
Public Hearing

before

SENATE ENVIRONMENT AND ENERGY COMMITTEE

"The Committee will meet to hear testimony from the public on the Department of Environmental Protection's proposal revising the Coastal Zone Management and Coastal Permit Program rules, published in the New Jersey Register on June 2, 2014"

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: August 18, 2014
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Richard J. Codey
Senator Christopher "Kip" Bateman
Senator Samuel D. Thompson



ALSO PRESENT:

Jeffrey T. Climpson
*Office of Legislative Services
Committee Aide*

George J. LeBlanc
*Senate Majority
Committee Aide*

Carlos Cruz
*Senate Republican
Committee Aide*

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



BOB SMITH
Chairman

LINDA R. GREENSTEIN
Vice-Chairwoman

RICHARD J. CODEY
CHRISTOPHER "KIP" BATEMAN
SAMUEL D. THOMPSON

JUDITH L. HOROWITZ
Office of Legislative Services
Committee Aide
(609) 847-3855
(609) 292-0561 fax

MICHAEL MOLIMOCK
Office of Legislative Services
Committee Aide
(609) 847-3855
(609) 292-0561 fax

New Jersey State Legislature

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

RESCHEDULED

PUBLIC HEARING NOTICE

The Senate Environment and Energy Committee will hold a public hearing on Monday, August 18, 2014 at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Judith L. Horowitz, Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Shirley Link, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The committee will meet to hear testimony from the public on the Department of Environmental Protection's proposal revising the Coastal Zone Management and Coastal Permit Program rules, published in the New Jersey Register on June 2, 2014.

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SENATOR BOB SMITH (Chair): Welcome to the most interesting Committee in the Legislature, in my view.

Senator Thompson is here; I'm here; Senator Bateman is also here. We have conflicting time issues, so we both had to go down to Judiciary first; I already did and have signed in. He's going in, to sign in.

Today we have a hearing on the proposed rules revising Coastal Zone Management and Coastal Permit programs. They were published in the New Jersey Register on June 2, 2014. And what we're putting together today is a little record that we will share with the DEP for consideration on these rules. And the DEP is present today; Mr. Glass and Mr. Cantor are here. They have indicated that they will stay to listen to everybody here today, which is a good thing -- a good exchange of information and communication.

At the end of the hearing, in a week or two, we usually get a transcript and we'll share that transcript with DEP. And, of course, it will be available to everybody, as these transcripts normally are.

So let us start first with the DEP to talk about the proposed rules. David Glass and Ray Cantor, come on up; and we'd like to hear from the Department -- and anyone else you'd like to bring.

And remember, you're being recorded, so you really should give your names and positions before you speak.

D A V I D G L A S S: Thank you, Mr. Chairman and members of the Committee. My name is David Glass, Deputy Chief of Staff, Department of Environmental Protection. To my right is Ray Cantor, Chief Advisor for the Department; and to Ray's right is Ginger Kopkash, Assistant Commissioner of Land Use.

So thank you for the opportunity. I know you mentioned to me a few weeks ago that you wanted to have a hearing to discuss our proposed permitting. We welcome the opportunity to come in today and explain the rule, what it is, what it isn't, and answer any questions that you may have.

Let's talk about the testimony. You will hear-- We did bring-- You have copies in front of you which include the press release, but also specific examples which we'll touch upon as we're explaining the rule, as well as you'll see examples right here -- but they're in front of you, as well, for your convenience.

We will talk about the rule as it pertains -- how it developed, how this was in the works prior to Sandy. While it does touch on issues that did occur during Sandy, this is a combination of two separate rules into one chapter -- that's why you might hear examples that this is a thousand-page rule and it's too big, we'll say. When you actually look at it, it's only 125 pages of new rule text.

Also we'll talk about the public process, as far as stakeholder meetings, public hearings, as well as the public comment period. And also we'll touch upon other rules as far as emergency rules that were enacted immediately after Sandy as a response to Sandy.

In addition, while the focus of this hearing is, obviously, the rules -- the Coastal Zone Management Rules and Coastal Permit Program, we did want to just briefly touch upon some of the other post-Sandy activities going on at the Department, and then we'll get into the rule itself.

As you've probably heard before, we're well into our buyout program which the Governor announced last year. And the purpose of that

program -- the Blue Acres buyout program is to get people out of harm's way. We've dedicated \$300 million of Federal funding that was appropriated out of Sandy legislation to buy up to 1,300 homes; approximately 1,000 in Sandy affected areas, and about 300 in other, repetitively flooded parts of the state. In the year since the program was announced by Governor Christie, the State has made buyout offers to nearly 400 homeowners, and has already closed on 150 -- so it's well on its way and we continue to make progress.

In addition, the Administration has committed \$100 million for elevation grants. So far we have awarded grants to 460 families in Sandy-affected communities and are moving toward getting the money to a total of 1,200 applicants. So again, that builds on the resiliency planning of elevating people who are in harm's way.

SENATOR SMITH: By the way, let me interrupt you for one second.

MR. GLASS: Sure.

SENATOR SMITH: The Governor signed the home elevation contractors' bill over the weekend.

MR. GLASS: Correct; yes, he did. Thank you for mentioning that.

In addition, shore protection -- as far as protecting our coast -- as it's been widely stated, the State is closely working with the U.S. Army Corps of Engineers on a massive undertaking to repair and improve our beaches and coastline. These repairs have enhanced the resiliency of our entire coastline; Phase I, if you will -- we'll call it -- the Army Corps has completed. And that was renourishment projects and repair work for a total

of \$345 million in work that was conducted by the Army Corps. In addition, DEP is working with the Army Corps to build 11 new coastal and flood protection projects statewide, for a total of more than \$1 billion. And there are five main projects that you usually hear about: Great Egg Harbor Inlet to Townsend Inlet, Absecon Island, Sandy Hook to Barnegat Inlet, northern Ocean County, and Long Beach Island. We expect the Army Corps to bid these projects in the next two to three months. New beach projects will start construction later this year -- in the November-to-January range -- after the summer season.

And, real brief, finally, with bipartisan support from the Legislature, the Governor recently signed the Environmental Infrastructure Trust bills that were on his desk. That will leverage more than \$1.2 billion in loans and grants through NJEIT and through the State Revolving Fund. And again, that will focus on providing low-interest loans to facilities that were impacted by Sandy; as well as a lot of other clean water, drinking water, wastewater projects.

Also, with the support of the Legislature, the Governor signed a Statewide Assistance Infrastructure Loan program -- also known as SAIL. This program provides upfront funding to critical projects ahead of -- in cases -- situations where there is Federal funding on the horizon; and this will provide upfront, short-term funding for those critical needs. And actually, this is the first state that has created such a program in the nation; so that's kudos to bipartisan support in making this a reality.

So with that, I will turn it over to Ray Cantor, our Chief Advisor, who will touch upon an overview of the rule, and we'll start getting into the specifics.

Thank you.

RAYMOND CANTOR, Esq.: Thank you, Mr. Chairman and members of the Committee.

I also welcome the opportunity to be here. I think it's a great opportunity for us to share with you and with the public what the Department is intending to do with this rule.

There has been a good deal of misinformation -- both in testimony at public hearings and in the press; I'm sure you'll hear some of the same comments here today -- and this is a great opportunity, as I said, for us to explain to you what the rule does, what the rule does not do, and to try to clear up some of those misconceptions; and to talk, again, about the philosophy of what this rule is trying to accomplish.

In a very simplistic manner, what the rule does is, really, good government. As Dave had mentioned before, we're trying to combine land use programs procedurally, so we don't have three separate processes when you apply for a Wetlands permit, a Flood Hazard permit, and a Coastal permit. This is our first major step to combine them into one so you get a land use permit that addresses all your land use issues all at once. To do that, by the way, when you are combining chapters-- Again, there are two chapters in our Coastal rules -- we're combining them into one -- so it looks like a lot more is happening, but it's a lot of words just being put together; two chapters being placed together.

But this is good government, this is efficient government, this is saving the State money, this is saving the applicants time and money.

Let me talk about what the rule does not do. Again, I will tell you this is not our response to Sandy; this rule will not result in

overdevelopment of the shore; and we're not going to be impacting natural resources -- all things which we -- have been claimed that we're doing. We are not.

Again, I already mentioned that this is not our response to Sandy. As Dave Glass just mentioned before, we have had a comprehensive approach to how we are rebuilding the Jersey Shore. Yes, Mr. Chairman, the Jersey Shore is great, which is why we have a comprehensive dune beach protection system being put in place; again, over \$1 billion worth of projects. From Sandy Hook to Cape May there will be new and better beaches up and down the coast in order to protect us. We adopted elevation standards which are above the Federal standards. We have been helping -- through our permitting -- people rebuild in an efficient manner. We have elevation funding, natural resource restoration. We are actually partners with some of the groups here today in some of the natural resource restoration projects. We have energy resiliency; the sheet piling project to protect Route 35; and, as I mentioned before, we have a very aggressive Blue Acres program to buy houses out, to tear them down, return them to nature in areas where it is appropriate to do so.

We believe we have the most aggressive Blue Acres program in the nation. I think while some states talk about what they want to do on the Blue Acres front, we have -- I know we've had, for quite some time -- a very aggressive and effective program.

SENATOR SMITH: Ray, let me ask you a question on that. How is it that the Blue Acres program will appraise or value properties that have been damaged by Sandy?

MR. CANTOR: I'm not an expert on the program, but my understanding is that they are appraising at pre-storm values.

SENATOR SMITH: Okay.

Second question: Dave mentioned that you had \$300 million of Federal money for the program, and then you said we have 1,000 homes, and another 300 on top. I just took the 1,000. When I divide 1,000 into \$300 million I get \$30,000 per property. Is it your opinion we need more money for the property acquisitions?

MR. CANTOR: I'm not sure that math--

SENATOR SMITH: Or is my math bad?

MR. CANTOR: I'm not sure if that math is correct. I had thought the average home was around \$200,000, \$250,000.

SENATOR SMITH: Oh, \$300,000? So my math is bad -- that's \$300,000. Okay, thank you. I'm sorry to interrupt.

MR. CANTOR: This is New Jersey. I'm not sure we're going to find a thousand homes for \$30,000 -- but, yes. (laughter)

This is not, again, as we've mentioned, even our only regulatory response to Sandy. We were working on these regulations for over three years. We had a lot of stakeholder meetings, which Ginger will talk about, and a fairly comprehensive draft of these regulations done before Sandy hit. Once Sandy hit we decided we weren't going to wait to do the comprehensive rule -- which we have here today -- but we were going to pull out and add to those sections that were very important for Sandy recovery. So we did two emergency rules, again, because it was important to act quickly as opposed to waiting for a longer haul. We adopted elevation standards which are -- again, a lot of details in this -- but essentially for

most areas it's a foot above the base flood elevations. We adopted the FEMA ABFEs before they were filed, which we thought was very important to bring people out of harm's way before they started to rebuild. So we're very aggressive in adopting elevation standards using the best science available, and making sure when people did rebuild they were doing so in an effective, and resilient, and protective manner.

We adopted a single-family home permit-by-rule to make sure that people can rebuild their houses quickly without having to come back to the Department. Again, there were lots of limitations on that to make sure they were rebuilding again in the same footprint or close to that. We adopted rules to protect and enhance our aquaculture industry which was severely impacted by Sandy; the same with marinas. The marina industry was significantly impacted by Sandy and we adopted regulations to allow them to rebuild, to reconfigure, and to be more resilient once they did so.

Very importantly, as well, we adopted a general permit for living shorelines -- it was a general permit. I don't want to underestimate this point, and Ginger is far more expert on living shorelines than I am, but this is a major step to moving forward to make sure that the New Jersey shore or coast is built back not just for hard structures, but have ecological features out there to make sure that we are enhancing our environment as we rebuild.

SENATOR SMITH: Another question for you: Were the 1,000 or the 1,300 homes identified? Is there any list of the properties?

MR. GLASS: That's ongoing. We continue to now-- You've probably seen a lot of press about the Sayreville, South River area. We're now engaged in East Brunswick, Old Bridge, Woodbridge -- to name a few.

We're meeting with mayors up and down the coast, as well as areas like the Passaic River Basin and the Raritan River Basin as well, to continue to identify properties to keep them -- to keep moving the queue. So we're working--

SENATOR SMITH: All right. The one thing that--

MR. GLASS: Lawrence Township as well, along the Delaware River.

SENATOR SMITH: It probably would be in everybody's best interest to get that identification done as quickly as possible. On the one hand, the emergency rules were set up to allow people to rebuild as quickly as possible. But if this is going to be part of the 1,300 homes that are going to be purchased because they're in harm's way, the sooner that that's publicly available the less chance that everybody would be wasting money. Obviously, of you're going to buy somebody out, having them rebuild and then buy them out is not -- it doesn't seem to be economically efficient.

MR. GLASS: No, that's fair, and we're moving as fast as we can as far as the pace, as soon as the money is appropriated and made available at the Federal government; some of it is through HUD, some is through CDBG funding. We're moving to that speed as fast as we can. And, honestly, as well, as we've noticed as we go up and down the coast -- because as you are aware it is a willing seller program -- a lot of homeowners along the coast want to rebuild. They just have not had a major interest in some areas of being bought out, such as areas in Middlesex County and the northern Passaic River Basin -- areas like that. That's been our experience so far.

MR. CANTOR: And just one small point, just to add to that. We are working with local mayors and with communities, so we're trying to buy up whole areas that want to leave -- the Weber section of Sayreville being one. So yes, we want to get the money as soon as possible, but we're not sitting back and just waiting. We are working with communities, working with towns, to make sure that we're all on the same page as to which areas are appropriate for buyouts.

SENATOR SMITH: All right. You stimulated another question, and I apologize because I know you want to get your information on the table.

But my understanding is that we have a different program than New York. In New York, they're not requiring that whole communities sign up for buyouts; but rather, they'll take an individual -- or they'll purchase individual homes when they can get them. Is there a little bit of a conflict here in the sense that if everything is voluntary that one resident of a community that is destined to be destroyed by the next storm decides that they want to rebuild and now the State -- if we've adopted the policy of not buying unless we can get all the homes -- doesn't that kind of frustrate the purpose of the program?

MR. GLASS: In any scenario like that, obviously, we're strongly encouraging entire clusters of homes to be bought out. And in individual scenarios you will have homeowners who just don't want to leave the area; this is where they're born and raised; they built that home and that's where they want to be. And we understand that. To the greatest extent possible -- and using Sayreville as an example -- we also noticed an uptick: once homes started to be demolished we had even more people

come on because they saw, "Okay, this is a reality. Homes are being demoed, my neighbor is leaving." But we do know there are just some individuals who are going to remain behind. So it's -- to the greatest extent possible, it creates a flood buffer; and, as well, it's a benefit to the municipalities and their first responders so they don't have to go into the areas. So we're-- In the past, we may have had 50 homes; you only have a couple homes left to worry about.

SENATOR SMITH: But the State does have a policy saying, "It's got to be everybody"?

SENATOR THOMPSON: Yes, but that's your general policy. You're not saying if one or two hold out, you won't buy any. You are going ahead, even though there are a few holdouts, right?

MR. GLASS: Correct, we're strongly encouraging that -- it's entire neighborhoods. It's been our policy. Because in the past we've noticed it turns into a checkerboard pattern, where you have just random houses purchased. We're strongly encouraging entire neighborhoods, but we understand as this develops -- and as it's been developing -- you are going to have some streets where you have people who don't want to leave, and we understand that.

SENATOR THOMPSON: But you're going ahead with those areas anyhow, even though there are a few people who say they want to stay. And most people want to go--

MR. GLASS: Most people want to go. I mean, we've had success--

SENATOR THOMPSON: Then you will go ahead and buy out in that area, even though there are a few hold outs, I'm saying, right?

MR. GLASS: Oh, no. We'll continue the program. Oh, so your question was, if not everyone goes, will we not buy out an area? No, we'll continue with the buyouts. Yes, sorry.

SENATOR SMITH: So there is some flexibility. It's not an absolute.

