
Joint Committee Meeting

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

"Douglas H. Fisher, the Secretary of Agriculture, has been invited to discuss the status of the soil restoration standards required to be adopted pursuant to P.L.2010, c.113.

Also, Dr. Stan Hales of the Barnegat Bay Partnership has been invited to discuss the status of measures to improve the health of Barnegat Bay"

The following bills will be considered:

Senate Bill No. 311, Senate Bill No. 2490, Assembly Bill No. 2954

LOCATION: Toms River Municipal Building
Toms River, New Jersey

DATE: August 18, 2016
10:00 a.m.

MEMBERS OF COMMITTEES PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Christopher "Kip" Bateman
Senator Samuel D. Thompson

Assemblyman John F. McKeon, Vice Chair
Assemblyman Timothy J. Eustace
Assemblyman Robert J. Karabinchak
Assemblyman John S. Wisniewski
Assemblyman Scott T. Rumana



ALSO PRESENT:

Carrie Anne Calvo-Hahn
Judith L. Horowitz
Michael R. Molimock
Matthew H. Peterson
*Office of Legislative Services
Committee Aides*

Alison Accettola
Senate Majority
Brian Quigley
*Assembly Majority
Committee Aides*

Brian Alpert
Senate Republican
Thea M. Sheridan
*Assembly Republican
Committee Aides*

***Meeting 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

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New Jersey State Legislature

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - AUGUST 18, 2016

The public may address comments and questions to Judith L. Horowitz or Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Pamela Petrone, 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 Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee will meet jointly on Thursday, August 18, 2016 at 10:00 AM in the LMH Room, Toms River Town Hall, 33 Washington Street, Toms River, New Jersey.

Douglas H. Fisher, the Secretary of Agriculture, has been invited to discuss the status of the soil restoration standards required to be adopted pursuant to P.L.2010, c.113. Also, Dr. Stan Hales of the Barnegat Bay Partnership has been invited to discuss the status of measures to improve the health of Barnegat Bay.

The following bills will be considered:

S-311 Van Drew/Kyrillos	Increases amount annually credited to Shore Protection Fund to \$50 million.
S-2490 Smith, B/Bateman (pending intro and referral)	Provides for protection of public's rights under public trust doctrine.

Issued 8/11/16

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website <http://www.njleg.state.nj.us> or call 800-792-8630 (toll-free in NJ) or 609-847-3905.



JOHN F. McKEON
Vice-Chairman

ROBERT J. KARABINCHAK
JOHN S. WISNIEWSKI
SCOTT T. RUMANA
DAVID W. WOLFE

New Jersey State Legislature
ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE
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COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

FROM: ASSEMBLYMAN JOHN F. MCKEON, VICE-CHAIRMAN

SUBJECT: COMMITTEE MEETING - AUGUST 18, 2016

The public may address comments and questions to Carrie Anne Calvo-Hahn or Matthew H. Peterson, Committee Aides, or make bill status and scheduling inquiries to Christine L. Hamilton, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideAEN@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.

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Douglas H. Fisher, the Secretary of Agriculture, has been invited to discuss the status of the soil restoration standards required to be adopted pursuant to P.L.2010, c.113. Also, Dr. Stan Hales of the Barnegat Bay Partnership has been invited to discuss the status of measures to improve the health of Barnegat Bay.

The following bill will be considered:

A-2954	Increases amount annually credited to Shore Protection Fund to \$50 million.
Land/Andrzejczak/ Mazzeo/Rible/Kean, S	

Issued 8/11/16

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

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SENATE, No. 311

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Monmouth)

Co-Sponsored by:

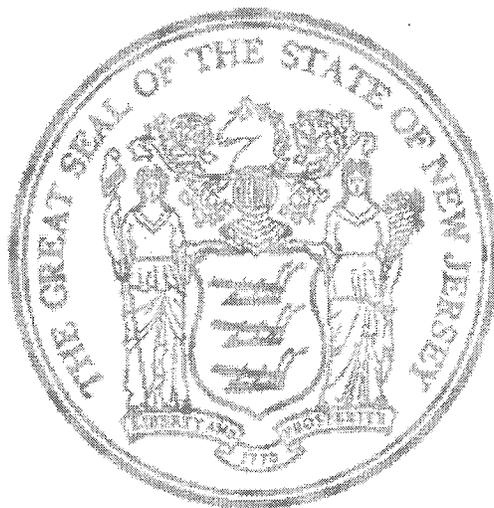
Senators B.Smith, Bateman, Greenstein, Whelan and T.Kean

SYNOPSIS

Increases amount annually credited to Shore Protection Fund to \$50 million.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/1/2016)

S311 VAN DREW, KYRILLOS

2

1 AN ACT increasing the annual amount deposited in the Shore
2 Protection Fund from the realty transfer fee and amending
3 P.L.1968, c.49.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 4 of P.L.1968, c.49 (C.46:15-8) is amended to read
9 as follows:

10 4. a. The proceeds of the fees collected by the county recording
11 officer, as authorized by P.L.1968, c.49 (C.46:15-5 et seq.), shall be
12 accounted for and remitted to the county treasurer.

13 b. (1) The county portion of the basic fee collected pursuant to
14 paragraph (1) of subsection a. of section 3 of P.L.1968, c.49
15 (C.46:15-7) shall be retained by the county treasurer for the use of
16 the county.

17 (2) The State portion of the basic fee, the additional fee, and the
18 general purpose fee shall be paid to the State Treasurer for the use
19 of the State. Payments shall be made to the State Treasurer on the
20 tenth day of each month following the month of collection.

21 c. (1) Amounts, not in excess of **[\$25,000,000]** \$50,000,000,
22 paid during the State fiscal year to the State Treasurer from the
23 payment of the State portion of the basic fee shall be credited to the
24 "Shore Protection Fund" created pursuant to section 1 of P.L.1992,
25 c.148 (C.13:19-16.1), in the manner established under that section.

26 (2) In addition to the amounts credited to the "Shore Protection
27 Fund" pursuant to paragraph (1) of this subsection, amounts equal
28 to \$12,000,000 in each of the first 10 years after the date of
29 enactment of the "Highlands Water Protection and Planning Act,"
30 P.L.2004, c.120 (C.13:20-1 et al.) and to \$5,000,000 in each year
31 thereafter, paid during the State fiscal year to the State Treasurer
32 from the payment of fees collected by the county recording officer
33 other than the additional fee of \$0.75 for each \$500.00 of
34 consideration or fractional part thereof recited in the deed in excess
35 of \$150,000.00 shall be credited to the "Highlands Protection Fund"
36 created pursuant to section 21 of P.L.2004, c.120 (C.13:20-19), in
37 the manner established under that section. No monies shall be
38 credited to the "Highlands Protection Fund" pursuant to this
39 paragraph until and unless the full amount of **[\$25,000,000]**
40 \$50,000,000 has first been credited to the "Shore Protection Fund"
41 pursuant to paragraph (1) of this subsection.

42 d. All amounts paid to the State Treasurer from the payment of
43 the additional fee shall be credited to the Neighborhood
44 Preservation Nonlapsing Revolving Fund established pursuant to

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

Matter underlined thus is new matter.

S311 VAN DREW, KYRILLOS

3

1 P.L.1985, c.222 (C.52:27D-301 et al.), in the manner established
2 under section 20 thereof (C.52:27D-320).
3 (cf: P.L.2004, c.120, s.61)

4

5 2. This act shall take effect immediately and shall apply only to
6 State fiscal years beginning after the enactment of this act.

7

8

9

STATEMENT

10

11 This bill increases from \$25 million to \$50 million the amount that
12 is annually credited to the Shore Protection Fund from the collection
13 of realty transfer fees.

14 The realty transfer fee is imposed on the recording of deeds
15 transferring real property, and is calculated on the basis of the amount
16 paid in the deed. The basic rate is \$1.75 for each \$500 of
17 consideration, of which \$0.50 is retained by the county and \$1.25 is
18 the State share. Currently, the first \$25 million of the State share
19 collected annually is credited to the Shore Protection Fund.

ASSEMBLY, No. 2954

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED FEBRUARY 16, 2016

Sponsored by:

Assemblyman R. BRUCE LAND

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblyman DAVID P. RIBLE

District 30 (Monmouth and Ocean)

Assemblyman SEAN T. KEAN

District 30 (Monmouth and Ocean)

Co-Sponsored by:

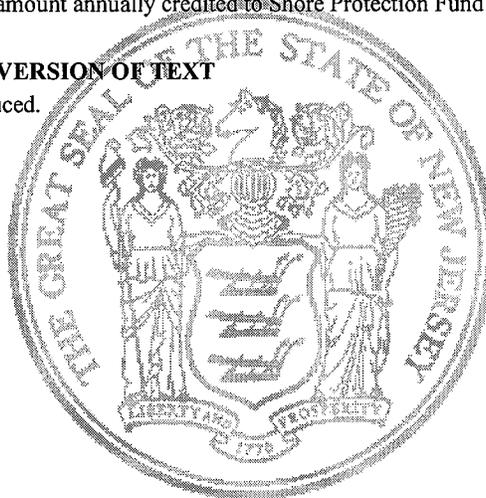
Assemblymen C.A. Brown, Wisniewski and Giblin

SYNOPSIS

Increases amount annually credited to Shore Protection Fund to \$50 million.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/17/2016)

A2954 LAND, ANDRZEJCZAK

2

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2 Protection Fund from the realty transfer fee and amending
3 P.L.1968, c.49.

4
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TABLE OF CONTENTS

	<u>Page</u>
L. Stanton Hales Jr., Ph.D. Program Director Barnegat Bay Partnership	6
Margot Walsh Executive Director The Jersey Shore Partnership, Inc.	24
Robert Mainberger President The Jersey Shore Partnership, Inc., and Senior Vice President Mott MacDonald, LLC	28
Jeff Kolakowski Vice President Government Affairs New Jersey Builders Association	35
Anthony Pizzutillo Government Affairs Consultant Commercial Real Estate Development Association -- NAIOP	35
Peggy Wong Secretary Board of Trustees Hudson River Waterfront Conservancy of New Jersey Inc.	39
John Weber Mid-Atlantic Regional Manager Surfrider Foundation	39
Tim Dillingham Executive Director American Littoral Society	41

TABLE OF CONTENTS (continued)

	<u>Page</u>
Thomas O. Herrington, Ph.D. Research Professor Coastal Engineering Davidson Laboratory Stevens Institute of Technology, and Director New Jersey Coastal Protection Technical Assistance Service	43
Thomas Fote Legislative Operations Manager Jersey Coast Anglers Association, and Representing New Jersey State Federation of Sportsmen.	46
Jeff Tittel Director New Jersey Chapter Sierra Club	46
Raymond E. Cantor, Esq. Chief Advisor Office of the Commissioner New Jersey Department of Environmental Protection	62
Virginia A. Kopkash Assistant Commissioner Division of Land Use Management New Jersey Department of Environmental Protection	70
Michael A. Egenton Executive Vice President Government Relations New Jersey Chamber of Commerce	76
Sara Bluhm Vice President Environment and Energy New Jersey Business and Industry Association	78

TABLE OF CONTENTS (continued)

	<u>Page</u>
Elvin Montero Director Communications and Issues Management Chemistry Council of New Jersey	81
Scott Ross Associate Director New Jersey Petroleum Council	82
Glenn Arthur Chair New Jersey Council of Diving Clubs, and Representing Citizens Against Restrictive Beach Access	82
Ronald A. Klempner, Esq. Vice President Board of Trustees Hudson River Waterfront Conservancy of New Jersey Inc.	87
Rebecca Foster Coordinator Municipal Public Access Planning Program Office of Coastal and Land Use Planning New Jersey Department of Environmental Protection	94
Melissa Danko Executive Director Marine Trades Association of New Jersey	94
Edward J. Kelly Executive Director Maritime Association of the Port of New York and New Jersey	94
Kieran E. Pillion Jr. Private Citizen	99
Michael J. Gross, Esq. Environmental Counsel New Jersey Builders Association	102

TABLE OF CONTENTS (continued)

	<u>Page</u>
Andrea Leshak, Esq. Joint Staff Attorney Hackensack Riverkeeper, and New York/New Jersey Baykeeper	111
APPENDIX	
<i>State of the Bay Report</i> submitted by L. Stanton Hales Jr., Ph.D	1x
Testimony, plus attachments submitted by Margot Walsh and Robert Mainberger	81x
Stakeholder Report submitted by Jeff Kolakowski	97x
Testimony, plus map submitted by Peggy Wong and Ronald A. Klempner, Esq.	107x
Testimony, submitted by Thomas O. Herrington, Ph.D.	112x
Testimony submitted by Andrea Leshak, Esq.	116x
Letter, addressed to Senators Bob Smith, Joseph Kyrillos, and Jeff Van Drew From Robert K. Marshall Director Advocacy and Legislative Affairs Greater Atlantic City Chamber	118x

TABLE OF CONTENTS (continued)

APPENDIX (continued)

	<u>Page</u>
Letter, addressed to Senator Bob Smith Chair Senate Environmental and Energy Committee from Douglas H. Fisher Secretary New Jersey Department of Agriculture	119x
Letter, addressed to Senator Bob Smith and Assemblyman John F. McKeon, plus Memorandum submitted by Melissa Danko	120x
Suggestions to amend Senate Bill No. 2490 submitted by New Jersey Chamber of Commerce, and New Jersey Business and Industry Association	124x

pnf:1-114

SENATOR BOB SMITH (Chair): Welcome to the two most interesting committees in the State Legislature -- the Assembly and Senate Committees that have jurisdiction over environmental issues.

Seated to my right is the Acting Chair and the Vice Chair of the Assembly Solid Waste-- What's the actual title?

ASSEMBLYMAN JOHN F. McKEON (Acting Chair): Kings of the Universe? (laughter)

SENATOR SMITH: The Kings of the Universe Committee. The Assembly is to the right, Senate is to the left. This is the Senate Environment and Energy Committee.

We should start, don't you think, Chairman, with calling the roll for both Committees, so we have a record of who's here?

ASSEMBLYMAN McKEON: Mr. Peterson.

MS. HOROWITZ (Committee Aide): He's going to do the roll for the Assembly.

SENATOR SMITH: Okay; Mr. Peterson. Sorry.

MR. PETERSON (Committee Aide): (off mike) Start with the Assembly?

SENATOR SMITH: Please.

MR. PETERSON: Assemblyman Rumana.

ASSEMBLYMAN RUMANA: Here.

MR. PETERSON: Assemblyman Wisniewski.

ASSEMBLYMAN WISNIEWSKI: Here.

MR. PETERSON: Assemblyman Karabinchak.

ASSEMBLYMAN KARABINCHAK: Here.

