

APPENDIX

Dear Commissioner Martin,

As you are aware, the Legislature has determined that the Department's Flood Hazard Area Control Act Rules, N.J.A.C.7:13-1.1 et seq.; Coastal Zone Management Rules, N.J.A.C.7:7E-1.1 et seq., and Stormwater Management Rules, N.J.A.C.7:8-1.1 et seq. are inconsistent with legislative intent. Article V, Section IV, paragraph 6 of the New Jersey State Constitution authorizes the Legislature to invalidate administrative rules that are not consistent with the intent of the underlying legislation.

As required by the Constitution, the Legislature previously informed the Department, through Senate Concurrent Resolution No. 180 of 2015, of the Legislature's finding that this rule proposal is not consistent with legislative intent.

Specifically, the rule proposal deviates from the intent of the underlying legislation by lessening and removing protections for headwaters, allowing development in vulnerable areas and mitigation elsewhere, weakening stream buffer requirements, and making it easier to obtain permits to build in flood-prone areas.

The Department's 30-day period within which to amend or withdraw the proposed rules has elapsed and the Department has taken no corrective action. As a result of this inaction, Sen. Lesniak has introduced Senate Concurrent Resolution 66, which would invalidate the DEP rules in question. SCR.66 has been referred to the Senate Environment and Energy Committee.

The Legislature would prefer to fix the DEP rules rather than simply throw them out. There may still be time to make the necessary corrections. Please let me know at your earliest convenience how you plan to proceed so that the Committee may act accordingly.

Respectfully,

Senator Bob Smith

Chair, Senate Environment and Energy Committee

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State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

P.O. BOX 402

MAIL CODE 401-07

Trenton, NJ 08625-0402

TEL: # (609) 292-2885

FAX # (609) 292-7695

CHRIS CHRISTIE

Governor

KIM GUADAGNO

Lt. Governor

BOB MARTIN

Commissioner

February 23, 2016

Honorable Bob Smith
Senator, District 17
216 Stelton Road, Suite E5
Piscataway, NJ 08854-3284

Dear Senator Smith:

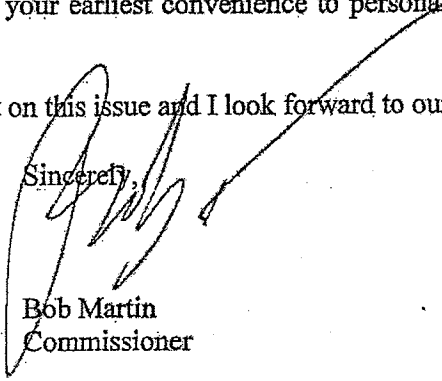
Thank you for your letter of February 19, 2016 concerning the NJDEP's Flood Hazard Area Control Act proposed regulations and the Legislature's concerns, expressed in SCR 180, that these regulations may be inconsistent with legislative intent.

Subsequent to your committee meeting on this resolution, and after meeting with the United States Environmental Protection Agency and reading the comments submitted, the NJDEP reevaluated certain aspects of our regulatory proposal.

As a result, we intend to make changes to our proposal to address a number of issues that were raised. I would like to meet with you at your earliest convenience to personally discuss what these changes will entail.

Thank you for your continued involvement on this issue and I look forward to our discussion.

Sincerely,


Bob Martin
Commissioner



**Testimony Before the
Senate Environment and Energy Committee**

SCR-66 (Lesniak)

March 7, 2016

By

**Michael Egenton
Executive Vice President, Government Relations
New Jersey State Chamber of Commerce**

Good morning Chairman Smith and members of the Senate Environment and Energy Committee. I am Michael Egenton, Executive Vice President of Government Relations for the New Jersey State Chamber of Commerce.

I am joined by one of our Board of Directors -- Dennis Toft, who is a member of the firm of Chiesa Shahinian & Giantomasi, heading their environmental practice. Dennis has great experience in several critical areas of environmental law and I have had the benefit of working with him for several years now.

His practice includes representation of developers, public utilities, parties performing remediation and redevelopment of contaminated sites and public entities. In the course of his practice, he frequently assist clients in obtaining flood hazard and other land use permits from NJDEP.

We are here today to urge the Committee to **not approve SCR 66**. The amendments to the flood hazard rules proposed by NJDEP are not inconsistent with legislative intent under the Flood Hazard Area Control Act.

These rules will prioritize and refocus permitting efforts on activities that are most likely to exacerbate flooding or pose risks to the environment. These rules will make the permitting process more efficient and add appropriate flexibility and provide greater consistency with federal, local, and other state requirements.

Many stakeholders - including the State Chamber - have spent countless hours and numerous meetings over the past two years, assisting in the rulemaking process.

It is not often that we can praise a regulatory proposal.

Implementation of this rule proposal will support our efforts to redevelop distressed areas, and bring much-needed jobs and investment to New Jersey.

The rules largely go to address the unintended negative consequences of the current flood hazard rules which were adopted in 2007 while also streamlining the regulatory process. The proposal was promulgated after an extensive stakeholder process.