MR. GLASS: Yes, yes, there is flexibility. Sorry, I--

SENATOR SMITH: Got it.

MR. CANTOR: Right -- it's not an absolute.

MR. GLASS: Yes.

SENATOR SMITH: All right. Sorry for the interruption again.

MR. CANTOR: Not a problem. Again, it's important that you and the public understand what exactly it is that we're doing, so we welcome these types of questions.

Let me talk a little bit about what the rule does not do. Again, there has been a lot of misinformation out there. This rule does not impact natural resources. We're not allowing -- we're not changing natural resources rules, except for one small part which I'll talk about shortly on some shellfish habitat. We're not allowing uncontrolled development of the coast -- I'll give you some more examples -- rather, we're just allowing some more efficiencies in how people can get their permits.

I've heard somewhere that we're allowing hotels to be placed in marinas. I don't even know where that came from, but in case someone mentions it, that's not the case.

We're not limiting public input into our decision-making process. There is one provision in the rule -- and the CAFRA rules go back to the 1970s in many instances -- where it says if we're going to adopt new

rules we shall have a public hearing. Well, we're taking that provision out because the Administrative Procedure Act already requires that public hearings be held when we do rules. So we're just taking out a duplicative provision in our rules. So without limiting public hearings at all, we're just making the rules -- we're just cleaning them up, in a sense.

SENATOR SMITH: There will still be a public hearing.

MR. CANTOR: Absolutely. There's always-- On this rule in particular, we had three public hearings and tons of stakeholder meetings which, again, we'll talk about in a short bit.

We're not making us at all any more vulnerable. Anything that is built in the coastal area, especially if it's in the flood hazard area, must be built to the proper elevation and construction standards. So if a home is being rebuilt, it's going to have to be elevated to the proper level. If a marina is being rebuilt it must be built to the proper standards as well. This will also not be our last go-round on our Coastal rules. We're about to begin a new stakeholder process to look at a new round of Coastal rules; so we anticipate maybe a year or so from now we'll have another proposal.

But I just want to warn you that there is still going to be groups that are not going to be happy with what we ultimately come out with -- that's just my prediction -- because I think we have a philosophical difference of opinion as to what these rules should do and what we should be doing in our coastal areas. It's this Administration's philosophy to allow for the rebuilding, but to do so in a much better, higher, stronger, and more resilient fashion. We want our shore communities to be rebuilt; but rebuilt, again, better, stronger, more resilient, higher, out of harm's way. We're not retreating from the coast, which is what a lot of people want us to do.

I just want to clarify as well that we are acting entirely in accordance with legislative intent. And I just want to read from the CAFRA statute for a second, Section 7 of PL 1993, Chapter 190. It says that, “CAFRA permits will not be required in the following situations: *B*, the reconstruction of any development that is damaged or destroyed, either in whole or in part, by fire, storm, natural hazard, or act of God, provided that such reconstruction is in compliance with existing requirements of codes of municipal, State and Federal law.” So even if we did not agree on a rebuild policy -- which we do -- the Legislature is very clear in its intent that we should be allowing people to rebuild, again, so long as they meet existing codes and standards -- which all development built on the coast, post-Sandy, will do.

I was with the Governor in Asbury Park on Friday, and the Governor did talk about our efforts to rebuild the coast and to make it more resilient; he talked about our clean beaches and our clean water. And there was a resilient (*sic*) applause for that statement. We could argue, or go back and have a discussion, about what should have been done in the 1950s, 1960s, and 1970s when the coast was built, but largely our coastal area is a built environment. And allowing rebuilding after a storm, again, is our policy.

We’re not abandoning the shore; we’re not retreating from Seaside, from Point Pleasant, from Asbury Park, from Lavallette, or Brick, or any other coastal community. I think a lot of the criticism of this rule -- and we’ll talk about what’s not in the rule; and what’s not in the rule is a retreat policy. You will-- People who are testifying may not say the word *retreat*; they won’t say that a certain town should not be brought back. But

what you will hear is they'll talk about we need to do better planning, we need to have lessons learned, we need to learn from our missed opportunities, or we need to make sure we don't have missed opportunities. And when you hear those terms, what they're really saying is, "Don't rebuild; retreat from the shore." Again, that's not our intent at the Department, it's not the Legislature's intent when they enacted the CAFRA statutes.

SENATOR SMITH: Yes, listen. I'm going to try to not allow anybody to characterize other people's testimony. So we'll give the enviros a break; and if the enviros start to beat up on the DEP, I'll also give them a slap up side the head. (laughter) Let's talk about what our position is, and then the other people will speak for themselves.

MR. CANTOR: No, absolutely, sir. And I wasn't trying to characterize testimony. I was just trying to clarify the philosophical difference of opinion. We want to rebuild the shore more resiliently; other people want us to retreat from the shore. And that's where you find a philosophical difference between what we did and what other people want us to do.

SENATOR SMITH: Right. That sounds like it's 180 degrees different.

MR. CANTOR: Yes.

SENATOR SMITH: But the good thing about a Democracy -- we listen to everybody's opinion.

MR. CANTOR: I also want to talk-- Besides all the procedural things that the rule does -- again, making it a better, more efficient permitting process -- there are a few substantive changes that we made for

marinas and for single-family homeowners. And if you don't mind, I just want to talk about those as well.

But first of all, we made a lot of changes to try to help the marina industry. Why should we help marinas? Marinas are water-dependent users consistent with the Public Trust Doctrine of allowing for navigation; they provide pump outs, and bathrooms, and other facilities that help to protect the environment. When you have marinas you limit the needs for individual docks; they provide recreational opportunities for our coast, public access opportunities for people.

It's also been an industry that's been declining and significantly harmed by Sandy, so we believe it was very important to do what we could in an environmentally sound manner to help marinas rebuild and do things better. They also provide, obviously, jobs to the economy.

Let me just show you a couple of things of what the rule does.

(witness stands and addresses Committee off-mike)

I believe we're in slide 4.

We help marinas in a few ways: one, we eliminate certain (indiscernible) requirements. The rules currently right now say you have to have something called water bathrooms, etc. Those things are already covered by the sanitation codes, by DCA, and construction codes, by health codes. So we thought it wasn't DEP's role to duplicate or try to add on to what those codes are. So we just tugged those provisions out.

We're also allowing marinas to expand in infill opportunities, and also to expand outside into shellfish areas.

What you see in this particular area are a host -- a line of marinas in the area. These are real-world examples, by the way. We had an

application to put a marina right in here -- in this little sliver. From our perspective, it made sense; it's already an area that is developed with marinas. However, this was designated in here as shellfish habitat, and under our rules we had to deny -- or would have denied that permit. So again, we think it's just common sense that in this particular area we should be allowing marinas to expand in an infill opportunity.

Let me just mention that, as well, because we're allowing marinas to expand -- both in infill and existing marinas -- in the shellfish habitat, when we're doing so, we're not destroying the shellfish. This is not a situation where they're going in and the resource is lost, but because physically you can't get to those areas, and because it's economic -- there's boating activities going on above the shellfish, we declare those waters to be prohibited. But the shellfish are still in the water, they're still functioning as they would, without destroying the resource. It's a choice between the economic impact of the shellfish industry or the economic gains to the marina industry. And we think in these very limited instances that the balance should be weighed to try to help out the marina industry, even though theoretically there may be some economic harm to the shellfish industry -- not to the shellfish resource.

You've also heard a lot of criticisms as well about the two-family general permit. Right now, if you're going to build in the coastal area-- As you know, by the way, in 1993 the Legislature, for the first time, closed the 24-unit loophole to some extent and brought it down to one unit close to the water. Well, we did so-- When DEP adopted its rules, we said that if you have lots and contiguous ownership after 1995 when our rules became effective -- contiguous ownership of one or more lots in 1995 -- you

were only allowed one general permit to build a single-family home or a duplex -- one. So let's talk about what happens when we do that -- again, real-world situations. You can see all the developed area, infilled (indiscernible) edge area, all large houses all over. Two houses, this one is a little bungalow; this one came in -- I'm not sure if it was torn down and rebuilt or it was an abandoned lot -- but they built a house to zoning standards under a general permit. They were allowed to do that; general permit, allowed to do that.

Under our rules, if this person came in -- this person did come in -- to expand this house, we had to say no. We either had to go through a very expensive, time-consuming individual permit process; in this particular situation, because it's filled to this edge, they would have had to push back over 100 feet -- give them a 100-foot setback under that. So this person was not allowed to rebuild his house to meet zoning standards.

I didn't say that's a good thing. We would argue for regulatory sense, for environmental sense; it makes little sense in an area like this to say that this person cannot expand his house. Again, it's Brick Township.

Another one from Brick.

SENATOR CODEY: Excuse me.

MR. CANTOR: I'm sorry.

SENATOR CODEY: What are your interactions with the leaders there, the Mayor and the Council?

MR. CANTOR: I'm not sure if we specifically talked about these rules. Maybe Ginger could answer more about that. But I don't think we have gotten any complaints from mayors about these types of requirements. So--

SENATOR CODEY: So as you're working, aren't you working hand-in-hand with them?

MR. CANTOR: Oh, absolutely. Again, we'll talk more about our stakeholder processes. But we have stakeholder processes which started out in -- with all groups together; we broke them out into subgroups. We met with environmentalists, builders, mayors, county officials, planners, college professors. We've had a very robust stakeholder process. And, absolutely, we work with the mayors all the time and we ask some of these questions.

In this particular situation, again, two lots owned by a single person -- one person. After 1995 he may build a house to zone standards. This guy now wants to come in and build a house, and we're telling him no, you have to get a general -- you can't get a general permit; you have to get an individual permit. This -- I believe we're in the Appellate Division or in OAL. We have 10 of these cases right now on appeal, either at OAL or at the Appellate Division because we say no. Again, in the area where it's all built up, as you can see, we find very little reason to fight this in court and to tell this person that he's the last one on his block and he can't build on that particular lot.

One more example, this one is in Surf City. A large house, as you can see; (indiscernible). They actually want to tear the house down, subdivide, and build two single-family houses, which would result in, actually, less impervious cover. And, actually, when they rebuild they'll be rebuilding to newer standards, as well as elevation standards. Because you can only get one general permit, not two, we had to tell this person no, you can't do that because you're only allowed one general permit. So if he

subdivided, one house would be allowed to be built, the second house probably would not be allowed to be rebuilt.

Again, we think it's just common sense that these scenarios -- which are real-world scenarios -- they're built-up environments, they're often (indiscernible) bulkheaded lots. It makes no sense to spend the Department resources to fight these. There's very little environmental benefit, very little environmental impact. Again, we just think it makes common sense that we should not be fighting these situations.

So we talk about overdevelopment. When you hear those terms, these are the situations that we're dealing with. We're going from a single-family GP to two single-family GPs. That's all that we're doing.

Again, these rules, generally, are to make the Department more efficient, more effective, to help our permitting process. They do not hurt the environment. They promote our policies of rebuilding and rebuilding in a more resilient fashion. And we think in the areas of marinas and these two single-family homeowners that it just makes common sense to make these changes.

And I'll turn it over to Ginger Kopkash who will talk more specifically about what the rules do.

VIRGINIA KOPKASH: Good morning. Thank you, Chairman, members, and -- Chairman and Committee members. I appreciate the opportunity to talk to you about what the Coastal Rule Proposal says.

Before I get into the specifics about the rule, I want to go into a little bit of background of how we came about the document that has caused, I guess, the flurry of interest.

When the Administration came into the Department, one of the-- Out of the Red Tape Committee came one of the -- the directive was to incorporate electronic submissions wherever you could within your permitting program. So we examined the land use rules and decided that in order to implement electronic submission of an application, we were going to need to undertake regulatory reform. The reason for that is, in land use typically what happens -- maybe not on these coastal lots that you had the visuals for, but on many of the developments -- you need not only a CAFRA permit, but probably some other land use permit, such as a Coastal Wetland permit or a Freshwater Wetland permit, transitional waiver, Flood Hazard Area permit when you come into our office.

So each of those programs had a slightly different initial submission process. That made it very difficult for us when we started to go through our work flow to -- give me a second-- It was very difficult for us to implement a -- or computerize a process that allowed us to take an application that included multiple different permits and allow for its electronic submission.

So the first step in undertaking that rulemaking -- our first transformation -- was the Administration decided to form a different type of rule team and approach to rule writing. Traditionally what would happen is each land use rule was written by one rule writer who worked with a management team member on that rule. And they made-- The management team member made the policy decisions that were implemented -- that the rule writer wrote and then worked with the legal team to make sure it was legally correct.

In the new construct, what they decided to do was take a team approach to writing the rule. Not only were rule writers on the team, but also practitioners, as well as we were required to follow a stakeholder process. On our rule team alone, which included myself -- prior to being the Assistant Commissioner, I was a worker bee, a writer -- was 145 years-plus of experience in land use permitting programs -- in different parts of it. Some of our rule team members implemented the Flood Hazard rules, Freshwater Wetland rules, Highlands, and CAFRA rules.

So the stakeholder process: When we entered into the stakeholder process, it was in the spring of 2011. We held meetings with the environmental community, development community, local government -- to answer your question -- and our State and Federal partners. We held a total of seven stakeholder formal meetings. And what that meant was we actually did an announcement out; we recorded the meetings, so if you weren't able to attend it, you could at least listen to the stakeholder session and what we talked about. Those meetings were very broad and general, but what we told the members -- or the public that attended the meetings is that our objective was administrative alignment of all the three land use regulatory programs -- in this case, it was Freshwater Wetlands, Flood Hazard, and the Coastal rules.

We also, maybe, talked about, in our stakeholder session, some larger topics like sea level rise -- we did talk about that in general terms -- and beach and dune activities. So we posed questions to each group about our direction regarding administrative alignment and what that meant to the public process.

One of the things that we did talk to them about was public notice -- important to them -- and we got feedback from everyone on that; the review time of an application -- how did they feel about that if we were to make the review time consistent across all three land use programs. An example of that would be Flood Hazard general permits are presently processed in 45 days, and general permit submissions for a coastal permit is 90 days. So there was a difference, and we saw an opportunity maybe for administrative alignment if people didn't have a big problem with aligning the review time.

We then broke into formal subcommittee meetings. And how that came about was we sent out an e-mail to everybody who attended the stakeholder session and said, "We believe the following broad topics were brought up and we want to explore them a little further detail with a subcommittee. If you would like to be a member of the subcommittee, please send us an e-mail response back." And the meetings were on the use and development of coastal resources, was one subcommittee; beach and dune maintenance activities; expansion of single-family home on a dune was another subcommittee; protecting encouraged development of new marinas; living shoreline; and then we had a special area rule subcommittee, and an administrative subcommittee.

Many of the proposed amendments reflected in the rules actually came or were suggestions made by the subcommittee members. Some of the subcommittee-- After those initial subcommittee meetings we held informal correspondence back-and-forth through e-mail, and then like with -- for example, living shoreline had numerous, numerous meetings where we went into very great detail.

These sessions-- We developed a list of responses and worked with the management team on a policy directive. What was clear from our sessions is the development community welcomed the idea of administrative alignment of the land use rules, and collapsing -- let me show it to you, right now, in Word -- this 7:7E and 7:7 of the Coastal Rules into one subchapter. Because they found it problematic when making a submission for a Coastal permit -- you had to use two different rules when preparing that submission.

What was also very clear to us with respect to administrative alignment is the environmental community voiced very strong concerns about the need for public notice of any land-use application.

Once we received the green light to move forward with the administrative alignment of the rule, the team-- We went into a detailed examination and analysis of all three -- or actually, technically, four -- rules that we had to bring into alignment. This was a very time consuming process, but incredibly enlightening. We broke each type of land use application -- and there are multiple general permits, multiple for each program -- Freshwater Wetland, Flood Hazard, and the Coastal program -- and even within the Coastal program, how you submit a general permit and the pieces of paper that you need for the various types of general permits in the Coastal Rules varied slightly differently even internally; and then differed from how you submit a Flood Hazard general permit or a Freshwater Wetland general permit.

