thence southwesterly along County Road 585 (now County Road 610) to its intersection with S.R. 47 at Dennisville; thence northwesterly along S.R. 47 to its intersection with State Road 49 at Millville; thence through Millville along State Road 49 to its intersection with County Road [555] 610 (Cedar Street); thence [southerly] southwesterly along County Road [555] 610 (Cedar Street) to its intersection with County Road 555 (Race Street); thence southerly along County Road 555 (Race Street) to its intersection with County Road 27 (now County Road 627); thence southerly along County Road 27 (now County Road 627) to its intersection with County Road 70 (now County Road 670); thence southerly on County Road 70 (now County Road 670) to the Center of Mauricetown; thence through Mauricetown westerly on County Road 548 (now County Road 676) to its intersection with the tracks of the Central Railroad of New Jersey (now Conrail); thence northwesterly on the tracks of the Central Railroad of New Jersey (now Conrail) to its intersection with County Road 98 (now County Road 698); thence easterly along County Road 98 (now County Road 698) to the intersection with County Road 38 (now County Road 638); thence northerly along County Road 38 (now County Road 638) to its intersection with S.R. 49 east of Bridgeton; thence westerly along S.R. 49 through Bridgeton to its intersection with West Avenue; thence south on West Avenue to its intersection with County Road 5 (Roadstown Road) (now County Road 626); thence westerly along County Road 5 (Roadstown Road) (now County Road 626) to Roadstown; thence northwesterly along the Roadstown Road to County Road 47 (now County Road 647); thence southwesterly along County Road 47 (now County Road 647) to its intersection with County Road 19 (now County Road 623); thence along County Road 19 (now County Road 623) northwesterly to Gum Tree Corner; thence northwesterly along County Road 19 (now County Road 623) from Gum Tree Corner across Stowe Creek to its intersection with Salem County Road 59 (now County Road 623) (Hancock's Bridge Road); thence northwesterly along County Road 59 (now County Road 623) to its intersection with County Road 51 (now County Road 651) at Coopers Branch; thence northeasterly along County Road 51 (now County Road 651) to its intersection with S.R. 49 at Quinton; thence northwesterly along S.R. 49 to its intersection with County Road 50 (now County Road 650); thence southwesterly along County Road 50 (now County Road 650) to its intersection with County Road 58 (now County Road 658); thence southerly on County Road 58 (now County Road 658) to its intersection with County Road 24 (now County Road 624); thence westerly along County Road 24 (now County Road 624) to its intersection with County Road 65 (now County Road 637); thence

northeasterly along County Road 65 (now County Road 637) to its intersection with County Road 665 (Walnut Street); thence northerly along County Road 65 (now County Road 665) (Walnut Street) to its intersection with County Road 4 (now County Road 633); thence westerly along County Road 4 (now County Road 633) to its intersection with County Road 627; thence northerly along County Road 627 to its intersection with County Road 661; thence easterly along County Road 661 to its intersection with State Road 49; [thence westerly along County Road 4 and northerly along County Road 4 and thence easterly along County Road 4 to its intersection with State Road 49;] thence northerly along State Road 49 (Front Street) to its intersection with County Road 57 (now County Road 657); thence easterly along County Road 57 (now County Road 657) to its intersection with State Road 45; thence northerly along State Road 45 to its intersection with County Road 540 at Pointers; thence northerly and northwesterly along County Road 540 (Pointers Auburn Road/Deepwater-Slapes Corner Road) to its intersection with the New Jersey Turnpike; thence westerly along the New Jersey Turnpike to its intersection with County Road 33 (now County Road 551); thence southerly along County Road 33 (now County Road 551) to its intersection with State Road 49; thence southeasterly along S.R. 49 to its intersection with County Road 26 (now County Road 632); thence northwesterly along County Road 26 (now County Road 632) to the Killcohook National Wildlife Refuge; thence northwesterly along this northeasterly boundary to the limits of the State's territorial jurisdiction on the Delaware River; provided, however, that the coastal area shall not include all that certain area in Cape May county lying within a line beginning at the intersection of S.R. 47 and County Road 54 (now County Road 654); thence westerly on County Road 54 (now County Road 654); to the intersection of County Road 3 (now County Road 603); thence southeasterly on County Road 3 (now County Road 603) through the intersection of County Road 3 (now County Road 603) with County Road 13 (now County Road 639) to the intersection with County Road 47 (now County Road 647); thence easterly and northerly along County Road 47 (now County Road 647) to its intersection with [State Road] U.S. Route 9; thence northerly along [State Road] U.S. Route 9 to its intersection with State Road 47; thence westerly along State Road 47 to its intersection with County Road 54 (now County Road 654).

(cf: P.L.1973, c.185, s.4)

6. Section 5 of P.L.1973, c.185 (C.13:19-5) is amended to read as follows:

5. [No person shall construct or cause to be constructed a facility in the coastal area until he has applied for and received a permit issued by the commissioner; however, the provisions of this act shall not apply to facilities for which on-site construction, including site preparation, was in process on or prior to the effective date of this act.] A person shall not construct or cause to be constructed a development in the coastal area until that person has been issued a permit approved by the

commissioner in accordance with the provisions of this act.

a. Except as otherwise provided in subsection b. and subsection c. of this section, a permit shall be required for a development in the coastal area that would result, either solely or in conjunction with a previous development, in:

(1) A residential development having three or more dwelling units located in the area between the mean high water line of any tidal waters and a point 1,000 feet landward of that mean high water line;

(2) A residential development having six or more dwelling units located in the area between a point greater than 1,000 feet and a point 2,000 feet landward of the mean high water line of any tidal waters;

(3) A residential development having 12 or more dwelling units located in the area at a point beyond 2,000 feet landward of the mean high water line of any tidal waters to the boundary of the coastal area;

(4) A commercial development having five or more parking spaces located in the area between the mean high water line of any tidal waters and a point 1,000 feet landward of that mean high water line;

(5) A commercial development having 10 or more parking spaces located in the area between a point greater than 1,000 feet and a point 2,000 feet landward of the mean high water line of any tidal waters;

(6) A commercial development having 50 or more parking spaces located in the area at a point 2,000 feet landward of the mean high water line of any tidal waters to the boundary of the coastal area; or

(7) A public development or industrial development.

b. A permit shall be required for a development in a municipality located in the coastal area which meet the criteria of a "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178), that would result, either solely, or in conjunction with a previous development, in:

(1) A residential development having 75 or more dwelling units;

(2) A commercial development having 100 or more parking spaces; or

(3) A public development or industrial development.

c. A permit shall not be required pursuant to this section for:

(1) A development for which on-site construction, including site preparation, was in process on or prior to the date of enactment of P.L. , c. (C.) (now before the Legislature as this bill). This paragraph shall not apply to any development defined as a "facility" that required a permit pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) as of the date of enactment of P.L. , c. (C.) (now before the Legislature as this bill);

(2) The reconstruction of:

(a) any building or structure that is a commercial development, residential development, or public development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or other act of God and which does not result in a greater structural footprint; or

(b) any building or structure that is a commercial development

or public development which does not result in an increased square footage of floor area, or in a change in the use of that building or structure;

(3) The reconstruction of a building or structure that did not at the time of construction require issuance of a permit pursuant to P.L.1973, c.185 (C.13:19-1 et seq.).

d. A development subject to any exemption provided in subsection c. of this section shall be required to satisfy all other applicable requirements of law.

(cf: P.L.1973, c.185, s.5)

7. Section 6 of P.L.1973, c.185 (C.13:19-6) is amended to read as follows:

6. a. Any person proposing to construct or cause to be constructed, or undertake or cause to be undertaken, as the case may be, a [facility] development in the coastal area shall file an application for a permit, if so required pursuant to section 5 of P.L.1973, c.185 (C.13:19-5), with the commissioner, [in such form] on forms and with [such] any other information [as] the commissioner may prescribe. The application shall include an environmental impact statement as described in [this act] section 7 of P.L.1973, c.185 (C.13:19-7), unless the commissioner waives the requirement pursuant to subsection b. of this section.

b. The commissioner may waive the requirement that an environmental impact statement be included in an application for a permit for a proposed development by general rule or for an individual permit application. The commissioner may waive the requirement that an environmental impact:

(1) based upon a consideration of the size, type, or location of the proposed development;

(2) because the development is to be located in a municipality which meets the criteria of "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178); or

(3) because the requirement of an environmental impact statement would place an unreasonable burden on the applicant compared with the environmental effects anticipated for that proposed development.

(cf: P.L.1973, c.185, s.6)

8. Section 7 of P.L.1973, c.185 (C.13:19-7) is amended to read as follows:

7. The environmental impact statement shall provide the information needed to evaluate the effects of a proposed [project] development upon the environment of the coastal area. The department shall not require any information to be included in an environmental impact statement other than the information set forth in this section.

a. The department shall require that an environmental impact statement shall include:

[a. An inventory of existing environmental conditions at the project site and in the surrounding region which shall describe air quality, water quality, water supply, hydrology, geology, soils, topography, vegetation, wildlife, aquatic organisms, ecology, demography, land use, aesthetics, history, and archeology; for housing, the inventory shall describe water quality, water supply, hydrology, geology, soils and topography;

b.] (1) A [project] development description which shall specify what is to be done and how it is to be done, during construction and operation;

[c. A listing of all licenses, permits or other approvals as required by law and the status of each;

d. An assessment of the probable impact of the project upon all topics described in a.;

e.] (2) A listing of adverse environmental impacts which cannot be avoided;

[f.] (3) Steps to be taken to minimize adverse environmental impacts during construction and operation, both at the [project] development site and in the surrounding region; and

[g.] (4) Alternatives to all or any part of the [project] development with reasons for their acceptability or nonacceptability[;] .

b. The department may require that an environmental impact statement may include:

(1) An inventory of existing environmental conditions at the development site and in the surrounding region which shall describe air quality, water quality, water supply, hydrology, geology, soils, topography, vegetation, wildlife, aquatic organisms, ecology, demography, land use, history, and archeology;

(2) An assessment of the probable impact of the development upon all topics described in paragraph (1) of this subsection;

(3) A listing of all licenses, permits or other approvals as required by law and the status of each; and

[h.] (4) A reference list of pertinent published information relating to the [project] development, the [project] development site, and the surrounding region.

(cf: P.L.1973, c.185, s.7)

9. Section 8 of P.L.1973, c.185 (C.13:19-8) is amended to read as follows:

8. [a.] Within 30 days following receipt of an application, the commissioner shall notify the applicant in writing regarding its completeness. The commissioner may declare the application to be complete for filing or may notify the applicant of specific deficiencies. The commissioner, within 15 days following the receipt of additional information to correct deficiencies, shall notify the applicant of the completeness of the amended application. The application shall not be considered to be filed until it has been declared complete by the commissioner.

[b. The commissioner, within 15 days of declaring the application complete for filing, shall set a date for the hearing. The date for the hearing shall be set not later than 60 days after the application is declared complete for filing.]

(cf: P.L.1973, c.185, s.8)

10. Section 9 of P.L.1973, c.185 (C.13:19-9) is amended to read as follows:

9. a. The commissioner, or a member of the department designated by [him] the commissioner, shall, upon a written request by the applicant or any other interested party, received within 15 days of the application being filed, hold a hearing within 60 days of the application being filed, or if no hearing is

requested, allow for a 30-day comment period, to afford interested parties the opportunity to present, orally or in writing, their position concerning the filed application and any data they may have developed in reference to the environmental or other relevant effects of the proposed [facility] development. If no hearing is held, the department shall provide sufficient public notice as to the commencement of the comment period.

b. The commissioner, within 15 days after the hearing, if one is held, or 15 days after the close of the comment period if no hearing is held, may require an applicant to submit any additional information necessary for the complete review of the application.

(cf: P.L.1979, c.86, s.3)

11. Section 10 of P.L.1973, c.185 (C.13:19-10) is amended to read as follows:

10. The commissioner shall review filed applications, including [the] any environmental impact statement and all information presented at public hearings or submitted during the comment period. [He shall issue a permit only if he finds] A permit may be issued only upon a finding that the proposed [facility] development:

a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.

b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.

c. Provides for the [handling and] collection and disposal of litter, [trash, and refuse] recyclable material and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.

d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.

e. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.

f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.

g. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing public scenic [and aesthetic] attributes at the site and within the surrounding region.

h. Is consistent with the management plan for the coastal area as provided in section 11 of P.L.1985, c.398 (C.52:18A-206).

(cf: P.L.1973, c.185, s.10)

12. Section 11 of P.L.1973, c.185 (C.13:19-11) is amended to read as follows:

11. Notwithstanding the applicant's compliance with the criteria listed in section 10 of [this act] P.L.1973, c.185 (C.13:19-10), if the commissioner finds that the proposed [facility] development would violate or tend to violate the purpose and intent of this act as specified in section 2 of

P.L.1973, c.185 (C.13:19-2), or [if the commissioner finds] that the proposed [facility] development would materially contribute to an already serious and unacceptable level of environmental degradation or resource exhaustion, [he] the commissioner may deny the permit application, or [he] the commissioner may issue a permit subject to such conditions as [he] the commissioner finds reasonably necessary to promote the public health, safety and welfare, to protect public and private property, wildlife and marine fisheries, and to preserve, protect and enhance the natural environment. [In addition, the] The construction and operation of a nuclear electricity generating facility shall, however, not be approved by the commissioner unless [he] the commissioner [shall find] finds that the proposed method for disposal of radioactive waste material to be produced or generated by such facility will be safe, conforms to standards established by the [Atomic Energy] Nuclear Regulatory Commission and will effectively remove danger to life and the environment from such waste material.

(cf: P.L.1973, c.185, s.11)

13. Section 1 of P.L.1986, c.145 (C.13:19-11.1) is amended to read as follows:

1. Notwithstanding the provisions of any rule or regulation to the contrary, the department shall not require the provision for low and moderate income housing as a condition for approval of an application to construct or undertake a [facility] development in the coastal area pursuant to the provisions of P.L.1973, c.185 (C.13:19-1 et seq.).

(cf: P.L.1986, c.145, s.1)

14. Section 12 of P.L.1973, c.185 (C.13:19-12) is amended to read as follows:

12. a. The commissioner shall notify the applicant within [60] 90 days after the hearing or comment period as to the granting or denial of a permit. The reasons for granting or denying the permit shall be stated. In the event the commissioner requires additional information as provided for in section 9 of P.L.1973, c.185 (C.13:19-9), [he] the commissioner shall notify the applicant of [his] the decision within 90 days following the receipt of the information.

b. If the decision to grant or conditionally grant a permit would result in a development substantially different from that in the application on which the hearing or comment period was held, the commissioner shall give notice of that fact to the applicant and to the public prior to the time notice of a decision is to be given to an applicant pursuant to subsection a. of this section, provide reasonable opportunity for public inspection of the preliminary decision, and allow an additional 45-day comment period before the applicant is notified of the final decision.

c. Any determination made by the department pursuant to the provisions of P.L.1973, c.185 (C.13:19-1 et seq.), including the issuance of a permit, shall constitute a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any applicant or interested party shall be afforded an opportunity to contest the determination in an administrative hearing before the commissioner or the Office of

Administrative Law. An organization may contest a determination on behalf of its membership. For the purposes of this section, a person shall be considered an interested party if the person:

(1) has raised an objection to the determination either orally or in writing prior to the determination by the department;

(2) alleges a significant issue of law or fact with respect to the determination; and

(3) alleges an interest, which may include an environmental or recreational interest, which is or may be affected by the determination.

d. An aggrieved person shall submit the following information to initiate an administrative hearing pursuant to subsection c. of this section:

(1) a statement of each legal or factual question alleged to be at issue, and its relevance to the determination, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication;

(2) information supporting the request, which shall be submitted pursuant to regulations adopted by the department for such purposes pursuant to the "Administrative Procedure Act";

(3) the name, mailing address, and telephone number of the person making the request;

(4) a clear and concise factual statement of the nature and scope of the interest of the requester;

(5) the names and addresses of all persons and organizations that the requester represents; and

(6) specific references to the contested determination, if any, as well as suggested revised or alternative permit conditions.