MR. PETERSON: Assemblyman Eustace.

ASSEMBLYMAN EUSTACE: Here.

MR. PETERSON: And Vice Chairman McKeon.

ASSEMBLYMAN McKEON: Present.

May I ask, with the indulgence of the Chair, that we ask our colleague, Scott Rumana, to lead us in the Pledge of Allegiance?

SENATOR SMITH: Absolutely.

(all recite pledge)

SENATOR SMITH: Okay; and if we could take the roll on the Senate side.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes; present.

MS. HOROWITZ: Senator Greenstein.

SENATOR LINDA R. GREENSTEIN (Vice Chair): Here.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Here.

MS. HOROWITZ: Senator Thompson.

SENATOR THOMPSON: Here.

SENATOR SMITH: Okay; we all have quorums.

Just by way of background -- our last topic today will be beach access. We are not releasing a bill today, all right? We're taking testimony; the consensus bill -- with the topics that everybody agrees on -- is now controversial. So we want to hear what everybody has to say, we'll think about it, and we'll be talking about it further in the fall. So that's the last item on the agenda.

In terms of the first item on the agenda, we had invited Secretary Fisher from the Department of Agriculture to be present to give

us a report on soil restoration standards. In 2010, the Assembly Committee and the Senate Committee came here and took testimony about the health of the Barnegat Bay. And we had a number of scientists present who said one of the major problems with the Barnegat Bay is the restoration of soil after construction. Once that construction vehicle goes over soil, it's like concrete; which means there is stormwater runoff into the Bay, putting a lot of bad things into the Bay.

So we passed a Bill, in 2010, that said the Department of Agriculture Soil Conservation Service will do soil restoration standards. It's six years later.

So Secretary Fisher could not be present today, but he sent a letter, dated August 12, and I will read it into the record.

It says, "Dear Chairman Smith: I'm writing in response to your recent invitation to attend the Senate Environment and Energy Committee meeting on August 18, 2016. Although I will be unable to attend the meeting, I do wish to provide you and the rest of your Committee with a brief update on the status of the adoption of the soil restoration standards pursuant to Public Law 2010, chapter 113.

"The State Soil Conservation Committee works with a multi-disciplinary subcommittee of stakeholders, program staff, and members of academia to develop and modify standards that include comprehensive methods to address soil compaction on construction sites. In addition to the standards proposed in 2012, and subsequently adopted, a new proposal to address Topsoil and Land Grading Standards was recently forwarded to the Office of Administrative Law for publication in the *New Jersey Register*. The proposal will be the subject of a 60-day comment period, and the State

Soil Conservation Committee looks forward to reviewing the comments that are received.

“On behalf of the State Soil Conservation Committee, I would like to acknowledge the current and future work of our Soil Conservation Districts, and our shared goal of protecting the waterways and quality of water in the Garden State. Sincerely, Douglas Fisher.”

We’re very grateful for a letter citing the progress; but we have some questions whether it’s going to be progress. We have not yet seen the standards; they haven’t yet been published in the *Register* -- the *New Jersey Register*. The normal procedure is that a copy of this is sent to the Office of Legislative Services for them to review. The Office of Legislative Services has not received them as of this point. And I personally am hoping we’re not being flimflammed. I have never seen standards take more than six years to be developed. And this is so important to the health -- not only of the Barnegat Bay, but other water bodies in the state -- that this should have been a top priority.

Last year at the Joint hearing the members of both Committees may remember that we were very critical of the Department of Agriculture for not getting this done. It’s now another year later; it’s now six years later, and those standards are not yet out there for the public to comment upon. Hopefully, they will be published shortly; and hopefully they will actually address soil restoration. There’s always more joy in heaven for the prodigal son that returns, or that something actually happens in a positive vein. We will see; and we hope that Secretary Fisher is, hopefully, trying to get this done in the proper way. But we shall see.

ASSEMBLYMAN McKEON: May I, Mr. Chairman?

SENATOR SMITH: Yes, sir; Chairman.

ASSEMBLYMAN McKEON: Yes, I'd just like to expand upon your remarks, which were articulate as always, and informational. And I have the greatest of respect for Secretary Fisher, as a former colleague and an individual who is a public servant.

But if you just look at the sequence of this six years, the year was met, as was required by the law. But then the standards were kicked back as needing to make them more cost-effective; you know, which is a signal for those who would be affected by the regulations -- the development community -- didn't want to pay for it; didn't want to, basically, comply.

And here we are, in 2016 -- a couple other points about that. There's a letter that Secretary Fisher authored, from 2014, to the representatives of this Ocean-Monmouth region, talking about the fact that the majority of the Barnegat Bay watershed was already developed. Well, we all know, in that timeframe, what had occurred as it related to Hurricane Sandy and how many of those homes, sadly, were destroyed; and thus we could have been well served by having those soil restoration standards in play.

And the last point I make is that even in this latest letter, they don't use soil restoration standards as the -- whatever it's been that's been sent to the Administrative Office; but rather, *topsoil and land grading*. Now, that's a distinction. So I don't know, in that letter, if he's talking about compliance with the full standards, as the 2011 law, or something different. Because it's not the same term that's used as to what was sent that no one seems to have a copy of. So needless to say, we're all disappointed.

SENATOR SMITH: Right. And hopefully we will not be as pessimistic as, unfortunately, the facts have so far been leading us to be.

That being said, with your permission, Chairman, we're going to ask Stan Hales to come forward. Stan is with the Barnegat Bay Partnership, and Stan has been a frequent witness at our prior hearings. Barnegat Bay Partnership just published the *State of the Bay Report 2016*, and we thought this would be a great opportunity to get an update on how the Barnegat Bay is doing.

So Dr. Hales, if you would please address the Committee.

L. STANTON HALES, Ph. D.: Is this on? (referring to PA microphone)

SENATOR SMITH: I don't know.

DR. HALES: Hello?

ASSEMBLYMAN McKEON: That's on.

SENATOR SMITH: Sound's good. (laughter)

DR. HALES: I thank the Senate and Assembly Environment Committees for the invitation to speak today. It's good to see all of you again back down here at the Shore.

I'd like to give kind of an overview of the *State of the Bay Report*. I'd like to talk a little about the process and what goes into it, and then address the concerns and respond to any questions.

We're required by Federal law, as a National Estuary Program, to report out on the state of the Bay every five years. We've done this three times in the history of the program; we tend to do a similar process. This is not a report just from my office involving my staff; but it involves all or any of the partners who wish to participate in the process -- which includes

Federal agencies, State agencies, county and municipal groups, governmental organizations, and academic institutions. So there are about a dozen different scientists and others with various technical expertise. We even included an attorney on that committee. (laughter)

SENATOR SMITH: First mistake. (laughter)

DR. HALES: Well, the attorney dabbled as a scientist for many years--

SENATOR SMITH: Okay.

DR. HALES: --so we thought it was good to include that individual. And he's actually sitting here in the room -- Charles Caruso, from the Pinelands Preservations Alliance.

Those 12 people basically issued a call for information from the public. So we took information resources that were available, produced by individuals, organizations, etc. The group also developed what we call a *QAPP* -- a *Quality Assurance Performance Plan*; the data had to meet certain standards. All of these were reviewed so there was consensus on the quality of the data that were put together and went into the report.

We also developed a decision document; we basically looked at the information and how we reached our decision in putting together the report. And I share all of this so that everybody understands that this report does not represent one individual's opinion and perspective; but this is the collective consensus of all the groups that participated with us as a part of the partnership.

There are 17 different indicators; they're grouped into the five different priority areas or concerns of the entire collective. The good news is this year, for the first time, we have status and trends information for

almost all of the indicators used in the report. And in contrast to that, the two previous reports we lacked information for at least a third of the indicators.

So we have a much more complete data base. This is largely due to the efforts of the State as a result of some of the recent science that has been conducted. So there's been a lot more money put into assessing the Bay's condition, and we have a great deal more information now than we had even five years ago. So despite Sandy, the amount of information that's been collected has increased. And we have more information in hand with which to address the Bay's problems.

So that's the good news.

And there are some bright parts of the report. But overall, the biggest problems in the Bay remain the biggest problems in the Bay; and we have a much better handle on the things that are contributing to those problems. And that big problem is eutrophication due to excessive nutrient loading, which is coming from, largely, nonpoint source pollution.

So all of the activities that we all do and our disturbance of the landscape of fertilizing our yards, our driving down to the Shore, many other things -- just about anything that we do on the land or water is contributing to the degradation of the Bay.

As a result of the increased -- the better science that we now have, thanks to the investments of the DEP and the very good work of the U.S. Geological Survey, we know that the nutrient load to the Bay -- the recognized nutrient load to the Bay is about 30 percent higher than has been previously recorded. It's not that the load itself is higher; but we just have a better handle on the science.

Previously, sort of our office assessment of the Bay was that the Bay was very sensitive to modest nutrient loading, based on comparisons to other systems. This new information makes clear that the Bay isn't really particularly sensitive to nutrient loading; but it is struggling under a much, much higher load than was previously recognized. And this makes clear the importance of our taking much more aggressive steps to address that nutrient load.

And to Assemblyman McKeon and Senator Smith -- both of the points that you made earlier today -- this is nonpoint source pollution. It's important that everybody take responsibility for this nutrient load. That's why our office feels that the soil restoration standard is so critical and so important.

The State told us recently that they are going to release that draft standard some time in the next few weeks; we look forward to seeing that. We have seen various drafts of that and are concerned that it may not be stringent enough. But until we see it, we don't know.

So with that being said, eutrophication remains the biggest problem due to a high nutrient load. Periodically we see all the problems of that process -- that is, we see harmful algal blooms around the Bay. There's been better documentation of the algal blooms. They are largely weather-dependent, and they're very localized; they are not Bay-wide. But when they do occur, they can have profound influences not only on our use of the Bay, but also on other ecosystem components of the Bay. What I mean by that -- some of these algal blooms are toxic to shellfish and fish; some of them actually can cause respiratory distress in people who are sensitive to it. So periodically these things have popped up, and they occur most often

when there are draughts. So in very dry years, or periods when we don't have much water flow into the Bay, these things will recur.

In addition to the water quality issues, we also have a lot of concern about the water supplies to the Bay. All of the available information suggests that we're taking an awful lot of water out of the coastal aquifers; I think, just for Ocean County alone, it's about 86 million gallons of water a day. That's water that doesn't flow through the ground into the Bay and out into the ocean. A couple of things are happening to it. We're reducing the amount of water that is flowing into the Bay, and then we're pumping about 50 million gallons a day of that immediately offshore. And we also know, from those new studies, that a substantial amount of that nutrient loading that's being pumped offshore is actually reentering the system. And so that raises the questions of what we do about that nutrient load.

The withdrawal of water from the ground is water for all of our activities. Some of those activities are things that we consider essential; but a lot of the use of that water we might not consider essential. One of the things that we ask for with the release of the report is that the State release the Statewide Water Supply Master Plan. The State has done some notable things to assess the State's aquifers; and I'm not just talking about the Barnegat Bay aquifer, but all of them. But without that Statewide Water Supply Master Plan, there's a dearth of information. And there's not much drive or push for everyone -- all of the users, consumers, resource managers, etc. -- to take additional steps. And some of those additional steps should have additional costs. But, you know, there's not a push to take those

additional costs to conserve, reuse -- and, basically, not use when it's not necessary -- water.

A number of other states have had to be very proactive in conserving water resources. I moved here from the state of Georgia during a five-year drought in Georgia. The state of Georgia reduced its water consumption by 80 percent during that draught period. So there's an opportunity to save considerable water for the future and for ecosystem services for the quality of life in the Bay. But the Statewide Water Supply Plan helps drive that.

So I think the Senate and Assembly actually funded the development of that plan. I would ask that you also request its release.

SENATOR SMITH: We have; and we've also been critical that the Water Supply Master Plan hasn't been released. It's a decade overdue.

DR. HALES: I think the last one was 20 years ago. So--

SENATOR SMITH: Two decades overdue; all right.

DR. HALES: With regard to protecting land and water, there is some good news. U.S. Fish and Wildlife Service, the New Jersey Department of Environmental Protection, Ocean County Natural Lands Trusts, and some other groups have done a really spectacular job in acquiring and saving additional open space. That's really important; all of those undisturbed areas function naturally to get water back into the ground; and all of the other ecosystems benefit from that.

We do know that just that acquisition of open space alone is not enough to protect the other services in the Bay; so additional steps are going to have to be taken. But that's not only a good start; that provides a

foundation for a number of other activities that we might use to move forward from.

I think one of the recent things that all managers of open space have encountered is that there's a lot of demand for other uses of the open space. And increasingly there's some concern about the commitment of funds to manage those open spaces and to protect them -- that is, there are a number of uses of those properties that we would consider questionable. I'm talking about ATV use; other illegal activities -- dumping, etc. And DEP has targeted a number of those properties and put some fixes in place to sort of crack down on the bad actors among us. But it's clear from the information coming to me that additional steps need to be taken to manage open space. And I think there are some funding consequences for that.

With regard to other open space in the watershed, we have a number of notable concerns. The green infrastructure that we're counting on for resilience -- for climate adaptation, for storm prevention protection, storm surge protection -- all of those areas are in trouble. We have, in partnership with two other National Estuary Programs, a region-wide wetland monitoring program that's called *MACWA* -- Mid-Atlantic Coastal Wetlands Assessment. It has a couple of million dollars of Federal funding behind it, and about five years of work, to establish a baseline. And upon our initial efforts to establish that baseline, Sandy rolled ashore. So essentially our early activities have been just recognizing the impacts of Sandy upon all these areas.

Most of the wetlands in the Barnegat Bay, and in some of the other coastal watersheds, are in serious trouble. They're eroding along the edges from the inside. These problems are made worse, actually, by the

higher nutrient loading of the Bay. So our wetlands are actually disappearing out from under our feet.

A concern that we had is not only that they're disappearing; but some recent work by the U.S. Geological Survey has established that there may not be enough sediment in the system -- that is, all material that's suspended, dissolved, flocculating, dripping around all of these coastal watersheds. There is not enough sediment in the systems to sustain our current wetlands. And so what that means is we're all going to have to be much more aggressive in managing these areas. The State and many partners have set up a program for coastal shoreline or living shoreline protection. Those are very much good steps in the right direction; they're very much needed if we're going to maintain and sustain these areas. But it means that everybody needs to work immediately to get these areas assessed and modified, enhanced, restored -- whatever you want to call it. And you know, there's no one-size-fits-all technique here. We're talking about developing entirely new technologies in a state where historically we've not liked to put a lot of leftover, used materials around the system because of contamination concerns.