We looked at how to submit a letter of interpretation, transitional waiver, flood hazard verification. We developed these charts where we looked at where we had similarities and where there were

differences. And then we opened up the statutes, and we examined those statutes and we looked again at where there was administrative requirements for submission, and also words that seemed to have significance.

The rule that seemed to dictate how we might move forward with administrative submissions and timeline requirements really came out of the Freshwater Wetland rules. The Freshwater Wetland rules had the most prescriptive public notice requirements. So then we asked ourselves, "Do we want to impose that requirement on all the land use applications that are going to come forward to us, or do we want to just keep that submission requirement separate to the freshwater wetlands?" And the decision was -- and it was a very deliberate decision, mostly with respect to the environmental community -- that we had the most robust public notice requirements. So we imposed public notice requirements on, for example, the Flood Hazard rules which presently, if you submit for a general permit, you don't have to do public notice; we imposed that across equally -- or we're proposing to propose that across equally all the land use programs.

After we were done the examination of the statutes as well as the regulations, we sat down with our Attorney General's Office and met with our deputies, and laid out to them what we thought we could do. And then we asked them for their input to make sure that we were not doing anything illegal or against the legislative intent with respect to application submission.

This exercise, as I noted before, highlighted that the process was very complicated. And it didn't surprise me because, at one point in my career, I oversaw the application review section. These are the folks

who initially took in an application, and then entered it into our computer system; that's why we had so many rejected applications. It's very difficult -- presently, it's very difficult to submit administratively complete applications if you're doing it for the very first time.

I want to make sure I covered everything; I guess I did.

All right. The other thing that we did when we undertook this effort is we looked at all the definitions within the four different rules. And we found we used words -- the same words -- but they had slightly different meanings in the different land use regulations. And we thought that, obviously, must cause a lot of people confusion when submitting an application. And even in our own Coastal Rules in 7:7 and 7:7E we had a different definition we found for what is a beach. In 7:7, it says "sand" and it doesn't include any plants; and in 7:7E you can have plants on a beach area. So we realized even more why it was important to put those two rules together; because when somebody was making an amendment in 7:7, sometimes they missed that change that they also needed to make in 7:7E.

When we were going about this exercise of administratively aligning our four sets of land use rules, we also were looking at ease of finding information. Right now, if you want to cancel a flood hazard area application, in order to figure out how to do that you actually have to delve into -- it's hidden in a section in the individual permit process that you would not intuitively know to go to find that information. So what we decided to do was have exactly the same named -- we're proposing to have exactly the same named subchapter, so there will be a subchapter called "application review." There's a subchapter on application submission, and we deliberately are naming them the same so that the public knows if I'm

submitting a permit I know this is where I go; and that when you read that section, the language, as statutory permissible, will be the same from one rule to the next. So as I think Ray was pointing out, what we believe we're proposing is really just good government in that respect.

That was the biggest part of this rule effort. Now, for many, it does not seem to be the great, big fix to the land use rules that many people were seeking. But in reality, it was something that is desperately needed for many different reasons -- even if we weren't going to go and move towards electronic submission. Obviously, for the regulated community and even for individuals who wanted to know if an application that the Department was reviewing was a complete application, an interested party -- for example, they would know the standards that that application needed to be reviewed against. And right now I think it is difficult for individuals to figure that out.

And let me just add electronic submission-- The reason why we would want to go to electronic submission is the information is available and will be more readily available to the public. Because with electronic submission you'll have the entire application in electronic format and it's easy to distribute to individuals so there's more transparency in the process there; and then the longevity of that information is also preserved as well.

So we went through that entire exercise, met with our subcommittees. Not too many people were interested in the administrative process -- that subcommittee -- it mostly ended up being predominantly the builders, and maybe a few consultants who were interested in that section. And we worked fairly closely with them on that portion of the rule.

Close to the completion of that writing we were hit by Sandy. And as Mr. Cantor pointed out, we changed our direction. What we did, though, was that we had known that some of the proposed -- the substantive changes, which weren't administrative, that we broke into subcommittees on -- such as living shoreline -- might actually be good rules to implement in an emergency rule-making process when communities wanted to start to rebuild. We also had changes with respects to beach and dune activities.

So we looked at the proposed rule language and determined if some of it still made any sense, and that if some of it should be implemented quicker than -- we needed to implement now, versus waiting for later. When we were encountering problems with homes that were affected by Sandy and rebuilding-- And I just want to point out too that many of the homes that we were hearing about and reviewing were homes that were built prior to the 1970s, probably prior to CAFRA itself, that were impacted by the storm -- mostly because they were built on slabs, you know, before elevations were put into place. We participated in meetings that discussed rebuilding issues faced by other states that were hit by hurricanes. And we also knew in New Jersey we had better flood elevations. And as Ray mentioned, we decided to do some emergency rulemaking, which really -- that emergency rulemaking was our first response to Sandy, and probably our most robust response with respect to rebuilding. We did an emergency rule for flood hazard that got at adopting the advisory-based flood elevations. But I want to point out a slight nuance there. It wasn't just the advisory-based flood elevation that we adopted. We actually said in that rule that you had to build to the higher of either the advisory-based

flood elevation -- the work map, the existing based flood elevation maps, or the State study. Because what we found was, in some particular locations the State study had a slightly higher elevation than, maybe, the ABFE, or the ABFE had a slightly different elevation. In that rulemaking, we require people to build to the higher of whatever one of those maps, and they have to build one foot above. That one foot is, I guess, the safeguard factor of whether -- why we believe we are requiring people to build in a more resilient manner. It is stricter than the National Flood Insurance program's requirement, so we thought that that was a positive move when people were rebuilding.

We also-- In our emergency rulemaking, we were looking at communities wanting to rebuild their shoreline. I happen to also oversee a grant program where we had monitoring stations out in the wetlands. And what was really clear was those wetlands did a wonderful job at absorbing some of the storm's impact. And communities that also had an engineered beach and dune system fared much better.

But some of our coastal policies were preventing those good things from continuing to happen. So in our emergency rulemaking we were now, through an individual permit process, allowing communities to maintain their engineered beach and dunes. Because what we heard from our technical experts is that if sand is captured in too much or in one portion of the project, and the project is a long span -- you gentlemen probably already know that -- you harm the portion of the project that just was robbed of its sand. So they have this practice called *backpassing*, where they take sand from one location and they move it back. So that increases the longevity of the project. So we undertook that -- we incorporated that

into our emergency rulemaking. And we also, with respect to living shorelines, we made some tweaks to some of the rules that we had already written to allow for the rebuilding of the horseshoe crab and the shorebird beach habitat that was lost during the storm -- that I believe some of the individuals from the environmental community were able to undertake because of that general permit.

So once the emergency rulemaking was completed we resumed work on the administrative alignment. And we held meetings-- We continued to hold meetings; we held meetings on the new V-zone -- that was a pretty controversial issue, and wondering if we should incorporate any changes in the rule with respect to that. We had V-zones -- or we presently-- ABFEs have V-zones where they didn't exist before, in the back bays and tidal riverine systems. And we also held meetings-- I spoke personally at the Commerce and Industry Association of New Jersey meeting; we spoke with the New Jersey Builders Association; and then I also spoke at the League of Municipalities about the upcoming rulemaking.

The effort to align the permitting process rules involves the following topics: emergency authorization, pre-application conferences, application requirements, requirements for an applicant to provide public notice, application review, permit conditions, and request for adjudicatory hearings.

For emergency authorizations, currently referred to as *emergency permits*, we are proposing to change that term to *emergency authorization* and removing the word *permit*. And we're aligning the process of how to request one across all -- we're proposing to align how to request one across all three land use permitting programs. This is very important because if there is an

instance where an individual -- there is immediate harm to lives or property or the environment, we want them to know how to go about requesting that authorization, and making it the same across all three programs allows us to be more effective. The reason we removed or are proposing to remove the word *permit* is because people believe it's actually a permit; they're required to submit for a permit following issuance of an authorization to undertake work. Currently in the Coastal Rules you actually have to have an inspection before you can undertake the activity. And what we're finding is that if there is a true threat to life and property, an inspection may not be possible.

Pre-applications: How to request a pre-application conference and submission requirements are proposed to be aligned across all three land use rules. We also incorporated, in this, rulemaking. We mentioned to the -- tell the public about the Department has set up the Department's Office of Permit Coordination and Environmental Review if they have to request permits from multiple different Department programs.

Application requirements: This was the one that we spent a great deal of time on -- how you submit an application for a Flood Hazard, Freshwater, Coastal. We're proposing to align, and we chose an application requirement process that allowed, across all three programs, to have the information needed by the project manager and the public to accurately review and assess the project's impact or potential impact on the environment. There are a lot of changes in here; presently, how to submit an application is housed in many different sections in 7:7E; we collapsed this all into one subchapter.

This is one slight change that I think that our -- a proposed change that we really haven't heard a lot about from the environmental community, which sort of surprised me a little bit -- or from too many people. Currently, when you submit a Coastal permit you have to do an environmental -- it only requires an EIS for CAFRA permit applications. And what we're proposing to do, in addition to (indiscernible), EIS must be submitted for all individual Coastal permit applications. Currently, you only have to do it for a CAFRA individual permit. So we're requiring it for all individual permits, so that would include a waterfront.

Public notice: We're requiring a robust public notice process that is consistent with the municipal land use law. Presently, it is not-- If you submit a Coastal general permit you only have to notify property owners that abut your property boundary. As I mentioned before, we looked at the freshwater wetland statute and we're requiring people to -- we're proposing that they notify people within 200 feet of the property boundary.

I'm going to speed up; I have a lot here -- sorry.

SENATOR CODEY: Excuse me, excuse me.

MS. KOPKASH: Yes.

SENATOR CODEY: Bob, what's the local ordinance? I thought it was three--

SENATOR SMITH: Municipal land use laws is 200 feet in property line.

MS. KOPKASH: Yes, it's 200 feet. Yes, we're proposing to be consistent with municipal land use law.

SENATOR CODEY: Yes, but I mean--

SENATOR SMITH: Do you require publication as well?

MS. KOPKASH: Well, we publish-- For CAFRA individual permits, they have a public notice requirement that requires a newspaper notice. But we put-- All applications that are received by the Department are published in the Bulletin -- New Jersey DEP Bulletin. So, in that respect, yes. But we require them also to notify the county in which the -- we're proposing the county in which the activity is taking place, municipality, construction official, the environmental commission, property owners within 200 feet, and also the soil conservation district -- which we did not have in our rules before, but it was housed in the Flood Hazard rules and we thought it made a lot of sense to carry that through across all.

SENATOR CODEY: Excuse me. But Bob, you know, with some of these areas with the wide gap between them -- you know, as opposed to some parts of my old district -- a couple hundred feet would be a thousand people.

MS. KOPKASH: Yes.

SENATOR CODEY: But down here, you know, that's small -- it's a small amount of homeowners, in many cases -- 200 feet. Do you see my point, Bob?

SENATOR SMITH: I do. And it's something I'm sure the Department will consider.

MS. KOPKASH: I could--

SENATOR SMITH: The thought was whether the distance should be greater down the shore because the population density is so low relative to other districts around the state.

MR. CANTOR: And this also applies to waterfront, as well as it applies to Hoboken and Jersey City -- you know, the Sayrevilles -- a lot more dense areas as well. It's not just the Jersey Shore.

SENATOR CODEY: No, but I mean-- Yes, in Hoboken, 200 feet is a gaggle of people.

MR. CANTOR: No, understood.

SENATOR CODEY: As opposed to some other areas on the beach where that may be two homes and everybody else is not notified who feels they should be. There's a big difference, you have to understand. It's like the cost of living between certain parts of this state; there are great differences, disparities.

SENATOR THOMPSON: But I would think that when you talk about setting a distance for notification, you're setting it based on the people who might be most impacted by what's happening -- not on how many people you need to have come to a hearing.

SENATOR CODEY: But Sam, I--

SENATOR THOMPSON: It doesn't matter how many people live in it; it's how far are people affected. That's what you use as a measure to determine how far you want to go.

SENATOR CODEY: Right. And on a beach setting, you know, 200 feet is very small because you have the coastline and somebody three houses away from you, and you're not included because of that distance between homes.

SENATOR THOMPSON: But again, as I say, it's not a case of how many people are near you, it's a case of how far you have to go before you get away from people impacted. So if there are a lot of people or a little

people, the distance should be based on how many people are impacted by what you're doing.

SENATOR SMITH: Anyway, obviously, there's a philosophical discussion there.

MS. KOPKASH: Yes.

SENATOR SMITH: You have other things you wanted to talk about?

MS. KOPKASH: Yes, I'm sorry I'm taking so much of your time. And I'm going to try to rush through--

SENATOR CODEY: We could use a little--

SENATOR SMITH: Well, we want to understand what you're doing.

MS. KOPKASH: Yes, and that's why I thought I'd tell the story all the way through. And I know it's not so exciting, but it is meaningful in many ways.

SENATOR SMITH: Yes.

MS. KOPKASH: Permit conditions: modification; transfer; suspension, terminations of an authorization. We looked at all those standard conditions that were in all three, and took the best of them all. And now, once again this helps, and this proposal will help for consistency of language; and consistency means consistent -- better compliance overall, better predictability of what's going to be on your permit.

Request for adjudicatory hearings was aligned -- or is proposed to be aligned across all three permitting programs. And you gentlemen know, of course, about the Environmental Enforcement Enhancement Act. That, if you think about it, is what we did without the Act. The

Environmental Enforcement Enhancement Act took and modified enhanced Department's enforcement powers under various environmental protection statutes, which also included CAFRA, Waterfront, Wetlands Act of 1970, and the Flood Hazard rules, and aligned them and allowed enforcement to also change and raise some of their fines.

Now, I'm just going to go really quickly into a little bit of detail about the substantive changes that I think have also caused a lot of comments.

Electronic permitting. *General permits-by-certification* is a new term that's been proposed in the rules and has caused, I guess, some comments from individuals. Typically what the Department would do when undertaking a rule writing effort is we would look at those standard, simple applications with low environmental impact and we generally would propose them as new permit-by-rules. And a permit-by-rule is when the rule is adopted, as long as you build in accordance with the permit-by-rule, you're fine. But what we found is that at the local level the construction official wanted a piece of paper from the Department to make sure that the individual that they were giving a construction permit for was building in accordance with the permit-by-rule. So we then were having to add to our-- We didn't get rid of the action. We still had to take an action on that, and write a letter in order to allow the individual to move forward on their construction project.

So a general permit-by-cert -- certification -- is an individual would be sitting at their home, and they certify to a series of facts about the project that they're about to undertake, similar to what you would do with a permit-by-rule, but you don't have to certify to it. You have to do public

notice when applying for a general permit-by-certification, the same public notice requirements of all general permits. And you have to pay a fee. The system, the general permit-by-cert is kind of like a registration system, so to speak. Then that goes into the Department's database and now we can do a compliance inspection against that general permit-by-certification request.

We are proposing two general permits-by-certification: the first one is for the replacement of a bulkhead in place or landward of its present location, with nonpolluting material. For many people, they could probably undertake this activity under Zane, and it's an exempt activity for many. But once again, Zane is another one of those activities that construction officials often don't want to sign off on.

SENATOR SMITH: What is Zane?

MS. KOPKASH: A Zane exemption is-- There was a Zane Act that said that if you are--

MR. CANTOR: Assemblyman (*sic*) Zane was the sponsor of it, and it became known--

MS. KOPKASH: And it is called Zane.

SENATOR CODEY: We figured that out ourselves. (laughter)

SENATOR SMITH: But what is it?

MS. KOPKASH: You can rebuild any -- without having to obtain a waterfront development permit -- rebuild a bulkhead, dock, pier, in its present location that was used for recreational or residential purposes.

But they also have come into us and asked us -- meaning the Division of Land Use regulation -- for a letter. So we are doing that activity, even though we were -- it's an exempt activity, we're still having to take time and effort to do it.