(cf: P.L.1973, c.185 s.12)

15. Section 14 of P.L.1973, c.185 (C.13:19-14) is amended to read as follows:

14. In the event of rental, lease, sale or other conveyances by an applicant to whom a permit is issued, such permit, with any conditions, shall be continued in force and shall apply to the new tenant, lessee, owner, or assignee so long as there is no change in the nature of the [facility] development set forth in the original application.

(cf: P.L.1973, c.185, s.14)

16. Section 17 of P.L.1973, c.185 (C.13:19-17) is amended to read as follows:

17. The department [is hereby authorized to] shall, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt [, amend and repeal] rules and regulations to effectuate the purposes of this act.

(cf: P.L.1973, c.185, s.17)

17. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to read as follows:

18. [If any person violates any of the provisions of this act, rule, regulation or order promulgated or issued pursuant to the provisions of this act, the department may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations and said court may proceed in a summary manner. Any person who violates any of the provisions

of this act, rule, regulation or order promulgated or issued pursuant to this act shall be liable to a penalty of not more than $3,000.00 to be collected in a summary proceeding or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under the circumstances.]

a. Whenever the department finds that a person has violated any provision of P.L.1973, c.185 (C.13:19-1 et seq.), or any regulation, rule, permit, or order adopted or issued by the department pursuant thereto, the department may:

(1) Issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;

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

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section.

Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

b. Whenever the department finds that a person has violated any provision of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, the department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

c. The department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, and the court may proceed in the action in a summary manner.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

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

(3) Assessment of the violator for any cost incurred by the department in removing, correcting or terminating the adverse

effects upon the land or upon water or air quality resulting from any violation of any provision of P.L.1973, c.185, or any regulation or rule adopted pursuant thereto or any permit or order issued by the department pursuant to that act for which the action under this subsection may have been brought;

(4) Assessment against the violator of compensatory damages for any damage or loss or destruction of wildlife, fish or aquatic life, or habitat and for any other actual damages caused by any violation of P.L.1973, c.185, any regulation or rule adopted pursuant thereto, or any permit or order issued by the department pursuant to that act for which the action under this subsection may have been brought. Assessments under this subsection shall be paid to the department, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

d. The department is authorized to assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than $25,000 for each violation. No assessment may be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section or provision of P.L.1973, c.185, the regulation, rule, permit, or order issued by the department pursuant to that act that has been violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, including any interest that may accrue thereon if the penalty is not paid when due, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 30 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due, unless the penalty is contested by the person responsible for the payment thereof. If the penalty is contested:

(1) and the amount of the penalty is upheld in whole or in part, an interest charge shall accrue and be collectible on the amount of the penalty upheld as of the date that payment was originally due on the penalty that was contested;

(2) no interest charge may be assessed on the amount of any penalty that was paid prior to or within 30 days from the date payment of the contested penalty was originally due, and if the amount paid to the department was in excess of the amount that

is subsequently upheld, the department shall be liable for payment of an interest charge for such excess amount, which interest charge shall accrue as of the date that the penalty was received by the department.

Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court. For the purposes of this subsection, the date that a penalty is due is the date that written notice of the penalty is received by the person responsible for payment thereof, or such later date as may be specified in the notice.

e. Any person who violates the provisions of P.L.1973, c.185, any rule or regulation adopted pursuant thereto, or any permit or order issued by the department pursuant to that act, an administrative order issued pursuant to subsection b. of this section or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative assessment in full pursuant to subsection d. of this section, shall be subject, upon order of a court, to a civil penalty of not more than $25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

f. There is created in the department a special nonlapsing fund, to be known as the "Cooperative Coastal Monitoring Enforcement Fund." Except as otherwise provided in this section, all monies from penalties, fines, or recoveries of costs collected by the department pursuant to this section on and after the effective date of this section, shall be deposited in the fund. Interest earned on monies deposited in the fund shall be credited to the fund. Unless otherwise specifically provided by law, monies in the fund shall be utilized exclusively by the department for the cost of providing aircraft overflights for monitoring, surveillance and enforcement activities of the Cooperative Coastal Monitoring Program established in the department.

(cf: P.L.1973, c.185, s.18)

18. Section 19 of P.L.1973, c.185 (C.13:19-19) is amended to read as follows:

19. The provisions of this act shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including the authority of the department to regulate waterfront development pursuant to R.S.12:5-1 et seq. and municipal zoning authority. [The provisions of this act shall not apply to those portions of the coastal areas regulated pursuant to enforceable orders under the Wetlands Act, C.13:9A-1 et seq., section 16 however shall apply to the entire area within the boundaries described herein.]

(cf: P.L.1973, c.185, s.19)

19. R.S.12:5-3 is amended to read as follows:

12:5-3. a. All plans for the development of any waterfront upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable, or any other similar or dissimilar waterfront development shall be first submitted to the Department of Environmental Protection. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection first had and received, or as hereinafter in this chapter provided.

b. The following are exempt from the provisions of subsection a. of this section:

(1) The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

(2) The repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure, provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels; and

(3) development in the coastal area, as defined in section 4 of P.L.1973, c.185 (C.13:19-4), landward of the mean high water line of any tidal waters.

(cf: P.L.1981, c.315, s.1)

20. Section 3 of P.L.1975, c.232 (C.13:1D-31) is amended to read as follows:

3. The department shall approve, condition or disapprove an application for a construction permit within 90 days following the date that the application is complete, except that this time period may be extended for a 30-day period by the mutual consent of the applicant and the department, provided that the department request the applicant for such an extension at least 15 days prior to the expiration date for the approval, conditioning or disapproval of such an application. This section shall not apply to applications for permits issued for developments pursuant to P.L.1973, c. 185 (C.13:19-1 et seq.).

(cf: P.L.1975, c.232, s.3)

21. Section 11 of P.L.1985, c.398 (C.52:18A-206) is amended to read as follows:

11. a. [Nothing in this act] The provisions of P.L.1985, c.398 (C.52:18A-196 et seq.) shall not be construed to affect the plans and regulations of the Pinelands Commission pursuant to the "Pinelands Protection [Act" (P.L.1979, c.111) ,] Act," P.L.1979, c.111 (C.13:18A-1 et seq.) and the Hackensack Meadowlands Development Commission pursuant to the "Hackensack Meadowlands, Reclamation and Development [Act" (P.L.1968, c.404), or the Department of Environmental Protection pursuant

to the "Coastal Area Facility Review Act" (P.L.1973, c.185)] Act," P.L.1968, c.404 (C.13:17-1 et seq.). The State Planning Commission shall rely on the adopted plans and regulations of these entities in developing the State Development and Redevelopment Plan.

b. Within 18 months of the effective date of this section, the State Planning Commission shall, in consultation with the Department of Environmental Protection, draft and adopt a management plan for the coastal area as defined in section 4 of P.L.1973, c.185 (C.13:19-4). The management plan for the coastal area shall thereafter be a part of the continuing process of the State Development and Redevelopment Plan.

c. The management plan for the coastal area shall be developed in a manner necessary to effectuate the purposes of P.L.1973, c.185 (C.13:19-1 et seq.) and shall be closely coordinated with the provisions of the federal "Coastal Zone Management Act of 1972," 16 U.S.C. §1451 et seq.

d. The State Planning Commission shall, where appropriate, consult with the Pinelands Commission in developing the management plan as provided in subsection b. of this section as it affects the planning and management of the development or use of any land in the coastal area that is also within the boundaries of the Pinelands National Reserve. The management plan provisions relating thereto shall be developed in a manner necessary to effectuate the purposes of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) and section 502 of the "National Parks and Recreation Act of 1978," 16 U.S.C. §471i.

(cf: P.L.1985, c.398, s.11)

22. a. (New section) The commissioner may waive the permit requirement for development in the coastal area if the commissioner finds that the requirement of a permit would create an extraordinary hardship for the applicant because a significant investment had been made in obtaining the approval of municipal or county governmental entities, as the case may be, prior to the effective date of this section and if the development would not have been required to obtain a permit prior to that effective date. The commissioner may waive the permit requirements pursuant to this section, provided the waiver would not result in a substantial impairment of the natural resources of the coastal area.

b. The commissioner may waive strict compliance with the provisions of P.L.1973, c.185 (C.13:19-1 et seq.), and the rules and regulations adopted pursuant thereto, upon a finding that a waiver is necessary to alleviate extraordinary hardship or to satisfy a compelling public need, and is consistent with the purposes and provisions of P.L.1973, c.185 (C.13:19-1 et seq.).

23. (New section) The department shall annually prepare and submit to the Senate Coastal Resources and Tourism Committee and the Assembly Environment Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly, a report regarding the status of applications for development in the coastal area pursuant to P.L.1973, c.185 (C.13:19-1 et seq.). The report shall:

a. Include any statistical or other type of information deemed

pertinent by the department to evaluate the effectiveness of the permit review capabilities and performance of the department;

b. Identify recurring problems in the permitting process and procedures, and describe the causes thereof, and suggest possible solutions to those recurring problems;

c. Provide an evaluation and analysis of the permit data and information collected and set forth in the report, which data shall include:

(1) The number of permit applications received by the department in the preceding year;

(2) The number of permit applications pending;

(3) The total number of permits issued, modified, and denied by the department;

(4) The average period of time that elapses between the receipt of a permit application and an administrative review of the application for completeness;

(5) The average period of time that elapses between an administrative review of a permit application for completeness and its being deemed complete;

(6) The average period of time that elapses between a permit application being deemed complete and the issuance, modification, or denial of the permit; and

(7) The average total period of time that elapses between the receipt of a permit application and the issuance, modification, or denial of the permit;

d. Make recommendations for appropriate legislative or administrative action to enhance the effectiveness of the permit review capabilities and performance of the department.

24. (New section) a. The Coastal Area Review Board established pursuant to section 13 of P.L.1973, c.185 (C.13:19-13) is upon the completion date of its duties, abolished, and all powers, functions and duties thereof shall terminate. Any appeal pending before the Coastal Area Review Board prior to the effective date of this section may be decided by the board.

b. An appeal from a decision of the commissioner made by an applicant after the effective date of this section, and prior to the effective date of section 13 of P.L. , c. (C.) (now before the Legislature as this bill) shall constitute a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and an applicant shall be afforded an opportunity to contest the decision in the manner provided therein. Upon the effective date of section 13 of P.L. , c. (C.) (now before the Legislature as this bill) and thereafter, an appeal from a decision of the commissioner shall be made in the manner provided therein.

c. For the purposes of this section, "completion date," with respect to the Coastal Area Review Board, shall mean the date upon which all decisions on appeal from decisions by the commissioner pursuant to section 12 of P.L.1973, c.185 (C.13:19-12), have been rendered by the Coastal Area Review Board, as certified by the voting members thereof. Notice of the certification of the completion date shall be published by the board in the New Jersey Register.

25. The following is repealed:

Section 13 of P.L.1973, c.185 (C.13:19-13).

26. The following are repealed:

Section 16 of P.L.1973, c.185 (C.13:19-16); and

Section 22 of P.L.1979, c.111 (C.13:18A-23).

27. Sections 1 through 19, inclusive, section 21, section 22, and section 25 of this act shall take effect one year from the date of enactment of this act. Section 20 and section 23 of this act shall take effect immediately. Section 24 of this act shall take effect upon the completion date provided in section 23 of this act. The Commissioner of Environmental Protection and the State Planning Commission may take such anticipatory actions as may be necessary to provide for the timely implementation of this act on the effective dates set forth herein.

STATEMENT

This bill would revise the provisions of the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), known commonly by the acronym CAFRA. This bill would provide for the application of more stringent environmental standards in reviewing development permits under CAFRA, and tighten existing regulatory thresholds for the issuance of permits pursuant to CAFRA.

Specifically, the bill replaces the current CAFRA definition of "facility" with a definition of "development." "Facility" was defined to include a number of industrial facilities, some public facilities, and housing developments under 25 units. In contrast, the definition of "development" in the bill utilizes much of the language from the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), thus covering all residential, commercial, industrial, and public developments.

The new definition eliminates the current exemptions for (1) many residential projects of under 25 units, (2) some industrial and public facilities, and (3) many commercial developments (e.g. strip shopping centers, restaurants, office buildings, etc.). Currently, the provisions of CAFRA require commercial developments to obtain a CAFRA permit if the development involves a parking lot of over 300 parking spaces, in which case the parking lot is considered a road and thus regulated.

The bill requires that these developments be subject to a tiered system of review based upon the proximity of that development to the mean high water line of tidal waters. In municipalities located within the coastal area which meet the criteria of "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178) (known generally as "urban aid" municipalities), only those residential development of 75 or more units would need a permit, regardless of its proximity to the water. These provisions would subject certain developments in the coastal area not presently subject to Department of Environmental Protection (DEP) permit review to such review, and would thus substantially close what is commonly referred to as the CAFRA "loophole."

The bill also contains a number of additional exemptions from permit requirements and review such as: developments for which

on-site construction was in process; the reconstruction of any development which did not require a permit pursuant to CAFRA as originally enacted; the reconstruction of any building or structure damaged or destroyed by fire, storm, natural hazard or act of God; or any development for which a "hardship waiver" has been granted by the Commissioner of Environmental Protection.

The bill also contains a provision allowing the Commissioner of Environmental Protection to waive the requirement that an environmental impact statement be prepared for all developments in the coastal area based upon a consideration of the size, type or location of the development, and if the commissioner determines that the requirement of an environmental impact statement would place an unreasonable burden upon the person proposing such a development when compared with any potential adverse environmental impacts. The bill also provides DEP with the discretion to vary certain provisions of the existing environmental impact statement requirements of CAFRA. The bill also allows the commissioner to waive the requirement that a public hearing be held on all permit applications for development in the coastal area.

The bill also provides that any determination made by DEP pursuant to the provisions of the CAFRA shall constitute a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and that any qualifying interested party would be afforded an opportunity to contest such a determination in an administrative hearing before the commissioner or the Office of Administrative Law.

The bill also authorizes the Commissioner of Environmental Protection to approve permits notwithstanding the requirements of CAFRA, in order to "alleviate extraordinary hardship, or to satisfy a compelling public need, and would not result in a substantial impairment of the resources of the coastal area." This "hardship waiver" language is similar to that contained in the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.).

The bill also directs the State Planning Commission, in consultation with DEP, to prepare a management plan for the coastal area. The management would become part of the State Development and Redevelopment Plan.

The penalty section of CAFRA has been amended to allow for greater civil penalties for violations. The bill provides the DEP with the civil enforcement powers provided under most other environmental acts. In addition to clarifying injunctive powers, the bill increases the maximum level of penalties for violations from $3,000 to $25,000. The bill also allows the DEP to issue civil administrative penalties. The bill also provides that penalty monies be deposited in a special nonlapsing fund, to be known as the "Cooperative Coastal Monitoring Enforcement Fund." Penalty monies would be used by DEP to defray the cost of monitoring, surveillance and enforcement activities of the Cooperative Coastal Monitoring Program.