The existing rules apply equally to previously disturbed areas and sites that have been developed for decades. This includes sites undergoing remediation. Application of the existing rules to these sites has delayed necessary remediation and has led in some instances to preventing other projects which would have an environmental benefit from proceeding. These sites include prior disturbances in riparian zones which existed before 2008, and most of these sites do not have measures to address storm water quality.

The rationalization of riparian zone requirements in the proposed rule will make it easier to redevelop these sites, to finish remediation projects and to incorporate up to date storm water treatment systems. At the same time, the proposed rules will allow greater ability to mitigate for riparian zone impacts by increasing mitigation options to match those under other programs. This will only increase the planting of trees and the protection of stream corridors.

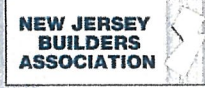
To this end, it seems that the legislature and proponents of SCR 66 misunderstand the proposed changes to the Special Water Resource Protection Area ("SWRPA") requirements. These 300 foot buffers are not being eliminated; rather the requirements with respect to them are being moved to the flood hazard rules where they belong. And this change will again allow for potential improvement to water quality on sites where a SWRPA buffer covers an existing disturbed area where there is no modern storm water treatment. I understand that NJDEP is willing to address concerns related to SWRPA buffers upon adoption of the rule, and would urge the legislature to provide NJDEP with the opportunity to do so.

The proposed rule also corrects the problem of having conflicting requirements between NJDEP and the Soil Conservation Service with respect to acid producing soils. This is again correcting the unintended consequences of the 2007 rules which only created confusion concerning these requirements.

The regulatory process changes in the rules are also needed to increase regulatory efficiency and allow both NJDEP and the regulated community to focus on projects with significant potential impacts. The process changes will assist in the implementation of necessary infrastructure and utility projects while ensuring that environmental standards applicable to these projects are not reduced.

Overall, therefore, the proposed flood hazard rules provide an enhanced opportunity to increase environmental benefits by expediting remediation of contaminated sites and making it possible for redevelopment including implementation of improved storm water management and riparian zone enhancement.

Thank you for the opportunity to express our views.



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

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

**FROM: GEORGE VALLONE
 PRESIDENT, NEW JERSEY BUILDERS ASSOCIATION**

DATE: MARCH 7, 2016

**RE: PROHIBITS ADOPTION OF DEP'S PROPOSED FLOOD HAZARD RULES, COASTAL ZONE MANAGEMENT & STORMWATER MANAGEMENT REGULATIONS
 SCR66 (LESNIAK)**

The New Jersey Builders Association (NJBA) **strongly opposes SCR 66**, which prohibits the Department of Environmental Protection (DEP) from adopting its proposed rules to revise the Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

NJBA strongly supports DEP's rule proposal, which would significantly benefit the State's economic recovery following the last recession and Superstorm Sandy. The amendments are based on stakeholder input from both the environmental and regulated community to ensure that any proposed amendments would safeguard the environment, public health and safety. The proposed amendments are common sense, science-driven changes that eliminate redundancy among regulations, while restoring, enhancing and maintaining existing water quality.

DEP is the State Agency responsible for ensuring that appropriate environmental protections are in place to restore, enhance and maintain existing water quality. DEP's proposal to consolidate the Stormwater Management rules into the Flood Hazard rules does not diminish environmental protection since the same 300-foot buffer will be incorporated in the new rules. Instead, DEP seeks to establish uniform riparian zone standards, while eliminating redundant and contradictory regulations that have caused unnecessary complications by requiring compliance with different site design and construction standards. The Flood Hazard rules will continue to minimize disturbance to riparian zone vegetation and newly require mitigation compensation to protect, preserve or enhance the functional value of the riparian zone.

continued...

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 MICHAEL J. GROSS, ESQ. *Environmental Counsel* • ROBERT M. WASHBURN, ESQ. *General Counsel* • THOMAS F. CARROLL III, ESQ. *Land Use Counsel*

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NJBA also strongly supports DEP's proposed approach for addressing acid producing soil deposits, as the current rules significantly impede or terminate development and redevelopment in appropriate growth areas. These deposits are often found in the same areas (i.e. Middlesex, Monmouth and Ocean Counties) that were impacted by Superstorm Sandy. Modifying the requirements will greatly facilitate recovery efforts in these critical areas.

Further, there is no scientific basis to support the 150-foot buffer for acid producing soils as there are better ways to control runoff from these soils. The current riparian zone restrictions lead to significant erosion, increases sediment load of the regulated water, and threatens aquatic biota. DEP's amendments would alleviate such unanticipated adverse environmental impacts and better protect species and water quality.

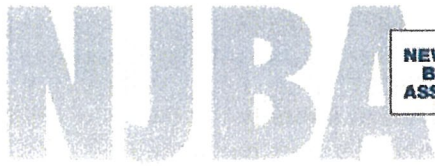
Since acid soils management is actually an on-site construction matter, NJBA agrees with DEP's determination that the local Soil Conservation Districts can effectively help developments avoid and mitigate impacts from these deposits by using proven engineering mechanisms. This is a common sense regulatory change that would also more effectively use agency staffing resources.