The other general permit-by-certification that we are proposing is for the construction of a dock, a ramp, and a pier on a lagoon. And as long as -- and there are certain constraints on that: it can't extend 20 percent of the width of the lagoon, limit the width of the dock to 8 feet -- all the environmental standards that are currently housed in the Coastal rules are also proposed to be imposed on that general permit-by-certification.

I want to also add that when we developed these general permits-by-certification, we also worked with our Army Corps of Engineers. Because we issue a State programmatic general permit -- which is, basically, we process the Federal permit for those types of activities -- and we work closely with them, and we showed them the computerized system and how it would work and function, they allowed us to continue to process the State programmatic general permit in that setting.

We proposed two new permit-by-rules. The one permit-by-rule is for the application of a pesticide to control invasive plant species. As many of you know who live along the coast, phragmites dominates the area and some homeowners want to try to control it on their property. And the application of a pesticide in a Coastal wetland, as written in this statute, requires a permit from the Department to do that. So this is one of those low-hanging fruit because the individual, if they're applying a pesticide in an aquatic setting -- which is the case in a wetland -- they have to come to the Department for an aquatic pesticide use permit to do that, which has the manufacturing requirements and how to safely apply it in that setting. So we are proposing a permit-by-rule for that activity, and that can't take

place and harm a threatened, endangered species habitat. And there are some other limitations on that one as well.

And also a permit-by-rule for the construction of a pool or a spa on a bulkheaded lot. We get a lot of individual permit requests for the construction of a pool. We also have enforcement cases where people have built pools waterward of their home without having to obtain a permit. These are little-to-no environmental impact; we thought that they made sense to do under a permit-by-rule.

We have proposed one new general permit, and that new general permit is for the application of a pesticide for greater than a quarter acre.

SENATOR CODEY: Excuse, may I interrupt?

When you're talking about pesticides, right away I thought, wait a minute. If I own a home down the shore, -- which I don't -- and I've got pests, and whatever -- okay? -- I call an exterminator, he has to go get a permit?

MS. KOPKASH: Excuse me?

SENATOR CODEY: He has to go get a permit?

MS. KOPKASH: Yes.

SENATOR CODEY: An exterminator?

MS. KOPKASH: Yes.

SENATOR CODEY: Well, geez--

MS. KOPKASH: *Pesticide* is an all-encompassing term. Pesticide means--

SENATOR CODEY: No, I understand that.

MS. KOPKASH: Yes, it's an herbicide -- to apply an herbicide.

MR. GLASS: This is in a wetland area. We're not talking about your home or anything.

MS. KOPKASH: In a wetland.

SENATOR CODEY: Only in a wetland area.

MR. GLASS: Yes, in a wetland area.

SENATOR CODEY: Okay, suppose that happens in a wetland area.

MS. KOPKASH: If you have a pest in a wetland area-- Well, to -- the application of a pesticide in a wetland, as in a mapped coastal wetland, in accordance with the statute, says you need to have a permit.

SENATOR CODEY: Huh.

MS. KOPKASH: Yes, so--

SENATOR SMITH: That's the new general permit?

SENATOR CODEY: So if they spray the flowers outside, he has to get a permit?

MS. KOPKASH: Well, if that's not a mapped coastal wetland, then you don't need--

SENATOR CODEY: No, if it isn't a coastal area.

MS. KOPKASH: If it is a mapped coastal wetland, then yes, sir, if you were going to put an herbicide--

SENATOR CODEY: That means even spraying -- well, I was going to say, but you don't have deer down there. (laughing)

MS. KOPKASH: Yes, we're limited by the statute, you know. So the one new general permit is for the application of a pesticide for greater than a quarter of an acre. This is commonly used by resource

agencies, such as U.S. Fish and Wildlife Service, and some others that want to do larger controlled phragmites. But that is through a general permit.

SENATOR SMITH: What other substantive changes?

MS. KOPKASH: Well, Mr. Cantor brought up some of the changes with respect to -- the substantive change with respect to single-family homeowners. And I wanted to maybe make a slight clarification to what he was saying.

(witness addresses the Committee off-mike)

And I don't think it really matters-- I'm just going to show you this one, because I think this makes the most sense.

The reason why these individuals, or this second home had to come into us for a permit -- and an individual permit at that, and they didn't need a general permit -- was that at one time -- and you mentioned this -- but at one time these two lots were under common ownership. And what we are finding is that -- and I don't necessarily know if this was intended or not -- we even have houses that were built in the 1960s that, sometime since the 1960s, somebody bought the neighbor's home. And as soon as that happens and we see that there is common ownership -- the way the rules are crafted -- you no longer qualify for a general permit; you need to obtain an individual permit.

The individual permit -- the reason why we're in court on most of these is we end up, if we can approve them, we obviously approve them. But we often cannot. And it's because these policies -- the policy is called the *filled water's edge*. And the filled water's edge -- there is a setback of 100 feet. And we did receive comments on this, and I think there is-- I want to clarify what that 100 feet is intended in the rules, and what it is written for.

The filled water's edge rule was meant to protect that waterfront for water-dependent use. It had nothing to do with protection of the building that's going to be built there, because in a tidal setting, how far back you are from the water doesn't affect whether or not you get flooded; it's the elevation of your home that determines whether or not you're going to get flooded.

So what we're finding on these small lots -- and, as you can see here, if this was an individual lot, as well here, probably -- this is probably 30 feet -- 100 feet would mean, maybe, you could maybe get a house right here in the front of the lot, if at all possible. And the intent of the rule is to preserve that first 100 feet for water-dependent use. And what we're finding on these small lots is that you couldn't build a marina at that location. It's not a suitable location for a marina. The lot is too small, it doesn't fit, it's a residential neighborhood, there is no commercially zoned properties. So we were kind of in direct conflict at the local level. And so in the proposed rule, we didn't, though, forget about the possibility that we could actually have a circumstance where a water-dependent use could take place on that property, and that it was of sufficient size. So in that proposed rule, we do tell them if there was a previously existing water-dependent use on that site that they have to comply with the filled water's edge rule, which then talks about, once again, preserving the water-dependent use on that property.

So I wanted to clarify that, because that was a pretty important nuance that we wanted to make sure is incorporated in it.

And also in that general permit we didn't -- we still continue to allow, or we make them comply with the dune rule, the beach rule, the wetland rule -- all the significant special area rules.

Lastly, I guess, because Mr. Cantor brought in to great detail the marina -- is dredging. We made some substantial changes with respect to dredging. What we found is that during our stakeholder session we met pretty extensively on this rule. We did have participation from the environmental community, which we thought was very beneficial and helpful with the final rule language that was crafted.

But we do allow for environmental dredging, or we're proposing, which currently doesn't exist; maintenance dredging -- we have slightly changed the definition for maintenance dredging so that existing historically used marina boat basins can be dredged without having to show proof that they had previously received a permit from the Department. All they have to do is show that there is a historical use of that area without having to go through some long documentation.

So thank you very much for bearing with me.

SENATOR SMITH: Well, listen. We appreciate your very detailed and informative discussion of the rule changes.

Are there any questions from Senators of the Department? (no response)

If not, you're going to stick around and listen to everybody, and then if we have more questions we can ask you?

MR. GLASS: We'll be here.

SENATOR SMITH: Thank you.

All right, just for the record -- three slips were turned in where there was no need to testify: Ed Harrison III from Baywood Marina and Marine Trades Association, in favor, no need to testify; Steven Mierzwiak, Brown's Boat Yard, Inc., in favor, no need to testify; Bruce Shapiro, New Jersey Realtors, in favor, no need to testify.

Chris Sturm, New Jersey Future, doesn't take a position on the rule but she'd like to testify.

Chris.

CHRIS STURM: Thank you, Chairman Smith.

Chris Sturm, New Jersey Future. Thank you, Chairman Smith and members of the Committee. And thanks to the DEP staff for your thorough description of the rule. (laughter)

Clearly the rule is addressing all kinds of administrative updates, and New Jersey Future did not comment on these in our comments to the DEP. But what we did look at was how these rules respond to Sandy. And we heard from Ray Cantor that the rules are not in response to Sandy -- but that was almost two years ago. And what we have is a new reality in New Jersey. Over the last couple of decades we have seen more people and more businesses moving to the shore; we're also seeing sea levels rising and storms becoming more violent, creating what really is a perfect storm.

And so we've got municipalities on the front lines, along with homeowners and businesses who are not safe and who lack, sort of, the guidance and resources to figure out how to keep people safe.

I looked at the CAFRA legislation this morning and it clearly calls for the rules -- it's in the interest 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 natural laws and so forth -- along with recognizing that there are legitimate economic aspirations.

So from New Jersey Future's perspective -- a nonprofit that promotes smart growth -- we want to see a healthy, prosperous state. I just got back from Ocean Grove; it was terrific, I want to keep going. But we're very concerned about the fact that the Federal government won't be able to keep bailing us out.

You brought up some really good points, Senator Smith, about the buyout program. The State has an excellent buyout program; really, a national leader. But the State has not shared its analysis of which locations really need those buyouts based on repetitive loss -- you know, National Flood Insurance claims over and over again, FEMA public assistance, FEMA individual assistance; not to mention the local infrastructure: the roads, the sewers, the water, the sidewalks that have to keep getting rebuilt.

So what we would really like to see from the Department's rulemaking for CAFRA is a look at all the risks -- both historical and going forward. I think you're going to be hearing a lot about sea level rise from other people who are testifying. Rutgers University is projecting 18 inches more higher sea level by 2050. And the real risk there is not so much that more areas will be under water all the time; but that when storms happen, the damage is going to be severe. We're going to have Sandy-like storms every 10 years by the end of the century.

So, you know, we need to get out in front of this, and we would like to see the CAFRA rulemaking look at the risks so that the rules can,

indeed, provide the kinds of protections and economic opportunities that the legislation calls for.

And in closing, I'd just also like to suggest that this Committee consider legislative amendments. I think there's clearly a lot that the DEP can do within the framework of the law, but I think it's also time to think about updating the statute.

SENATOR SMITH: Okay. You do understand these are proposed regulations, as opposed to necessarily being statutorily driven -- other than the statute way back when, which said DEP should adopt rules and regulations.

MS. STURM: Right.

SENATOR SMITH: And I would appreciate if anybody who testifies could be as specific as they can be about what they think should be in the rules or how the rules should be changed. I thought your suggestion that there be a public database where we know where there's repetitive flooding, the infrastructure that's constantly at risk -- that should be available to the public, especially when they're making a home-buying decision, or whatever.

MS. STURM: Yes. And I would add to that, that that database should also look at future risks -- projections of future risks, based on sea level rise.

SENATOR SMITH: Thank you very much.

MS. STURM: Yes, thank you.

SENATOR SMITH: Chris was neither in favor nor opposed; and if somebody's indicated where they are, I'll be happy to indicate that.

We do have just so many interesting people on this. Not indicating in favor or opposed, so we will ask him up: Tim Dillingham, American Littoral Society. And then we'll get some in favor and opposed.

TIM DILLINGHAM: Mr. Chairman, thanks very much.

Tim Dillingham; I'm the Executive Director of the American Littoral Society. We're a coastal conservation organization based out of Highlands, New Jersey. We've been involved in CAFRA and waterfront development issues for 53 years.

We are opposed to these rules; so my apologies about not checking that off. Write it off to a little bit of summer rustiness coming off the beach.

And I appreciate, Mr. Chairman, your admonition of Mr. Cantor about not poisoning the testimony of others. We clearly have a different position than this Administration. I don't think that they've given you a full understanding, despite their thorough recitation that Ms. Kopkash went through.

This is the first major rule affecting coastal management since Hurricane Sandy. And, as such, it ought to be an opportunity to learn the lessons that that storm showed us. Yes, we've inherited a development pattern along the coast, but we clearly have future challenges such as sea level rise, climate change -- that we know because the best scientists in the state are telling us these things are happening and ought to be dealt with.

So this rule is much more than simply an administrative rewrite and sort of an efficiency attempt.

I will say that we have absolutely no problem with that aspect of it. As Ms. Kopkash noted, the Littoral Society in particular undertakes

habitat restoration projects; we do that in partnership with the DEP. We did almost a mile-and-a-half of beach last year to restore horseshoe crab and shorebird habitat. We are people who go in front of the State, in front of the Army Corps of Engineers for permits. So I understand very well where their regulations, I think, get in the way of the intent of the laws that you all have passed.

But I don't think this rule is solely about that. And I think that the substantive changes that the Department did put in place are significant enough that the Department ought to withdraw the rule and ought to engage in a much more robust stakeholder process.

I will say-- And we have participated in those processes. We participated; we've provided comments to this Administration throughout its response to Sandy -- whether that's in terms of their applications for CDBG restoration grants, or for the HUD, other HUD programs, FEMA's responses. The unfortunate record is there hasn't been a lot of engagement, and there's not a lot of information that comes out about what the plans are from the Administration, how those monies are going to be used.

You know, there's very little opportunity to look at the language of these rules to really have a substantive interaction about the details. As you all know, in regulations the devil is in the details. The language matters about what's allowed, what's not being allowed, what's being encouraged.

And unfortunately, in the cases when the Department has done that -- for example, in this idea of a living shoreline, which is a use of nonstructural approaches to controlling erosion to protect the landowners' property, but also to restore that part of the habitat that's been lost--

Senator Smith, you live on Barnegat Bay, you know that an extensive amount of that Bay's interface between where the water meets the land has been bulkheaded. We've lost all the habitat that provides the basis for the recreational fishing industry, for the commercial industry, and, by extension, the economy of Ocean County and a good part of the state. We work together with the DEP on crafting a better approach to permitting those types of projects as a way of providing opportunities for landowners to protect their property, but also to restore the environment. And that happened to work well, but it took a lot of interaction. And that kind of interaction was not present in this rule.

I would just note that in her testimony, Ms. Kopkash said, "Well, we went, we talked to the commerce and industry association, the Builders Association, and the League of Municipalities." They did not come and talk to the environmentalists after the rule had been proposed, sort of in that final phase.

I would say specifically the goal should be here to build and rebuild resilient communities. We do have an urban coast; there's no doubt about that. But this is not the final landscape. And we know the challenges are that are coming. So we ought to take opportunities to learn from what happened in Sandy, to reduce the risk to property, to reduce the risk to people. And that doesn't mean go back and build exactly the same footprint that we had before. You all had been very good about listening to people in terms of the travails and the challenges that they've had in becoming made whole and getting back on their feet. And you've heard me say we should help people get back on their feet; but don't put them in a

place they're going to get knocked down again, all right? That should be the intent of what's going on in this rule, and it does very little of that.

It goes far beyond recodification and administrative streamlining. The general permits -- we could talk about the specifics of them, if you'd like. You know, the idea that a homeowner is going to be encouraged to use herbicides in coastal waters, in tidal wetlands, without a whole lot of oversight from the Department is a little scary. We all know that that's-- When we had the conversation about the fertilizer law that the Legislature enacted, a lot of that was about understanding the appropriate way to use these materials. If you use it, you set it up in a way that there's no interaction with the experts at the Department -- that's a certification -- then you're not going to have that opportunity to guide people in the appropriate use of this. It goes beyond the U.S. Fish and Wildlife Service using it -- that type of thing.

I think the most controversial -- one of the most controversial aspects of this is that the proposed rule expands development in high-hazard areas by removing current limitations, and reduces the level of oversight and regulatory control for such development.

So Mr. Cantor talked about the general permit for single-family houses. What he didn't talk about was the change in the policy. The policy currently says you cannot build a house in an undeveloped portion of the flood hazard area if it's within 100 feet of the water. Pretty common sense; even though we have a developed coast, we don't want to increase the amount of development if it's at risk.

That's now being changed. Now we're being allowed -- the State is proposing -- DEP is proposing to allow that kind of development to

happen in high hazard areas. We interpret that as allowing more development in the wrong places; not misinformation, it's a change in policy. Now, they rely on building standards. We're saying the better strategy is to keep people out of harm's way. Don't put them into high hazard areas -- rather than to think that if we simply elevate or rebuild the walls stronger that that's going to protect us. I think we know that that next storm always comes that exceeds the standards.