The bill also amends R.S.12:5-3 to provide that CAFRA shall be the only State law regarding the regulation of development in the coastal area landward of the mean high waterline of tidal

waters. The effect of this provision would be to supersede any regulations that would regulate coastal land development pursuant to what is commonly known as the Waterfront Development Law, R.S.12:5-1 et seq.

The bill also requires that the DEP submit annual reports to the Senate Coastal Resources and Tourism Committee, and the Assembly Environment Committee, or their successors, containing information on the efficiency of the permit review process, and any recommendations for enhanced efficiency in implementing the department's responsibilities under the bill.

The bill also makes technical corrections to the description of the boundaries of the coastal area as defined in CAFRA, and makes changes to the boundaries to remove areas overlapping with the pinelands protection area.

The bill also amends section 2 of CAFRA, altering the findings and declarations of the Legislature to reflect the regulatory provisions contained in the bill.

The bill also repeals section of 13 of P.L.1973, c.185 (C.13:19-13), thereby abolishing the Coastal Area Review Board established therein, repeals section 16 of P.L.1973, c.185 (C.13:19-16), which directed DEP to develop a long-term environmental management strategy for the coastal area, and repeals section 22 of P.L.1979, c.111 (C.13:18A-23), which directed the DEP to revise the environmental design for those parts of the coastal area within the Pinelands National Reserve which may conflict with the provisions of federal law regarding the pinelands.

The bill also amends the title of P.L.1973, c.185 to reflect the changed emphasis of CAFRA. The bill also amends the short title of CAFRA to the "Coastal Area Development Review Act," thus reflecting the change in terms used throughout the bill.

Finally, the bill changes certain definitions from the plural to the singular and makes other technical changes.

Revises provisions of the "Coastal Area Facility Review Act."

TABLE OF CONTENTS

mjz: 1-65

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SENATOR JOSEPH M. KYRILLOS, JR. (Chairman): Ladies and gentlemen, we will call the hearing to order. I am Senator Kyrillos. Welcome to this public hearing of the Senate Coastal Resources and Tourism Committee. On my left is the Vice-Chairman, Senator Andrew Ciesla, from Ocean County; and Senator Joe Palaia, my colleague from Monmouth County, a member of the Committee; and finally, Senator Jim Cafiero, from Cape May County.

I have a very short opening statement which I will read. Then I will ask members of the Committee for their comments. Then we will get right into testimony. As is custom, we have the Office of Legislative Services recording today's hearing, and transcripts will be available.

Today our purpose is to hear testimony, as you know, on S-1475, sponsored by Senator Bennett and myself, which amends the Coastal Area Facility Review Act. One of the real challenges for New Jersey is to find a way to permit those who want to live at the shore and visit the shore to enjoy the resources that attract them there, without destroying those resources in the process. We've got to remember that CAFRA was enacted in 1973 to prevent the New Jersey coast from being overrun by large industrial facilities, such as oil refineries, petrochemical plants, and nuclear power generating stations.

Although successful in this regard, CAFRA could not react to the other larger changes that have affected the shore. For example, CAFRA couldn't react to the proliferation of residential developments along the coast. Although the fears of huge power plants and chemical facilities never did materialize, the Jersey shore was still subjected to very intense development. Now we've got to realize and face the reality that the New Jersey coastline is the most highly developed stretch of shoreline in the entire nation. Developments have been constructed within close proximity to the beach without State review, utilizing the so-called CAFRA

loophole, and that exempts housing developments, as you all know, of 24 units or less from CAFRA permitting.

Commercial developments such as shopping malls and office buildings are not subject to regulation at all, unless they have more than 300 parking spaces. So 70 percent of all development on the coast escapes CAFRA review.

While we can't go back and make a brand-new start, we can start from now and make a brand-new end. In an effort to reform the real glaring and obvious problems with the current law, we have entered this legislation which I believe addressed both environmental concerns, as well as legitimate economic aspirations of the shore area.

So, this bill closes the infamous CAFRA loophole. It recognizes property rights by explicitly granting the right to rebuild. It expands the scope of the CAFRA law by subjecting types of residential, commercial, industrial, and public development currently not regulated under existing law, to CAFRA compliance, and it directs the State Planning Commission to adopt a managing plan to channel growth and development in the coastal area.

I realize that the bill has provisions which will generate many concerns among various constituencies. The staffers from OLS asked me if I wanted to put a support pile of those wanting to testify in one corner and the opponents' pile in the other. Needless to say, the entire pile was made up of opponents. There are some neutral folks, and maybe one or two folks who want to testify in favor.

This is a very complex and controversial issue. I think that good public policy demands that all sides be heard and the most comprehensive data be compiled. So I welcome -- all of us on the Committee welcome and encourage input on all sections of the bill, from all interested parties, both today, in private, and in future hearings.

With that, let me turn the meeting over to Senator Andrew Ciesla, from Ocean County, for his comments.

SENATOR CIESLA: Joe, thank you very much. My goal for being here today is to begin the process of looking at this legislation. I am here to learn from the people who are going to testify regarding the impact of what we are planning to do here. It is my goal to fully understand what the impact of this legislation will be, not only on the environment, but on the economy of the State of New Jersey. I view this first meeting as a start in this particular process.

Thank you, Mr. Chairman.

SENATOR KYRILLOS: Thank you, Senator Ciesla. Senator Palaia?

SENATOR PALAIA: Thank you, Mr. Chairman. Just briefly again, I just want to say the same basic thing. I am here to listen, as I am sure the other Committee members are. No one could put in a bill as complicated as this type of bill is and have it all done in one sitting. It just can't be done. We know there will be a lot of twists and turns as we work our way through it, because it is not a simple matter. It is extremely complicated.

I would look forward to listening to what they have to say. I am sure the Committee is going to take those suggestions and maybe redraft, or do what we have to do to come out with a bill that I hope in the end would have some kind of compromise to it with all of the people involved.

Thank you, Mr. Chairman.

SENATOR KYRILLOS: Thank you, Senator Palaia, cosponsor of this original legislation. Senator Cafiero?

SENATOR CAFIERO: Mr. Chairman, thank you. I guess I echo the remarks that have been given so far by the other members of the Committee. I guess I am the only member of the Committee who was here in '73 when CAFRA I took place, and I guess I was the one responsible for creating Cafiero's donut

back in 1973. My guess is that the Senator from the home county probably was one of the biggest objectors. I am here to listen and learn -- to hear what my constituents say again, what they have been saying since 1973.

SENATOR KYRILLOS: I missed your earlier remark, Senator. Cafiero's donut?

SENATOR CAFIERO: Cafiero's donut. I don't want to take the Committee's time to explain that. I will defer to them to give the most kind--

SENATOR KYRILLOS: It will be interesting reading in the transcript, though, if we could--

SENATOR CAFIERO: What, from 1973?

SENATOR KYRILLOS: That's right.

SENATOR CAFIERO: No.

SENATOR PALAIA: How did they write up about the donut?

SENATOR CAFIERO: They all know.

SENATOR KYRILLOS: Thank you, Jim.

I would urge everybody to be as concise as possible. We have a number of members of the environmental community who would like to speak. We have the Vice President of the Builders Association, and some citizens as well.

First I would like to call up the Assistant Commissioner from the Department of Environmental Protection and Energy, John Weingart. Welcome, John.

A S S T. C O M M. J O H N R. W E I N G A R T: Good afternoon. Thank you.

I am Assistant Commissioner of the New Jersey Department of Environmental Protection and Energy. I have been involved with the administration of CAFRA since 1975. Like many of you, I have seen a lot of amendments proposed to CAFRA. This is the best one. This is one that seems to me to have listened to a lot of the discussion that has gone on over the years of ways to amend CAFRA, and to have taken large steps

toward incorporating a lot of the suggestions, questions, and concerns that were raised in the previous years of debate into one bill. If this bill was enacted today without changing a word, it would be an improvement over CAFRA as it is today.

I think there are a number of ways the bill could be improved further. There are a number of suggestions that we, in the Department, would like to make, and we would request the opportunity to work with you in the weeks ahead to draft the bill -- or, to draft changes to the bill. I won't go into them in detail now, but will just mention two general areas.

One is that the bill, I think appropriately, divides the shore into tiers, or the coastal area into tiers, and sets up three tiers. I would recommend considering shaping those tiers somewhat differently, so that the area immediately adjacent to the water -- the beaches and dunes and wetlands, which are already protected, as well as a 150-foot buffer of some area of roughly that size inland of those areas, be considered the most sensitive, or the area that is regulated most intensely, since it is the most sensitive area. Then the tiers that go inland further than that be regulated less intensely. Whether the number is 12 or 15 or 25, or a number higher than 25 units, I think is something that we would be delighted to work with you to discuss.

The second area is in the area of more administrative changes to the bill. The bill speaks of combining the Waterfront Development Act with CAFRA into one law, which I think is an excellent idea. It would lead to a somewhat more streamlined permitting process. The Waterfront Development Law is the 1914 law under which we now regulate piers and docks and bulkheads in the CAFRA area, as well as a narrow band of upland development outside the CAFRA area along the Hudson River and Delaware River and Raritan River.

My suggestion would be to explicited include the Department's current regulation under that Act within this Act,

so that there would be one law that governed coastal development. That specific suggestion would not change the regulation as it is today. It would not subject anything to regulation today that is not already regulated, nor would it change the criteria under which it is regulated, but it would lead to consolidating some of those reviews.

There are other administrative changes that the bill speaks of that I think need a little refining to improve, to make sure that if-- CAFRA is set up today to regulate only large developments. As a result, it requires an Environmental Impact Statement and a public hearing for every project. The bill takes steps to address that so that if we are regulating smaller developments, they don't have to necessarily have a public hearing or necessarily submit the same volume of information that would be required of a large development. There is some language work that we would like to do with you on that.

Similarly, the bill appears to the Department of Transportation, and to me, to at least leave open the question of, if somebody has to repave a road, for example, would that need a permit? I don't think any of us intend that, but there are language questions like that.

In closing I would just like to say I think-- To reiterate, we would like to work with you on this. I think as we all greeted each other today it was somewhat like a reunion. Many of us in this room -- or most of us in this room, I think -- have been to lots of these hearings to discuss various bills to amend CAFRA, coastal commissions and other acts that would do this. The question is, can we do it this year? Is this one going to be different? Particularly with this being a gubernatorial election year, can we do it this year? I would say the answer is, "Yes." I have talked to most of the people in this room at various times about CAFRA and about their concerns. We all have different wish lists. If we

were each writing our own bill, we would come up with different bills. But I think there are areas where we are all pretty close to agreeing. I think I said this the last time I testified before you, and then Dery Bennett got up and said I was wrong, but I still think I am right.

There are areas where we would all agree on ways to improve CAFRA and that we could do it. Senator Cafiero mentioned that CAFRA was originally enacted 20 years ago. That, too, was a gubernatorial election year. If it was able to be done then, I don't see any reason why it can't be done this year.

Thank you. I would be happy to answer any questions.

SENATOR KYRILLOS: John, thank you for your comments.

Senator Palaia?

SENATOR PALAIA: John, throughout the bill it seems like we're putting a great deal of pressure on the DEP for review of the process and everything. Are you ready, really-- Are they ready to accept it knowing -- with all due respect, knowing the track record that we have over there now, where it has taken us forever to get the simplest things put through? Are we going to go through this bureaucratic plan again?

ASSISTANT COMMISSIONER WEINGART: I think there are two differences, or there is one difference and one problem, which I am glad you raised. The difference is, if this bill were passed, or something like it were passed today, the regulations are already in place. We already have coastal policies that govern how we make decisions; that are out there; that are probably subject to debate, but which are somewhat predictable. So we can say to somebody-- If someone comes in with an application to build on a dune, we can say we are going to deny it, or we are going to deny that part of the project that is on a dune; that it is in our regs. So there wouldn't be that kind of a delay.

There are staffing issues that-- I am not sure the best way to address them, but we have to address them. The day this bill becomes law, there are more people who are going to need permits than need permits today, and we are going to need a larger staff to review those permits.

SENATOR PALAIA: Here we go.

ASSISTANT COMMISSIONER WEINGART: Yes.

SENATOR PALAIA: Here we go again, John. That is exactly my point. Are we now going to say, "Well, there are budget restraints. We don't have enough people. Well, I've got 90 days to do this. I am going to take up to the 89th day"?

SENATOR CIESLA: That's out of it.

SENATOR PALAIA: No, I'm just saying that that is the way it is now.

ASSISTANT COMMISSIONER WEINGART: I think the 90-day law has been one of the more successful laws that I have been involved with, because it has made us make decisions more quickly. But as the permit fee programs-- The permit programs are increasingly financed almost entirely by fees. So the staff that now runs the CAFRA program is paid out of the fees that come in from CAFRA permits.

The problem we will have is the start-up time. If, on a given day, we suddenly have twice as many CAFRA permit applications, we are not going to immediately have enough money to pay for those fees. I think we would eventually, but I think there needs to be some kind of a bridge for the first year that these amendments take effect, where there would be an appropriation or something, someway that we could hire the staff. I also think that we all need to be sensitive to when those amendments take effect, to make sure that, on the one hand, we are given enough time to get geared up so that the day it becomes law we have the staff, so that we don't have those kinds of backlog delays that most new laws usually have. But on the other hand, to make sure that we do not provide too

large a window in which people can put pilings in the ground on every vacant site. I mean, that is a delicate balance, and I am not sure of the best way to do it.

SENATOR PALAIA: I just see it as a potential problem down the road.

ASSISTANT COMMISSIONER WEINGART: Yes, it is definitely something that needs to be addressed. I don't see it as an--

SENATOR PALAIA: See, we can pass whatever we want, as you know, but after it leaves our hands and the Governor even signs it into law, the ball game is really just starting.

ASSISTANT COMMISSIONER WEINGART: Yes. I mean, we--

SENATOR PALAIA: It is not just ending, it is just starting then.

ASSISTANT COMMISSIONER WEINGART: We would love to see as many of those issues addressed in the drafting of the bill as possible, so that we could recognize that we had something workable.

SENATOR PALAIA: Okay. Thank you, John.

SENATOR KYRILLOS: Thank you, Senator Palaia.

John, you will note that in the bill we increased the penalties for noncompliance fairly significantly, and called for that money to be put into the Coastal Cooperative Monitoring Fund for helicopter overflight to the coastal region, etc. I don't know how much money would accumulate over the course of time. Perhaps some of that increased penalty money could serve to help you with potential staffing problems.

ASSISTANT COMMISSIONER WEINGART: Yes. I think we might want to see some--

SENATOR KYRILLOS: I don't know if it will amount to a significant amount of money or not, but that is something that we can discuss.

ASSISTANT COMMISSIONER WEINGART: Yes, and I think we may want to see some flex -- either a cap on how much-- If it

goes beyond a certain amount it would go to other uses, or some language like that.

SENATOR KYRILLOS: Is there a way for you -- and you may not have a number right now -- to ascertain exactly, or project what kind of money the penalties would bring in?

ASSISTANT COMMISSIONER WEINGART: No. I mean, you know, we always hope the penalties will bring in nothing, because everyone will apply.

SENATOR KYRILLOS: We're hoping it will be zero, but--

ASSISTANT COMMISSIONER WEINGART: Right.

SENATOR KYRILLOS: --if history is a guide, it is still tough to--

ASSISTANT COMMISSIONER WEINGART: It is real tough, yes.

SENATOR KYRILLOS: Okay. Senator Ciesla?