So the wetlands which we are counting on to protect a lot of our back bay and other neighborhoods and communities along the shore, have a big problem as we move forward.

These same issues are also affecting SAV beds -- Submerged Aquatic Vegetation. The most common one in Barnegat Bay is eelgrass. Eelgrass beds continue their decline, post-Sandy. So Mike Kennish, I think, has been in here before talking to you about the decline of eelgrass beds. Those declines continue. And what's not well recognized about eelgrass

beds is they're probably the best wave attenuator. They do more to knock down waves from storms than wetlands. So there are some amazing laws of physics at work; but as we lose the eelgrass bed, we get bigger waves in the Bay that eat at the wetlands, and we're losing those at a faster rate.

So a lot of the critical wetland habitats upon which many of the Bay's resources depend are in trouble. Those same eelgrass beds and wetlands provide food and refuge habitats for fish, shellfish, the blue crabs, the clams, the oysters -- all the things we love to eat. So all of those impacts also have an economic consequence, and it's not a good one.

And then lastly -- land use. Essentially, there's nothing going on in the Bay that's not affected by all of the activities that we do on land. And we continue to develop land. The pace has slowed; Sandy, and just the regional economy, as we all know, are slow. But we do continue to develop landscape. And as we do, that strains -- the functioning of the remaining open space and the other remaining space.

So it's not a pretty picture; but that is where we are right now in the Barnegat Bay.

SENATOR SMITH: Thank you.

Chairman.

ASSEMBLYMAN McKEON: Dr. Hales, thank you.

I'm going to defer for a moment to my members to see if anyone has any questions of the witness; and then I have one or two. But I am going to start with Tim.

And to all -- Assemblyman Eustace is substituting in today, and we welcome you here.

ASSEMBLYMAN EUSTACE: Thank you; thank you, Chairman.

Doctor, last year we were here and we talked about the stormwater being pumped continuously into the Bay. I'm just wondering if that's still a problem, or if that's been addressed?

DR. HALES: About 20 percent of the Bay's nutrient load comes from stormwater. Again, the numbers of nutrients pouring into the Bay are higher than we think. Addressing the stormwater is one of the important opportunities; it's one of the few tools that we have to substantially reduce the nutrient load.

And this is one of the-- When you say *stormwater*, you know, everyone's first thought is to *stormwater basins*. And there are several thousands of these just publicly owned in Ocean County alone. A few years ago the State started a program to build and construct better stormwater basins. And I think the average cost of those basins was about \$500,000 apiece. And so I'm not saying that that's not an effective tool for reducing the nutrient load from the basins that are constructed; but if that's where we put most of our money, that's going to be a very expensive effort. And it doesn't address all of the basins that we currently have.

Now, there are a number of groups -- a number of our partners that have been taking public funding -- what we call Section 319 funding. It's pass-through money from the Federal government to the State. The State has been making that available to renovate and restore stormwater basins. And some of our partners -- Tim Dillingham with the Littoral Society and Steve Souza at Princeton Hydro -- have done a couple of

fabulous basin restoration projects. And we've actually brought people in from EPA headquarters to show off some of those things.

So that's an important opportunity. But it's an expensive one, and I think a far better way to do that would be through the MS4 program, and from taking some of these additional steps with homeowners. What we're trying to do is get everybody to kind of keep their stormwater to themselves; and make their yards more like a sponge so we can actually reduce the need for stormwater management. We really need to be far more aggressive in doing that.

Where we have big basins -- yes, I encourage everybody to spend money. And there are some groups-- The Brick (Indiscernible) is also spending a lot of money renovating some old stormwater basins up in Brick, where we know we have a high nutrient load. So it's a step in the right direction; I don't know how cost-effective it is, over the long run.

ASSEMBLYMAN EUSTACE: Thank you.

ASSEMBLYMAN McKEON: Bob? (no response)

Anything, John? (no response)

Just a-- Would the Senators like to go first? I'll wait.

SENATOR BATEMAN: No, go ahead.

ASSEMBLYMAN McKEON: You sure?

SENATOR SMITH: Yes, go right ahead.

ASSEMBLYMAN McKEON: Good, good.

Just a couple of things. One is a little different than I heard you talk you about, as far as the water temperatures. And I presume, in part, that's driven by climate change and the warm summers we've had, now consistently, for the last 10 years. Combined with the Oyster Creek

circumstance where, if I remember, like the entire -- every drop of water, or the equivalent of it, every six weeks goes through the Oyster Bay filters and it comes out warmer. Now, I know it's not the real volume of the Bay; it's usually a lot of the same water back and forth. How does that factor in, compared to the nutrients?

DR. HALES: Well, the warmer water temperatures actually will increase the eutrophication. Eutrophication is a biological process: at a higher temperature, we get more production. So the plant's operation does increase the overall eutrophication in the Bay.

And climate change does, to some extent, also potentially increase that eutrophication. You know, we've had a number of warm winters. One of the other things that we're seeing having an impact on the Bay's ecology-- And I have to be honest; this is where it becomes more -- it's a -- there's not a lot of science. But I've heard rumors from time to time that there are more jellyfish in the Bay.

ASSEMBLYMAN McKEON: Correct.

DR. HALES: And one of the things that we recognized is that the Bay, on average, has been much warmer in winter. And the jellyfish of most concern is actually a southern species. And with the warmer temperatures in winter, that species overwinters. And we've actually seen a reduction in complaints about that species because we had two very cold winters in a row in which the Bay froze over in large part.

So it's a complicated picture. We might expect other southern species to come into the Bay. And we're actually seeing that with the fishes.

ASSEMBLYMAN McKEON: It's interesting, Dr. Hales, because other than high taxes, the biggest complaint I get is that we're

getting stung by the sea nettles in Barnegat Bay. So you're attributing that--
- And I thought -- and I guess you're the expert -- that it had something to do with a lot of the replacement of the bulkheads with more of the plastic; and while it solves one problem, it creates another as it's a natural way for them to breed more. But it's all related to temperature.

DR. HALES: No, it's not entirely temperature; and that's why I say this is complicated and there's not, you know, all the science that we would like to have on it. Jellyfish have what is called an *alternation of generations*. They have a very complex life history; it's very different from our own. The little jellyfishes that you see floating around out in the Bay -- they're actually boys or girls, and they do the boy and the girl thing; they make eggs and sperm. (laughter) When the sperm fertilizes the egg, we get a little larva that then attaches to bulkheads -- to the underside of floating docks--

ASSEMBLYMAN McKEON: Did I ask this question?
(laughter) Sorry.

SENATOR SMITH: You're starting to become salacious.
(laughter)

DR. HALES: Well, I should have brought some props.
(laughter)

ASSEMBLYMAN McKEON: Save them for Senator Smith's party.

DR. HALES: Okay.

That larva attaches to bulkheads and floating dock, and produces something -- there are a lot of technical terms for it, but I'm just going to call it a *polyp*. That polyp on the underside -- you probably could

get 50 million polyps on the underside of this table right here. Each polyp then buds off-- The polyp is what overwinters in the Bay. Those polyps can then bud off 20 jellyfish the following spring. So a single floating dock can produce-- And if you have one in somebody's lagoon, once they get established in that lagoon they can spread quickly through that lagoon; and then they have lots of nice little homes for 60 years.

Paul Bologna up at Montclair State has documented that they do have an affinity for plastic; it's not the first time someone has documented that kind of affinity. But there are very few of those that have been done. So, yes, plastic does-- So a lot of the changes in the Bay are promoting the establishment of jellyfish.

ASSEMBLYMAN McKEON: So the last question -- and we all know that the numbers, as far as the billions, that Barnegat Bay means to New Jersey's economy. And it's also-- would be a significant expenditure. But I thought a potential solution -- and I would love your comment on that -- was some level of water exchange between the ocean and the Bay, to just kind of create a natural exchange. Sadly, the thought that one of the good things that may have come out of the hurricane was that there would be a natural kind of cleansing of the Bay. But I guess we haven't seen that happen?

DR. HALES: This is one of those things where our understanding of the Bay is changing. As a result of the U.S.G.S. placing flow meters all over the Bay for a number of years, with DEP funding, we now know that the turnover in the Bay is actually different in different parts of the Bay. We can think of the Bay as actually being almost like three bays. But the turnover in those different segments is much more

rapid than we previously recognized. It's just that we have some better science now. And I'm not saying that a better increase in the turnover in the Bay might not help some things. But I want to get back to a couple of those laws of physics. The Bay, for the most part, only -- the height of the water in the Bay is determined by the height of the water in the ocean. For the most part, that's fairly constant. If you punch a new hole in the bucket of the Bay -- if you consider the Bay a big bucket, and add more ways for the water to come in somewhere -- it means there's less water coming in somewhere else. So you may be able to improve conditions locally in the area of that new inlet, but you're likely to have a deleterious impact in some other place that's not -- doesn't have as much water coming in as it used to. And it's even a little more complicated than that, but there's no simple answer there.

And, you know, the better way to improve that turnover in the Bay's total volume -- what we call the *tidal prism* -- is to actually have more fresh water flowing through the Bay's headwaters. And this gets back to getting stormwater back into the ground. That's the better way to flush the Bay -- is to reduce our consumption of water, and to put more water back into the ground that gets to the Bay.

One of the things that's happened -- for 40 years the amount of groundwater flowing into the Bay has been declining. That should be a concern to everyone.

ASSEMBLYMAN McKEON: Thank you very much.

SENATOR SMITH: Senators, any questions?

Senator Bateman.

SENATOR BATEMAN: Thank you, Mr. Chairman.

And Doctor, first of all, let me compliment you on this report. It's very impressive.

And we have taken small steps over the last five years or so, since I've been on this Committee, to pass legislation limiting the application of fertilizers, and some other steps.

SENATOR SMITH: Yes.

SENATOR BATEMAN: If you had a magic wand -- and you know, obviously, money is always an issue -- what is the single best thing the legislature could do to do to increase the water quality in Barnegat Bay?

DR. HALES: The single best thing to improve water quality in the Bay -- that's a great question. The biggest component of the load is nonpoint source pollution. The biggest thing that we could do something about is the water that is running off the landscape; so we need to reduce that. So the soil restoration and all of these other stormwater measures-- You know, DEP is actually looking to roll out a new stormwater program-- Ginger? (addresses colleague in audience) Okay. The State-- Do you know the schedule on that? (addresses colleague in audience) Okay. Well, the State is about to release a new revised stormwater management plan that does put increasing responsibility on municipalities and others to reduce stormwater inputs. Those are the best places, right there; those are the things that we can do something about.

And what we have to do is, basically, put-- It's source reduction. We want everyone to take more steps. And there are a lot of different things; you know, it's not cutting down trees, it's not disturbing the landscape when you can. You want everything you do to maintain as much natural functioning of these areas as you can.

SENATOR BATEMAN: Thank you, Doctor.

SENATOR SMITH: Any other questions on this side? (no response)

So just an editorial comment, which is, you're absolutely right about the soil standards. It needs to be done. But in terms of the stormwaters -- one of the programs we have not been able to get into law in the State of New Jersey is the establishment of stormwater utilities. We've passed a 2 percent cap on municipal governments and county governments, which leaves them very little room to get anything done. In the United States of America, we have more than 1,500 stormwater utilities that are working to clean up these stormwater problems. And, of course, the problem is always money; the stormwater utility collects a small *vigorish* -- that's a South Jersey term, native to Atlantic City -- they collect a little vigorish from those property owners that have large impervious surfaces, like shopping centers, office building parking lots, and things like that. And the stormwater utility then uses that money to begin dealing with the most environmentally devastating stormwater malfunctioning basins that we have and starts to correct them. And I think someday, hopefully in the near future, we will stablish stormwater utilities so that they can start to clean up this problem. Because you're absolutely right; the last frontier in water pollution is stormwater runoff, and we need a way to fund it.

So that's just a commercial message.

And let me thank you, Dr. Hales, for your continuing effort to help make our Bay healthy. We still have a long way to go, but your efforts are most appreciated -- and the same for the Barnegat Bay Partnership. We do appreciate what they do.

DR. HALES: Well, thank you, Senator. And I'd like to thank all of you for your support, too. This past year, the Senate and Assembly both passed a resolution supporting the reauthorization of the National Estuary Program. There are three National Estuary Programs in New Jersey: New York-New Jersey Harbor Estuary Program, our program, and the Partnership for the Delaware Estuary. And I'm very pleased to share with you the fact that our program -- the National Estuary Program was reauthorized this year with a bill that was sponsored by Mr. LoBiondo and Mr. Larson in Washington. So that passed unanimously in both the House and the Senate. And one component of that reauthorization is an additional funding stream to address priority problems in coastal watersheds. And it's so much money, actually, that it requires a match that our program can't acquire that funding. So we're going to need additional help from the State and others to acquire those funds.

So we look forward to working with the State and all of our partners who play such an important role in supporting our efforts to protect the Bay.

So thank you very much.

SENATOR SMITH: Thank you, Doc.

Our first Bill is S-311, sponsored by Senator Van Drew and Senator Kyrillos. And it increases the amount annually credited to the Shore Protection Fund to \$50 million.

Currently, \$25 million a year is taken out of the Realty Transfer Tax revenues and allocated to the Shore Protection Fund, which is dedicated toward projects to help our shore. And we've held this Bill over quite a bit; so we did make a little progress on beach access. I don't know

how much progress we're going to make today, but we're going to try. But we do want to get this Bill moving.

That being said, for anybody who's either in favor or opposed to this Bill, you should know that it will be second referenced to Appropriations, because it's a spending bill. And I don't think anybody should mislead anybody: The State does not have a lot of revenue for a lot of anything. That being said, we're trying to be helpful to the process and move it along. The longest journey begins with a first step.

Now, this Bill has been introduced on the Senate side. The great news for the Assembly side is that you get a chance to get some testimony and decide what you may want to do with it when you deal with it on your side.

So I believe the first person we should have up is the person who sends me a letter every month and says, "Where's my Bill?" And is that Ms. Walsh? It is, right? Come on up.

ASSEMBLYMAN McKEON: As the witness comes, Senator, we do have-- The Assembly can vote today on this; we do have a Bill.

SENATOR SMITH: Did we list it on the agenda, though? Are we okay?

MS. HOROWITZ: Yes.

SENATOR SMITH: Oh, they have their own agenda. Okay, good; I didn't know that.

Thank you, Chairman.

MARGOT WALSH: With me this morning is our Partnership President, Bob Mainberger, who will join with me giving testimony.

SENATOR SMITH: Good; and introduce yourself.

MS. WALSH: Yes, I will.

Thank you, Chairman Smith, and members of the Senate Environment Committee; and Assemblyman McKeon, for your Assembly Committee this morning. We really are pleased for the opportunity to present our proposal for increased funding for shore protection.