DEP's proposal mirrors its other rulemaking initiatives to modernize the application process by allowing electronic submittals, processing applications efficiently, and eliminating unnecessary paperwork, while strictly holding applicants and their professionals accountable for their submissions.

One reason that NJ's economy continues to lag is the costly, inconsistent and complex regulatory process, which unnecessarily impedes vital development and infrastructure projects and deters companies from choosing to locate in NJ. The homebuilding industry strongly supports DEP's rule proposal, as it protects the environment without needlessly hindering the Superstorm Sandy rebuilding efforts, the housing industry and the State's economic recovery.

For these reasons, NJBA respectfully urges that you **vote NO** on **SCR66**.

GX



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 www.abconvention.com
 www.njmx.com
 www.foundationforhousing.com

July 28, 2015

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

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

Dear Mr. Brower:

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

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

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

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

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

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

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

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

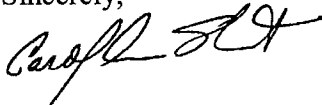
1. What counts as disturbance under N.J.A.C. 7:13-11.2(e) and (f)? Are you allowed one quarter acre of encroachment into actively disturbed areas in addition to the disturbances allowed under Table 11.2? See 47 N.J.R. 1180-3.
2. What happens to a temporary condition of disturbance such as a soil pile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

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

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

Sincerely,



Carol Ann Short, Esq.
Chief Executive Officer

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



NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
NEW JERSEY CHAPTER

Memorandum

To: Members of the NJ Senate Environment & Energy Committee
From: Michael G. McGuinness, CEO
Date: March 7, 2016
Re: Oppose SCR-66

On behalf of the 715 members of NAIOP NJ, the Commercial Real Estate Development Association, I urge you to oppose SCR-66, which determines that the NJ Department of Environmental Protection's (DEP) proposal to revise Flood Hazard Area Control Act Rules, Coastal Zone Management Rules and Stormwater Management Rules is "inconsistent with legislative intent." This action is minimally premature, and very disappointing to NAIOP NJ and the many stakeholders who have lauded the DEP for approaching this rulemaking process with obvious care and consideration of input from the regulated community (numerous stakeholder meetings were held over the past two years). We are also very concerned that this measure is attempting to derail rules that have not yet been adopted. The DEP's proposed rules would:

- Prioritize and refocus permitting efforts on activities that are most likely to exacerbate flooding or pose risks to the environment.
- Make the permitting process more efficient.
- Eliminate some overlapping regulations.
- Add appropriate flexibility.
- Provide greater consistency with federal, local and other state requirements.
- Consolidate the Stormwater Management Rules into the Flood Hazard Area Control Act Rules as a way to ensure accountability, increase efficiency and eliminate procedural problems resulting from the overlapping jurisdictions.
- Reduce riparian zones relative to acid-producing soil deposits while ensuring the least impact on local streams.

The proposed rules would allow both improved water quality and redevelopment to occur, particularly in urban and older suburban rings where we want to encourage growth, but are stymied by the existing outdated NJ DEP rules. Implementation of the new rules will support our efforts to redevelop distressed areas, and bring much-needed jobs and investment to New Jersey. As we struggle to compete for jobs, it is counterproductive to derail rules that will improve the regulatory process and our business climate.

We respectfully request that you oppose SCR-66 and allow the proposed rules to be adopted. Once adopted, we can monitor program operation and then proceed with any changes, if they are needed. Too much time and energy has been invested to stop these carefully prepared rules that are based on sound science and common sense.

Thank you for your consideration.



March 7, 2016

The Honorable Bob Smith
New Jersey State Senate
Chairman, Senate Environment and Energy Committee
State House
Trenton, NJ 08625

Dear Chairman Smith,

On behalf of the International Council of Shopping Centers (ICSC); we would like to expression our opposition to SCR66 which would prohibit the adoption of the Department of Environmental Protection's (DEP) proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

ICSC is the global trade association for the shopping center industry. Our members include shopping center owners, developers, property managers, marketing specialists, architects, investors, retailers, brokers, academics and public officials. The retail real estate industry in New Jersey provides employment to over 374,580 (2014) people and is an economic engine of the state. In addition, shopping center retail sales for 2014 were \$81.7 billion which accounted for \$5.7 billion in sales tax revenue to the state.

While our industry recognizes the need to provide environmental protections; we support DEP's changes which will continue to safeguard fragile eco-systems while helping to streamline some of the processes that developers and businesses have found to be overly burdensome deterrents to doing business in New Jersey. We believe DEP's proposed rules and regulations send a message that New Jersey is a good place to do business.

Thank you for your consideration. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink that reads "Ken Morgan".

Ken Morgan
ICSC Southern NJ Government Relations Chair
Principal, Morgan Law, LLC

CC Vice Chair Senator Linda Greenstein
Senator Christopher Bateman
Senator Richard Codey
Senator Samuel Thompson