SENATOR CIESLA: Thank you. John, I would just like to follow up on what Senator Palaia indicated in the approval process. I gather from your comment that this is the best alternative that has come along, that the Department is supporting it. I suspect the Department had a significant hand in actually drafting the bills.

ASSISTANT COMMISSIONER WEINGART: Actually, we didn't, but we do support it.

SENATOR CIESLA: Okay. My question is: Does the Department, in making this recommendation, have adequate information to adequately understand the impact of the bill?

ASSISTANT COMMISSIONER WEINGART: Impact? Which kinds of impacts?

SENATOR CIESLA: Well, the bill is proposing to set up tiers and to regulate development from 1000 feet of any tidally flowed waters. Do we know where that is; how much property that encompasses; who can be expected to develop in those areas; how much time it will take to review those applications;

and the amount of personnel that might be necessary to do that in an expedient fashion?

ASSISTANT COMMISSIONER WEINGART: We know one of those things. We know that there are about-- Well, I will give you the figures. There are 653,000 acres within the CAFRA area, and there are about 121,000 of those acres within 1000 feet of the water. So, what is that, a fifth, I guess?

SENATOR CIESLA: About.

ASSISTANT COMMISSIONER WEINGART: A little less than a fifth of the CAFRA area is within 1000 feet. We do not know exact numbers of any of this, in part because it is hard to figure out, but also because, you know, the numbers keep changing on what kind of proposals we are talking about.

In terms of timing, I think we can, and would, commit to making quicker decisions for smaller projects. It doesn't always carry over that the smaller project is easier than the bigger project, but it does carry over, usually, that the people with smaller projects, particularly individual home owners and such, have less resources and deserve quicker answers, or need quicker answers.

But again, I would point back to the 90-day Act. The 90-day Act was something this Department opposed when it was first proposed. We said it was unworkable, and it has worked out great. It has worked out that the decisions on those laws -- or under those permits, are made within 90 days of the application being declared complete. Ninety days is three months, which is a long time, but it is a lot less than it could have been. I think if we can address some of the administrative issues while the bill is being drafted, we can have a system that is pretty workable the day it takes over -- it takes effect.

SENATOR CIESLA: But truthfully, we really don't have a solid handle on what the impact may be and the resources necessary.

ASSISTANT COMMISSIONER WEINGART: No. One question you asked-- We know what the area looks like, and we have provided some maps to the staff here -- the OLS staff -- of sample areas, of different types of areas of the CAFRA area, what 1000 feet would look like on aerial photographs. We have a request from you to provide them for the entire CAFRA area, which we will do. You can see what it looks like. I mean, if you take 1000 feet, it is a lot of area. A thousand feet is most of Long Beach Island when you take both sides, 1000 feet from the bay and 1000 feet from the ocean. So, it is a large area and there would be a lot of-- The way the bill is now drafted, there would be a large amount of development regulated that isn't regulated now.

SENATOR CIESLA: That is the point that I would like to make, and I'm glad that you recognize that, because this bill dramatically increases the amount of regulation that will occur within this zone -- dramatically. The point that was perhaps glossed over before, is that in my reading of the bill, this proposes to take CAFRA out from the 90-day construction wall. It has been my experience, at least in talking with people who have applied and have wished to comply with the regulations, that contrary to the 90-day law perhaps helping to expedite, it seems to me that some people have been indicating that on the 90th day is oftentimes when the approval or modifications or requests for additional information were forthcoming.

ASSISTANT COMMISSIONER WEINGART: Senator, just on that, I think that is a myth. I mean, I have been in the job of Assistant Commissioner for a year-and-a-half, and I have heard that comment for years. I have said to everybody I have spoken to, "If anybody feels that is being done to them, let me know -- any applicant, any building group" -- and nobody does. There have been a few cases in the Stream Encroachment Permit

Program where something like that has happened, but that doesn't happen.

The complaint that is legitimate, or does add to the 90 days, is that it takes time to declare an application complete. So someone submits something and we send it back to them and say it is not complete. That doesn't start the 90-day clock, and that does make it run longer.

SENATOR CIESLA: Why does it take so long to deem an application complete then, if that is the problem?

ASSISTANT COMMISSIONER WEINGART: Well, one of the problems which I think the Doria package of bills that you passed last year helps to address, is communication in both directions. We, in some programs, have had technical manuals to say exactly what is required, and in some we haven't. Now, under those bills we are just, in the next couple of weeks, going to release technical manuals for every permit program that will say explicitly what is required.

Similarly, there has been a sort of scatter-shot approach to training, where we put on workshops for consultants and lawyers and permit applicants on how to work in the permit process. We haven't done that, probably, as much as we could. Again, one of the recommendations, or requirements, of those bills is that we do that more.

There are some consultants, some permit applicants who have been through the process a number of times who submit applications that are generally declared complete from the beginning and generally go through in something like 90 days or less. I can provide you with numbers, if you would like, showing the length of time it is taking to get a permit from the Department in CAFRA has gone down over the years. But that is not to say that there are not problems.

SENATOR CIESLA: Okay. But I am correct in my reading of the bill that this proposal does remove the 90-day restriction?

ASSISTANT COMMISSIONER WEINGART: I didn't see that, so I don't know. It is not something that DEP would advocate. I would like to see the 90-day restriction, or something like it, kept in. It is helpful to us to have that restriction in the bill.

SENATOR CIESLA: Maybe OLS could research that for me, because I read the bill as doing that.

Thank you.

SENATOR KYRILLOS: I think Senator Ciesla's observation is correct. John, let's work together on some suggested language to put some finality to the process in the legislation.

Are there any other questions from the members of the Committee? (no response) John, thank you very much for being here.

ASSISTANT COMMISSIONER WEINGART: Thank you

SENATOR KYRILLOS: I, as always, appreciate your input, your counsel. I thank you for your endorsement of the bill. I realize you have some qualifications, as we all do, and we will work together on it. I should say publicly that I have discussed this matter many times, not only with you, but with Commissioner Weiner, and with the Governor's Office, and I think the Legislature and the administration really are committed, as you point out, to passing a bill this year -- this gubernatorial election, legislative election year, or not. I am very confident that we will see a bill enacted into law in this session of the Legislature.

Thank you, John.

ASSISTANT COMMISSIONER WEINGART: Thank you.

SENATOR KYRILLOS: Before we get to Peter Reinhart, from the New Jersey Builders Association, and then to members of the environmental community, I would like to bring up two citizens whom I think have to leave. I will ask them to make

their comments as summarizing as possible. First, Bob Furlong, from the Friends of the Jersey Shore, who is officially neutral.

R O B E R T J. F U R L O N G, SR.: Thank you, Joe. I use the word "neutral," because I favor what you do. I question how you do it.

First, I would like to make one mention of something: You said overbuilding along the shore was a prime cause of what we are facing today, and a lot of blue-ribbon groups said the same thing. I don't agree with that at all. It is not what you build; it is where you build it and how you build it that counts. I think it is wonderful and very American that 24 people can enjoy the ocean in two acres, where formerly only one person enjoyed it, at a very much lower price. I mean, shorefront property is very expensive. To start putting, like, one and two units to an acre destroys the whole availability to many, many people.

Another concern I also have is that pollution has been pointed to as being caused by overbuilding at the shore. I contend that a gum wrapper thrown into a sewer in Jackson is just as dangerous to the shore as a cigarette wrapper thrown in a sewer in Avalon, because they all end up in the same place. So I think the concern we have is quite a bit different.

Plugging the holes in the permitting process is very, very noteworthy, and we all appreciate it, but the question is, how do you go about it? The first thing I object to, and I strenuously object to, is putting this process into the hands of the DEPE. It was left out of the legislation -- the "E." The comment that Joe made, the comment that Andy made, basically is the comment I would make. I believe it is an area that is involved with decision making that is based on the wrong reasons. I think you are taking the whole guts of the law and you're tearing it apart by giving it to this group to make the decisions. Obviously, a lot of these decisions are

adversarial in nature, particularly against the building community, which I do not represent.

You have two other options you have not investigated. I know there are approximately four areas in law that permit the counties to do the very same thing. I can quote the law anytime you want me to.. You have established planning boards in each county. You have people who are very much concerned who are close to the problem, who are not sitting in Trenton, who could pass the laws -- let's say, activate the permitting process as you are looking to do. So you have that option. You haven't examined that at all.

You have another option, the type of thing that was presented with the Coastal Commission. Unfortunately, much too large a law, but there was a characteristic that was very noteworthy establishing--

SENATOR KYRILLOS: So, you're advocating the Coastal Commission?

MR. FURLONG: No, I'm not. I am just saying a Coastal Commission just to do the permitting. That's all. In other words, the two options that take it away from the DEP, either one would be more effective. The county thing would defuse it into six areas, rather than one. You could narrow the date and the time down considerably.

The other thing I think you are missing out on is, basically what we should be looking at is land use legislation, not regulation. I can just see the book now. I mean, it's like, round up the usual suspects. Write the regulations. The book will be this thick (demonstrates). No one will understand it, and there will be 18 different interpretations, because even in your law you have put things which are so broad that you could drive a truck through. Scenic, aesthetic, historical-- I mean, these words can mean anything to anybody. You have to be much more concise.

So basically what you ought to do, I believe, is write specific requirements, because what you're doing is, you're adding permitting on top of permitting. Nowadays you go get a permit to build. You want them to get another permit to build. So what you're doing is, you're putting another layer over the municipalities, which is okay.

Now, in the Coastal Commission program they asked the municipalities to rewrite their master plan. That was wrong. All you fellows have to do is pass a new land use regulation which will obviate the possibility of variances, which are given much too often, because all these towns have the race for ratables, which has caused this problem to begin with. You want to slow down that race. That is your whole point here. So if you pass a land use regulation which indicates what can and what cannot be done, that will take the place of a book this thick (demonstrates) of regulations which are meaningless.

The other thing I think you should be aware of -- and I hope everybody is -- no town can have flood control insurance unless they actually carry out the dictates of the Flood Control Commission, or whatever it is called. So if you rebuild, or you build in a flood prone zone, you have to do it at certain heights, certain requirements, all those things that are needed now. So the question I see here actually is much simpler than this voluminous law. It is simply a matter of preventing things from being built poorly and being built in the wrong place. That's the whole problem.

Now, as far as a right place is concerned, I believe you also missed the boat because the Coastal Management Plan is demanded by the Federal government. It is something that has to be done in order to get Federal funds. It is written into the law to build -- 1985. You put in 18 months here for them to get started. Then you give it to the Department of Planning and The Pinelands Commission, totally divorced from the problem.

The Coastal Management Plan should be put together by the DEP with a group from the shore who are close to the problem, who know the problem, including, of course, The Pineland Commission. You know that the shore was left out of the State Plan because at that time the Coastal Commission was being considered. Now the Coastal Commission does not exist; now we have the vacuum. You have to fill it much quicker than 18 months, because you know that will spread to 24 months, like every other commission. That should even be part of this law: giving a timetable; who should do it; when they should do it. That is more important than penalties -- getting to penalties, another waste of time.

In every borough hall, in every county seat, in every State department, there is a pile this high (demonstrates) of penalties that have not been collected. I would rather pay a penalty and get away with something than be stopped. You can save four pages of this legislation by saying, "The permit will be revoked" -- period. You violate the law, you lose the permit. Forget the helicopters and all those things. The thing to do is to stop what's wrong. If you're tough about it, forgetting the politics of it, you can enforce the law.

The other thing is, you don't need environmental statements. Again, too much discretion. Have you seen environmental statements? I have one; I nearly brought it with me. It was this thick (demonstrates). It is nothing but borax. The front page and the last page refer to the project, and they grabbed it from every other environmental statement that was ever written. So that is too much. Another page unnecessary, because environmental reviews should only be given to large projects of certain specified size. Before you know it, somebody in DEP doesn't like somebody in Long Beach Island. He has too much money, and therefore they don't like him. So, they will say, "We need an environmental statement

from him," which will cost him approximately $25,000. It's craziness. Get rid of it; you don't need it.

This is a very simple bill that could be codified and bring these things about specifically. I believe it could very easily be done. I didn't bring my statement with me because I couldn't get it typed. I have a big sale going on and I was busy.

SENATOR KYRILLOS: You better get going.

MR. FURLONG: Yep, that's why I asked to speak early.

SENATOR KYRILLOS: What's on sale?

MR. FURLONG: Please, Joe, I would like very much to be part of this process. I think I have a lot to contribute.

SENATOR CIESLA: That sale isn't at the fair, is it, Joe? (no response)

MR. FURLONG: Are there any questions you might have?

SENATOR KYRILLOS: We already gave Bob Furlong a chance to advertise his store once before. I don't think we want to--

MR. FURLONG: Okay. Seriously, Mr. Cafiero?

SENATOR CAFIERO: No.

MR. FURLONG: Joe?

SENATOR PALAIA: No.

MR. FURLONG: Andy?

SENATOR CIESLA: No, thanks.

MR. FURLONG: I'm sorry the Democratic side isn't here. I would like to talk to them.

SENATOR KYRILLOS: I'm sure you'll have another chance to talk to them. Bob, thank you for your comments, your no nonsense comments. I will read through them again when the transcript comes out. I appreciate it.

Next I would like to bring up Ed McCrohan, from Point Pleasant, for his brief remarks.

E D W A R D M c C R O H A N: Thank you, Mr. Chairman, for the opportunity to testify as an individual. I would like to

say that I am both a member of one environmental group that is represented here, but I am also a real estate investor in northern Ocean County, albeit on a rather minor scale.

My testimony today -- and I will submit more detailed information to the appropriate people later -- is, first and foremost, as a father who remembers Ocean County as it was 50 years ago, whose only son recently said he did not want to be given oceanfront property in northern Ocean County as a gift, because of the deterioration in the environment and the quality of life in northern Ocean County.

So before I make a summary of my analysis of S-1475, do you have any questions concerning my background and interest, to place my comments in perspective?

SENATOR KYRILLOS: I think we have them in perspective very well. Thank you.

MR. McCROHAN: Okay. The key thing is, the property on which I currently live has been in my family since 1922. My family has owned property in Point Pleasant Beach on the oceanfront since before the First World War. So, based upon my personal experience, I seriously doubt that municipal governments in New Jersey can be depended upon to enforce development restrictions relevant to protecting or improving the environment or reducing the risk of catastrophic floods without, unfortunately, intensive State and Federal monitoring, and the potential, in fact, for direct penalties against individuals, municipal officers, to whom such enforcement might be delegated, as well as the developers. In other words, I would like to see if there are penalties, that there be some penalties against municipalities or their officers who fail to notify DEPE of developments.

In my analysis of S-1475 as an engineer, and a familiarity with Cox's version of New Jersey Municipal Land Use Law, I have considered its impact on three potential, or real developments in northern Ocean County: One is a condominium

hotel; another is a consolidation of three existing motels that has been going on for several years; and finally, a project that I might be involved in, consolidating residential lots where there might be two families and creating a new motel. I might have been, or might become an investor in one of these projects. The uncertainty about the CAFRA review process is one of the reasons I have not put up a lot of money for property, other than for my personal use, so far.

My conclusions are that CAFRA revisions, as proposed, on balance, correct many of the defects in the current statutes. The tiered system of regulation and language compatibility with Municipal Land Use Law seem to be major improvements in the State's passive approach to environmental protection. Secondly, however, even the proposed revisions without support of appropriate regional planning -- not municipal planning -- and substantial additional funding for the purpose of public recreational areas, major preserves, restriction of power boat operations in northern Barnegat Bay and rivers, and the control of nonpoint source runoff from existing facilities, will not reverse the deterioration of environmentally sensitive areas, in northern Ocean County at least.