I'm Margot Walsh; I'm the Executive Director of the Jersey Shore Partnership.

Our history began in October 1991. The Halloween nor'easter caused extreme beach erosion and flooding damages that were way beyond the financial resources of shore communities to rebuild their beaches and infrastructure.

In response, the Jersey Shore Partnership was launched as a not-for-profit, nonpartisan organization to advocate for dedicated State funding for shore protection. Working with the New Jersey Legislature, the annual dedicated Shore Protection Fund was established in 1992 at \$15 million annually; and it was increased to \$25 million annually in 1998, drawn from the Realty Transfer Fee, where it stands today.

This unprecedented legislation created the opportunity to advance a cost-sharing partnership with the Federal government that typically has provided 65 percent of Federal funding for beach replenishment projects, with the local share at 35 percent. Of that local share, the State matches 75 percent to the receiving municipality's share of 25 percent of the match cost; or, roughly 9 cents on the dollar of the total project cost.

This partnership puts large projects within the financial reach of needed municipalities, and is a huge economic investment in the New

Jersey shoreline. Why then did the Partnership start a campaign for increasing the Shore Protection Fund?

Sandy forever changed the footprint of the Jersey Shore. We introduced S-311 and A-2954 to address a critical need as we face a future far different from past experience in assessing the future existence of our coastline. We have choices: We can continue to protect our coastline -- a most valuable economic and environmental New Jersey asset -- through cyclical beach replenishment; or let nature take its course and lose our beaches to erosion, endangering people, property, coastal infrastructure, habitats, and the economy.

Fortunately, New Jersey has taken the pathway to preservation. An increase in the Shore Protection Fund will protect the State's 24-year investment in ensuring the future of our coastline and the economic benefits to all New Jersey taxpayers.

How did we arrive at \$50 million? The DEP has increasing responsibilities in addressing coastal resiliency issues that include maintenance commitments on existing nourishment programs, pending future authorized cost-shared beach replenishment projects, and critically needed State-funded municipal cost-shared projects.

Post-Sandy, at least 12 additional beaches replenished for the first time will now be within the DEP's beach maintenance authority.

We know that New Jersey can anticipate more Sandy-like storms due to sea level rise and global warming. We also know that strong, healthy, safe beaches are the magnet for the shore tourism economy, more than half the State's total tourism revenue; contributing to residential and

business taxes, and thousands of jobs in retail, banking, food services, construction, entertainment, and more.

We know that future costs of mitigation will be more complex and expensive. Successful resiliency projects must include the impact of coastal storm surges on the bays, streams, lakes, and rivers that are impacted by coastal storms and cause severe flooding.

We know that, currently, still viable supplemental Sandy funding is not a permanent source of funding for a long-term fix for future storm protection projects. We know that the Federal/State cost-sharing formula for beach maintenance will change for beaches constructed after 2000. The 65/35 formula for original beach replenishment projects will remain the same. However, the ratio for maintenance will become a 50/50 cost-share, creating additional funding challenges for the State and municipalities.

The bottom line is that we cannot afford to jeopardize a uniquely successful investment in our State's economy. The return on the State's investment makes indisputable economic sense. The State realizes a \$20 billion per year return in shore tourism revenue, and the associated influx of billions of dollars over more than 20 years from our cost-sharing partnership with the Federal government on its present \$25 million per year investment.

Projections over the next 10 years present a realistic assessment of future authorized projects that exceed the current annual \$25 million Shore Protection Fund. Bob Mainberger, our Partnership President, will present the financial status of the New Jersey Shore Protection Program.

And in closing, I would like to make just a brief comment.

Over the past 25 years, we have worked in partnership with the DEP Office of Engineering and Construction as the stewards of the Shore Protection Fund. We are proud of this relationship and the work of the DEP professionals, and delighted that the Division has been elevated to its own program area, with Dave Rosenblatt promoted as Assistant Commissioner for Engineering and Construction.

I thank you for the opportunity to address you this morning, and turn it over to our President, Bob Mainberger.

SENATOR SMITH: Mr. Mainberger.

R O B E R T M A I N B E R G E R: Thank you; thank you, Mr. Chairman.

Senators and Assemblypersons, I wanted to at least provide an overview of where financially we sit -- the State of New Jersey sits. Obviously, most of these projects, as you are aware, are other specific appropriations to the Water Resource Development Act -- the water bills. But there are also a lot of other sources of funding that come through and under the jurisdiction of the Secretary of the Army, which is the Continued Authorities Programs.

So we went to the Army Corps of Engineers -- the two Districts. As you are aware, the State of New Jersey is split between two districts. They like to work in a regional program. And the split is at Manasquan Inlet. So to the south -- everything to the south of the Manasquan Inlet and up into the Delaware Bay is under the Philadelphia District; and everything from the Manasquan Inlet north, up into New York area, is under the Army Corps of New York -- their District.

So we have two Districts serving us; in reality, it's really constructed that way because essentially the overall littoral environment serves that-- Essentially, almost all sediment from the Manasquan Inlet -- or somewhere south of the Manasquan Inlet -- heads to the south. And the remaining sediment moves to the north, up to Sandy Hook.

It's important to note that the natural sediment that used to come into the ocean typically is not there anymore because of all of the development that's happened across the state. So that we are looking at, essentially, a very slow rate of attrition for the Atlantic beaches. And this particular program from the State not only addresses just 127 miles of the Atlantic coastline; but it extends into the back bays, into the Delaware Bay, and into the Raritan Bay. So it's a very important program.

I know that Margot had indicated that she was talking about 24 years of investment of the State of New Jersey. Obviously, the State of New Jersey has been investing into the shore much longer than 24 years. But she was identifying, essentially, the 24 years that have been stabilized funding through the Shore Protection Fund.

So I would like you to understand that many of these projects are Federal projects alone; some are Federal and State shared; some are Federal, State, and local or municipal shares. So when you look some of the presentations or some of the documents I've provided, you'll see they are identified that some specifically include a municipal share, and some do not.

It's also important to know that I contacted both the Philly and the New York Corps. We acquired their particular program projections for the next 10 years. We also acquired the CAP -- the Continued Authority

Program projections for the next 10 years. The CAP program projections really kind of centralized more to the front-loading of the next 10 years; but as we all understand in government, there has a tendency to be slippage. And we anticipate that they would be attenuated out as typically any larger government program would experience.

But looking at that, I did provide a little summary sheet to explain which place I'm providing. And there's no reason to go through all of them. Essentially, they all summarize into Plate No. 1, which shows the actual costs that we're projecting the State will experience.

And it's interesting to note, if you look at that Plate No. 1, you're going to see three different colors: one is *Soft Costs*, one is *State Share for Federal Projects* that are committed and anticipated; and then there are *Non-Federally Funded Projects* that are, essentially, the municipal projects that the State shares in when they have funds to do so.

It's important to note that the State has been managing a very tightly controlled fund for the last 24 years -- from \$15 million to \$25 million. And, essentially, the State is very prudent in matching their funds against Federal dollars to create the most bang for the dollar. So when there is a demand for matching funds for Federal projects, the municipal projects have a tendency to fall by the wayside because you try to get the most done for the monies that you have.

Looking at this particular projection, we're looking at the 10-year average for the projects to be about \$50.6 million. Now, it's interesting to note that this would be a more dire plate except for the fact that there are financial partnering agreements with the Federal government which attenuate the costs for some of these larger projects. For instance,

the Northern Ocean County project, as you are aware, is anticipated to be put out to bid later in September this year, and start construction early next year and occur over the next few years. That's a \$165 million project. The State share of that is almost \$60 million. That is not shown in a two-year window; that is shown in a projection of a financial partnering agreement with the Federal government, and it extends out over 10 years and beyond. So this is a more realistic approach and need, to try and budget the funds that are going to be available.

So you can see, essentially, that, initially, in 2016-- I mean, we're in pretty good shape. And the reason for that is as these Federal projects get built -- these large beach fill projects -- they come under the umbrella of the Federal government. So after Sandy, all of these projects that were built were actually renourished by the Federal government, directly, without any cost appropriations to the State or the municipalities to bring those projects back to their protective template. So as these projects move forward, as you experience Federal disasters that affect these types of projects, the government steps in and it actually relieves some of the burden that may be part of the normal renourishment programs and cycles that you would see for some of these projects.

Also, it's very important to understand that we're not talking about buying a house and essentially having a mortgage that every month it's going to be the same; because it's the same house, it's the same interest rate, you're locked in. We're looking at an environment that is very dynamic. You could see a swing of costs because of the result of any condensed environmental period that would have high wave activity or storm activity -- such as we saw in 1991, and 1992, and 1993; or we most

recently saw in March 2010 -- Hurricane Irene, Sandy, and Jonas. So to have the ability to have that money available to flex, to respond to the actual demands, is very important.

So that's why we put this together. I apologize; some of the backup information is very small. I wanted to get it into kind of a condensed version so that you could look at it at your leisure; look at some of these different projects. I gave you a little cheater set there; it would help. (laughter) But certainly I will leave my card with your aides, and I can provide you with electronic copies so you can bring it onto your computer; you can go back, and you can go look at the majority of these projects and see how they're developed.

SENATOR SMITH: Thank you.

MR. MAINBERGER: So at that particular point, without belaboring -- going through all of these plates, if there's any particular questions that I could help answer, I'd be pleased to do so.

ASSEMBLYMAN McKEON: Any members have any questions?

Senator.

SENATOR THOMPSON: In your Plate No. 1--

MR. MAINBERGER: Yes.

SENATOR THOMPSON: --you show a tremendous spike in State cost projections for 2018.

MR. MAINBERGER: Yes.

SENATOR THOMPSON: But in 2017, the State costs are \$38.5 million; spike at \$88.9 million the next year; and then it drops back

down to \$26.7 million. Why is the projected big spike there in 2018? What's going to occur at that point?

MR. MAINBERGER: Yes, that spike-- When you see, and you get backed into the actual documents that are provided, that is the influx of the CAP program -- the Continued Authority Programs -- into that. I anticipate that that particular spike will probably attenuate out over the following years; but that's the projection that the Corps provided to us.

There are almost 30 particular programs. And it's interesting to note, too, that the Continued Authorities -- that's 10 authorities that are underneath the Federal government, under the Secretary of the Army. And those 10 authorities have access to funds that are not really controlled by the Water Resource Development Act authorizations. They are funds that can be tapped as they actually demonstrate the demand, and they get the partnershiping agreements with the State and the locals onboard with them.

So that's where their projections show they come in. I anticipate that that will spread out deeper, longer into the projection -- the 10-year projection. But that's where the Corps has identified that they will come in.

SENATOR THOMPSON: Of course, as you said up there in your chart -- it doesn't show it being attenuated. It just shows a one-time spike, and then it drops down to even less than it was in 2017.

MR. MAINBERGER: That's correct.

SENATOR THOMPSON: Just one year suddenly you need all this additional money. You didn't need it the year before; you don't need it

a year after. But it's kind of difficult to understand why one year you're suddenly going to need all this money.

MR. MAINBERGER: Yes; well, unfortunately that's the way the data was provided--

SENATOR THOMPSON: I would just like to get some more information on that--

MR. MAINBERGER: Right; and also--

SENATOR THOMPSON: --this projection spike.

MR. MAINBERGER: --it's also interesting to note that, obviously, in 2016 -- if you go back into some of the support documents, there was a tremendous amount of money that was invested in the Jersey Shore by the Federal government without a share. If that was part of the normal appropriations, the New Jersey cost would have been much higher. And that was really the result of the declaration of Sandy as a Federal disaster.

SENATOR THOMPSON: There's still post-Sandy money coming in, as shown in 2016.

MR. MAINBERGER: Correct; yes.

SENATOR SMITH: Thank you, Senator.

Chairman.

ASSEMBLYMAN McKEON: Thank you.

Any members? (no response)

Seeing none, you have all of our great esteem for the wonderful advocacy you do for our environment in this area.

MS. WALSH: Thank you. And I'd just like to note that Bob Mainberger is not only the President of the Partnership; but he's a coastal

engineer and Senior Vice President of Mott MacDonald. So we are very fortunate to have him as a resource for us.

ASSEMBLYMAN McKEON: That would have otherwise cost a lot of money, is what you're saying. (laughter) So thank you for that.

MR. MAINBERGER: Yes.

ASSEMBLYMAN McKEON: We have -- the next two witnesses are Tony Pizzutillo of NAIOP and Jeff Kolakowski of New Jersey Builders Association.

Jeff; Tony.

Tony, you can lead off; Jeff, you know that-- Well, if you'd like to testify, you can; I apologize.

J E F F K O L A K O W S K I: No; no worries.

ASSEMBLYMAN McKEON: You have some concern about the RTF impact.

A N T H O N Y P I Z Z U T I L L O: Yes.

ASSEMBLYMAN McKEON: Tony.

MR. PIZZUTILLO: Good morning, Mr. Chairman and Committee members.

SENATOR SMITH: Microphone, microphone. (referring to PA microphone)

MR. PIZZUTILLO: What do you want me to do?

SENATOR SMITH: That one.

MR. PIZZUTILLO: Is that better?

ASSEMBLYMAN McKEON: Yes.

MR. PIZZUTILLO: Thank you.

Good morning, Chairman and members of the Committee; and thank you for the opportunity to speak to you today on behalf of the commercial real estate industry, who is a significant contributor to the Realty Transfer Fee.

Given the fact that shore protection, obviously, is a public policy issue that should be considered and dealt with by the Legislature, the commercial real estate industry has serious concerns about the allocation of additional dollars out of the Realty Transfer Fee fund for this purpose.

Given that the law has been in place, and the first \$25 million of the fund annually is to be allocated for Shore replenishment -- that happened prior to a change in public policy and the constitutional amendment that would require the affordable housing obligation -- we believe that real estate transactions that fund -- that go into the Real Estate Transfer Fund be used for affordable housing, and that those funds not be redirected into shore protection. Given the fact, again, shore protection is a laudable cause, I think we need to rank our priorities in that we have to look at other revenue means for shore replenishment other than the Realty Transfer Fee.

Obviously, affordable housing is a critical issue in this state; affordability is a critical issue; job creation is a critical issue. Certainly, tourism is a very important industrial sector in this state; and there must be other more creative ways to fund beach replenishment other than, again, attacking the Realty Transfer Fees.

So again, I hope you take this into consideration, especially again speaking on behalf of the commercial real estate industry, but also in providing the necessary need to meet the obligation for affordable housing.

Thank you very much.

SENATOR SMITH: Jeff.

MR. KOLAKOWSKI: Ditto; same comments. (laughter) I associate myself with Tony Pizzutillo's comments.