So there is very much a difference of philosophy about how we should be responding and moving forward on the storm. And it's not misinformation; it's in the rule. It is somewhat covered over by the idea of this is just about administrative streamlining, but it's true.

The second part I would say-- You had a hearing several weeks ago, or last month, when you heard from Dr. Kennish about the status of Barnegat Bay. So despite the declining trends in the natural resources, in the habitats of places like Barnegat Bay that he talked about, the Department is expanding development into special areas for activities which the rule itself acknowledges will negatively impact shellfish resources, shallow water habitats, and submerged aquatic vegetation. It does have to do with the proposal to allow the marinas to expand into shellfish habitat.

I will say that in my conversations with the scientists they'll tell you that those shellfish don't necessarily live happily underneath the boats. There are a lot of impacts. The marina industry does a good job, I think, and has really put a lot of effort into the clean marina idea and to controlling the impacts. But there are impacts, so we are sacrificing one resource that's important to not only the ecology of these places, but to one industry in favor of another industry. We're trading the shell fishermen's

fundamental livelihood and the natural resources they depend on for the marina operators' opportunity to expand into new waters.

I will say if you read the rule, the rule talks about less -- fewer and fewer people are coming into marinas. And that's a crisis that needs to be dealt with because we don't want to lose that industry, no doubt. But if the challenge is we have fewer people looking for slips, then how is expansion of the number of slips the answer to that, particularly when it goes into sensitive environmental areas?

So really the redefinition of dredging is sort of creating some loopholes which would allow for dredging to impact on submerged aquatic vegetation, which you heard Dr. Kennish talk about diminishing -- we're losing that as well -- a very important habitat for crabs, for fish, for the fluke that we depend on for the fishing industries. These are not resources that we have so many of that we can sacrifice them. We should not be trading off one industry for another -- one piece of the ecosystem for another interest.

I will say that, lastly, on the beach and dune idea we objected to the rules the Department proposed on the emergency basis. You know, we think that as we invest billions and billions of dollars over the lifetime of these Army Corps and State projects, we should be allowing the dune and beach systems to build and to operate as naturally as they can. That means allowing the sand to create them; that means allowing the dunes to happen. The Department is saying no, let's shave those off, move the sand around. Backpassing is one idea; but the rule allows for modification of the dunes, moving the sand down.

When I talked to the coastal engineers that I know, they say that that increases the instability of the project and undermines the sort of long-term ability of these dune systems to grow and thereby provide us more protection over the long-term.

So that is, I think, unfortunately driven by this controversy of people wanting to see over the top of the dunes. I mean, I don't know if you follow the controversy in Atlantic City, and Longport, and Margate where they ultimately wanted to trim -- like a haircut -- the top of the dune grass in order to maintain the thing. It is one of those conflicts where I think sometimes the waterfront owners are not taking the long-term view about what's in their best interest. You saw this play out in the easement question -- about whether or not homeowners should be compensated for dunes that are recreated under the beach restoration projects.

Lastly, I would say that there's more opportunity to protect the coastal wetlands. And Ms. Kopkash talked about the fact that we've documented, through some of the observations after the storm, that tidal wetlands play a role in reducing the risk. As sea level rises, the wetlands need to move inland, and you need to create enough space to allow them to do that so they can continue to provide that ecological service to us. Right now, we are decreasing setbacks; we're allowing development to happen closer and closer to the edge and, therefore, taking away that opportunity for those resources to help us out in the face of these future storms that are going forward.

So I don't think that the Department has learned the lesson of Sandy. I don't think that they have -- as they should have -- taken this opportunity to really act on things.

The information is out there, and the testimony that I provided to all of you. There's a link to the New Jersey Climate Change Adaptation Alliance, which is a group of both governmental and nonprofit organizations, academics -- they went and surveyed what other states in the region have done. And, unfortunately, New Jersey is lagging far behind in our ability and our willingness to step up and deal with climate change and its impacts. Delaware has done it, Maryland has done it, New York has done it. So there are examples out there on steps we could have taken in this rule, and we ought to take in the rule. The rule is where development meets the policies -- through these regulatory programs.

So again, I would urge the Department to withdraw the rule, get a better stakeholder process in place so we can really debate this stuff. Don't drop a thousand pages of rules on us at the beginning of the summertime, and then say, "Let's everybody have an opportunity to talk about this," and all the details that are in there.

Lastly, if they don't do that, I think that the Legislature ought to look at whether or not these rules are consistent with CAFRA. CAFRA talks about balancing the economic development and the economic aspirations of the residents of the shore in a comprehensive framework which protects the most fragile parts of that environment. And at a shore that's as developed as ours is, we don't have the opportunity to lose those last remaining elements of the natural systems which not only provide ecological benefits, but, obviously, as we've learned through Sandy, help protect our communities and the people who live along the shoreline.

So I thank you for the opportunity to testify. I thank you for doing this in the late summer. And I am happy to answer any questions you might have of me.

SENATOR SMITH: Thank you, Tim.

Our next witness is Melissa Danko from the Marine Trades Association of New Jersey.

MELISSA DANKO: Good morning.

SENATOR SMITH: In favor.

MS. DANKO: In favor.

Am I on?

SENATOR SMITH: Yes.

MS. DANKO: Okay. Good morning, Mr. Chairman and members of the Committee. Thank you for the opportunity to testify here and speak on behalf of the Coastal Zone Management Rule proposal. I am Melissa Danko; I'm Executive Director of the Marine Trades Association of New Jersey. We're a nonprofit trade organization representing approximately over 300 recreational marine businesses dedicated to advancing, protecting, and promoting the recreational boating industry and our waterways in the State of New Jersey.

Yes, we are here in support of these rules. As previously mentioned, there are a number of rule changes here that will impact our industry. And I'm going to talk a little bit -- I'm going to provide some statistics about what the impacts really are to our industry, to give you some numbers and some real hard facts as to the things that our industry is facing.

As you know, Hurricane Sandy devastated many of our marinas, boatyards, boating and fishing businesses all across the state and destroyed countless boats. It's estimated that uninsured losses from the storm, just in our industry alone, are in excess of \$100 million.

In addition to the significant destruction of our coastal infrastructure, the storm greatly reduced our recreational boating fleet. These losses have had a direct, negative impact on our industry's small businesses, and the employees who relied on the business industry for their livelihood.

There are currently 151,787 registered vessels in New Jersey. In the year 2000, there were 240,281 registered vessels. So therefore, in a little over a decade, our industry has lost close to 88,000 registered vessels. These losses, combined with a slow economic recovery, have severely strained these small businesses and these small owners located all over the state.

Our industry has been working very, very hard with the support of many others -- including the State -- to recover from the storm. However, it's going to take many, many years to recover all that was lost.

Additionally, another trend I think that's important to discuss here is the conversion of marinas to waterfront condominiums and development. It's a trend that is growing not only here in New Jersey, but is growing at the national level. I sit on many State Councils with other organizations from all across the country, and they all talk about the loss of marinas to residential development. It's happening all over. Many of the other states have taken a pro-active approach, like these rules have, to ensure that marinas remain viable components of working waterfronts.

Prior to Hurricane Sandy, a tracking of these losses here in New Jersey alone have indicated that over 500 slips that were available to the public are gone, as well as boating services and jobs. These include boat storage, repair and maintenance facilities, fuel sales, pump out facilities, and retail sales of boating and related supplies. While a condominium development may still offer slips, in most cases those are reserved only for those who own those homes. So not only do you lose public access, you also lose all the services that a marina provides as a working waterfront business.

It's important to note as well that our industry is very, very heavily regulated. So not only do they need to go in for a permit -- which is why I'm here testifying in front of all of you -- to do anything at all on their property, every activity they conduct on their property is heavily regulated: their service work, their repair work, everything from -- they have to manage their stormwater, to fuel -- everything. So they are constantly working very, very hard to make sure that they are 100 percent compliant; not only that, but working above and beyond 100 percent compliant to ensure that they do everything they can to protect the environment.

We all know that boaters want to boat on clean water. We want a healthy Bay, we want healthy waterways. So these businesses rely on that; we rely on the environment. So they do everything in their power to make sure that they do their part to keep the environment clean. So it's important; it goes hand-in-hand.

I want to talk just quickly about the importance-- I think I don't need to get into this too much; I'm sure everyone knows why boating is important. It's a pastime in New Jersey for friends and families, for

people to get out and enjoy. We here in New Jersey have beautiful natural resources to enjoy fishing, dining, hunting, cruising -- everything that people who love to be on the water can enjoy. It's also a great way for families to spend time together. And recreational marinas provide that access to allow people to get onto the water, to the water, to enjoy the water. They are a very valuable component and an essential component of our waterfront.

In addition to providing enjoyment and recreation, our industry contributes substantially to the economic impact -- approximately 18,000 jobs and \$2 billion in spending.

Our Association strongly supports the adoption of these rules and the efforts of the Department to streamline and amend the Coastal Zone Management Rules for existing marinas to perform maintenance, conduct infrastructure improvements, add restaurants, and allow for the development of new marinas. We also support strongly the proposed amendments for maintenance dredging, new dredging, dredge material, and dredge material management areas. The failure to maintain the navigational depths of our waterways has far-reaching impacts on all of our coastal communities. These changes are greatly needed; we are facing a dire situation here in New Jersey to dredge our waterways, and these rule changes are going to be desperately needed to ensure that we can get through the difficult permitting process and perform important maintenance dredging of our waterways to ensure safe waterways and navigable waterways.

In closing, the Coastal Zone Management Rules, for years, have prevented many projects at marinas from moving forward -- projects that were sensible, offered environmental improvements or upgrades that were

needed to maintain an aging and unsupported marine infrastructure. Many of these facilities are in desperate need of repair and, unfortunately, have been unable to navigate through the permitting process. So these proposed changes do represent a reasonable and balanced approach so that those facilities, when they are able to go ahead and move forward, can make the changes that they need to expand or enhance their facilities, and rebuild and become more resilient.

So I thank you very much for your time and the opportunity to speak here today.

SENATOR SMITH: Thank you for your testimony.

Cindy Zipf, Clean Ocean Action.

Cindy.

CINDY ZIPF: (off mike) Thank you.

SENATOR SMITH: I think you have a--

MS. ZIPF: Yes.

SENATOR SMITH: --guest with you as well.

MS. ZIPF: Thank you.

A new colleague to introduce you all to.

Good morning. Thank you, Mr. Chairman and Committee, for holding this important hearing.

I'd like to introduce you to our Staff Scientist, Cassandra Ornell. She will be doing the bulk of the comments for today's -- for the Coastal Zone Management Rules.

We did not also highlight whether we were opposed or against (*sic*) because there are aspects that we do support. But you know, I guess if

we have to be in a column, we would be more opposed because of the concerns that we have at this time.

Cassandra will now introduce herself a little bit, but we're going to do a brief overview on the comments -- more substantial comments that we submitted, just to give you a highlight of some of the issues that we are concerned about.

We did participate in some rulemaking prior to Sandy -- some of the dredging and dredge material management issues. But I would agree with much of what Tim had said regarding not being made aware of this huge rule change that was, kind of, just put out there recently. And we understand the need to provide consistency and clarity in the rules. But these rules are much more than that. And the substantive impacts that they will have will be of great concern.

So I will turn it over to Cassandra. Thank you.

CASSANDRA ORNELL: Thank you, and thank you for having this hearing today.

As Cindy mentioned, my name is Cassandra Ornell. I am a Staff Scientist for Clean Ocean Action.

So as Cindy indicated, we understand and appreciate the need to streamline these rules; however, we also think there are some substantive changes that are of great concern that will actually weaken coastal protection, permit development in sensitive areas, and impair water quality.

We're also additionally concerned that the consolidated coastal rules do not reflect the legislative intent of CAFRA. The rules, as written, do not capitalize on lessons learned from Sandy. They encourage development irresponsibly; and so, as such, we urge the Senate to evaluate

the rules to ensure they are compliant with the purpose, intent, and statutes of the law, as well as consistency with any related Federal rules.

For example, the proposed rules enable splitting a buildable lot with one residence into two, and would allow construction of one or two dwellings in a flood hazard area within 100 feet of a navigable waterway. This puts coastal residents directly in harm's way.

How are these changes reflective of the legislative intent of CAFRA, which stipulates that all of the coastal area should be dedicated to those kinds of land uses which promote public health, safety, and welfare; and protect public and private property? The resultant increase in polluted runoff that will enter waterways, which will further degrade coastal water quality and threaten the continued viability of the shoreline.

Indeed, it is the overdevelopment of the coast that has helped to create a significant challenge for navigation in New Jersey waters -- an important maritime heritage, as we just heard. Decades of soil erosion, loss from improperly managed construction sites, agricultural activities, and other land use practices have caused increased sedimentation of New Jersey's waterways. Channels are filling in, and dredged material management is a more pressing and complex issue facing our waterfront communities.

While we support maritime business, recreation, and tourism, and the need for dredging in management areas, these decisions cannot be made in isolation of the larger picture of coastal management. In order to effectively balance economic, cultural, and environmental needs, planning must be at a regional level by a representative group of community stakeholders, including local marine businesses, agencies, and citizens.

At the core of these efforts has to be a reduction of land-based soil erosion. Clean Ocean Action has extensive experience with dredge material management plans for regions, such as the northern bay shore area and the New York/New Jersey harbor. With true public involvement from the bottom up, plans can be developed to meet the responsible dredging needs of the region with beneficial use of dredge material that can improve the region's ecosystem. However, we are concerned that proposed changes will allow dredging and dredge material management almost without restraint, creating significant negative water quality impacts. For example, the requirements for what constitutes maintenance dredging have changed so that it would be permitted in areas that may not have been dredged for decades, and up to historically dredged depths, and with lax proof -- all with less oversight than what's given to so-called *new* dredging projects. These changes have several repercussions. First, it's easier to dredge in areas abandoned decades ago and that have since converted to ecological valuable natural areas and/or have covered, filled-in, and buried contaminated silts. Second, people will be able to deepen channels to accommodate larger boats, which will lead to increased turbidity and higher demand for dredge material management areas. These ramifications conflict with CAFRA's requirement to provide adequate environmental safeguards for the construction of any developments in the coastal area. The rules must be changed to hold maintenance dredging in check and prevent irresponsible development along our shorelines.

The proposed rules additionally remove the requirement that an area must have been used as a dredge material management area within the last 10 years to be considered as such in the future. Allowing any

historical dredged storage area -- not even one (*sic*) used for decades -- to be used as a dredged material management area could easily lead to the conversion of natural areas that may serve important habitat and ecological functions, which does not reflect CAFRA's declaration to preserve the most ecologically sensitive and fragile area from inappropriate development, nor its statement that every effort should be made to ensure the continued viability of the shoreline.

The rules must be revised to require that protected species, habitats, and areas providing essential ecosystem services -- such as natural buffering and water quality improvement -- are protected from conversion into dredged material management areas.

Moreover, as others have said, the proposed rules would allow expansion or new construction of marinas in shellfish habitat, which will undermine the health of the habitat and condemn the shellfish for harvest.

Marinas could also be expanded into areas as shallow as 2 feet mean low water, which causes sediment disturbance, increased turbidity; and the mechanical impact from the resulting prop dredging will harm shellfish. Further, sensitive species will be placed at risk by allowing boat traffic in such shallow areas. For example, a 2013 peer-reviewed article by Lester, et al., found that, conservatively, 11 percent of terrapins in Barnegat Bay have scars consistent with injuries from boats.

These changes clearly exemplify the CAFRA language against inappropriate development in ecologically sensitive, fragile areas. There are no provisions in the rules to limit the cumulative area of shellfish habitat that could be impacted and condemned across the state, nor did the Department provide information on the economic and environmental

benefits that will result over and above the loss of ecological habitat, water quality benefits, sensitive shellfish resources, and income to those harvesting shellfish.

Furthermore, given the important role that natural systems and green infrastructure play in promoting coastal resiliency, the rules do not sufficiently promote or incentivize changes to ensure the continued viability of our shoreline.

These are just some of the concerns we highlighted in our written comments that we submitted to the Department, and will leave with you today.