Three, the environment is, after all, still the base of our local economy. Without active measures on the part of the State, the quality of these natural resources which have attracted residents, day-trippers, and now more permanent residents, will continue to deteriorate, albeit at a slower rate. I doubt that the value of my waterfront property will reach its 1986 peak in inflation adjusted dollars in my lifetime.

Four, careful scrutiny of the language as it relates to non-CAFRA developments; that is, ones that have already been planned, or were under construction during the 1980s but for which the local permits were issued. Perhaps ground breaking

occurred on part of the site and has been halted for several years by foreclosures, consolidation by deed end, or operation of adjacent hotels and multifamily structures. It is clearly required. I believe that clever developers will be able to defeat the apparent purpose of S-1475 on projects which I consider in my analysis.

Fifth, I feel that the maximum civil penalty is far too law, or at least should be indexed for inflation. I am not qualified to comment on the hardship waiver language as proposed. So those are my conclusions.

My recommendations are: That the proposed exemption on the review and permit requirements for larger, non-CAFRA development projects, such as motels, condos, etc. that were started during the real estate boom of the '80s, say those with 20 to 24 residential units, but for which the physical construction was stopped or was never started, and has not been going on for a reasonable period of time, like three or four years, should be subject to CAFRA review if, and only if, they go into any municipality asking for changes in variances or changes in building permits. If they go ahead and finish it the way it was planned, it should not require new review. But if they start piecemeal changing it, then it should be subject to review.

A developer should be limited to a single cadre waiver or permit for all adjacent developments, say, within a reasonable geographic area of 1000 feet. Where there are common general partners, corporate officers or directors, or major stockholders with voting rights that overlap, full disclosure of officers and parties with more than, say, a 10 percent interest should be required on all applications, and waivers should not be permitted for any developer in which a government official or his family has, say, greater than a 10 percent interest. This would help control and running, to some extent.

Public participation should be required in establishing definitive standards for the Commissioner's waiver, and comprehensive documented findings by the Commissioner should be available for public review on those cases where he grants waivers. I feel the civil administrative penalties should be indexed to inflation, and perhaps a cap put on the total for a quarter of a million dollars, as opposed to having the Commissioner potentially cite a developer for $25,000 penalties, as is common in Municipal Land Use Law.

Then finally, I think there has to be some penalty for municipal officers, or municipalities, which fail to implement the Legislature's attempt in terms of updating CAFRA. Basically, DEPE depends upon municipal officials to report and send applications for variances and permits to them for review. If you get 10 variances on a property, they change names of who the owners are, they reconsolidate lots, and you can do quite a bit without ever submitting it for review.

So, those are my comments. I wonder if anyone has any questions?

SENATOR KYRILLOS: Thank you, Mr. McCrohan.

MR. McCROHAN: Thank you very much.

SENATOR KYRILLOS: Members of the Committee? (no response) Thank you very much for your suggestions.

Next I would like to bring up -- and Dery Bennett will be next, then Bill Neil, then Tim Dillingham, then Marie Curtis -- Peter Reinhart, Vice President of the New Jersey Builders Association.

P E T E R S. R E I N H A R T, ESQ.: Thank you, Senator.

SENATOR KYRILLOS: Welcome, Peter.

MR. REINHART: Good afternoon. Mr. Chairman and members of the Committee, I am Peter Reinhart, Vice President of the New Jersey Builders Association. I appreciate this opportunity to appear before you to address the issue of CAFRA reform.

As John Weingart said, there have been an awful lot of bills. I am going to just modify his comments. He said it is the best bill he has seen. I will say that it is certainly the most recent that I have seen.

SENATOR KYRILLOS: I thought you were going to make news, Peter.

MR. REINHART: I know better than that, Joe.

As you know, Mr. Chairman, the New Jersey Builders have, since the mid-1980s, advocated changes in the State's coastal policies that would lower the permit threshold, i.e., close the loophole, as it is commonly known, according to proximity to tidal waters; and also provide for a regional planning process to promote the orderly development of the coastal area.

Senate Bill No. 1475, however, goes well beyond these objectives. In addition to requiring most development projects to apply for costly and time-consuming CAFRA permits, the bill requires the same extensive level of review for small three-unit projects as it does for large-scale developments of 100 or more units. Let us not forget, Mr. Chairman, as you pointed out, that 20 years ago when CAFRA was adopted, its principal target was not housing, but offshore facilities. A comprehensive review of housing policies under CAFRA is clearly in order.

To facilitate meaningful discussion of the impacts of S-1475, and other bills, we suggest two things: First, require the New Jersey Department of Environmental Protection and Energy to produce and make available legible maps showing the extent of the 1000- and 2000-foot distances from tidal waters, so that all concerned can evaluate the impact of this bill. We just heard Assistant Commissioner Weingart say that 1000 feet is roughly 20 percent of CAFRA. I think arithmetic means that 2000 feet is 40 percent. If we are going to have six-units-or-less applications reviewed for 40 percent of the

CAFRA area, the number of new applications is going to be absolutely enormous.

Second, we suggest that you consult with FEMA -- the Federal Emergency Management Agency -- to assess which structures in the coastal region were damaged as a result of this past December's nor'easter. We believe that a review of this information is critical before this Committee takes any further action on this bill.

In the interest of time, I will limit my comments today to five key issues: permit thresholds, the State Plan, the grandfather provision, third-party appeals, and the 90-day law.

With respect to the permit thresholds, we support the use of a graduated, not abrupt system that varies with the distance between proposed development and protected resources. In its current form, S-1475 would tremendously increase the volume of CAFRA permit applications. Please keep in mind that the CAFRA region is extensive. You have already heard 653,000 square feet. We calculated that as roughly 20 percent of the State, over 1300 square miles. The DEPE already has difficulty complying with the time frames required under the 90-day construction permits law. How will they be able to handle this increased work load without hiring more staff to process these applications? If so, where will the money come from to pay for these staff? Senator Palaia and Senator Ciesla have already picked up on this, and we appreciate that.

As to the assessment of recent storm damage regarding new residential structures constructed in coastal area flood hazard and high wind zones, the NJBA is confident that today's building code provisions are more than adequate from the standpoint of design and construction to minimize the probability of flood and/or wind damage. In fact, the New Jersey building subcode and the BOCA code have routinely updated flood resistant and wind loading design requirements

over the years to be consistent, if not more rigid than, standards promulgated by the Federal Emergency Management Agency and the American Society of Civil Engineers.

As many of you know, FEMA, in conjunction with the New Jersey Office of Emergency Management, is presently assessing damage to the coastal areas sustained during last December's storm. Initial reports out of the FEMA -- the office in Toms River -- indicate that the majority of claims, in excess of 99 percent, involved damage to structures constructed prior to 1968. These structures were built before the establishment of the National Flood Insurance Program and without the benefit of flood insurance rate maps to establish required finished floor elevations in relation to the base flood elevation of the locality.

Further, it is doubtful that any substantial losses have occurred to buildings constructed post-1977 when the State's Uniform Construction Code was adopted.

The issue of whether or not coastal area buildings designed and constructed in accordance with today's codes can withstand Mother Nature's forces should not be the subject of this discussion, unless there is clear documentation to the contrary.

With regard to planning for the region, while we support the logic of bringing the coastal area into the State planning process, we are concerned with the provision in S-1475 that would make the State Plan binding only in the CAFRA region. This is particularly sensitive since there is no requirement in the bill to address the economic development and shelter issues; there is an inadequate requirement for involvement by others than the DEPE, which means that the private sector will again be excluded from the process; and there is no requirement for the State Planning Commission to adjust its statewide plan to accommodate any regional restrictions on growth in the CAFRA region.

I also call your attention to the grandfather language which is limited to only those developments for which on-site construction was in progress on or before the enactment date of the bill. Any CAFRA reform bill should provide protection for projects which have obtained preliminary or minor subdivision or site plan approval. S-1475 does not provide for this level of protection, which is not only contrary to recent trends in legislation, e.g., the Freshwater Wetlands Protection Act, but is also unfair to those who have made substantial investments and have proceeded in good faith under the laws then in existence.

We are also concerned with the open-ended appeals process that encourages interested third parties to appeal or contest DEPE permit decisions that will delay the construction of projects that otherwise meet the criteria and standards of this bill. Currently, third parties do not have this right and appeals are routinely denied. S-1475 even allows an appeal to be granted when a third party merely demonstrates a recreational interest in the project. On a related note, while we welcome the proposed removal of the mandatory public hearing from the CAFRA process, this proposed change is essentially meaningless since third parties can still request a public hearing.

I have one last point for your consideration: One of the more positive features about New Jersey's CAFRA law is that it is a 90-day construction permit. Even John Weingart agrees that this is a positive thing. And yet, S-1475 would turn the clock back by removing CAFRA from the 90-day law, thereby inviting the DEPE to be less accountable for its actions. This is directly contrary to the recent DEPE accountability laws that became effective only last year. This proposed change is greatly disturbing, since the volume of backlogged applications will likely skyrocket if the permit thresholds are reduced as we discussed.

We believe that S-1475 does not streamline the review process, and if anything, makes it more cumbersome. This comes at a terrible time when New Jersey has been losing tens of thousands of jobs and is just now hopefully poised for recovery.

Mr. Chairman, members of the Committee, I hope that during your review of this legislation our concerns regarding permit thresholds, the State Plan, the grandfathering provision, third party appeals, and the 90-day law are resolved favorably.

We are available to meet with you to elaborate on these and other concerns with the bill before any further movement. Thank you very much for the opportunity.

SENATOR KYRILLOS: Peter, thank you very much. I want to point out to you -- and I am sure your analysts have discovered this in the bill -- that I think for the first time in any CAFRA bill-- In the legislative findings statement at the very beginning of the legislation, we talk about the economic aspirations of coastal inhabitants and the need for a strong economy. You will note that there is no mention of cumulative impact language in the bill. We have provisions for hardship waivers, the possible waiving of environmental impact statements. We have heard some of your concerns of the past.

I noted in the beginning of your comments that the Association supported a closing of the loophole and some form of regional planning. If we were to call for an economic analysis of a proposed State plan for the coastal region prior to that plan being put into effect, how would the Association react to that? Could they then possibly favor a binding plan?

MR. REINHART: Certainly we could support and be in favor of, obviously, an economic impact. I don't think we could support a portion of the entire New Jersey State Development and Redevelopment Plan being binding only on 20 percent of the land in this State. I think we either should have all or nothing.

You know, when CAFRA 1973 -- when Senator Cafiero's donut was in place and Senator Perskie's thumbprint on all other parts of the anatomy -- was enacted, we didn't have a Freshwater Wetlands Protection Law. We didn't have all the regulations under stream encroachment, etc. that we have now. The need for all of CAFRA to be so definitively separated from the rest of the State isn't there anymore. I think in the review of the legislation, and as we go through the discussion, we should keep that in mind.

SENATOR KYRILLOS: Well, in our future discussions, Peter -- you may want to take a crack at this now, but maybe not -- I would be very curious as to what kind of regional planning the Association had in mind when you mentioned the fact that you are in favor of some mechanism for planning along the coast?

MR. REINHART: We will certainly want to be involved, and will be involved. How it takes shape-- I think we need all the good minds in the room. I certainly am not a planner; I'm only a lousy lawyer -- hopefully a good lawyer, but, you know-- We will work with you on that.

SENATOR KYRILLOS: Very good. Members of the Committee, any further questions? (no response) I appreciate the two bits of consensus that I think so far we have, at least from your end, achieved: the loophole closing and some mechanism for planning. We'll move from there. Thank you very much, Peter.

Next let me bring up, from the American Littoral Society, its President, Dery Bennett. Welcome, Dery.

D E R Y W. B E N N E T T: I am the Executive Director.

SENATOR KYRILLOS: Executive Director, I'm sorry.

MR. BENNETT: Yes, I don't have a fancy title.

SENATOR KYRILLOS: My apologies to the President.

MR. BENNETT: That's okay.

We have been working on CAFRA amendments, and we have been working with you on S-1475. I think I would agree with John Weingart that this is better than we have had in the past. I think we are on the right track.

I think that some of the things-- You know, one hesitates to say the things one likes because it points out that maybe the other side will see those. We are delighted that the Coastal Area Review Board is stricken from CAFRA under this bill. We saw some attempts to strengthen section 2. We think that the section 2 part, the introductory, or the reason for the legislation, could be worked on some more.

I am testifying on behalf of the American Littoral Society. There is a group of us who have been working here called "Campaign for the Coast," but we will be talking as separate organizations. Ours, for one, did not notice the dropout of the 90-day clock. We would agree that the 90-day clock should stay in. I don't know how it came out. The fact that there is a 90-day clock has been very helpful, we think, and we would--

SENATOR KYRILLOS: Another new piece to add to the consensus -- a growing consensus.

MR. BENNETT: And to the pluses, yes. We also believe that the thresholds have to be changed, coupled with a plan. I believe that changing the thresholds alone will not do the job. CAFRA has about a 95 percent approval rate on permit applications, and I think that would hold the same. If you had the threshold of one unit throughout CAFRA, you would have an enormous amount of work to essentially accomplish the same thing again. So it has to be coupled, we believe, with some planning. The idea that it falls within the State Plan is something that we feel we can endorse.

I wanted to concentrate, really, on two issues: the threshold and reconstruction, and talk a little bit about them, rather than get terribly specific. We have worked before in

the past, and will work again. I gather you are here to hear our ideas, not to vote five to nothing today, or whatever, to get it out of Committee.

What I would like to do is talk about those two and give you our point of view, maybe to clear up a couple of misconceptions. On the thresholds, we argue that there should be a threshold of one near water. We suggest 1000 feet. The State, before you this morning, has suggested that they want -- that they would consider a narrower band than 1000 feet, but they want to pick up some things in addition to residential construction: a bulkhead that now could be built 20 feet above mean high tide. In some cases on the oceanfront or on the bayfront, a bulkhead back in the wetlands, or back behind a beach, sometimes guarantees the loss of those wetlands or that beach if there is a lot of storm erosion taking place.

I think the 1000/2000, 6/12, 1/75 numbers can be talked about, and should be, but we feel very strongly that there are certain situations on the shore where we want the State to be able to exercise jurisdiction over one unit in an area where -- I am thinking of Avalon -- they are, right now, subdividing lots in the dunes to build on. Now, those dunes are 500 feet back from the water now. They won't necessarily be that far back in the future.

There is language in the proposed amendments you have that says that -- depending on what version, and the version we were talking about the other day is a little bit different from the version I have now -- the Commissioner is allowed to waive, or vary the demands of the environmental impact statement and the review process. We would like the Commissioner not to have the right to waive the demands, but certainly to vary them.

Let me give you a couple of examples: I don't think that the environment or anybody gains if a person has a lot on a barrier island surrounded by houses, and has to go through 90 days of hurdles to get permission to build one house. Maybe

it's 600 feet from the mean high tide line. There should be a process. We think the regulations, as you have proposed them, give the Commissioner and the DEP the opportunity to draw up various levels of permit demands on the applicant, depending on where that single lot or small lots are. But we would like the Commissioner -- the DEP to have the opportunity to look at all of those, and maybe if somebody comes in with an application for that home, they get the permit -- this is given that the local permits are all in shape -- much faster than 90 days, with very little-- What is the need of having a single unit do an environmental impact statement on a 50 by 100-foot lot? We agree. We don't think necessarily that there ought to be a full-blown EIS with an archeological and all these things, when one has been done nearby quite recently. It could be adopted by reference. So I think those things can be worked out.