SENATOR BATEMAN: Good testimony.

SENATOR SMITH: Brevity is the soul of wit. (laughter)

ASSEMBLYMAN McKEON: Excellent.

ASSEMBLYMAN WISNIEWSKI: Very eloquent.

SENATOR SMITH: You guys are done?

MR. KOLAKOWSKI: Thank you, Chairman.

SENATOR THOMPSON: Mr. Chairman.

SENATOR SMITH: Yes?

SENATOR THOMPSON: One question: Do we have any information on what is the total amount of revenue generated by the Realty -- for the fund?

ASSEMBLYMAN McKEON: I think it's \$272 million; I think.

MR. PIZZUTILLO: I'm sorry; what was--

MR. KOLAKOWSKI: The revenue; the yearly revenue. It ebbs and flows with the economy, of course.

SENATOR THOMPSON: But, you know, we're talking--

MR. KOLAKOWSKI: When it comes to real estate--

SENATOR THOMPSON: --you have \$25 million coming out and another \$25 million. So what's the total pot we're working on here?

MR. KOLAKOWSKI: I think last fiscal year it was around \$350 million.

MR. PIZZUTILLO: Around \$300 million.

MR. KOLAKOWSKI: Around \$300 million.

SENATOR THOMPSON: About \$300 million; thank you.

MR. KOLAKOWSKI: But there are several other dedicated--

SENATOR BATEMAN: Designations; right.

MR. KOLAKOWSKI: --sources for it. Some portion goes to county offices, particularly the county public health offices--

SENATOR THOMPSON: Well, I'm speaking of the money that we're looking at here that's available, that we're looking to take money out of. What's the status of that pot?

SENATOR SMITH: So I have the answer.

SENATOR THOMPSON: Okay.

SENATOR SMITH: Because the staff researched. It says, "In 2015, the Realty Transfer Fee brought in \$272 million to the General Fund--
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SENATOR THOMPSON: Okay.

SENATOR SMITH: --of which \$25 million was dedicated to the Shore Protection Fund; \$5 million to the Highlands Protection Fund; and \$66 million to the Extraordinary Aid Account."

SENATOR THOMPSON: Thank you.

SENATOR SMITH: You bet.

Thank you.

So, for the record, Michael Moore of Sportsman's Marina is in favor, no need to testify; Cindy Smith, citizen, in favor, no need to testify.

The next witness, Peggy Wong, Hudson River Waterfront Conservancy, in favor.

P E G G Y W O N G: (off mike) I'm going to roll my remarks over into the Bill -- for 2490. So I am going to decline this time.

SENATOR SMITH: Okay. Actually, that may not be a smart move; but whatever you want to do.

So how about John Weber and Tim Dillingham, two in opposition.

Come on up, guys.

J O H N W E B E R: Right. It's this one; great. (referring to PA microphone)

Thank you, Mr. Chairman. And I got here first, so I'm going to speak first. (laughter)

Thank you, Mr. Chairman, members of the Senate and the Assembly. We get equal time that Margot got, right? We get the same amount of time?

SENATOR SMITH: Well--

MR. WEBER: I'm teasing.

SENATOR SMITH: --we'll see what you need; go ahead.

MR. WEBER: All right.

I'm here to question what we're getting for that money -- the \$25 million or, if it passes, the \$50 million.

I'm from Monmouth County, and Monmouth County got a beach fill project in the 1990s; hundreds of millions of dollars. We got big, wide, flat beaches that didn't really provide a lot of protection in Hurricane Sandy. I don't need to tell you what happened to towns like Belmar, and Asbury Park, and not to mention Sea Bright, Monmouth Beach -- these were all replenished beaches. No protective dunes; big, wide, flat beaches. I

have a real problem with what we're getting for our money. There's no secret that the 22-foot-high dunes of Long Beach Island -- they provided some protection. I still don't know why we couldn't get those in Monmouth County.

And worse yet, as was testified to before, the Federal government came back and they replaced the big, wide, flat beaches that didn't provide us a lot of protection. So I'm really questioning what we're getting for our money. And if the State does have a share in this, I think the State should be asking these questions and seeing what we're getting for our money, because I don't think that we're getting the protection that we should be getting.

I feel like we should be looking at these beach replenishment projects as something that buys us some time. And, in that time, we can use that time to create a real plan to do coastal realignment and really think of what's going to protect us. And I am talking about pulling back from the coast here. You know, we need to move critical infrastructures. We're relying far too heavily on beach fill; it's far too expensive. And again, we could be getting more for our money.

I have the good fortune of helping the Surfrider Foundation chapters in Long Island as well. And the mother of all Army Corps reports just came out; it's called the *FIMP*, the *Fire Island to Montauk Point*. They literally started working on this in the 1960s; and I'm not kidding about that. And lo and behold, parts of the FIMP, parts of the giant plan in Long Island include relocating housing; raising roads; raising people's houses. So we like to think of the Army Corps as like a one-trick pony, and all they do is put sand on the beach. But they're finally starting to see the light. And

in the biggest project that they're undertaking on the East Coast, as far as I can tell, they're doing some other things. If we have skin in the game, I feel like the State should be asking for something different, not just beach replenishment. That just washes away.

I also want to caution -- some of these beach replenishment projects are causing access problems; we'll talk about this later. But we know the town of Deal -- they got their sand; they got \$40 million worth of free sand, and they decided to pass an ordinance to restrict parking to residents only right near all that sand. So it is really problematic for the surfing community, for anglers, and people -- we're hearing about it. All's well that ends well -- they didn't end up passing that. But it has created a problem. And so we have towns getting this money and not meeting the public access obligations.

SENATOR SMITH: Thank you.

Tim, American Littoral Society.

T I M D I L L I N G H A M: Good morning, Mr. Chairman and members of the Committee. Thanks very much for the opportunity to testify.

My remarks are similar to John's, in the sense that, as we think about doubling this Fund, it's a very expensive, ephemeral, and, in many instances, a short-term fix to the vulnerability of housing on the edge of the shore. We should be thinking about the context of how we carry that program out.

The Shore Protection Master Plan hasn't been updated since 1986, I believe. So we haven't gone back and taken a comprehensive look at how we manage those dynamic processes, that were mentioned earlier,

along the shoreline towards these goals of protecting our communities and providing a recreational resource. Some of the work that I've been doing lately on the Delaware Bay -- reestablishing habitat. We particularly have not taken into account the impacts of sea level rise and climate change, and that needs to be factored in there.

I think John's point is well taken -- that we need to better put public money into restoring these beaches. It hasn't been effective; the money hasn't been used -- it's been directed mainly to the actual nourishment projects themselves.

We haven't used it as an opportunity to assess and acquire areas that we know are going to continue to be vulnerable. And so we're getting ourselves into a long-term, very expensive cycle of putting people back into harm's way in many instances. And this is an opportunity -- before we double this Fund -- that we ought to ask those questions.

And lastly, there's increasing concern about the impacts of the nourishment projects on offshore fishery areas and offshore fisheries habitats. The Corps of Engineers in the Manasquan and Barnegat reach part of the project have started to look at an area that the State of New Jersey has identified as a prime fishing area, both for its habitat qualities and for the use of it by the angling community. Those areas, because of the volumes of sand that are needed, are becoming more and more tempting, I guess, to move forward. And the mechanisms that are in place to protect them are not strong enough or not adequate enough.

So as we go into this much-increased program, with all the money that's coming into it -- both post-Sandy money and the future WRDA appropriations that were discussed -- there's a much-larger planning

contest that needs to be put in place before we -- so we can spend that money wisely towards multiple purposes. And this Bill obviously doesn't do that.

SENATOR SMITH: Thank you; thank you for your comments.

MR. DILLINGHAM: Okay, thank you.

ASSEMBLYMAN McKEON: Tom Herrington of Stevens Institute, in favor.

Welcome, Mr. Herrington.

T H O M A S O. H E R R I N G T O N, Ph.D.: Thank you, Chairman Smith, Chairman McKeon, Committee members. Thank you for the opportunity to testify today.

SENATOR SMITH: You want to get in front of that black microphone. (Referring to PA microphone)

DR. HERRINGTON: This one?

SENATOR SMITH: Yes.

DR. HERRINGTON: Sorry.

SENATOR SMITH: Move it over so you can be heard.

DR. HERRINGTON: Thank you.

I'd like to testify today on some of what you did get for the \$25 million per year you've been placing into the Fund since, I think, Margot said, 1998.

And when we take a look at what the Fund was able to achieve since its founding--

SENATOR SMITH: Move that microphone a little closer.

DR. HERRINGTON: Oh, sorry.

So if we take a look at what we've been able to achieve over the 24 years, we have been able to protect almost 50 percent of our developed coastline with Federal Shore Protection projects. It needs a very large scale, as we've heard -- large scale projects to build beaches wider, dunes higher, right? And we know unequivocally that when we looked at the damage from Sandy, the 50 percent of the coast that was not protected by these types of projects suffered severe damage. And we only have to look across the Manasquan Inlet to see the damage that occurred in northern Ocean County to communities like Bay Head, Mantoloking, Brick, and Toms River and compare that to Sea Girt; compare that to Manasquan. It's night and day.

And so these projects do work. And the research our group is conducting at Stevens, with support from the Fund, has shown this; along with the Army Corps of Engineers, and FEMA, and other researchers around the world.

So we do know these projects work. And if we invest in these projects, we will have proactive, preventive storm damage prevention.

So the Fund is critical to maintaining this. And as we look forward, and as Margot and Bob Mainberger just testified, we're going to see increasing costs. And those costs are coming from two areas: one, we have more projects; we have to match more Federal funds. And the funding ratios are shifting. We're moving from a 65 percent/35 percent match to a 50/50 match. So that, just by its nature, is going to cost us more money.

And the other thing we've learned is that we just can't protect our oceanfront beaches. We really need to look at the coastal system holistically; we need to be concerned about what's happening in our inlets,

on our Bayshore lines; and we need to understand how to protect them more effectively too. And we've heard some testimony today about what we call *living shorelines* and *natural nature-based features*. These are all elements now that the Army Corps of Engineers is beginning to integrate into their thinking of comprehensive shore protection and storm damage prevention.

And so, a matter of fact, as part of the North Atlantic Coast Comprehensive Study that came out of the Sandy Supplemental Bill, the Corps now is charged to look at ways to protect the back Bayshore lines of New Jersey. And that is great news for New Jersey, because we saw tremendous damage to our Bayshore communities during Sandy. And we really need additional funds now to be able to leverage those Federal dollars again to help enhance and protect our Bayshore communities, just like we're doing on the oceanfront.

So these two very important issues: one, providing comprehensive protection for all of our oceanfront coastal communities -- remember, we're only really protecting 50 percent of them right now -- and bringing that protection into the Bayshore communities are really very important.

And so by increasing the Fund -- maybe doubling it, or whatever it would take -- will allow us to continue to leverage these Federal dollars to maintain a very successful program that has protected many, many communities in New Jersey.

I've submitted some written testimony for your review; but I'd be happy to answer any questions you may have.

SENATOR SMITH: No, but I'd just like you to arm wrestle the gentleman from the Surfrider Foundation. (laughter) You both have two entirely different views of this program.

But anyway, thank you very much for your comments.

DR. HERRINGTON: Sure.

SENATOR SMITH: The last two witnesses, both in opposition-- No, no; I'm sorry. Tom Fote, Jersey Coast Anglers, concerned; and Jeff Tittel, opposed.

Gentlemen, if you could come up.

T O M F O T E: I guess I took the mike away from Jeff.

J E F F T I T T E L: Somebody finally did. (laughter)

SENATOR SMITH: You're the senior rep.

MR. FOTE: It's always interesting when I used to start these conversations, and explain who I am. When I used to go against the Army Corps of Engineers, I used to say, "As a retired Army Corps of Engineer Officer, it's always questioning to me to sit here and basically testify against my branch."

And basically, some of you might remember Senator Gagliano who basically put through this Bill many years ago.

SENATOR SMITH: Yes.

MR. FOTE: Basically, he was the first Executive Director. But another hat he wore was with me on the Atlantic States Marine Fisheries Commission; he was the legislative appointee, and I was the Governor's appointee -- which I still am, after all these years; because he was smart, he retired many years ago.

When I look at beach replenishment -- when I talked to Tom back in 1992, I said, "As long as it doesn't affect fishing, you don't have to handle with me." What's happened in the last couple of years -- it has affected fishing.

The Army Corps of Engineers, as it did when it tried to dump the dredge fill materials off the Raritan Bay with contaminated dioxin -- Agent Orange, which they sprayed on me with in Vietnam -- which they were putting in the mud dump, because that was the most cost-effective place for them to put it -- when they started looking for sand, they usually went to inshore beaches, took the sand that had washed off the beach, and put it back on the beach.

What they're now doing is attacking the old barrier islands; those lumps we call the *famous fishing lumps* off New Jersey. As a matter of fact, I have maps that go back to 1981 by the State that designated them a National Marine Fishery Service -- that designated them as purely fishing areas -- whether it was the Sea Isle City lump; whether it was the Harvey Cedars lump; and now the Manasquan Ridge.

I got caught sleeping; usually I don't do that. I got caught sleeping, and the Sea Isle City lump and the Harvey Cedars lump are gone.

You know, fishermen have fished there since commercial fishing started in the United States back in the 1600s -- and recreational -- for all those years. There is no more area to fish over there; it's gone; the lumps are gone. And as anybody who fishes knows that without lumps, without structure, the fish don't congregate and we don't have fishing opportunities.

We're not against beach replenishment; but we're basically against destroying the fishing for the generations to come. I mean, Jimmy

Lovgren, whose son was -- actually, he went down with that boat the other day; Jimmy and I went to see Assemblyman Wolfe yesterday because he couldn't make the hearing today because of family things. And we talked about it, and we talked about the importance for the commercial fisherman and the recreational fishing. So Jimmy asked me to speak, also, for the Garden State Seafood Association and talk about that we can't destroy the lumps. You need to find alternate methods of getting that sand; not destroying the commercial and the recreational fishing community. There's enough pressure on us, with global warming; I mean, we've lost the surf clam fishery inshore.

Also those lumps provided areas where, as fishermen know, sand eels -- one of the more important forage species for the blue fish, striped bass, wheat fish, anything that eats -- basically reproduce on those lumps. When those lumps are gone, they don't reproduce there, so we don't get those huge schools of sand eels that we used to get.

We're not against beach replenishment, as such; we think, as we said many years ago, you put it on the beach, it's going to wash away, so it's-- Our jetties will be back, exposed in five years anyway, and you just spent a lot of money on it. And you want to keep doing that, it's up to you. I mean, all you had to do is look at Harvey Cedars -- not Harvey Cedars.