Given that the legislative intent of CAFRA is ignored numerous times, it is clear these rules should not be adopted as written. As such, we are asking that the Senate withdraw the rules and initiate an open, public process to redraft them in a way that reflects the spirit and the letter of CAFRA, and ensures that future coastal development accounts for lessons learned from Sandy and protects our coastal resources.

Thank you for your time.

SENATOR SMITH: Thank you, Cassandra. Thank you, Cindy.

MS. ZIPF: Thank you.

SENATOR SMITH: Dave Fisher and Carol Short from New Jersey Builders. They don't have an *in favor* or an *opposed* on their slip. Nothing is checked, so I guess you're neutral on it.

CAROL ANN SHORT, Esq.: No, we're in favor; in support of it.

SENATOR SMITH: In favor -- okay.

MS. SHORT: Yes. It should have been checked; I apologize. Everybody missed that column.

We're already into the afternoon. Good afternoon, Mr. Chairman and members of the Committee; Governor, good to see you this morning. We appreciate the opportunity here to speak on the Coastal Zone Management and permit program rules.

I want to thank DEP and the staff -- Ray, and Ginger, and Dave and others -- for all their efforts on this behalf.

I have with me this morning Dave Fisher who is the current President of the New Jersey Builders Association. In the interest of time, I'm going to turn it right over to Dave and let him present our comments.

D A V I D B. F I S H E R: Yes, thank you. And we appreciate this opportunity to testify and make comments.

NJBA has submitted extensive comments on the proposal in strong support of these pragmatic and procedural changes to the regulatory program. Our members have firsthand experience and knowledge of the permit requirements administered by DEP's Division of Land Use and believe that these amendments will make significant improvements to the regulatory process.

We also look forward to follow-up proposals from the Department to make necessary substantive amendments to certain coastal policies. First, it is important to note up front that the proposed revisions were not drafted by DEP in a vacuum. Since 2011, and especially in light of Superstorm Sandy, the DEP held numerous stakeholder meetings during which a broad spectrum of constituencies, including governmental, business, and environmental groups, had an opportunity to provide input

prior to the drafting and release of the proposal. Such an approach is entirely consistent with Commissioner Bob Martin's 2010 DEP Transformation Plan which states, "We must also vet our proposals for change with external stakeholders in order to better understand the impacts that the changes will have on our constituents." The NJBA has viewed these forums to be of mutual benefit overall, as they facilitate a better understanding of agency rulemaking in light of statutory and regulatory obligations.

We encourage the DEP to continue to utilize the stakeholder process prior to modifying any of its regulatory programs.

Over the years, NJBA has expressed how difficult the land use permitting programs are to navigate, particularly due to certain inconsistent and overlapping requirements between land use regulations for coastal areas, and regulations to limit disturbances in and adjacent to freshwater wetlands and flood hazard areas. As affected practitioners who submit coastal permit applications all the time, we strongly support the DEP's efforts in this first proposal to organize, realign, and standardize the underlying permit rules for these three significant land use programs. Specifically, this consolidation will help streamline the permitting process to achieve better efficiencies that will benefit both the constrained DEP agency staff as well as to the regulated public.

While DEP previously took emergency action to amend the Flood Hazard and Coastal Zone Management rules to support safe and resilient rebuilding efforts after Superstorm Sandy, the proposed amendments are primarily procedural in nature. Important areas of change include electronic permitting for two narrowly defined new general permits-

by-certification; two, additional permits-by-rules; and three, they also provide for a clarification of permit application requirements, public notice requirements, pre-application conferences, application reviews, and adjudicatory hearings.

The proposed changes streamline staff and division functions, improve internal processes, and share permit applications across divisions, and reduce unnecessary and redundant paperwork by using technology. Such commonsense improvements not only benefit the regulated community, but also enable the agency staff to better focus on DEP's core mission of protecting the State's environmental well being. Specifically, DEP states in the background document for the proposal how the proposed amendments will "further the effort to prioritize and refocus its permitting efforts on the activities posing the most risks to the coastal environment."

NJBA agrees that the proposed amendments certainly further the DEP's goals and mission. We applaud Commissioner Bob Martin and his senior staff for remaining committed to the stated goal of transforming DEP's operations and pursuing important regulatory reforms. As such, we strongly support the proposed amendments to the Coastal rules.

Thank you.

SENATOR SMITH: Right. So Dave, as I understand your position of the Builders Association, you're very happy with the "streamlining of the applications and the combination."

MR. FISHER: We are.

SENATOR SMITH: Do you have any positions on marinas, dredging--

MR. FISHER: Not in particular. I mean, our members are really--

SENATOR SMITH: How about on the two-lot subdivision issue?

MR. FISHER: I think that's kind of an opportunity to help the homeowner. It probably affects very few, if any, of our members, because we're principally homebuilders. But, you know, I think it seems like a commonsense approach to helping people rebuild.

SENATOR SMITH: Great. You're going to give us copies of everything?

MR. FISHER: We will.

MS. SHORT: Yes, we've provided that.

SENATOR SMITH: Okay, thank you so much.

MS. SHORT: Thank you.

MR. FISHER: Thank you.

SENATOR SMITH: Okay. We have an individual, Peter F-E-R-N-E-R-D-O-N (*sic*)? Are you here?

P E T E R F E R W E R D A: (off mike) Ferwerda. (indicating pronunciation)

SENATOR SMITH: Okay, and you're representing yourself, and you're a resident of Warren Grove. And you neither checked either way; you'd just like to testify. We would like to hear what you have to say, sir.

MR. FERWERDA: Good morning, Senator Smith and Committee members.

I've heard and I've become more educated as to the problems associated with the consolidation proposal submitted by the DEP. I originally decided that I should come here because of my displeasure with the protection of my health and safety guaranteed by our State's Constitution.

The specific problem is that the CAFRA rules, as I understand them, do not embrace the standards that they agreed to in dealing with the CAFRA overlap area of the Pinelands National Reserve. The Department of Environmental Protection, many years ago, adopted a Memorandum of Understanding with the Pinelands Commission saying that, in essence, when it came to the overlap area, if there was any doubt as what rules should apply, it should be rules that had been adopted by the Pineland Commission pursuant to the direction of the Department of the Interior. However, being involved in controversy -- controversy involving maintaining water flows, clean water, avoiding problems of digging through acquicludes and digging deeper than nature had intended, I would think that, in these new rules that they're consolidating, they should also make mention of and show conformity with the Pinelands Commission rules such as wetlands buffers. In the Pinelands rules there is no 50-foot, 150-foot, or less than 300-foot wetland buffer or transition area when you're near a water of the State of New Jersey -- near the waters of the State of New Jersey. The proposal does not specifically address that.

The other parts of the problems are that we have a problem of enforcement of the rules. A specific alteration of a stream channel was originally issued a violation notice in 1980. However, it wasn't until 2012

that that alternation of the channel was presented to the DEP. Something is wrong with enforcement.

So I've heard nothing about the applicant, requiring that he have, as a co-applicant, the municipality. Now, if we believe that all of these rules require a grassroots effort, then I would think that in any application for an authorization or a permit that the municipality or county be a co-applicant so they, at the grassroots level, would make sure that whatever is the most appropriate treatment for a development application -- that, in fact, it is done; rather than having problems at the State, with people to go out do to enforcement work, and budgets and constraints like that. Where in a municipality, usually when a development application is approved there is an escrow account provided by the applicant to make sure that there is money to pay the people who make sure that he does his work well. And that it is in harmony with all of the things that are in that thousand-and-some-odd pages of rules.

So that's the reason why I'm here. I'm here to, one, express my displeasure with the past practices of enforcement; two, the rules don't necessarily aggressively attack the problem of enforcement; and three, the rule seem to be very silent as to its difficult relationship with the Pinelands. Now, we know as a fact that we adopted fertilizer rules because the development in the upland areas of the bays -- Great Bay, Barnegat Bay, and so forth and do on. Now, maybe if there had been better diligence in making sure that the Pinelands rules were followed we may not have had to adopt that rule. But what about, in the future, uses in developments in that area? For example, the Pinelands legislation says that there will be no dredging within the Pinelands. So now in your rule you talk for a lot of

pages about dredging, but it doesn't say anything about, well, this is dredging as it relates to tidal waters; and anything involving the streams in the freshwater, or creating lakes and things, is not to be done by a mechanized or motorized vessel. But yet, there are dredges out there today that are working away, burrowing into sandstone or silicate stone, creating a slurry, and then pumping it to a processing plant for delivery.

So I'm very unhappy, and I think that accountability has to begin at the grassroots level. And the rules that are being proposed by the DEP don't do enough to have the grassroots as a participating party in what's being done.

Thank you.

SENATOR SMITH: Thank you for taking the time to come today.

Two, I think, marina-related witnesses: Jack Van Dalen, marina at Barnegat Light, and Jim Cerruti, Fair Haven Yacht Works. Maybe the two of you could come up together, because I think you might have similar interests in this.

Are you guys here?

JOHN VAN DALEN, Esq.: (off mike) I'm here; Jack Van Dalen.

SENATOR SMITH: All right, Jack is here. How about Jim? Are you here?

JAMES CERRUTI: (off mike) Yes, sir.

SENATOR SMITH: Come on up.

All right. And I would point out that Mr. Van Dalen provided an exhibit to the Committee entitled "Marinas at Barnegat Light, New Jersey."

Gentlemen, introduce yourselves and take it away.

MR. VAN DALEN: Good day, Mr. Chairman and members of the Committee. My name is John Van Dalen -- or Jack; I'm an attorney, and I represent The Marina at Barnegat Light. The Marina at Barnegat Light strongly supports DEP's rule proposals, certainly as they affect marinas.

That marina is full, and it has been full for a long time. It has a waiting list. It's our understanding that the other marinas -- and you can see there are a bunch of them; and I've given another copy of this to your staff, which you can more easily look at -- you'll see there's a cluster of about five marinas in what's a natural lagoon near Barnegat Light; it's in the municipality of Barnegat Light.

Again, it's full, it has a waiting list, and it's our understanding that the other marinas there are full as well.

Barnegat Light -- or, I should say Barnegat Bay -- to its credit, virtually all of it has shellfish. There's not much of it, if any, that doesn't have some sort of shellfish habitat. My client, The Marina at Barnegat Light, would like to expand. It has additional property--

SENATOR SMITH: Jack, this is not an infill project, right? It's an expansion outside of the boundary?

MR. VAN DALEN: I'm not sure; it is actually -- the property they own is located between two existing two marinas. It could qualify as infill, or it could qualify as an expansion under DEP's rules. But it won't qualify as any of those unless those rules are adopted.

SENATOR SMITH: Listen, I'm going to put you on hold for a second. We're being called to the floor to vote on the Essex County judicial package. So we will resume in about 15 minutes, okay?

MR. VAN DALEN: Thank you.

SENATOR BATEMAN: Mr. Chairman, how many more are there?

SENATOR SMITH: Well, we have two presently up there. After the two, there are three, six, seven people who want to testify. So we are resuming in about 15.

(recess)

(return from recess)

SENATOR SMITH: Thanks, everybody, for your indulgence. You'll be happy to know that there are eight new judges from Essex County. Justice will be done in Essex. The session is over.

We have our two current witnesses, Jack Van Dalen and Jim Cerruti, at the desk. And after they complete their testimony, we'll then go on to the others.

So Jack, back to you.

MR. VAN DALEN: Thank you.

My client, The Marina at Barnegat Light, is full, has a waiting list, has been full for years. It's my understanding, in talking to the owners there, that the other marinas are also full. And they're in a perfect location for expansion or infill if DEP passes these, or enacts these new rules. Practically all -- or virtually all, I should say -- of Barnegat Bay, the vast, thousands and thousands of acres of water of Barnegat Bay have shellfish. Unless these rules are passed, it's very doubtful that my client is going to be

able to expand that marina. I've looked at some of -- or at least one of -- DEP's shellfish classification sources, the 1963 survey, and it indicates that this area has shellfish, shellfish of at least recreational value. So it is an area of natural shellfish recruitment, as is all of Barnegat Bay. We're talking about a very, very small area here for expansion, and very small areas elsewhere in the state that no doubt are shellfish beds.

SENATOR SMITH: How big is the area you're talking about -- the area of expansion?

MR. VAN DALEN: Well, I can point out on the aerial that I have. It's about a 450-foot chunk of land between two existing marinas -- between my client's marina and the one to the south.

SENATOR SMITH: That sounds like two acres, 400-by-4?

MR. VAN DALEN: It could be, approximately.

SENATOR SMITH: Or four acres -- two or four acres, okay. Do you have riparian rights for that property?

MR. VAN DALEN: Yes, they do.

SENATOR SMITH: They own it.

MR. VAN DALEN: Yes.

SENATOR SMITH: Okay.

MR. VAN DALEN: Except for the street ends, which are projections of the street ends out into the water.

SENATOR SMITH: Right. And is it your opinion that the rules, as proposed, provide for expansions, not just infill?

MR. VAN DALEN: They provide for both.

SENATOR SMITH: Okay, thank you.

MR. VAN DALEN: In particular here, I think my client would qualify under the infill criteria. Some of the other marinas in there may also want to expand; I can't speak for them.

The (indiscernible) in question is a natural lagoon, and it experienced virtually no damage during Hurricane Sandy -- neither to the marinas nor to the boats. It's a-- In nautical terms, as we say, it's a great *hurricane hole*. So it's a place where there is a public demand for boat space; it's not being met, and it should be allowed.

In New Jersey, I want to remind the Committee of something else. There's a legal document, a very important legal document -- the Public Trust Doctrine. And it's quoted for many things, but its original purpose, and its continuing purpose, was to guarantee that the public has a right to navigate on tidal waters -- navigate, go fishing, other recreational uses -- indeed, go clamming. You can't do it if you don't have a place for a boat.

DEP's rules help to restore, or help to ease the frustration or the tension between its current rules and the Public Trust Doctrine, and the public's right to go navigate, use a boat on publicly owned tide waters. So I heartedly endorse DEP to get on with adopting these rules. They're needed; they will help restore the balance between the public's right to go boating and environmental protection. It will not destroy the resource; the shellfish beds will remain there. It will be off limits to clamming, but it's a very small price to pay to protect the public's right under the Public Trust Doctrine, and to ensure the economic vitality of the marina industry.

Thank you.

SENATOR SMITH: Thank you for your comments.

Jim Cerruti, Fair Haven Yachts.

MR. CERRUTI: Yes, sir, thank you. I hadn't intended to testify, but since--

SENATOR SMITH: Then you have to check the box that says, "No need to testify."

MR. CERRUTI: I know; I'm not good at paperwork. I do my best. (laughter)

But as long as I'm here, and I'm happy to hear that this marina down south is full. Up by me, my marina is Fair Haven Yacht Works; my wife and I have owned it for nearly 20 years now. We're just hardworking people trying to make a living. Our occupancy rates, since 2007 when the economy went down, they dropped considerably. We have been, probably somewhere around 65 to 70 percent for a long time.

SENATOR SMITH: Where is your marina?

MR. CERRUTI: It's on the Navesink River in Monmouth County.

SENATOR SMITH: Okay.

MR. CERRUTI: And there are only three marinas there and one yacht club. There are probably about 400 slips or so in that area; whereas a place like Brick, New Jersey -- they have 28 marinas.

So we had a lot of open slips for a lot of years. And we've only just now started to rebuild that, which is great. And then, of course, Sandy hit, and that totally threw us back on our heels. We're, right now, probably at 96, 98 percent occupancy, which I think is because of our location, because there are not that many marinas there, fortunately for me. But also

because people are moving into the area; and waterfront community -- people see it, they want to get out on the water.

My day is spent either upside down in somebody's bilge putting in a bilge pump, or it's fixing 20 feet of dock, or it's sitting in my office at 10:00 at night trying to fill out a permit application.

These rules -- these proposed rules will, in my opinion, make that part of my job just that much easier.

SENATOR SMITH: You're not looking to expand, though, right?

MR. CERRUTI: I am not. I cannot in my location.

SENATOR SMITH: Okay. You're in favor of the consolidated/streamlined process.