On the reconstruction of a damaged house, a number of people believe that organizations like the Littoral Society see the State getting its foot in the door by getting in the permit processing on reconstruction, as a way of taking back the coast and throwing people out of shorefront homes. If a house is damaged by a storm and the lot is still there and half of the house is still up, none of us can conceive of a way for passing a law which says, "We therefore throw you out." There is good law up through the U.S. Supreme Court that raises serious questions about that.

However, in a town where-- Let's say during a storm back in Freehold, a house was damaged because a tree fell on top of the roof and broke the roof's main structures, tore off the back of the porch, set fire and burned down the kitchen. That person would need a building permit from the town in order to rebuild, at which time the town can come in and say, "At the same time that we are giving you the permit, we want you to come up to code on septic systems, wiring, and some other things."

What we suggest is that, on a reconstruction question near the shore, somebody, and we believe it should be the State, because the reason we have a CAFRA is because the coast is a statewide interest-- We suggest that DEP should have the ability to come in and say, "Okay, your house was damaged by a storm. It should be jacked up six feet. It should go on pilings, and not on a solid structure." That house might be built long before the better codes are in existence, and it will be a way to bring it up to code. We are not comfortable right now on those situations where we think there is a State interest in having the local communities' codes quite do the job. This would be a cooperative program with the towns and with the county and with the Feds. It says, "Here are the things you've got to do in order to get your permit. We are not going to deny you a permit to rebuild -- basically we can't -- but it makes sense for you to build the structure in such a way that next time the porch washes off, it doesn't float down the street and knock somebody else's house down." I think these are common sense kinds of things.

The idea of giving the person an absolute right of reconstruction, the way it is written here, sounds as if we are cursing ourselves to repeating the same kind of damage that happened on the coast during this last storm. You have all heard horror stories of the applicant who has been put through hoops, and we have all heard them described. Our instinct, especially after the last storm, is that the horror stories are what is happening to the shore as some sea level and geological events are taking place. We see what you are recommending today as a step forward. I don't see why we can't work together on some of these to work them out.

I can't get up without talking a little bit about third party appeal. This is an amendment that we feel very strongly should be allowed to stay in the document. Let me give you an example or two of our experience with third party

appeals. It is something that environmental organizations like the Littoral Society want to have in the law. We don't want a third party appeal cavalierly. We have launched about six in 15 years. One of them that we launched cost us $100,000, which we didn't have, which we raised. These are not the kinds of things that are going to pile into a court by lots of people, because they are expensive. It is basically a trial. You have examination, cross-examination, and depositions. It's not cheap, and we do not do them frivolously.

The opportunity to be able to go before the OAL, we feel, is an integral part of the process. Without it, we think, in certain instances, there is serious environmental damage that can be caused by projects that we wouldn't have the proper opportunity to question.

Other than that, let's keep working on this. We have a window, I guess, before the silly season, and we have to use that to try to get something through.

SENATOR KYRILLOS: Dery, thank you for your comments. We will continue to discuss all of these issues. I think we all want to work toward some redesign of the thresholds and the various tiers. While I recognize that you would like to see a threshold of one in the 1000-foot zone, I would be curious about your feelings toward higher thresholds in the out areas. Perhaps in the future we can discuss that.

MR. BENNETT: Yes. The original 25-unit threshold was an arbitrary number way back. No one seems to remember exactly how, except that one version suddenly had that number in it. The numbers that we have come up with -- the 1, 6, and 12 and 75-- I mean, we didn't come up with a biological number of 75 rather than 60 or six rather than 12 or 14.

The other way to go about this is to do the complicated mapping, the way you did with the Wetlands Act. That took about five years-- The titled Wetlands Act took about five years to go into effect because they had to do

mapping. If there is a way to come up with an easier approach to that and come up with thresholds that make sense--

The important thing, I think, for you all to realize, is that we don't see any great strength in saddling all of us with the job of regulating a lot of what in the current CAFRA rules and regs is called "infill," where you have development patterns already set up. We don't need to go in there and make life miserable for that person. On the other hand, there may be situations near there where you want to ask some more questions. So there ought to be, maybe, a tiered approach of units backing a tiered approach of the volume, or detail, that is demanded in the environmental impact statement or the permit application.

SENATOR KYRILLOS: I don't know if you've got the technical expertise to look down the map and give us your assessment of where the threshold ought to be, one, in your opinion, and where it could vary; where it could be much larger than that. You mentioned Avalon. Maybe in other parts of the CAFRA zone it could be much higher than that. We don't have to necessarily look at the entire coast as a model to block it, in terms of--

MR. BENNETT: We took a stab at this before when we talked about different zones.

SENATOR KYRILLOS: Yes, I know we did.

MR. BENNETT: Our instinct is that the barrier islands, basically -- the spine of the barrier islands is not something to break our backs over protecting it. The beachfront and the bayfront of the barrier islands are where the emphasis should be laid on the barrier islands.

Back on the mainland, we would be more concerned about a 60-acre tract of good woodlands or some buffering area around some tidal wetlands. I mean, there are situations where you have an expanse of land before you get to the first paved public road. We may want to direct development away from that,

because once it starts in there, you get spoiled. There may be a place up the coast closer to Linwood that would be a place where you would want that to happen.

The fact is, everybody -- not everybody, most people, a lot of people -- want to live at the shore. In the process of everybody wanting to get there, we are starting to rub out some of the values that bring us there in the first place. There is a large public good in trying to protect, not only the tourism dollar, but the shellfish dollar, the commercial fishing dollar, the crabbing dollar, the swimming dollar-- There are lots of dollars to worry about. I don't know how you would go about that, except that I think we should discuss variable thresholds, depending on -- maybe on land types and land use patterns that have been established or not established in some areas.

SENATOR KYRILLOS: Does any member of the Committee have anything to add? (no response) Dery, thank you very much for all your help.

Next I would like to call Bill Neil, from the New Jersey Audubon Society.

W I L L I A M R. N E I L: Good afternoon, Senators. I was thinking before I came here that I wasn't going to do a prepared statement. I changed my mind early this morning. I had Senator Bennett on my mind and I was thinking, no matter what happens, for all the time John put in, all the agony, that we really owe him something, and he is not here to have the chance, perhaps, when something has the opportunity to pass.

I wrote a formal talk. It will take about seven minutes to give. I will get to it quickly, but I just want to preface it by saying that I am interweaving economic, environmental, and, if I don't go out on a limb, what I think are some moral values here. I have tried to draw on the political traditions of both parties. It will be obvious from what I say that I have drawn from the tendency of Democrats to

want to regulate and spend, and maybe an inverse tradition from an older Republican tradition about responsibility and cost to the taxpayer, and debt. So, here goes:

New Jersey Audubon fully appreciates the difficult task before the Legislature today. We have no illusion that the primary forces acting on you are concerned with the protection of real estate, not coastal habitat. That's a big distinction which is not captured in the euphemism called "shore protection," the shore protection that the Legislature has spent nearly $45 million on this past session.

We hope that the press and people in attendance today will ask themselves one more question beyond the one that the powers that be have constantly been repeating in our ears during five years of coastal negotiating; that is, to ask in addition to, "Can it pass?" the question: "Will it work -- work to save habitat and coastal water quality?"

We also must list some vital sources of data and professional judgments that we haven't heard discussed over the past two years, but which, in our opinion, have to form the basis of any intellectually serious attempt at coastal growth management and reform:

1) The Cahill "Stormwater Manual for the Coast," 1989.

2) The management recommendations for the Barnegat Bay Study done by Rogers, Golden, and Halpern, Inc., August 1990, one that was, we say a bit sheepishly, authorized by you, the Legislature, but whose recommendation, to adopt the equivalent of Maryland's Chesapeake Bay Program, administered now by the Chesapeake Bay Critical Area Commission, was left out of the final Barnegat Bay Study.

3) And, most recently, and which only reached our desk last week -- January 21, 1993 -- the Army Corps of Engineers Beach Erosion Control Project, Asbury Park to Manasquan, nine miles, at a 50-year, fully funded cost of $768 million. That works out to be a commitment of $15 million per

year for 50 years. Not a penny is for habitat acquisition, water quality monitoring, or environmental land use planning to prevent water pollution. If we are doing such a good "balancing act" of economics and environmental protection, could someone please show us the comparable coastal habitat protection appropriations? These sums far exceed all the money we've ever spent buying State and Federal refuges in coastal New Jersey. I would suggest that if the new rules are a budgeting burden, and they may well be, that a tiny, tiny, 1/100th fraction of that might go towards the habitat needs and the regulatory needs.

It seems that every time we sit down to the bargaining table, we're told to balance the difference. Please don't forget that at least 50 percent of the original wetlands and uplands are gone or hopelessly fragmented. Members from the audience of a similar discussion about San Francisco Bay had to remind the "balancers" that the Bay was down to 3 percent of its original wetlands. But we suppose that all these details will be ironed out by section 20 of this bill-- of the last version I had, which was two days ago -- which passes the ball to the State Planning Commission staff, which, by the way, had its staff recently cut by 50 percent by the Legislature, which also placed a measure before the voters to allow for legislative oversight of regulations developed after a bill passes -- to prevent the bureaucracy from running amuck, I guess. But, here we go again. The Legislature is virtually asking the bureaucracy to do all the difficult, thankless work. And, as we read in section 20, it says, "The Management Plan for the coastal area shall thereafter be a part of the continuing process of the State Development and Redevelopment Plan."

But, is it not true and very relevant that many members of this Legislature believe that the State Plan is purely advisory? Indeed, Senate Bill No. 1122 (sic) would not

allow the State Plan to do what we want it to do here in this section of the bill: Deny permits and funding for inappropriately placed development in the remaining best areas at the coast. We're still confused by the contradiction between this possible outcome for section 20 b. and the better sentiments that follow in 20 c. In our opinion, this will be a very muddled legal message to a judge searching for legislative intent. I can't guarantee any member of the public that the State Plan is going to deliver. It hasn't saved a single forest and can't seem to even get a 100-foot vegetative stream buffer enacted, which in our opinion, and from everything I have read over the past five years, is the lowest common denominator of water quality protection.

Now to just three key sections of the bill before us. In our view, to make a claim to any improvement in the coastal status quo, these are the bare-bones requirements that must be in a bill:

Section 2, the "findings section:" The Campaign for the Coast submitted careful comments months ago to make sure the legal balance in this section would now be tipped to lowering the percentage of permits approved well below the current 90 percent-plus figure. As the language stands now -- that was as of Wednesday; I don't know what it is today -- it doesn't dent the status quo. It sends a muddled legal message. When will it ever concede that we cannot continue the same coastal growth rate in impervious surface cover forever? It has to, by logic, diminish over time.

Section 5, the "threshold for permit review:" We feel it is absolutely essential that within 1000 feet of all tidal waters the threshold be one structure, intended to explicitly include docks and bulkheads. This is both an environmental and financial issue. We believe a substantial percentage of coastal building is single residence construction, and these are the small "projects" that pressure and pressure local

officials to approve construction as close to the water as possible, often for the best view, and thereby, also as the December storm demonstrates, as close to the taxpayers' wallet as possible to make up for the placement risk.

Let's see if we have the current New Jersey coastal definition of "individual responsibility," a phrase plucked from the winds of current political rhetoric, down correctly. Here is our translation: The State taxpayer has no say in where over 50 percent of the coastal building goes -- that's under 25 units not State regulated -- but the State picks up 35 percent of the cost, after Federal taxpayers pick up the other 65 percent, to pay for what nature has just demonstrated was a poor municipal placement decision. I think it simply translates to this: Don't tell us where to build our second homes. Just bail us out when we're all wet.

This figure of 1000 feet is the basis for the Maryland Bayshore Program. It does not solve all cumulative drainage, nonpoint source pollution problems. It is a compromise figure of controlling the most dangerous building and the bare minimums of habitat protection.

Now on to section 5 c. (2) and (3), the "infamous rebuilding section:" We cannot overemphasize how strongly New Jersey Audubon opposes this provision. We believe that it is an implicit legal signal and moral commitment to rebuild, without rational scrutiny or consideration of the public cost, any and all coastal construction in perpetuity. As we have noted above, the cost for just barely one-tenth of our coastal zone, nine miles -- protecting it -- from Asbury Park to Manasquan is seven-tenths of a billion dollars for 50 years. If they get it, everyone else will want it too, at a cost of $7 billion for a 50-year program for 100 miles of coast. This is the first stone on the walkway to the greatest taxpayer bailout since the savings and loan fiasco. Where is all the outrage

from the taxpayer groups who screamed about much less money going to other parts of our State?

We ask, instead, for the right of the DEPE to review applications for all damaged or destroyed buildings, clear in our view that the intent and result of such a review power will be to deny only the most outrageous safety and cost requests to restore untenable new coastal terrain arrangements and structures to the prestorm status quo. Political reality would not allow any other outcome.

The State has the right to bring science and cost considerations to bear when coastal property owners are asking State and Federal taxpayers to shoulder well over 90 percent of the coastal protection costs. Make no mistake about it: It is largely to defend that poorly situated first row of structures, many of which are vacation homes. Would we be overbearing moralists, blinded by family values, if we pointed out the homelsss and those who haven't purchased their first home, and asked that they become part of the moral cost accounting?

We would be more than happy to get into the rational scrutiny of the gross economic value of the coastal economy, those multimegabillion figures tossed around, if that is now to be trotted out to show how cost-effective spending $7 billion can be to protect these much touted larger billions.

We want to close now with a call to reflection upon a well-known coastal literary passage. Senators, the Builders and Realtors and various uncritical coastal boosters want us to believe that the real estate growth light at the coast -- at the end of Jay Gatsby's dock across the bay, if you will -- will be green, green without consequences forever. But we know that in reality, in environmental reality, that traffic lights are also amber and red from time to time. It is a form of tough regulation, these various colors, on our concept of freedom, to save us from our worst selves, literally from "cumulative impacts." If you don't want to listen to Bill Neil

and New Jersey Audubon, then read your own consultants' predictions of what will happen if all the 65,000 homes now on the pending site plans in Ocean County are built next to Barnegat Bay, and added to the 34,000 dwelling units built there between 1972 and 1986.

Senators, Governor Florio, and members of the Legislature, it is time to stop running red lights at the coast.

SENATOR KYRILLOS: Thank you, Bill for your thoughtful comments. Senators, any questions or comments? (no response) Bill, we have your testimony. We know you have many concerns. In case those here assembled didn't catch it in your remarks, I will note that on the sign-up sheet here to testify, you did check the "in favor" box, in case there is any ambiguity about that. Go ahead, Bill.

MR. NEIL: Senator, that's right. I think if we can lower the threshold to one, despite all the reservations about the rebuilding -- and I am not sure we can win it-- I am stating my case, and I know what the politics are. It's got cost consequences and safety consequences. Lowering the threshold will help. Maybe someday we will get there with a different climate, perhaps after the cost accounting of another storm.

If you think I am presenting Maryland's case as an absolute stop to building, I want to indicate that it didn't happen on the oceanfront. That law was only passed for 16 counties on the Chesapeake Bay side, so they made a distinction. They did not pass it on the oceanfront.

There are 54,000 grandfathered single-family homes, as tough as that law is, plus a 5 percent growth allocation for each county, their choice of where that goes on the bayfront. So it hardly put a stop to development. Fifty-four thousand homes is a substantial percent, so it wasn't a no-growth bill. You know, it was a heavy grandfather thing. I think that type of provision is the beginning step, the least we can do for the

Jersey coast, because I think we have more development than Maryland, if you look at the total coast.