After Sandy, I was told to go look at Island Beach State Park and see how long before we could restore it. So I actually went over the bridge four days after the storm when most people couldn't get over. And I wanted to see what happened to the (Indiscernible) bungalow colony that's sitting there right before you go -- at the entrance to the island, because they are all little one-story bungalows. I figured they would be totally gone.

They weren't touched. Why? Because (Indiscernible) owned the property, and not the people who lived in the bungalows. He decided 20 or 30 years ago that he was going to protect his property and build 20-foot-wide dunes. And they didn't get a drop of water. It's in the areas that we didn't build the dunes, like Ortley Beach and Mantoloking, that they washed through. So that's a good lesson.

I'm going to say one more thing, because you asked a question before -- that if we had a magic wand, what you would do about Barnegat Bay. I think I'm a little bit qualified, since I served on the Barnegat Bay Management Plan and the Barnegat Bay Estuary Program, since it started in 1982, to know; so that gives me a little time and place. I was also on the Policy Committee for 18 years.

We talked about stormwater; we talked about all the effects of that -- how the water doesn't go back into the groundwater. The problem we have all over the state is what we do with our sewer systems. We pump the aquifers dry and basically put them out into the rivers. Now, Barnegat Bay was done when we built those sewer plants along the coast. We directed pipes to go from directly under the Bay out to the ocean. So putting those pollution (indiscernible) disrupters into the ocean, but not into the Bay-- Which is a good thing. But we're also pumping the aquifer dry. That's why in drought years you have the water level dropping. You can't pump 100 billion gallons a year out directly to the ocean, out of the aquifer, without replacing it -- and into the Delaware River, into the Raritan Bay, and things like that. And it's not just the shore. That happens up in the mountains, because they have, actually, shallower aquifers than us, and that money goes into Raritan Bay and other areas.

So if you ask me what I could do -- I would basically repair every sewer system in the United States to basically make that a Tertiary I, which means we can drink that water and put it back into the system, put it back into the ground; and we would have more fish and everything else that's basically there.

And thank you for your time and patience; and thank you for bringing this to the Shore. I guess you didn't get the memo though; it's supposed to be shorts, no ties--

SENATOR BATEMAN: Yes. (laughter)

SENATOR SMITH: No ties. (laughter)

MR. TITTEL: Sandals.

MR. FOTE: Sandals.

MR. TITTEL: Well, you have sneakers; that's close.

MR. FOTE: Close.

SENATOR SMITH: Tom, thank you very much.

ASSEMBLYMAN McKEON: Thank you, Tom.

MR. TITTEL: Thank you.

I just want to start out and say that I don't know when the last time, if ever, I agreed with the New Jersey Builders Association in testimony in front of a legislative body. But I agree with them; and I also want to go into a couple of other points that I think are important.

What we keep doing in this State, fiscally, is we keep cutting up the same pie into smaller and smaller pieces. You know, we're taking \$20 million out of Clean Energy for Park salaries; we're stealing money out of settlements to plug holes in the budget; we're grabbing money from one pot or another -- and the State's broke. We can't fund the TTF; and then we

came up with the idea to give massive tax cuts to have a bigger hole so that we can fund Transportation. And we're doing it again.

And the problem that we have with this Bill is that we're taking money from vital programs. We strongly support affordable housing; it helps build group homes for handicapped adults. That money helps towns meet their affordable housing obligations. If we start cutting into those funds, then it's going to actually mean more development and more sprawl as well; taking money away from county health programs as well.

And so we keep doing it. We just keep rearranging the deck chairs on the Titanic, and I think what we're doing again is fiscally irresponsible.

And now I want to get into the substance of the Bill, because one of the most glaring omissions in this Bill is we're not dealing with what's actually happening at the coast. There's no real planning; we haven't had a plan in years. We don't even have a coastal plan of any kind. We're not looking to make the shore more resilient. We're not looking to deal with sea level rise or climate change. We've got fish, right now, here in Toms River, living in the storm drains because our bays are getting higher and our land is getting lower. And we're not dealing with any of it. And all we're going to do is pump more sand.

Between 1970 and Hurricane Sandy, the State of New Jersey and the Federal government pumped a billion dollars' worth of sand that went out to sea in one storm. So think about that: it's a perpetual work project. North of the Manasquan Inlet -- we're not even requiring dunes that offer some level of protections. But they're not even doing it. It's just

big, wide, flat beaches that will just go out to sea again. And so, it's sort of madness.

And at the same time -- I don't call them lumps; we call them *shallows* and *fisheries*. But we're turning those places off our coast into deserts, destroying the biota, destroying the fisheries at the same time. We're not doing it right or sustainably, and it's a real serious problem -- with how we do beach replenishment, and how we are dealing with our coast. We're putting up sea walls that don't work right down the road from here, that are actually going to cause more erosion quicker.

We really need to come up with a comprehensive plan for the coast, and come up with not only ways to help stabilize the coast and fix the coast, but to have a long-term funding mechanism to do it right. Because it's going to take a lot of money to buy out homes in flood-prone areas; to be able to build a double dune in areas where we need to do a natural fix. And we're not doing it, and that's part of the problem.

And then the biggest problem we have -- we're not tying this into public access. Army Corps -- one access point every mile. You know, it's our money; and again, that's why we're here for the other Bill. But it's our money, and there are towns along the coast that want our money, but don't want the people who pay for those beaches to be able to have access. And there's no requirement in this for that as well.

So we see this bad on an environmental level, on a climate level, on a fiscal level, and on a Public Trust Doctrine level.

So we hope-- Go back to the board, hold the Bill, and let's work on a real plan for the coast that actually deals with sea level rise, climate change, and resiliency. And do it right, and come up with a long-

term funding mechanism. Because the \$40 billion-a-year tourism industry and all the properties do deserve help; but we have to do it right.

Thank you.

SENATOR SMITH: We appreciate the comments.

From Mr. Tittel's and Mr. Fote's comments, I think it would be appropriate to have a resolution, Chairman. Not today; but maybe one drafted, where we forward our concerns to the Army Corps of Engineers concerning the source of the sand for beach replenishment. I think the point that Tom is making is that they frequently use the sand that is part of the fisheries, and that creates a major problem. Got it; message received. We're going to get on record saying that they should use other sand, and that they should try to have their activities be protective of the fisheries.

That being said, this Bill is going to have a long road to hoe; go through Appropriations; we're asking for a doubling of the allocation. We're going to have to fight for your life to-- And you're going to get the same opposition in those locations. It's going to be a policy question for the Legislature and the Governor. The Governor has to either sign it, or veto it, or conditionally veto it.

And we've had both sides of this: We've had some representatives from -- for example, the gentleman from Stevens who said this is the greatest thing since Swiss cheese; and we've had Surfrider and Sierra saying it's a terrible thing. We've been doing it for years; tourism is a huge industry in this state. If beach replenishment was done properly -- not hurting fisheries, as Tom said -- it would be-- They're for beach replenishment, but they are concerned about where the sand comes from.

Any other questions from the Senate members?

SENATOR BATEMAN: Mr. Chairman, if I may.

SENATOR SMITH: Yes, sir.

SENATOR BATEMAN: It's my understanding that we're doubling the money, but there are no specifics on how that money is going to be spent at this point. That has to go through the process.

SENATOR SMITH: Well, it would be for the Shore Protection Fund; and these are the--

SENATOR BATEMAN: Right. But specifically, we don't know what projects, or whether dunes are involved--

SENATOR SMITH: No; absolutely not.

SENATOR BATEMAN: Okay.

SENATOR SMITH: Absolutely not.

SENATOR BATEMAN: That's going to probably come out during the process, I would suspect.

SENATOR SMITH: I would expect.

SENATOR BATEMAN: Okay.

SENATOR SMITH: Yes.

Senator Thompson.

SENATOR THOMPSON: Well, in the same vein, again, the majority of the testimony in opposition to this was not necessarily testimony in opposition to increasing the funding. It was about how the money is spent and what is being done.

And you mentioned about the sand; but then there was other testimony about, are these actually the best ways to handle the problems. So maybe, at some point in the future, we spend more time looking at that

because, again, as my colleague said, this Bill is simply about should there be more money available for shore protection.

SENATOR SMITH: Right.

SENATOR THOMPSON: Exactly how it is going to be expended; that will be determined elsewhere at another time. But maybe that is something we should revisit at some point in the future.

SENATOR SMITH: Great.

SENATOR THOMPSON: I don't think anybody-- Now, of course, there was the subject that, okay, this will decrease money for affordable housing, potentially; but again, I don't think anybody felt that you don't need more money for shore protection.

SENATOR SMITH: Right. And by the way, I'd like to-- As I read how the money is being spent, I didn't see any money being spent for affordable housing.

SENATOR BATEMAN: No.

SENATOR SMITH: Was there? No; the money is going into the General Fund.

SENATOR BATEMAN: The Black Hole.

SENATOR SMITH: With the exception of those--

SENATOR BATEMAN: The Black Hole.

SENATOR SMITH: Right. (laughter)

So that being said, on the Senate side--

SENATOR BATEMAN: I'll make a motion, Mr. Chairman.

SENATOR SMITH: Moved by Senator Bateman.

SENATOR GREENSTEIN: Second.

SENATOR SMITH: Seconded by Senator Greenstein.

Let's take a roll call on the Senate side.

MS. HOROWITZ: On Senate Bill 311, Senator Thompson.

SENATOR THOMPSON: Yes.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Yes.

MS. HOROWITZ: Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes. And the Bill is released from the Senate Committee.

Chairman.

ASSEMBLYMAN McKEON: Yes; I'll have my members speak as they cast their vote. So I will entertain a motion to release.

ASSEMBLYMAN EUSTACE: So moved.

ASSEMBLYMAN McKEON: Moved.

ASSEMBLYMAN KARABINCHAK: Second.

ASSEMBLYMAN McKEON: Moved and seconded.

Roll call.

MR. PETERSON: (off mike) On the vote -- on the motion to release Assembly Bill 2954, Assemblyman Rumana.

ASSEMBLYMAN RUMANA: While I appreciate the need for increasing the funding, I'm going to abstain because I'm not set on the fact that this is the right funding source.

MR. PETERSON: Assemblyman Wisniewski.

ASSEMBLYMAN WISNIEWSKI: I'm going to vote "yes," but I do think we have to be careful as we move forward, because we continue

to carve up fund, and not necessarily have a vision of where we're going to be down the road with how much money we actually need for programs.

MR. PETERSON: Assemblyman Karabinchak.

ASSEMBLYMAN KARABINCHAK: Yes.

MR. PETERSON: Assemblyman Eustace.

ASSEMBLYMAN EUSTACE: I'm looking forward to seeing a resolution on how we, indeed, do spend the money; and I cast a vote of "yes."

MR. PETERSON: And Vice Chairman McKeon.

ASSEMBLYMAN McKEON: Yes; thank you.

Just very briefly -- I appreciate everybody's thoughtful comments. And Tom and Jeff -- certainly I'll join with Senator Smith in moving towards a resolution to deal with what you had suggested -- in disrupting the fishing patterns. Although Senator Smith whispered to me, "You still can't catch a fish, regardless of what it is." (laughter)

Just the thought is -- in the beginning of the first part of the testimony when we had Dr. Hales, we talked about how essential and how important it is to do the kinds of things to improve the ecology of the Bay. It costs money. And understanding that there are a lot of things that cost money; and John's thoughtful comments that we have to take into account, we have to kind of put -- we have to walk the walk beyond just talking the talk.

So with that, I vote "yes," and look forward to the process through Approps and beyond.

SENATOR SMITH: Chairman, if I might, our last item of business is the beach access Bill; and this requires a little background.

And first of all, the Bill on your side has to be sent to Committee, I think, right?

ASSEMBLYMAN McKEON: Yes; we've not--

SENATOR SMITH: And by the way, we're in the same boat. It's introduced; but we didn't have a quorum on August 8, so it's not officially in our Committee. So we're not voting to release anything today, but we are going to flesh out any issues.

Background: In December of last year, we had the Appellate Division striking down the DEP's 2012 Public Access Rules in *Hackensack Riverkeeper Inc. and New York/New Jersey Baykeeper v. the New Jersey Department of Environmental Protection*, which I think got everybody in a whole bunch of communities very much engaged into the beach access issue. And as a result of that, in January of 2016, we passed legislation that was signed into law giving the DEP the authority to require onsite and offsite public access and a permit. The Appellate Division, in subsequent legislation widely debated among stakeholders, as part of that process we promised the stakeholders-- We said, "We can't deal with the bigger issues of beach access;" but we promised we would set up a process where we start to deal with some of those issues.

Many stakeholders were not happy with the rules adopted for beach access. But everyone agreed, in that room -- and we had a room just like this, filled wall-to-wall with people -- that there needed to be a cop; there needed to be somebody who was in charge of shore programs; and that the DEP's authority should be -- to do so would be put into law so that CAFRA and all the other statutes that regulate the Shore could be enforced.

So January 2016 -- emergency meetings; passed the Bill; Governor signed it.

So the first chance we got -- the first meeting of the Environment Committee we set up a process and we invited anybody who considered themselves to be interested in the issue to come forward and participate in a citizen task force. We had 72 different groups; 72 different groups and people participate in that task force. And they were asked to do two things: First, give us a consensus report -- what are the things that all of the stakeholders can agree on? And then give us a separate report on all the issues, the problems, the things that we can't agree on.

So as a result of that process-- And let me say to you that we had some terrific work by Sara Bluhm from the New Jersey Business and Industry, she was a Co-Chair; Tim Dillingham of the American Littoral Society, also a Co-Chair; Mike Egerton, New Jersey Chamber of Commerce, also a Co-Chair; and Debbie Mans, from the New York/New Jersey Baykeeper. The four of them were Co-Chairs; they were responsible to hold meetings and give everybody their opportunity to have input. They had numerous stakeholder meetings. In fact, the four of them showed me the scars on their bodies, periodically, from all of those meetings. (laughter)

But they came back to us with a 29-page report. And in 29 pages, how many things do you think the stakeholders agreed on? Four. Everything else was controversial. By the way, the four they agreed on, we're about to hear they no longer agree on. (laughter)

But let me tell you what the four items were. First of all, and really the biggest thing that this very -- this consensus bill does, is to put the Public Trust Doctrine into the statutes of the State of New Jersey. The

Public Trust Doctrine is a common law principle; it goes back a thousand years to English Common Law. And it says the King, the Sovereign, the State of New Jersey owns, in trust for the people of the State of New Jersey, a certain portion of the shore-- (confers with aide) High mean tidewater? What's the actual-- It's to the mean high tide mark?

MS. HOROWITZ: The mean high water--

SENATOR SMITH: Mean high water mark.