MR. CERRUTI: Yes, sir. Yes, sir, because I do need to do maintenance dredging, and I do need to do other smaller repairs that might require a permit. And anything to do with streamlining that process, I am in favor of.

SENATOR SMITH: Great.

MR. CERRUTI: Thank you.

SENATOR SMITH: Thank you, Mr. Cerruti.

John Weber, Surfrider Foundation, opposed; or in opposition, rather.

J O H N W E B E R: Okay. It's red, so it's on, right? (referring PA microphone)

SENATOR BATEMAN: Yes.

SENATOR SMITH: Red is go in Trenton.

MR. WEBER: Thank you, Mr. Chairman. Glad to be testifying at the most interesting Committee in the State Senate.

So after Sandy, the Surfrider Foundation put beach cleanups aside, and our members and volunteers picked up hammers and crowbars and we gutted people's homes for about three or four months. We emptied the contents of their houses and we put them on the curb.

I'm glad that you're hearing from people who did the same thing. Surfrider Foundation may have turned out hundreds of volunteers to do that kind of work, mostly on the weekends, but Clean Ocean Action turned out thousands of people to do that kind of work. Save Barnegat Bay was impacted by the storm -- that's an understatement -- and had to relocate. They're actually in a location now that they share a space with a group that, to this day, is still helping victims of Sandy. I know the New Jersey Environmental Federation -- who I think left -- their officers were flooded and they had to relocate. So at least for me, personally, that's what is informing our attitude about these rules, so keep that in mind.

I have to address a couple things that the State representatives said here. I know Ms. Kopkash talked about a stakeholder process, I guess, as they formulated these rules. Surfrider Foundation was very, very involved in the rulemaking process for public access -- for beach access. This is going back a couple of years, but we were very, very involved. It would only make sense that the people concerned with public access to our coastal waterways would also be concerned with development -- changes to rules about development in those coastal waterways. And, you know, this was the first I heard about the stakeholder process. I know they had a couple of environmental groups involved in the process; I'm sure they did.

I'm just saying that I don't think it was comprehensive or included all of the environmental community, because we certainly weren't involved in that.

Another thing that was said, I think by Mr. Glass, they talked about the \$345 million shore protection -- all the work that has been done. I live in Monmouth County, and I just need everybody to know that when the Army Corps replenished the beaches in the 1990s and early 2000s, they built big, wide, flat beaches with no dunes. Our engineered beaches were big, and wide, and flat, and they provided no protection from Hurricane Sandy. Belmar -- destroyed; Spring Lake boardwalk -- destroyed; Monmouth Beach, Sea Bright -- those towns were completely destroyed. They all had engineered beaches. So it would have been nice if the DEP had forced the Army Corps to come back and build dunes to actually protect these towns, but they didn't. The Army Corps came back, and they built -- they replenished the beaches, and I just need you all to know that that has consisted of raising the beach up 3 or 4 feet. So the beach that was at the floor, now it's here. Sandy was a 13-foot storm surge with 20- to 30-foot waves on top of that. How 4 feet of sand, vertically, is supposed to protect my little town of Bradley Beach, it boggles the mind. They didn't make the beaches any wider; they just added 3 or 4 feet of sand vertically. So I just want you to hear the other side of the story. Yes, I know a lot of shore protection work has happened, but Long Beach Island gets 22-foot dunes; I don't know why we don't get anything in Monmouth County. We get big, wide, flat beaches that have already proven to provide no protection. So I just didn't want that to go unanswered too.

So onto the subject at hand. These Coastal rules-- Again, everything about this is framed by Sandy, to me. My Congressman has said

that 346,000 homes were either damaged or destroyed by Hurricane Sandy -- 346,000. Now, I'm going to go out on a limb and say every single one of those houses was built legally. Anybody who owns a home, you know, you can maybe get a -- convert your attic to a bedroom without anybody noticing and no permits; you can maybe turn a closet into a bathroom without permits and nobody notices. But it's pretty darn hard to build an entire house without anybody noticing, with no permits. So I would say they are all built legally, okay?

So if anything in this rule -- and I think you've heard that this is the case -- is going to allow more homes to be in these areas, that's the problem, that's why there's this opposition from the environmental community. To allow more homes to be legally built in these areas, that is the problem.

The other thing-- You know, we're told that these rules have been created to reduce red tape and all the bureaucracy with getting permits. Well, the last year that you could actually go look up these numbers, 95 percent of everybody who applies for a CAFRA permit gets a CAFRA permit. Back when Joe Doria was the head of the New Jersey Assembly, I believe he passed a law that required the DEP to send a report every year to the Legislature about -- reporting certain numbers: air permits, water permits, CAFRA and land use permits were part of that, okay? So you can go to a part of the DEP website and you can go in and find these numbers. For some reason, even though there's a law, the last year these numbers are available is 2007. But if you want to practice your math, Mr. Chairman, you go in and you look at how many CAFRA permits were applied for in 2007, and how many were given, you'll find out it's

about 95 percent. So I don't know what the red tape is that's being talked about. From the testimony today I can understand there's cases where there are things that are inconsistent and maybe need to be brought in line with other parts and other rules. To me that sounds like this rule needs a little tweaking around the edges; it doesn't sound like it needs a thousand-page rewrite. So this is one of the things -- that it seems like it's pretty easy to get a CAFRA permit now.

The word *retreat* was mentioned. I'm going to tell everybody that we're in the process of retreating. People don't really realize this. I had the opportunity to look at a bunch of postcards going back to the turn of the century of Asbury Park. And I have to tell you, over the decades, there's a half-a-dozen structures out into the ocean in Asbury Park, going back to the turn of the century. Right now, there's only one that's still there, and that's Convention Hall. So all those structures, I'm sure they were damaged by storms and not rebuilt. That's managed retreat. So we're in the middle of that.

Some people use *retreat* and they think we all need to go and move to Pennsylvania. That's not what we mean. We can manage the way we live with this coastline, and we can reduce the risk. Retreat is reducing the risk. It doesn't mean we're all leaving; I like living near the beach, too, but we can reduce the risk and really not put more silly development where it doesn't need to exist.

Other testimony from the DEP -- when they were talking about the pictures, they gave examples of where they need to say, under the current rules -- they would have to say no to somebody. Well, saying no -- that means one less person, one less family that we have to go and empty

the contents of their home and put it on the curb, okay? So that's what it comes down to.

The toothpaste is out of the tube; we can't undo it. We developed, really, a lot. We should recognize that we shouldn't have developed so much, but we did. What this Committee, and what this Legislature, and what this State should do is, at the very least, not make it worse. Let's make sure we have rules so we're not making it worse, we're not encouraging more development along the Jersey Shore.

We know there's the cry for *restore the shore*, and *rebuild the shore*, and all that after Sandy. Well, the Surfrider Foundation started a website called, "Rethink the Jersey Shore." We need to rethink the Jersey Shore. I'm not saying we have all the answers; we're mostly just putting up news about things that maybe are good -- a town is really doing some progressive work to prepare for the next storm after Sandy, or another town is really not doing a good job and they're just doing the same old thing. That's the kind of stuff that's -- whatever you think of the Jersey Shore, but I encourage you all to take a look at this. And I really encourage the Committee to consider declaring these rules inconsistent with legislative intent of the original law and sending them back to the drawing board.

SENATOR SMITH: Thank you.

MR. WEBER: Thanks very much.

SENATOR THOMPSON: Now, you placed a great deal of emphasis on the fact that 95 percent of CAFRA applications are approved. And I guess you're saying that's justification for saying, "Well, there's really no need in changing because obviously people are going to get their applications approved."

My own experience with viewing DEP through the years -- you say, "Well, the process isn't that bad." That's not necessarily true. The fact that you can get an application approved -- I find, very frequently with DEP, just getting a decision can take forever. That can be very costly; it causes all kinds of inconvenience for people, and so on. So if people are complying with what are rules that are appropriate, then there's no reason-- Hey, people should get a decision; you shouldn't have to wait forever and go through a tremendous amount of attorneys and everything. So if you make the process better, as long as your rules are appropriate and they're complying with it, if it makes life simpler for people, we should.

MR. WEBER: Sure, and I was just going by the numbers that were available, Again, these 2007 numbers that are on the DEP's website -- which I don't know why they're not more current numbers -- but they just have the number of applications, and the number of approvals. If the Legislature would like them to say how long -- the average time -- that might be useful information to collect too, to be informed.

SENATOR SMITH: I think Sam's point was that because 95 percent are approved that doesn't necessarily mean that--

SENATOR THOMPSON: The process is good.

SENATOR SMITH: That the process is good or bad. It's just a statistic, all right?

MR. WEBER: Fair enough; thanks.

SENATOR SMITH: Bill Parsons, Dredge Harbor Boat Center, LLC.

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) They had to go.

SENATOR SMITH: Had to go.

UNIDENTIFIED MEMBER OF AUDIENCE: But they do approve.

SENATOR SMITH: How about-- Yes, and that was in favor.

Thomas R. Beaton, David Beaton and Sons, Inc.

Mr. Beaton, what is it David Beaton and Sons do?

T H O M A S R. B E A T O N: David Beaton and Sons is a boatyard marina in the west Mantoloking section of Bricktown.

SENATOR SMITH: Okay.

MR. BEATON: First, thank you for letting me come to this hearing.

Our boatyard was started by my grandfather 80 years ago. And it's been in the family for that long. And for many years -- recent years -- permitting has become a nightmare to us. The process has just been very long and drawn out. And to give you a quick example: We wanted to build new restrooms in the boatyard, and it took several years to get the CAFRA permit, appealing denials and everything else. We eventually did get them, but it took several years, and the process was very long and expensive and drawn out.

Another example is we wanted to build a new lifting area, and all we needed to do was modify it -- just move it, make it a little wider to haul out boats -- and that took several years. So I think streamlining the process of permitting would be a great benefit to the environment and to the people -- not just us.

Boatyards provide public access to the people. We also provide pump out stations, which -- I know I don't, and many other marinas -- we

don't even charge for it. We just kind of feel like this is our obligation to keep the Bay clean, as we're going to give people a free place to pump out their boat and make it so they want to do it.

So basically we're in favor of these proposed changes. And I think they'll help us, and I think they'll help the general public -- or the boating public.

Thank you.

SENATOR SMITH: Thank you, Mr. Beaton.

Bill Potter. And Bill, you should be a doctor, because your handwriting is very difficult to read. (laughter) Is that Dock Road Group?

R. WILLIAM POTTER, Esq.: That's right.

SENATOR SMITH: Okay; go -- in opposition.

MR. POTTER: Apparently only my secretary can read my handwriting.

Thank you very much, Mr. Chairman, for this opportunity to speak to the Committee about the proposed DEP rulemaking.

I've got about six or seven points I'll try to make very quickly, because I know we're running behind schedule here.

My first point deals with the procedure for the promulgation of the regulations. It strikes me that there was not enough time given for thorough review. The DEP announced the new regulations on June 10, 2014, in a press release; the first public hearing was 15 days later. The next public hearing was the next day, 16 days later. The third public hearing was on July 9; and the end of written comments was August 1. So that comes to less than 60 days for commentary on what amounts to about a thousand page review and reformation of the regulations involving CAFRA, the

Waterfront Development Act, the Coastal Zone Management Act, the Coastal Wetlands Act, Freshwater Wetlands Act, and I think I've left out a few as well.

So my question is, what is the hurry to get all of these new regulations in place? We recommended to the DEP in a letter that--

(Senator Smith's cell phone rings)

It's probably your wife calling. (laughter)

SENATOR SMITH: I'm trying to find the turn-off button; there we go.

Go ahead.

MR. POTTER: We recommended in a letter to the DEP legal office that they extend the comment period by another 60 days, and we've never received an answer to that. But I just think that if you're going to rewrite the regulations involving regulations -- some going back 40 years -- in order to promote consistency, we need to find out whether or not that consistency is simply another word for relaxing substantive regulations. So I suggested that there was not adequate time for review.

The second point: global warming, global climate change. In my review of the 1,000 pages I found no mention whatever of the realities of global warming, sea level rise, storm surges, increased flooding -- all of these factors that have scientists ready to jump out windows because of the need for hasty action to deal with global climate change -- and that includes both adaptation and prevention. Certainly on the adaptation side we need to rethink the coastal zone development opportunities that we're having.

I know Mr. Cantor talked about retreat from the coastal zone was not an option. Well, it reminds me of what Colonel Chesty Puller said in Korea. He said, "Retreat? Hell. We're advancing to the rear." (*sic*)

Well, I think the same thing goes here. We need to talk about: Do we really want to redevelop the coastal zone and, if so, under what circumstances in order to adapt to the inevitability of global climate change and sea level rise?

My third point deals with the 10-year rule. There is currently a regulation that limits the construction of confined disposal facilities. These are very large-- These are basically landfills limited to dredge spoils for dewatering. And they're very obnoxious things -- at least, if you live near one. And I represent clients who are literally across the street from what is proposed to be the largest regional disposal -- confined disposal facility on the East Coast, at least in the Mid-Atlantic area.

SENATOR SMITH: Where is that?

MR. POTTER: Dock Road in Eagleswood Township, Ocean County, right on the edge of Barnegat Bay.

SENATOR SMITH: Okay.

MR. POTTER: Anyway, there's a 10-year rule that provides that you cannot issue a general permit for the reactivation of an unused CDF if it has not been in use for at least 10 years. Well, the last use of this particular CDF was 1982 and 1983. DEP, nevertheless, evoked the general permit rules under the Wetlands Act on the theory that somehow or other the 10-year rule could be ignored. We're in court on that issue right now. And this regulation here proposes to remove the 10-year rule, which benefits not only my clients but any person or property owner in the coastal

zone area, because otherwise you don't know whether or not that nice, natural area right across the street is going to someday be reactivated as a formerly used CDF -- in other words, an open air landfill for sediment and the disposal of dredge spoils. So I think that rule needs to remain.

Point number four: There is a grandfathering clause in here for CAFRA-permitted projects that are being reconstructed on the same horizontal space, the same footprint. I refer to it as the *footprint rule*. This rule, I think, needs to be strengthened, rather than weakened -- and in terms of not only the horizontal space taken up, but the vertical space. I mean, by virtue of this footprint rule, if you're rebuilding a small motel that is a single story and you want to put in a high-rise hotel in its place, provided you stay on the same physical footprint, you're exempt from CAFRA. And I think that is a mistake, for obvious reasons.

Point number five: The regulations say that before you can reactivate or create a new confined disposal facility for sediment and dredge spoils you have to make sure that it is compatible with the surrounding area. Well, that is a very general terminology, which I think needs to be strengthened. And I think it should be that there should be no CDFs, no dredge spoil facility, no dredge spoil landfills within the same area of a residential development project. These are simply incompatible land uses for which we need to have very explicit restrictions.

And that really leads into another commentary about the need to find alternatives to the old Confined Disposal Facility model. Dredge spoils can be used to help replenish damaged shore areas; they can be used to replenish wetlands if they're judiciously applied, and so forth. So let's get away from the old thing of just dumping it out and putting it into a huge

space called a CDF, and then dewatering it, and then trucking it out -- causing all sorts of environmental injury at the same time.

Next, I have a very technical point: it deals with Appendix G to the regulations dealing with dredge spoil management. There's a question that is not answered in the rulemaking as to whether or not this Appendix G is supposed to be a "technical manual," in which case the DEP can change it pretty much at will; or is it proposed to be an actual part of the regulation? If it's part of the regulation, it cannot be changed except by going through the standard APA rulemaking process. And I think there needs to be some clarification on what is the purpose of the Appendix G dealing with dredge spoil management.

And my final point is: We're seeing the merging of regulations which were developed over the last 40 years for the coastal zone, stemming from different statutes, many of which have different substantive policies and different procedures. And I think we need to find out whether or not it's consistent with those statutes to have, essentially, a single procedural mechanism for all of them. I really don't have a strong legal opinion on that because, frankly, I wasn't able to really research all those statutes in the time that was permitted to me. So my final recommendation is, I think that the Legislature should ask -- to tell DEP the regulations are withdrawn for further review, and withdrawn in order to deal with issues such as global climate change and global warming impacts.