SENATOR KYRILLOS: Thanks, Bill, very much. We will continue to talk about this.

MR. NEIL: Thanks, Senator.

SENATOR KYRILLOS: I know I said that Tim Dillingham would be next, but before Tim, if he wouldn't mind, I would like to bring up Ken Smith, because Ken always seems to speak last at these hearings, and I want to give him a crack at not being last. However, I will ask him to be brief, because I promised members of the Committee that we would end at 3:00. We may go a little bit over that. We have four more witnesses left. We will go to Tim next, then to Marie Curtis, then Fred Schmidt, from Cape May County. Thanks, Ken.

K E N N E T H J. S M I T H: Thank you, Mr. Chairman. I will be as brief as I can, but please indulge me just a little. I try to be brief at these hearings. Outdone as I appear to be by the Campaign for the Coast, I would like to say a few words on behalf of the people who live on the coast.

CAFRA "reform" is a subject which has been kicked around the State House and the coast for many years. I commend you for your work on this bill, and for your concern for the environmental needs of the coastal area.

Reform means different things to different people, and while I very much want to see the CAFRA threshold question resolved, I want to be sure that what we're doing results in good environmental preservation, and at the same time safeguards the rights of our citizens to live, work, and play in the coastal zone.

There are, basically, three important parts to coastal management: environmental resource needs -- clean water, maintained beaches, open space; public recreation needs, which include the public's right and desire to obtain lodging, eat at restaurants, enjoy amusements, movies, etc.; and lastly what I

would call constitutional rights. These include an individual's right to own property, restore it, replace it, change its size, shape, whatever, within local guidelines. Constitutional rights also include the right of communities to exist, to govern, and to manage their own affairs to the maximum extent possible.

A management strategy that ignores or omits one leg of that tripod will fall flat on its face. We need to remember that our coastal communities are no different than any other hometowns. They have weddings and funerals, garden clubs, and everything else that is common to American communities. In addition, they support a tourism industry that brings many millions of dollars into the State. Indeed, a conservative estimate of directly coastal-related revenues, about $5 million annually -- taking off the casinos -- puts our income at more than the entire box office gate of all the movie theaters in the nation -- about $4.3 billion last year. Of course, if you put the popcorn in, maybe we would come in second.

Beyond the dollars, the good times, the camaraderie, the healthful recreation our people get from coastal tourism makes it extremely important sociologically, and the preservation of these unquantifiable, but very tangible benefits, should be the heart of our mangement goal, its basic premise.

There are groups out there which, with some arrogance, have determined the "proper" role of our coast, and which would denude our towns of their homes and tourism facilities, perhaps to site us on the mainland and tram us over to the beaches for a day of "ecotourism." I would remind these people that there are many recreational diversions and interests at the shore -- four people playing cards on their sundeck is also valid tourism -- and I would ask this Committee, as they review this legislation, to consider carefully, "What does the public want?"

Many specifics of the bill have been addressed today, and I will comment briefly on just a few areas of concern to me. I don't think you are going to release the bill today, as the resolution of this issue necessitates careful crafting and some dialogue.

1) Regarding reconstruction: I suggest you replace the damage clause, section 5 c. (2), with the words, "damaged or destroyed for any reason." Since we're closing loopholes, let's close that one with an unequivocal reconstruction guarantee.

2) In the same clause, the provision for commercial or public development will trigger a CAFRA application, even if a second floor is added to the structure, without a footprint increase. That's a bit much. And concerning footprint increase, the bill would send to the CAFRA process small businesses, three- to four-family unit owners and anyone beyond a two-family ownership who wishes to add a family room, garage, a cooler, any increase in footprint. I question if that is what we really want.

I would much prefer to see a minimum square footage trigger, or a percentage of the existing footprint as a trigger. Senator Connors' bill suggested a 25 percent expansion trigger, and, quite frankly, on small properties, even that is not enough.

For example, the South Carolina Coastal Council, in one of the most stringent coastal management plans in the country, still allowed for a basic construction or expansion up to 5000 square feet before a structure would come under their purview. I am not even asking for that, but let's consider 2000 to 3000 square feet before we send people into the long, involved, and costly CAFRA permitting gauntlet.

3) Regarding public development, there is no threshold for reconstruction. Any public development triggers a CAFRA review. Let's look at it: "Development" means the

construction, relocation, reconstruction, or enlargement of any building or structure, and includes public development. "Public development," among other things, means "a development that is publicly financed," which is any public development. "Reconstruction" means the repair or replacement of a building, structure, or other part of a development. The trigger is the same, regardless of the type of public development or its proximity to tidal waters. We will be affecting all "public development" east of the Parkway, and that is insane.

4) The CAFRA process is what it is, so I won't comment on it other than to say that most people who have been through it once never ever want to do it again. If it were an objective process with clearly defined review parameters, it might be different. But it's not, and I think we need to reform the process before we send everyone and their grandmother into it. I note that a permit may be issued if one can show that their project would cause minimal feasible interference with the natural functioning of plant, animal, fish, and "human life processes," whatever that means, at the site and within the surrounding region. Hmmm. And, "notwithstanding the applicant's compliance" with all of the listed criteria, the Commissioner can still shoot him down. Let's take a look at that, and at the provisions for contesting a decision, which include having an "environmental recreational interest" in the site.

5) I am also wary of any management plan which is hatched by the DEPE and the State Planning Commission, and I hope we will have input in the preparation of that plan.

6) My last comment has to do with the three areas where "development" related to anything more than a one- to two-family home may be prohibited, and the applicant will be told, "Don't even apply." These are overwash areas, erosion hazard areas, and coastal high hazard areas.

Overwash areas have already been delineated from aerial photos of the '62 storm, a delineation that is way out of date, and could conceivably include large areas of the barrier islands. Erosion hazard areas are subject to unempirical delineation, and we are currently in a battle over their use in the National Flood Insurance Program. Coastal communities have been directed by FEMA, through an adopted regulation which was drawn up by Clark Gilman of the DEPE, to expand their coastal high hazard areas under a vague definition that could put those areas all over the lot.

If you don't think it can hurt anyone, I am attaching a CAFRA decision which was triggered by a change in use, actually reducing the density from a two-family to a one-family, under Governor Kean's Emergency Order. The couple in question finally were allowed to reconstruct, not because the DEPE relented, but because the Governor exempted their use from a CAFRA review. It was awful. During that period, a lot of small owners got hurt, small contractors went belly up, and not one bit of environmental good resulted from it.

As we work to resolve this question, let's be aware that legislation, if not carefully drawn, results in regulative constraints that have nothing to do with environmental quality, and do not at all accomplish the goals of the legislation. I have much respect for this Committee, and I trust you to make the correct decisions in the deliberations on this legislation.

Thank you very much for allowing me to testify.

I just want to say one thing as an aside: I was pleased to hear Dery Bennett reduce some of the caustic comments that have been finding their way into the press, but then, of course, Bill Neil brought out the real meaning of Campaign for the Coast again, so I think we know where they are coming from.

Thank you, Mr. Chairman.

SENATOR KYRILLOS: Thanks, Ken. I don't know if it would help our transcribers if they had a copy of your written testimony, if it is prepared, and I see that it is.

MR. SMITH: (speaking off mike now) I will supply it. Change the millions to billions. I did it this morning.

SENATOR KYRILLOS: You better scribble it in there. Thank you, Ken.

Next, Tim Dillingham, from the Sierra Club. I'm sorry for the delay.

T I M O T H Y D I L L I N G H A M: Thank you, Mr. Chairman and members of the Committee. My name is Tim Dillingham. I am the Director of the New Jersey Chapter of the Sierra Club.

We would like to commend the sponsors of the bill today for a piece of work that definitely moves New Jersey's efforts at coastal management in the right direction. I think the bill, as it is structured, begins to establish rational, needed controls over the many activities which both in the past contributed to, and in the future may contribute to, the impact and degradation of the coastal environment and on the resources which we all make such great use of. It has taken a very systematic approach, I think, to addressing the issues which I think you are getting a consensus on, at least to our areas of discussion.

We are very happy to see that it establishes the public's right to participate in and, if necessary, challenge decisions made by the Department of Environmental Protection. We all know that those decisions are often ones which we disagree with, and the ability of the broader segment of the public to engage in a formal appeal and challenge to those, is very important.

Finally, the call for the management plan, which would allow the State to address growth and development at the shore in a balanced, proactive manner, rather than chasing undirected

overdevelopment around trying to mitigate its impacts, is one which is most welcome.

Going back to the Chairman's earlier comments, I think this bill recognizes and reflects our changing knowledge about the impacts and the way we use coastal resources. It obviously goes from an emphasis on large facilities to issues associated with much smaller types of land use. In a very real way, I think it represents a new start in the way that we are going to manage our resources down there.

I guess one comment I would add is, some of the issues we are concerned about are ones that have been brought up earlier: the thresholds, the rebuild provisions, the planning aspects of the problem. I would offer one piece of advice, I guess, to the Committee. There are actual problems out there that are unrelated to the long history of your discussions about the management program and the regulatory program we have: declining water quality; we are losing fisheries; and we have very real problems with storm impacts.

As we consider this bill, we have to really look at whether or not the provisions of it objectively address, and effectively provide a remedy to those problems that are created by development.

I would also like to support the concept that the shore itself, the shoreline area and the area very close to the natural resources, that is, wetlands systems and dune systems, is a critical area; one that has much greater sensitivity to development, in which there has to be an effective mechanism over almost all activities in that area because of their probable impact.

I would also like to pick up on something the Chairman said earlier that we all recognize that the past development on the shoreline was not necessarily environmentally sensitive. It was undertaken in an age when we did not understand as much as we do now. I think we need to seek to have a mechanism

within this law to allow us to go back and correct and restore some of the problems which are creating environmental problems down there. I think in order to do that we will have to focus on single-family houses and associated activities, and look for opportunities through a permitting process to bring those houses up to standard, up to our current state of the art, or state of knowledge of environmental management.

As far as the rebuild issue goes, I think it is only reasonable that if we are going to live, play, and have card games in high hazard areas, that we make sure that we have appropriate construction siting standards. I, too, would call for an analysis of how well the current codes are truly protecting us from storm damage. It would be interesting to see an objective evaluation of that.

I guess I would end there. I think the bill provides a very good foundation. It obviously is an improvement over the current situation, and I think it goes a long way towards addressing the problems that are there at the shoreline that we need to deal with.

SENATOR KYRILLOS: Tim, thank you for your very constructive comments. You mentioned fisheries, and I am curious if the sportfishermen, or even the commercial fishermen, are part of your Campaign. I don't think they necessarily are.

MR. DILLINGHAM: I know there are commercial fishing interests and sportfishermen which are members of Clean Ocean Action, and who are also members of the American Littoral Society, and obviously they are members of the Campaign. The bill did come out relatively recently, I think, and as you continue your hearings you will probably see more vocal support from those groups.

SENATOR KYRILLOS: I agree. I think it would be useful to hear what they have to say about it. Are there any

comments from the members of the Committee? (no response) Tim, thank you very much.

MR. DILLINGHAM: Thank you.

SENATOR KYRILLOS: Marie Curtis, from the New Jersey Environmental Lobby.

M A R I E A. C U R T I S: Good afternoon, Mr. Chairman, members of the Committee. I am Marie Curtis. I am here today representing the New Jersey Environmental Lobby. I would like to mention that I am also a resident of the shore area, and I am pleased to see my Senator here at the table today.

The Lobby which I represent is composed of some 1100 individuals and organizations which seek to preserve and protect New Jersey's natural resources. We are very pleased to see some movement in the area of coastal protection and coastal planning. We think this is long overdue.

I should also apologize to the Chairman and sponsor of this legislation for putting a question mark when I made out the sign-in form. After listening to others who expressed some reservations, but were generally in favor, I guess I should have said I am more in enthusiastic support, as our position on this bill.

The bill before us today, however, does need some more work. While we applaud the approach that makes the permit threshold more stringent closer to the water, we do not believe that three units in the immediate shoreline area is sufficient. What we must protect is the dune line and the shore itself. After all, this is the main attraction for our tourism industry, and that is of economic and vital importance to our State. It is here that we have to exercise extreme caution to protect the natural barriers that nature provides. Any structures in this immediate area can affect the natural barriers. Some may have little or no effect, but others could undermine an entire dune system.

For these reasons, we would suggest a single unit threshold for permits in the first tier adjacent to the water. For those areas where the dunes are already irretrievably lost, or where construction has alrady occurred, the granting of the permit should present little problem. For those areas that remain undisturbed, or that can be rebuilt naturally if allowed to do so, then perhaps a permit should not be granted. When individual structures would undermine the natural barriers that protect others, both people and property, then we have to reexamine our priorities as a community.

That same reasoning applies, we believe, to the automatic right to rebuild that is embodied in the bill. Certainly such a right is presumed in most cases. However, in those areas where rebuild merely continues or exacerbates an already unsafe situation for either the inhabitants of that property or others, then it should be reconsidered. A permit process in these cases would provide such an opportunity.

Certainly no one wants to increase the burden on those who suffer from the violence of these storms. To the contrary, we all sympathize and want to respond with assistance. A permit process for rebuild scenarios would allow for the most current protective practices to be included, and we heard from New Jersey Builders that the codes have become more stringent; that new practices are far more protective of property now than they were even 20 years ago. This would ensure a greater measure of safety for those who do build in the immediate coastline area. Provisos for raised structures, or for relocation within the property boundaries to assure more protection for those inhabitants in the future-- These are but an example of what this could mean.

Because many of these single structure permits would be almost pro forma -- such as the instance that Dery Bennett mentioned of the single lot in the center of Long Beach Island -- we would like to see the Commissioner empowered to vary the

requirements of those environmental impact statements. As it reads now, the Commissioner may waive the EIS requirement. We think this may be going too far and placing an unreasonable burden on the DEPE Chief. On the other hand, an assurance on a simplified form that the landowner submits, would require little effort and seems preferable to us. We see no need for that thick volume of an EIS statute or requirement that was mentioned previously for some of these small areas. We don't think that serves any useful purpose, and certainly it slows down the Department's progress.

We would, however, note that neither in the EIS nor in the permit process do we see mention of secondary accumulative impacts, and we think that when we are talking about overdevelopment of the New Jersey shore that this certainly is an area that we must be considering.

We are pleased to see that the bill sets a firm deadline and requires completion of a management plan for the coast. Placing responsibility with the State Planning Commission, in conjunction with DEPE, will assure coordination of future actions both within and without the region. This seems to us both reasonable and efficient.

While we had hoped to see some form of conservation zoning included in a coastal statute, we recognize that we cannot do everything at once, and this bill cannot be all things to all people, much as we would wish it so. Instead, however, we would recommend that the immediate shoreline area be defined as the mean high water mark to 1000 feet or the first parallel paved road, whichever is further. The purpose of this would be to protect those still-undisturbed areas of marshland or woods along the Delaware Bay shore and along some of the inlets and interior bays on the coastline.

As the no-name storm of December illustrated, thwarting nature and natural processes can be expensive in both monetary and human terms. Let's hope we have learned our

lesson. We must work with natural forces in the future if we are to ensure the safety of our citizens and the healthy shoreline upon which much of our tourism industry is based. We applaud the sponsors for this first step on the way to sound coastal policy.

We look forward to working with you in the future in any way we can to improve and promote the legislation and move it along, because, election year or no, we, too, would like to see this legislation come to fruition this year.