SENATOR BATEMAN: High water--

SENATOR SMITH: That's the Sovereign's land, in trust for the nine million people in New Jersey.

SENATOR BATEMAN: Since the King's time.

SENATOR SMITH: And the whole issue with beach access is how do you -- how does New Jersey get our citizens to have free use of the King's land -- of their land?

So the first purpose is to put the Public Trust Doctrine in statute. It is not in statute; it is not in New Jersey State statute now. And that's a shame on us. Everybody agreed that should be done.

Second thing that was done: Everybody agreed that there are some facilities wherein beach access should not be permitted. For example, Earle Naval (*sic*) Station, all right? They have a dock that goes out into the Atlantic Ocean. You don't want people walking through a military facility. And there may be other national security facilities where, as a matter of policy, it would not be smart to have beach access.

So in the Bill it says that the Homeland Security Department in State government would name those facilities so to be clear that they are not responsible for beach access.

The third thing that it says -- and everybody, we thought, could agree on -- was that we have all these Shore communities, and in New Jersey the law that regulates land use is the Municipal Land Use Law, 40:55D. That requires every municipality, every 10 years, to update its Master Plan. So the third thing that's a consensus recommendation is that those Shore communities, when they do their 10-year update, should have a Master Plan element that deals with beach access. They should plan for it. Where should it be, what should be involved, do you need restrooms, do you need parking lots, where should the access be, how do people get to it, etc. They should plan for it. And by the way, that will be a tool -- both for the town and the DEP -- to ultimately figure that out for that specific town.

And then finally -- and this was never in the beach access rules -- the fourth thing that people could agree on is that there may be reasons that, for the protection of the environment, you don't want to allow beach access. For example, you might have a place along the Shore that has threatened and endangered species; and you really don't want people walking through that.

So those are the four basic agreed-upon-- I'll show you the report; I'll show you the locations in the report. So the 79 people, or 72 people?

The 72 groups walked out, and put that in a report, and they sent it to us. That's all the Bill has in it -- this stuff they agreed on. And now, members of the 72 groups are saying, "No, we never agreed on that," or, "You should do more."

The first Bill that we're doing, and what we promised the people who participated in this -- there are two Bills. The first Bill is what

is absolutely consensus; and the second Bill we'll have all the controversial down-and-dirty stuff. I'm hoping we can get a consensus Bill passed. The controversial down-and-dirty stuff Bill -- I don't think we can get it passed in this term of the Legislature. But I do think we can vet it, and find out what the issues are, and get it ready to be passed.

So some people are going to get up and say, "This is a terrible Bill because you didn't deal with--" We didn't deal with it, because it wasn't a consensus issue. Those were the four things-- And we went through this with a magnifying glass to try and find out what people agreed to. They were the only four things we could find that people agreed upon.

So with that being said -- Chairman, with deference to you -- the DEP has come down to say, "This is the worst Bill ever produced." And I promised Assistant Commissioner--

RAYMOND E. CANTOR, Esq.: (off mike) Chief Advisor.

SENATOR SMITH: Chief Advisor at the DEP to come down and vilify the Bill in the first 10 minutes of testimony. (laughter)

So Ray, come on up and tell us what's wrong with the Bill, and tell us all the good things the DEP knows on beach access.

ASSEMBLYMAN McKEON: Chairman, when I gave some remarks a little bit earlier -- about Secretary Fisher's comment--

SENATOR SMITH: Right.

ASSEMBLYMAN McKEON: Ray sneezed; it was almost like an *Animal House* move, when he was going like-- (laughter)

MR. CANTOR: I don't know what you saw, Assemblyman, but it was not that. (laughter)

SENATOR SMITH: Go, Ray.

MR. CANTOR: Thank you, Mr. Chairman -- Chairmen -- and members of the Committees. My name is Ray Cantor; I'm Chief Advisor to Commissioner Bob Martin, Department of Environmental Protection.

With me today is Assistant Commissioner Ginger Kopkash; she is Assistant Commissioner for the Land Use Management Program. Ginger's programs include all the Land Use permitting and our coastal planning.

First of all, I want to thank you, Mr. Chairman, for your sponsorship and your leadership in your actions last January to put back into the statutes, to clarify that the Department does have the powers under our coastal -- under CAFRA, under waterfront development to require public access as part of those permits; and by doing so, restoring our regulations; or, at least, in large part. That legislation did not restore all the things that we had in our regulations, especially in some of the parts dealing with Municipal Public Access Plans. While we still believe we have the authority to work with towns to develop those plans; while we believe we have the authority to approve those plans, and use them as part of our regulatory program, the court very specifically said we did not have the authority to require or to, in any sense, promote having separate funds at the municipal level, or to require municipalities to take certain action.

So in order to, again, continue our regulations by making sure we're in accordance with that court decision, we are now proposing new regulations to at least modify our regulations; to take out some of the provisions that your legislation did not address, but the court said we did not have the authority. Those regulations are now on our website; and I believe will be in the first *New Jersey Register* in September.

We're not here, by the way, to oppose this legislation or to say, one way or the other, if we support it or oppose it. We're here to talk about what we think that legislation does do. We're also here today to talk about the Department's Coastal Public Access Program and all the good things we think are already in existence on the ground, and all the things we're going to be doing, moving forward. So I just want to put that in context.

I also think it's very important for this Committee to understand -- we're not just talking about the beaches here; not just talking about the 127 miles of shoreline along the Atlantic Ocean. We're talking about all tidal waters in the state. These are oceans, bays, rivers, and streams. There are 231 municipalities that have a tidal waterway in their municipality. We're talking of a shoreline, combined, of over 4,000 miles. So again, this is a very expansive program that we're talking about; public access and the public trust. And we have to keep that in mind because, honestly, inland streams are different than oceanfront municipalities. Again, we must be very wary of the differences in all the things that we are doing.

Again, we think we have a very good program in place. We have excellent public access, especially along our oceanfront. We'll talk a little bit more about that, moving forward. But we do recognize that there are challenges. We have a history of development in this state that, were we to do it over again, we would probably have done things differently. We're talking about decades worth of development; and in some instances, in our urban municipalities, a century's worth of development decisions that have cut the public off from access to the waterfront -- things which we are now working to correct; things that we're now trying to improve.

The Department's strategy is really five-fold in how we're trying to expand public access to all our waterfront and to make it reasonable and meaningful for the public, and to implement the Public Trust Doctrine. One, under our regulations, we require public access be provided for any new development; for any change of a use of a development; and for existing development that expands beyond its boundaries. You'll hear more talk later on about what those triggers should be; we believe those are the appropriate triggers. We're working with how to do Municipal Public Access Plans, and Assistant Commissioner Kopkash will talk more about that.

We're in the process of, right now, providing grants to municipalities, the nonprofits, and others to enhance access, especially in our urban waterfront area. We are, again, working on our Shore Protection Programs, as it was just talked about in the last Bill you did; and that having a lot of benefit, as well, in enhancing public access to our oceanfront. And we're trying to educate the public to enhance their experience so they understand where you can access the waterfront, and what type of amenities and services may be there when you do that.

I will now turn it over to Assistant Commissioner Kopkash, who will expand on some of those things.

SENATOR SMITH: Well, just before you do. Does DEP want any changes to the Bill?

MR. CANTOR: Again, once I go through how we read the Bill, I think it will be evident. I think, from our perspective, we think our regulations work. Again, we--

SENATOR SMITH: Nobody's challenging your regulations. We're just establishing the Public Trust Doctrine and the statute.

MR. CANTOR: Well, I understand that. And philosophically, we have no problem-- We've been implementing the Public Trust Doctrine in our regulations for the last 30 years.

SENATOR SMITH: Ray, Ray, Ray. But do you want any changes to the Bill? Do you, the DEP, want any changes to the Bill?

MR. CANTOR: I would answer that, Senator, by saying there are -- the way we read the Bill, it doesn't comport with our regulations, and we think it raises significant issues.

SENATOR SMITH: How does it not comport?

MR. CANTOR: If you don't mind, I'd rather just go through a couple more things, and then--

SENATOR SMITH: No, no, no, no, no, no, no.

MR. CANTOR: Okay, fine; I'll jump right into it then. Fine.

SENATOR SMITH: Please. (laughter)

MR. CANTOR: Thank you. We brought Ginger down here for nothing, unless she gets to go on and talk about her issues.

There are three ways that this Bill, we believe, significantly changes how our regulatory process works.

SENATOR SMITH: Tell us.

MR. CANTOR: One, it doesn't-- In our reading of the legislation, it doesn't just codify the Public Trust Doctrine; it extensively expands the Doctrine and changes what the Doctrine says.

SENATOR SMITH: How does it do that?

MR. CANTOR: Again, all of Section 1 talks about the Public Trust Doctrine. And again, if you can look at the Public Trust Doctrine, you have to look at the case law -- *Matthew v. Bay Head*, and all the different types of tests you do to determine where public access should be provided. The Public Trust Doctrine does not say that public access needs to be provided over all property, all the time, for all waterways. So it's-- Again, we had a long conversation about that; there are some legal scholars out there behind me, and we can get into a further conversation. But the Public Trust Doctrine does not say that.

I will read one provision in the legislation that is particularly troublesome, and that then will lead to a number of other decisions, going forward.

I'm talking, in particular, Section 1, subsection 8. And we're talking about -- there is a sentence that says, "The DEP shall implement the Public Trust Doctrine." But it says, "In so doing, the Department has the duty to make all tidal waters and their adjacent shorelines available to the public to the greatest extent possible." That, Senator, in our reading of it, is not a codification of the Public Trust Doctrine; it creates a new obligation to provide access to all tidal waters, and all adjacent shorelines, all the time, to the greatest extent possible. Not even practical; but possible. And again, from reading that, and then reading everything else, we think that leads to a number of decisions that we, quite frankly, rejected when we did our regulations in 2012. We believe this is going to require that single family homeowners, who are either building a new house or even putting out a bulkhead in their backyard or a shed in the back, and have to come to us for a permit -- they will now have to provide public access across their areas.

Marinas, again, will be back to providing 24/7 access to their facilities. It would overturn the *Avalon* decision; and require municipalities, when they get funding from the State or any permitting decision, to provide restrooms, and parking, and additional access points, even in areas where it may not make any sense to do that.

Existing businesses, again, that are just continuing their business; who are just expanding their business within their lot -- putting in a bulkhead, etc. -- they will have to pay tens of thousands of dollars each and every time they come to us for a permit to provide additional public access. This was an issue that was argued back in 2012; and we heard the business community at that time. And we thought, yes, if you are going to change the use of that property -- go from industrial to residential; if you're going to expand beyond your property boundaries; if a new development, a new redevelopment coming in -- yes, you should provide public access. But if all you're doing is continuing your existing business within your building lot, we don't believe -- we didn't believe, in our regulations when we adopted them, that you should provide new public access.

Ports and Homeland Security facilities-- We agree, by the way, that they should not provide public access onsite. But this is going to require that they provide public access offsite. We agree with that, by the way, Senator. Again, we just have different triggers as to when it happens.

And 24/7 access will be required, again, we believe, for all our parks, and when we give out Green Acres money. I remember back when we did the 2012 rules, there were a number of environmental conservation groups that used to take Green Acres money. And they said, "If you don't change these regulations, we will no longer accept Green Acres money,

because we cannot allow the public onto our properties, 24/7, as was required in the old rules.”

And again, industrial/commercial properties, where it may not be safe to be -- again, they may not be Homeland Security facilities, but they may be unsafe properties. They may have trucks, forklifts; the geography may not be conducive to having public access there. Our rules say they have to provide offsite, not onsite; there’s no such exclusion in here.

Again, you couple all those factors with the obligation -- the duty to make all tidal waters and their adjacent shorelines available to the public to the greatest extent possible -- we think it will lead to these results. Which is why, in our regulations, we were very specific when you have to provide and when you do not have to provide.

SENATOR SMITH: So Ray, the DEP is not neutral on this Bill.

MR. CANTOR: I’m raising concerns with the Bill.

SENATOR SMITH: I understand. So if you wouldn’t mind, take your concerns and send them to us. And if you have language you would like us to consider, we would be happy to take a look at it. We would like to have, really, a consensus Bill where everybody’s on board.

MR. CANTOR: No, I understand that; I think that can be done. Again, I don’t mean to be flip at all. But if you took the section of our regulations that implement our provisions, I think you will find all the language there to address any concerns we may have.

SENATOR SMITH: So send it to us.

MR. CANTOR: I absolutely will.

SENATOR SMITH: Tell us what it is the DEP wants, in writing, and we'll consider it. I mean, the great news about the legislative process -- it's slow and it's deliberative; unless there's an emergency, like the DEP lost its ability--

MR. CANTOR: And we're still appreciative of that.

SENATOR SMITH: Yes, yes, yes, yes, yes. Well, you can show your appreciation by actually sending us your concerns in writing, and language that you'd like to see. And maybe we can work some of these issues out. We're not -- we really would like it to be a consensus.

MR. CANTOR: We will send you the language that we think we can agree to.

SENATOR SMITH: Okay.

MR. CANTOR: Can we take a few more minutes just to talk about some of the other things we wanted to talk about?

SENATOR SMITH: Sure. Ginger's going to take the good stuff, right?

MR. CANTOR: She'll take some--

SENATOR SMITH: All right. Ginger, the only thing I ask--

MR. CANTOR: I'll do a couple of good things--

SENATOR SMITH: SENATOR SMITH: --five minutes or less, because we have a lot of people who want to testify.

MR. CANTOR: Then I need two; then I need two. But go ahead.

SENATOR SMITH: All right; take three.

Go ahead.

VIRGINIA A. KOPKASH: All right; thank you.

I just wanted to give you a little bit of background of what we've been doing in our Coastal Zone Management Program to increase public access along our shorelines.

So when Sandy hit-- Our rule was passed; then Sandy hit, and we had to do a reset button. We had spent quite a bit of time working with municipalities, so that when the rule was finalized, we could develop the Municipal Public Access Plans with them. But many of those municipalities were hit so hard, they didn't want to spend the time on planning -- public access planning.

So what we decided to do was, we went out to each of those municipalities and started to remap the public access points that, at one time, we were aware of; we photographed those points and collected data about whether it was handicap accessible, whether the location had restrooms, and things like that.

In addition to that, we decided to also set up a grant program where we reached out to municipalities and we provided them grant funding to develop a Municipal Public Access Plan. We also developed templates that they could use, as well as offered GIS assistance with those municipalities. So in that effort, we spent at least \$400,000 -- around \$400,000; we also reached out to and are actively working with at least 40 municipalities on their Municipal Public Access Plans. We, through that effort, hired staff to go out and work with those communities; and we developed an interactive Public Access map. I think many of you are aware of that map; that map has over 3,000 points on it, where you can glean information at that particular point of what amenities are available to you.