Thank you very much.

SENATOR SMITH: Thank you, Mr. Potter.

David Pringle is gone, I believe. Right?

Mike Pisauo, New Jersey Environmental Lobby.

MICHAEL L. PISAURO Jr., Esq.: Thank you, and I'm kind of sad that we found someone who has worse handwriting than me. (laughter) I took pride in that.

MR. POTTER: (off mike) Not possible. (laughter)

MR. PISAURO: Thank you very much for having this hearing and enduring through this lengthy process.

I wanted to start off and say-- Basically we heard this morning starting off with what everything the DEP has done to address the damage caused by Sandy. You did not hear from DEP -- in fact, DEP sort of disclaimed -- what these rules were supposed to do. They said they weren't supposed to address lessons learned from Sandy.

Unfortunately, the explanation, or descriptive language, in their proposal says exactly the opposite, and I'm going to quote, "The proposal reflects the Department's knowledge and experience as concerning coastal development issues accumulated over decades, as well as specific lessons learned from the impact of, and rebuilding from, Superstorm Sandy and other weather events." So these rules are supposed to be, in part, addressing those lessons. Unfortunately, there are no lessons learned -- or at least that are evident from these rules.

Some specifics: DEP also, in the very beginning, said we can't undo what was done in the 1940s, 1950s, and 1960s. That's very true; there may be cause for some legislative changes to allow us to address that. But while we cannot, maybe, undo what was done 40, 50, 60 years ago, maybe we shouldn't make it worse. The infill rule that DEP talked about is one of those things that -- maybe development shouldn't have been there in

the first place; allowing an additional lot, and additional development does not seem to be a good idea in all cases.

I also want to point out that it's not that a person could not get a permit; they just cannot get a general permit. There is a difference. It's not saying you cannot subdivide because this is now one lot under our merger doctrine. It's just you need to go through some extra steps to make sure. It does seem, from the lessons that we learned from Sandy, putting more people in harm's way seems to be counterproductive.

And some specifics: The proposed rule at 7:7-13.1d -- that's the infill rule -- 7-1.5 is redefining lawns as being *porous*, not *impervious*. You heard from Dr. Kennish several weeks ago that lawns are, for all intents and purposes, nonporous or solid surfaces when it comes to addressing infiltration of rain. That is because the compaction of those soils is so much greater than virgin soil that the pore spaces in that soil cannot absorb the water.

And having this change does a couple of things: one, I suggest it goes against the statutory requirement that the regulations that the DEP proposes should be consistent with the natural laws governing physical, chemical, and biological environment at the coast. Again, classifying lawns as something that they are not goes against that statutory requirement.

Also, it has the impact of allowing increased density. You've now redefined what *porous* and *impervious* cover is; you've now allowed an increase in density over and above what the rules already require. Which brings me to my next point. These rules do not address at all the densities allowed to be built along the coast. So these densities have been in there for decades and, in certain areas of the coast, we can build up to a 90

percent impervious cover. That's going to be greater than 90 percent because now lawns are not considered impervious; they're now considered porous.

We, again, have failed to learn the lessons that when you put a massive amount of impervious surface, you do a couple of things: one, there's nowhere for water -- a storm surge -- to go but down the streets, up your lawn, and through your house. It also does nothing to address water quality. This Committee and the Assembly's Environment Committee have had multiple hearings during the summer about the health of the Barnegat Bay. Every two years DEP issues its 303(d), or the Integrated Water Report list. Our waters are degraded; in large part those waters are degraded because of stormwater. We're not doing anything to address it. These rules do nothing to make it better and, in fact, make it worse.

Additionally, increasing stormwater, increasing runoff will change the habitat of our waterways, increase sedimentation of those waterways, and then those run into our coastal waters.

I wanted to say I was glad to see something in these rules: a move towards electronic submissions. I represent environmental groups and local citizens objecting to projects. Trying to get copies of records from DEP is sometimes a difficult thing. If these records are submitted electronically, I would hope that getting them is much easier. I have submitted numerous OPRA requests and then several times have been told, "No, there's nothing new in the file." And I have to call up and say, "That can't possibly be true because you should, at the very least, have my comment letter." And then there are records. I have done final reviews where records that weren't there on the final review last week -- the next

time I do it, they're there; and they should have been there in the first place. So that would be helpful.

That brings me to my point about the comment period. What these rules do is make it a very strict timeframe in which -- for DEP to issue permits. And I fully support people getting timely permits. And I think John Weber indicated that 95 percent of the permits are issued. I haven't looked at those numbers recently, but I also believe many of those permits are issued in a very quick timeframe. I'm not saying the process is perfect; but the rules, as they are proposed, do not allow DEP, the applicant, and the public to take into consideration the complexities of a project.

I have one project in particular in mind; I represent a group that is opposing a project down in Lacey Township. The proposed Notice of Settlement was issued in August of 2010. Those permits have not been issued. Why? Because those permits should never be issued; the project does not meet the requirements. The project has changed several times in scope and in nature over the last four years. Under these proposed rules, DEP would not have had the opportunity to work with the applicant to do the changes to actually protect the environment to qualify. I mean, in one instance, the DEP and the applicant were saying there was not a wetland in the project. The Army Corps of Engineers -- which has a much more restrictive definition of what is a wetland -- came out and said, "Clearly, this is a wetland." That only happened because of the perseverance of my clients in providing comments.

Which brings me to the next point. Not only do you have this strict timeframe in which to issue permits, you do have to have a public notice upfront. But there is no follow-up mechanism. For example, this

project has changed multiple times in this last four years. I had no way of knowing, on behalf of my clients, that additional documents had been submitted; there was no notice mechanism. I would have to file an OPRA request. I would then get a notice seven days later -- seven business days later that there were, in fact, additional documents. It then may take me two weeks, three weeks, four weeks to get an appointment to go down and see those files. If I need to make copies of anything larger than an 8-and-a-half by 11 sheet of paper, many times that is an additional several weeks before I can get the copies of those documents to share with my client, or my client's experts. The comment period has already run, under these proposed rules.

So my suggestion is -- some projects may take longer; the rules should acknowledge that. There should be a mechanism in the rule to provide notice that additional documents or changes to the project have been submitted; otherwise, people like me have to submit OPRA request, after OPRA request, after OPRA request. And we were here several years ago talking about how much of a burden that is on the Department.

And lastly, as Bill Potter indicated, these rules are just absent of any discussion of climate change. And I think that is against the statutory requirements. Because NJSA 13:19-10 forbids DEP from issuing any permits where the air and water cannot assimilate this additional development. I would argue on climate change our ability to absorb additional greenhouse gas emissions has long since been exceeded. Clearly, our ability to handle more stormwater and additional pollutants in our waterways has clearly been exceeded.

And lastly, the gentlemen were talking about the marinas, and I fully support the boating industry. I would also suggest that maybe the drastic decline the DEP mentioned about the registered boats in the water might be because our oceans and our bays are dying. But our ability, under the Public Trust Document, to have access and enjoy for recreation our waterways, I would suggest to you, implies a right to have a healthy waterway to enjoy. And these rules do not further that.

So for that I would ask this Committee to exercise our rights to indicate these rules are against the legislative intent and ask DEP to start the ball over again.

Thank you.

SENATOR SMITH: Thank you, Mike.

Dave Pringle, Clean Water Action.

And after Dave will be Nicole Dallara from the Sierra Club, and she is our last witness.

David.

D A V E P R I N G L E: Thank you, Mr. Chairman. Again, David Pringle; I'm the Campaign Director for Clean Water Action, also formerly known as New Jersey Environmental Federation.

And I did note this on my slip -- we oppose the proposed Coastal rules, and that's because those rules will result in more, not less, folks being put in harm's way at great cost to themselves, the environment, other industries besides the construction industry, and such.

Sandy was, obviously, devastating -- both from an economic and a personal standpoint. And when I say *personal*, I mean individuals and

our collective psyche. I think you would be inhuman if, wherever you lived, you don't feel a little bit more vulnerable than you did pre-Sandy.

And while hurricanes happen and damage is going to be caused, I think it's quite clear and really brought home that bad and overdevelopment -- both the quality of the development, the quantity of the development, and the location of that development -- significantly exacerbated things, and unnecessarily so.

These proposed rules may result in decisions faster; but faster doesn't necessarily mean better. And we certainly don't oppose faster, but we certainly do oppose worse, and not better, and that's what these rules do. They will weaken protections, and it's already clear that the protections in place are not rigorous enough.

The only lesson learned from Sandy was DEP didn't allow folks to rebuild faster than they otherwise should have -- not that there isn't other reasons for that redevelopment not happening, like the poor management of the grants that have been going down at the Federal and State level. You'd have to have your head in the sand.

If we were starting from scratch, we certainly wouldn't build our coastal areas the way we have, historically. We're obviously not going to ever, let alone with one fell swoop, change that. But a silver lining of Sandy creates some opportunities to make sure that we don't build further in the places we shouldn't have in the first place and in the few places we haven't already.

These rules ignore sea level rise; they ignore climate change; they ignore the increasing severity and frequency of storms; and they ignore previous poor design and overdevelopment. Other states are doing a much

better job -- from Virginia to Maryland to New York; Democratic and Republicans. This isn't about ideology; it's about being smart, and New Jersey is being dumb. New York is requiring rebuilds at a foot higher than New Jersey because it recognizes climate change is happening.

I like piers and restaurants on marinas like the next person. But we need to recognize the costs. Yes, there are some benefits to that development, and some luxuries attached to it. There are real costs, in terms of other industries: recreation, tourism, fishing, and taxpayers. Because who is that marina and who is that restaurant going to look to, to rebuild when they get destroyed -- not *if*, but *when* they get destroyed? It's going to be the taxpayers. So there are very real consequences and costs that DEP fails to, purposely, not include in this proposal. They ignore threatening dangerous species, Category I waterways, drinking water supplies. The mapping they're using doesn't factor in new flood maps and where sewers currently are and aren't. From a scientific perspective -- as Mike Pisauro mentioned -- lawns are an impervious cover; they function, hydrologically, the same way. DEP knows this; they are purposely supporting overdevelopment with that change.

The stakeholder process was a joke; it wasn't -- as Tim mentioned, it wasn't comprehensive to the agreed recommendations were made by the Environmental Public Health Committee -- they were ignored. And they were secret, and the vast majority of environmental groups were not included; the largest statewide environmental groups were not included; major regional players were not included -- they didn't even know they were happening. It's still not on the website, despite DEP's claim that they are

big on public-- (Indiscernible) the Builders mentioning the 2009 transition report. It's a bunch of hogwash.

Folks talked about how hard it is for DEP to give you an answer. It's not because of red tape, or inefficiencies; it's because of a lack of political will and a lack of resources. So we're not going to get better answers by requiring faster decisions and reducing public oversight and, as a result, decreasing government oversight -- which is what permits-by-rules, and permits-by-certification, and general permits all do. It doesn't mean they don't all have their role; but especially in a place like this, it's not the way to go.

So there are very real environmental and economic damages that will result from this rule, and taxpayers will foot the bill. So I very much appreciate that you're holding this hearing and bringing this to the attention. And I hope that the Legislative Oversight Committee takes action; I hope the Legislature -- if the DEP insists on being foolhardy and continuing forward with this -- that you use your oversight rules. This is clearly not the intent of CAFRA on the underlying legislation, and the Legislature should veto this rule if it comes to that.

The proposed rule doesn't even come close to providing appropriate safeguards. It may help a few folks in a few instances; but the vast majority of folks will be hurt in the short- and long-term if these rules go forward as proposed.

Thank you.

SENATOR SMITH: Thank you for your comments.

Our last witness is Nicole Dallara from the New Jersey Sierra Club.

NICOLE DALLARA: Good afternoon, Chairman and members of the Committee. I'm Nicole Dallara, the Outreach Coordinator for the New Jersey Sierra Club.

The New Jersey Sierra Club opposes the proposed changes to the CAFRA and Coastal Zone Management Rules. These rules violate New Jersey's CAFRA legislation, and we believe the Legislature should pass an oversight resolution.

This rule proposal is the first major revision and rewriting of the rules since Hurricane Sandy, and these rules do not strengthen coastal protection or encourage more regional planning. We believe these rules create more loopholes and waivers. Especially after Hurricane Sandy, we are troubled that the rules do not mention climate change or sea level rise, and there are no programs for adaptation or mitigation of sea level rise, resiliency planning, or strong natural systems.

Allowing for more development in high hazard areas and flood hazard areas violates FEMA rules, putting more people and property in harm's way, jeopardizing flood insurance or causing significant increases in rates. This is not about helping people rebuild; this is about promoting more development.

This rule does not result in more predictability, transparency, or the elimination of red tape in our Coastal permitting programs. Instead, these changes will promote more sprawl along our coasts which will put more people and property in harm's way.

We believe the Legislature needs to pass legislation to strengthen coastal protections through climate adaption planning, programs

to enhance and restore natural systems, discouraging growth in high-hazard areas, and policies to enhance water quality.

The Sierra Club has a number of concerns with proposed challenges to the Coastal Zone Management Rules which include: the expansion of general permits, permits-by-rule, and permits-by-certification. We are extremely troubled by the inclusion of a new permit-by-certification which would allow an applicant to fill out a permit online and automatically receive the permit if criteria are met. This process does not allow for any governmental review, and oversight, or public input.

We are further concerned about how this will impact review by the Tidelands Council for wetland permits for piers, docks, and boat ramps for single-family homes. This is going to allow for a lot more development in high-hazard areas.

We are also concerned with new waiver provisions and exemptions. We are concerned this provision will allow inappropriate projects to move forward in vulnerable locations along the coast.

The rule proposal also impacts CAFRA regulations. These changes raise the following concerns: nonporous cover and impervious cover concerns. The rule proposal would amend the definition of nonporous cover to include lawns, crushed stone, compacted seashells, and others as porous. We know from the studies that have been done that those are actually compacted soils and are not porous, and these types of landscaping should be excluded.

We're also concerned that regulations are based on outdated mapping. We're concerned with the accuracy of the data reflected in the 2001 State plan, which is old and outdated, does not include threatened

and endangered species, CI streams and buffers, up-to-date flood mapping, or any information on sea level rise and storm surges. It allows for extremely high-density development in some of the most vulnerable high-hazard areas of New Jersey. The regulations should be based on the most recent mapping from FEMA, NOAA, and Rutgers to take into account storm surges and sea level rise.

It also doesn't include climate change impacts, which are ignored. The proposed CAFRA changes do not address impacts from Hurricane Sandy, sea level rise, or storm surges. Instead, they move New Jersey in the wrong direction by allowing high-density developments in some of the most high-hazard areas of the state.

There is also a lack of capacity-based planning. There is no analysis for drinking water and sewer capacity, nor looking at the impact of nonpoint source pollution. There is no hazard planning.

We also have concerns over provisional permits. We are concerned that provisional permits, that allow property owners to start building if they could lose funding before approvals are in place, has remained in place. We objected to this permit under the Emergency Rule and we urge it to be removed.

Hurricane Sandy was a disaster that hit our coast and showed the need to implement better regulations to protect our coast from future storms. This rule proposal should be an opportunity to implement those changes now, but we are concerned this rule moves us in the wrong direction.

We need regulations that address sea level rise, flooding, and storm surges, and prepare our coasts for future impacts of climate change.

This rule proposal does not move us in that direction. Instead, this rule proposal is encouraging more growth in high-hazard areas and opening up environmentally sensitive coastal areas to more development.

The New Jersey Sierra Club is asking the Legislature to pull down this rule proposal and come forward with legislation that will protect our coast for future generations. Legislation should include closing the CAFRA loopholes, fixing coastal legislation to include climate change mitigation and adaption, TMDL for Barnegat Bay, and a Coastal Commission.

Thank you.

SENATOR SMITH: Thank you very much.

Thanks to everybody for participating today. You've given us a lot to think about.

Meeting adjourned.

(HEARING CONCLUDED)