If you have any questions, I would be happy to answer them.

SENATOR KYRILLOS: Members of the Committee, questions? (no response) Marie, thank you very much for your testimony.

MS. CURTIS: Thank you.

SENATOR KYRILLOS: Finally, unless I hear otherwise, I will bring up Fred Schmidt, an attorney and landowner from Cape May Courthouse, who is opposed to the bill.

F R E D E R I C K W. S C H M I D T, JR., ESQ.: Good afternoon. It is a long, but beautiful ride up from Cape May County to Trenton.

SENATOR CAFIERO: I didn't know that, Freddy.

MR. SCHMIDT: Well, you travel it too often, Senator.

I am pleased to be here today, and I am glad you are holding a hearing on this. I am opposed to S-1475 because I firmly believe that the "threat to the shore" is an overrated and overstated argument, brought on by people who do not own land that will be regulated by this bill.

We have a myriad of current pieces of legislation already in force throughout the State, much of it enforced by DEPE. Much of that regulation is having the anticipated impact of preserving land and stopping development. We have Coastal Wetland legislation. When is the last time you saw a structure of any permanent sort built on coastal wetlands? It is

absolutely prohibited. CAFRA I -- excuse me for using a new acronym for the current legislation-- CAFRA I has worked. The "loophole" that everybody is concerned about, I find a little difficult to understand, because a loophole is something we all missed. Nobody missed the exemption for the first 24 units of residential construction or the exemption that was built in for most low-level, commercial development.

We know from what we have already seen and experienced that that legislation works. It has slowed development; it has stopped development, in a lot of cases. If you chose to have a hearing and invite people who have been through the process to come in and show you their applications, each application would sit yea high from the table, and you would have people clamoring to come in here and tell you about their experiences with the DEPE, and tell you that they never understood that they were under the 90-day permit requirements of the construction law.

Moreover, we also have the Freshwater Wetland Protection Act. The full impact of this bill, and the regulations, have not yet been felt by the State or the regulated community. People are now just beginning to wake up to the impact of these regulations. They are far-reaching; they are quite broad; and many of these regulations end up being, in my opinion, confiscatory, and we are going to have a lot of litigation over those issues.

In addition, we have flood damage prevention regulations, mostly adopted on municipal levels as a result of Federal requirements for the Federal Flood Insurance Program. These regulations require very stringent standards of construction in the zones of concern when it comes to flood damage and storm damage. And guess what? Those standards work. The structures left standing after Hugo traveled through South Carolina are those structures that were built pursuant to these standards. They work. Why are we assuming that we need

something new. We simply need to figure out how we can encourage greater use of these standards. If they are not already in place in every community, we should enforce it. And if we have houses that are standing there waiting to be destroyed before they are going to end up complying, we should give some thought to, at what point in reconstruction, or additions, we might want to make the requirement, and what we can do to help the landowner by providing loans in order to assist him in underwriting the cost of compliance with these things.

What is the real problem? The real problem we are hearing about here is man; man in the scheme of human nature. If we really looked at it, we would find that even in terms of the natural environment, it is the animal, whether it is man or deer or any other type of animal. Too much of man or too much of an animal and we end up destroying the environment. Well, nature has its own way of taking care of overabundance. We choose different means of doing so, and regulation has been our latest effort to do so.

Unfortunately, we have a Constitution and we have the concept of private property rights. This is where the collision comes into play. It is interesting when you try to balance the equity. The whole concern here among those people who are opposed to this is the cost of the regulation that is being placed upon the vacant landowner. And it is interesting that it is the vacant landowner who has not contributed to the problem up until this time. Anybody with vacant land is something we want to preserve -- has something that we want to preserve, and he hasn't caused the problem. We built into this legislation an exemption for those people who have caused the problem, if there is a problem. Remember, I question whether there is a problem.

But, you built in an exception for the very people who have caused the alleged problem. The full burden of complying,

of saving this natural resource, is placed upon the vacant landowner, who, in fact, is part of what you are trying to save in the first place, and he has been doing it voluntarily.

One of the problems that we in the landowning, regulated, and development community find, is that the threat of new regulation automatically spurs more developing. Towards the end, I am going to give you a good example of how that has worked. You should consider that. I think it is time for a bit of repose in the State of New Jersey. You have passed the Permit Extention Act, and if you adopt CAFRA II and close the loophole, about the time that the developers will be digging out from the financial ruin that they have suffered as a result of both the recession and prior regulatory efforts, you will find that they will be ready to start building just in time to have to go and get a permit for that first 24 units.

You should also keep in mind that the current CAFRA legislation has discouraged a lot of maximum development. I could give you countless examples of 50-acre tracts on the mainland that are developed no greater than 24 single-family lots. Why? Because the landowner chose not to even consider coming to the Department of Environmental Protection in order to get a permit, because of the cost and the time. So you end up with larger than one-acre lots, or a large reserve that is dedicated as part of a landowners' association, which is permanent open space for that group.

Now, these are some of the unintended and untalked about results of CAFRA legislation and regulation that is already here and in place.

I also find it interesting that we discuss the coastal zone in terms of a coastal natural resource, but those people who own it aren't compensated for this resource. Let me give you a good example, one that is very easy to understand. When is the last time you saw the owner of wetland compensated for the sale -- as a result of the sale of seafood, the harvesting

of seafood and the sale of seafood? When is the last time you saw an open space landowner compensated? Think of this interesting prospect: Try compensating people who are willing to set aside their land and not develop the land on an annual basis, whether it be wetlands or just regular land or farmland. Compensate them, pay them per acre on an annual basis, and see if you don't get people stepping up to have their lands delineated as such and to reserve them until they are ready to develop them.

Leave your development regulations in place, if you will, but go ahead and pay them. Take away the tax burden while you're at it. They are actually providing a public service we are not recognizing. They are providing that valuable open space that we want, but we don't pay them for it. We don't even thank them for it. When they preserve a wetland, they are providing that necessary resource that becomes the breeding ground for many of the important parts of that ecosystem that all of this legislation is designed to protect, but we don't compensate that landowner. We don't reward him in any way. All we do is limit him in what he can do, and when it comes to wetlands, it is literally nothing.

When you look at the equities, we end up actually punishing those who have not contributed to the problem, and rewarding those who have, because the value that is taken away from that vacant landowner inures to the benefit of those who have already rushed and developed their property. All of us are part of that problem. This is a societal problem. All of us enjoy a trip to the shore. Many of us have worked in the construction industry, or related fields. We have been involved in the permitting process, either as legislators or as people who have agreed to these things. So, we cannot walk away from the responsibility. We must share the responsibility for it. I think we ought to begin looking at compensation as a

means of addressing the financial havoc that we have wreaked upon the vacant landowner.

Yes, there are problems that come with development, and yes, we have been surprised by coastal development and the problems that we find after the development has occurred. And yes, we have decided that we need State planning in order to address these problems. But guess what? State planning is not going to solve the fact that the same problem we encounter here-- State planning simply says that no development will occur unless the infrastructure is in place, and now we have identified the problem. The public sector has failed in its responsibility, both here and at the shore and in the rest of the State, to provide that infrastructure to support the land use that has been planned on regional and municipal and county bases for years. That is why we have gridlock, and that is why we have air pollution, and that is why we have water pollution.

But, there are things that we can do. We can solve the traffic problem. We can provide public transportation. This takes your action; this takes your subsidy; it takes your foresight to do that. We can also provide sewerage to septic communities where the septics are now -- were installed originally on land that was probably not really suitable for it, but at times we permitted it. But it takes money to do it. Yet, it is that problem that we complain about that motivates us to adopt yet another regulation to deal with the problem. But in doing so, we don't really deal with the problem.

Likewise, we might consider dealing with the stormwater problem in the same way.

SENATOR KYRILLOS: Mr. Schmidt, I am going to ask you to just stay to the bill and try to summarize your thoughts, if that is possible.

MR. SCHMIDT: These relate to the bill, because the bill is not necessary if we deal with these problems. I will

try to be brief, and I am almost to the end of this. I hope you appreciate the fact that as a landowner I have suffered much, and I am going to address that in just a second. I traveled a long way to make this statement today -- two-and-a-half hours up and two-and-a-half hours back, just for this short period of time.

SENATOR KYRILLOS: That's a long way. We all have, as well. Thank you.

MR. SCHMIDT: I appreciate your taking the time to hear me.

All of the issues can be dealt with, and should be dealt with, but they require money. Those are the problems. We know they are there, and we should address them. New regulation doesn't address the existing problems. That is the point I want to make. That is what we should turn our attention to -- those existing problems.

Now, if we insist on adopting new regulation, before we give the Department of Environmental Protection more authority, we should take a good look at how they handle existing authority. If you do and if you hold hearings, you will find that they are not enforcing all laws that they now have the responsibility for enforcing, and that there is an uneven-handed and disproportionate effort on their part to enforce existing laws.

They have published regulations, some of which can be justified by your statutes adopted, and they have unpublished regulations, some of which are written and some of which are not written. A good example is the farmland policy in the current CAFRA regulations right now. I don't find any authority in the current CAFRA bill to support any restriction against the development of farmland. Yet, the CAFRA regulations clearly prohibit all development of farmland.

Now, do we see development of farmland pursuant to CAFRA permits? Absolutely, we do. It is called the Mitigation

Policy. Are there any regulations supporting this Mitigation Policy? Absolutely none. And how is this policy defined? Well, it depends on who comes there and it is done on a case-by-case basis. Somebody is told that they have to go out and buy two acres of farmland and preserve it in perpetuity for every acre of farmland that they want to develop. Somebody else has said they can use some of their farmland, instead of buying other farmland, and there the ratio is one to one, and it is not even in writing.

Now, as an attorney, with the training that I have, I find that quite offensive. The more important problem you have is that to the extent that the average citizen is supposed to know what your statutes and the regulations of this Department say, how can they if they are not in writing? Before we go on and give them more authority, we ought to make sure that everything they are doing: a) is supported by statute; and b) is set forth in regulation and is clear and is fair. I think if you hold some hearings you will find that we could spend years clearing up that situation, and it is about time we did it.

In closing, let me tell you a little story about my personal experience, and I will try to keep it very brief. On October 4, 1988, I woke up to the 7:00 news and listened, as I always did in the morning, to the news broadcast. I listened that morning to the voice of then Governor Kean, who was talking about the October 3 emergency adoption of the Waterfront Development Regulations. Without explanation, I dressed hastily, left the house, my wife wondering where I was going and why I was already in a bad mood. I got to the office and contacted as many people as I could in the development/environmental community and the regulatory community to find out what had happened.

Within two days, I found out what had happened. Every bit of land that I owned, and almost every bit of land that

clients of mine owned, was stopped right in the midst of everything. Regardless of the status of the permits that were then required, they were stopped by a law, by regulations adopted on an emergency basis pursuant to a law that was never intended to provide regulatory authority of the nature taken by the DEP at that time. This is the agency I am talking about. You talk about stretching-- You give them an inch, and they will take a mile. They have been given that liberty and that latitude time and time again, and it is time-- They are good and reasonable people if you make them focus their attention on things, but we have to. We have allowed that situation to get out of hand, and that was a classic example of it. Is it over yet? No.

I happen to have been a partner in Last Chance Development, as in Last Chance v. Kean. We had to litigate all the way to the State Supreme Court to win what was very clear to every lawyer who read the statute very quickly: They didn't have the authority. Is it over yet? No, it is not over yet. We had to file a lawsuit in order to get the permit fees back for the waterfront development applications that many of us felt compelled to apply for during that period of time. It took that lawsuit to get those permit fees back. Is it over yet? No. We are now still waiting for a trial on the issue of damages for the temporary taking of our property for that period of time those regulations that were totally unauthorized and unconstitutional were in effect.

Now, what was Last Chance? Last Chance was six acres, half of which was wetlands, half of which was uplands. It had an approval for 13 single-family town houses, with the beautiful sunset overlooking the Cape Meadow. It was exempt from the Freshwater Wetlands buffer requirements. Nonetheless, the first building was 120 feet from the freshwater wetlands. A pretty good buffer, I would say. The stormwater drainage system, 50 feet from the wetlands.

We applied for a Waterfront Development permit under this program, and we were denied. We were denied for one reason: We didn't comply with the 150-foot buffer that they wanted on this particular property. Well, we said, "We are exempt." They said, "This is a new program." "Well, under the Wetlands Law, we are supposed to be exempt and there aren't supposed to be any new programs. This is supposed to be the only program." They disagreed with us, and said, "Sue us, take an appeal, do whatever you want."

Well, we took an appeal, and finally it was resolved only by the Supreme Court decision which evaporated their authority. During that period of time, and since, you should understand I had quite a very interesting experience. During that period of time, I tried to make arrangements to modify the project. We agreed to take the stormwater system out of the wetlands. That still was not enough. They wanted us to redesign the entire project to comply with the 154 buffer requirement that they wanted to impose even though we were exempt from it.

Since that time, the market has changed. This lot would support, at most, six single-family housing lots in the City of Cape May under their ordinances. That is what I would like to do now, and I have spent up to $15,000 in planning to try to get that approval. On the local level, the municipality is happy. They can't believe that a developer will abandon 13 units and come in for six. What kind of response am I getting from DEP? Absolutely no cooperation at all.

I have asked for the basis--

SENATOR KYRILLOS: Mr. Schmidt, I'm sorry. We are going to have to wrap up very soon.

MR. SCHMIDT: This is the most important point.

SENATOR KYRILLOS: Okay.

MR. SCHMIDT: This is the most important point, and this is what I will close with.

SENATOR KYRILLOS: Please conclude on this point. Because we don't have any further speakers, I don't want you to take advantage of that. I have let you on on for awhile.

MR. SCHMIDT: In 1989, we were classified -- our wetlands were classified as exceptional in resource value. They did not explain to us why at that time. Subsequently, after hiring consultants to write letters, we were told that we were classified as exceptional because of the migratory bird issue. We finally dropped it, and it took several months to finally get that answer. Now the issue has come up again, because the six lots are not exempt from the buffer requirement and they still want the 150 feet. So I have asked, informally, on numerous occasions, for the basis of that determination, since August, and I have written letters. I have finally had to ask for the assistance of my good Senator to make the DEPE provide the information upon which they based their initial decision.

Why is this important? It is important because if we were in the intermediate category of wetlands, the six lots would fly just like that, without any requirement for their review. The difference between the intermediate and the exceptional category is the data that we cannot obtain.

My point is quite simple: When you consider giving more authority to an agency that is unwilling to even explain its own decisions to the citizens who make application to it, you have a problem. I hope you recognize the problem, and I hope we focus our attention on dealing with that problem, plus all of the other problems that we have allowed as a result of development which we know has had to occur to accommodate the natural rate of growth and birth rate that we have enjoyed in the State of New Jersey.

Before you move on S-1475, I suggest you set it aside and focus on these problems. If you do, I will be glad to come back and help you with that, and suggest the solutions, and

suggest the directions we can take that would be very productive in eliminating much of the harm that has been done. There is much that can be done there, but we have not yet looked in that direction.

Thank you for your patience.

SENATOR KYRILLOS: Thank you, sir, very much. Are there any other comments from members of the Committee? (no response)

Obviously, we will continue these discussions with interested parties, between this Committee and the administration. The hearing is adjourned. The Committee will reconvene on Monday morning at 9:30 for the purposes of discussing tourism in the State of New Jersey and problems in the aftermath of the storm, and upcoming budget decisions relating to travel and advertising and promotion.

Thank you.

(HEARING CONCLUDED)