We are also working in the northern part of the state. We have over 500 points in the northern part of the state, in urban areas, of public access points and information we're going to add to the interactive map; as well as working along the Delaware Bayshore and the inland tidal areas. Because that's something that's always forgotten about -- is our urban cities along the Delaware Bayshore. So we're working with them to identify those public access points.

As Ray mentioned, we also have additional funding that we are working -- or actually, we've done an RFP on to give out to communities in the northern part of our state.

And maybe -- probably the most profound change that we've made is we've designated a particular person who spends all her days on municipal public access -- development of the plans, development of our website, interacting with the community -- basically, a specialist, a resource within the Department that we really never had before. That individual is here today. She did not want to come forward; she's a little shy. But that was very significant, because it helped us identify the extent of the issues that are out there, and maybe the areas that we need to work on to improve.

For our oceanfront, it doesn't seem to be -- getting from the land to the water does not seem to necessarily be the problem. We have statistics that show that, on average, 98 percent of our coastal oceanfront shoreline is accessible at every half-mile. And it's 96 percent-- Or, no; did I just mix that up?

MR. CANTOR: No, you were--

MS. KOPKASH: Yes, 96 percent is every quarter-mile. So that doesn't necessarily seem to be the bigger issue. It may be the back bay areas, the northern waterfront, probably, we could actively work on. Which is why we focused our grant program in the northern waterfront -- the latest round.

So with that, I'm going to hand it over to Ray.

MR. CANTOR: And I will just conclude-- Again, there was--

SENATOR SMITH: By the way, good job. You did it in three minutes.

MS. KOPKASH: Thank you.

MR. CANTOR: I'll just-- Well, two points: One, Ginger had mentioned the grant program we have out there. We actually have \$100 million that we are going to be -- either out, right now, in RFPs, or will be out by the end of the year; or doing projects to expand access to the public, mainly in our urban municipalities. So again, we're very excited about the on-the-ground, real results that we are going to be getting.

And there was a good deal of conversation -- I think a lot of misinformation, by the way, when you looked at the last Bill -- about what our Shore Protection projects do, as far as access. The Army Corps has requirements that there be access points -- again, as Ginger mentioned -- every half-mile. And if an area is going to get beach replenishment, it does not have to have -- we're requiring more access points.

They also require more parking spaces. They take into account the fact that there are certain geographic or other limitations. So for instance, I know in the Loveladies section, which has come up quite often -- I think it's about a two, two-and-a-half mile area -- they will be going,

basically, from three access points to six, and an additional 20 parking spaces will be created. So these Shore Protection projects do enhance access; they don't take away from access.

And one thing I don't think people quite realize. When we do these projects, we are now getting easements on all the beachfront areas. And those easements guarantee the public's right to access those Sandy areas for the first time. They have the right to nondiscriminatory access to that land. So in the old paradigm, where you could get to the water, but the sand area was off limits -- the sandy area, wherever we do an access project or a beach project, will now have public access allowed to it.

So again, Mr. Chairman, I thank you for the opportunity to be here today. Again, we think we have a good multifaceted, and practical, and effective program. But I will absolutely send you, and to the Committee, the language that we think is appropriate.

SENATOR SMITH: Language, yes; please.

Right; and remember the purpose of this Bill is just to establish the first principles. It's not to get into the nitty-gritty of the rules, or the controversial part of who pays for it, where does the money come from. That's all going to be in the controversial Bill. This is just, hopefully, to get the Public Trust Doctrine into law. We don't have it now.

MR. CANTOR: Yes, and philosophically we agree with you, Mr. Chairman. We just think this Bill has some language that could be changed.

SENATOR SMITH: You think we're overreaching; you need some constraints. Got it. You're going to get us language.

MR. CANTOR: Yes.

SENATOR SMITH: Okay.

MR. CANTOR: Thank you.

SENATOR SMITH: So let me give everybody the good news. Most of the people who are here -- an awful lot of the people who are here are all on the same issue. And it all comes down to marinas, pretty much -- or yacht works, or boat basins, or whatever.

So let me read these into the record. Jim Cerruti, Fair Haven Yacht Works, opposed, no need to testify, requests amendment; Ed Harrison III, Baywood Marina, opposed, no need to testify, requests the amendment; Don Ditzel, Comstock Marina, opposed, no need to testify, requests amendment; Allison Waldron, Marine Trades Association, opposed, no need to testify, requests amendment; Spencer Hondros, from Spencer's Bayside Marina, opposed, no need to testify, requests amendment; Tom Leaming, MTA/New Jersey, Leaming's Marina, opposed, no need to testify, requests amendment.

Then, in a different category: Doug O'Malley, Environment New Jersey, in favor, no need to testify; Steve Westberg, Westberg and Sons, opposed, no need to testify; Gil Hawkins, Hudson River Fishermen's Association, in favor, no need to testify; Captain Bill Sheehan, from the Hackensack Riverkeeper, in favor, no need to testify; and Cindy Smith, who didn't check either "in favor" or "opposed," but she did check "no need to testify."

So apparently the marina thing has everybody crazy. Send in language; we'll take a look at it. We didn't say a thing -- I don't think we said a thing in this Bill about marinas. But I got a letter from, I think, the Marine Trades Association saying, "We think there's ambiguity." So let's

talk about that. We're not releasing a Bill today; we have plenty of time to talk.

Now, there are some people -- if they're on the marina thing, maybe just one person could come up and tell us what your issue is. But before we do that--

So we had two of the Co-Chairs--

ASSEMBLYMAN McKEON: Two of the fabulous Co-Chairs--

SENATOR SMITH: Right.

ASSEMBLYMAN McKEON: --of the Committee -- Mike Egenton of the State Chamber, and Sara Bluhm of BIA. And as the two of you were Chairs, we'll give you the latitude to take as much time as you need, within reason. But as it relates to the remainder of the witnesses, we're going to try to deal with the three-minute rule, okay?

M I C H A E L A. E G E N T O N: Oh, no; we have places to be. So we'll plan the plan, (laughter) through the Chair.

SENATOR SMITH: Go right ahead.

SENATOR BATEMAN: You might be losing your Committee, Mr. Chair. (laughter)

MR. EGENTON: First, Chairmen, Michael Egenton, Executive Vice President of the New Jersey State Chamber of Commerce; my colleague, Sara Bluhm, with NJBIA.

I want to give special recognition to the time, effort, and the work that both Sara and our other two colleagues -- Tim Dillingham and Debbie Mans -- spent in working with you, Chairman, and the Committee on this issue.

SENATOR SMITH: Move the microphone a little closer to you. (referring to PA microphone)

MR. EGENTON: Okay.

So Sara and I, in our discussions, felt that there's-- Obviously, you'll hear from other folks -- you mentioned the marina people and others who will-- And we say the same thing: If you have certain particulars, you want to tighten up the language, we welcome that. If you want to forward it to us, we'll give it to you, and OLS, and the like.

One thing-- When we started this several months ago, Chairman, you know that I had made a statement, and you had nodded, that in our world -- the business community; now, putting our Chamber hat and BIA hat on -- that there are cases where access to critical infrastructure may be feasible, but obviously not appropriate. I think the analogy I always used was -- you have the Bayway Refinery; people have to recognize you're not going to go through that facility to get to the Arthur Kill.

ASSEMBLYMAN McKEON: True.

MR. EGENTON: There has to be logic, and reason, and practicality. So we kind of kept that throughout as we were getting a lot of input and feedback from all the individual stakeholders.

What I would like to do to, sort of, get to the heart of the matter on critical infrastructure, Chairman, several folks-- And please recognize, too, Chairman, that at this time of year there are some people who are on vacation; we're still trying to get feedback. I did have a very prominent legal mind help me craft a very short paragraph to tighten up the section on critical infrastructure. I understand our colleagues in the business community -- Elvin Montero from CCNJ and Scott Ross from the

Petroleum Council -- may have one or two other tweaks to it, but I think we're almost there. I'm going to submit this for the record to you, Chairman, and to OLS, to help us incorporate it into the Bill -- as you're making a good Bill even better.

And I would also ask that, as we go forward, that other stakeholders who have their particulars that they want to modify the Bill, to strengthen it up -- that we give them that opportunity.

SENATOR SMITH: Right. The only admonishment I would give you -- this is the consensus Bill.

MR. EGENTON: Right.

SARA BLUHM: Yes.

MR. EGENTON: And we know that.

SENATOR SMITH: So we're trying to set up basic, first principles about access. And we start to get into too much of the nitty-gritty, it becomes nonconsensus.

MR. EGENTON: We recognize that; and trust me -- that was a role that we played, as our role as Co-Chairs, with over 80 stakeholders.

MS. BLUHM: Can I jump in there too?

MR. EGENTON: Yes. I'll submit this -- the language for the record, and I'll turn the remarks over to Sara.

MS. BLUHM: And Chairman, just along those points, too, so that you're aware. I think also within our transparency of some of the discussions that happened, and also what we put in the report, I can speak specifically to critical infrastructure.

We did spend a lot of time going through, to try to highlight which Federal or State regulations could provide the security exemptions;

and that that was something that the group spent a lot of time on. So I think that we are looking in the language that is in that section, to make sure that it reflects the discussion and the spirit that everyone got to, to get to that being a consent item. And that's part of the reason why we wanted to--

SENATOR SMITH: Well, right now, in the Bill, it says the Office of Homeland Security would put together the list. Is there some fear that the Homeland Security people will not see it the same way as the business community?

MS. BLUHM: I don't think from the business community standpoint; but it did come up within discussions of our working group. And that was part of the reason why we went through to list some of the areas that people were comfortable with of -- if you fall under these regulations, that you would be deemed as *critical infrastructure*.

SENATOR SMITH: Okay. And by the way, that doesn't change -- perhaps, in the controversial Bill -- that if you're expanding your facilities along the shore, even though they're not to be beach accessible, that you wouldn't have some financial responsibility to help with beach access.

MR. EGENTON: That's a non-consent item. On the bill, on the bill--

MS. BLUHM: That's a nonconsent. (laughter)

MR. EGENTON: Sorry; I--

MS. BLUHM: We live to fight another day.

SENATOR SMITH: All right.

MS. BLUHM: But on the consent items--

SENATOR SMITH: We got the point.

MS. BLUHM: Yes.

SENATOR SMITH: You're going to send us some language to look at.

MS. BLUHM: Yes, we are.

MR. EGENTON: Yes, sir. I will make sure that Judy gets it.

MS. BLUHM: And you know, joking around too, Chairman.--

SENATOR SMITH: Let's ask Scott Ross, New Jersey Petroleum Council and Elvin Montero, Chemistry Council of New Jersey, to come forward.

MS. BLUHM: And Chairman, one thing that you did miss, on page 2, which I think was also a consent item--

SENATOR SMITH: What?

MS. BLUHM: That everybody reserves their opinion could change once the actual Bill came out. (laughter)

SENATOR SMITH: Herd of cats. (laughter)

Gentlemen.

ELVIN MONTERO: Good afternoon.

Thank you, Mr. Chairman, Mr. Vice Chairman, members of the Committee. I am Elvin Montero with the Chemistry Council of New Jersey. We represent the chemical, pharmaceutical, and petrochemical industry in the state.

Like the Co-Chairs said before, we thank you for the opportunity. We were a part of that stakeholder process. There was an agreement on which facilities were exempted. And I think it would just benefit this Bill just to have that clarification. So I think we will all benefit

by knowing which facilities are exempt, and not just putting a blanket statement about the Homeland Security -- unclear what list they would use.

Just to give you an example: This is a Bill considering issues about what's on the waterfront. Well, the Maritime Security Act deals with the critical infrastructure security at those facilities that have properties on different waterfronts. So that would be an appropriate regulation or security regulation at the Federal level that we can reference. That, I believe, is in the language that Egenton just gave you. The only thing we would add is to add the DPCC program; and, at the Federal level, the CFATS program, which is the Chemical Facility Antiterrorism Standards.

SENATOR SMITH: Right. For those who are not aware of the acronym, DPCC is the Discharge Prevention Control, and Containment (*sic*).

MR. MONTERO: Prevention Program.

SENATOR SMITH: Those are facilities that have to dike tanks in the event of a spill.

S C O T T R O S S: Thank you. Scott Ross, New Jersey Petroleum Council.

Chairman and members of the Committee, I'll be brief because Mr. Egenton and Sara said everything that our concerns were.

Just tighten up the language in Section 3. Use some examples of facilities, if they fall under certain regulations, and we'll be fine with that.

SENATOR SMITH: Thank you; thank you.

ASSEMBLYMAN McKEON: Thank you both.

MR. ROSS: Thank you.

MR. MONTERO: Thank you.

ASSEMBLYMAN McKEON: Glenn Arthur -- I'm calling you twice: once on behalf of Citizens in Opposition of Beach Restrictive Access, and the other as part of New Jersey Council on Diving Clubs. And Tim Dillingham, if you would join him. Tim, of course, with the American Littoral Society.

Gentlemen.

G L E N N A R T H U R: Thank you, Mr. Chairman, and Senators, and Assemblyman McKeon.

My organization represents the SCUBA, skin, and spearfishing members of the community. And we definitely want to thank Senator Smith and Senator Bateman for introducing this Bill. We are definitely for it.

And just to be brief, we have very little problem with anything that's in it. And I've already submitted a few minor corrections, via e-mail, to you and Ms. Horowitz.

As far as the COBRA group, as we're called, it's a coalition of private citizens who are watching closely in northern Monmouth County what is actually going on with beach access. And I will tell you that although we applaud the DEP's map that they recreated after taking it offline post-Sandy, it has numerous inaccuracies which we are studying and will be presenting to them shortly.

SENATOR SMITH: Good.

MR. ROSS: They've identified locations where there is access, but not public access; they've identified locations where it is actually unsafe because the township has never repaired the street end, other than putting

up a Jersey divider. There are many other locations that are closed right now because of the beach restoration project that's going in.

SENATOR SMITH: Can you move the microphone a little closer to your--

MR. ROSS: All right; thank you.

SENATOR SMITH: No, not that one; the tall black one (referring to the PA microphone) -- close, close to you so everybody can hear you.

MR. ROSS: And as it stands right now, the map itself is inaccurate.

SENATOR SMITH: Okay.

MR. ROSS: So as I said, we're making up a report, and we'll be submitting it to them very shortly.

SENATOR SMITH: Great.

MR. ROSS: One question I do have is -- will there be another hearing on this legislation?

SENATOR SMITH: Absolutely. There will be many, many hearings. It's both houses of the Legislature; this is a hearing without a vote. We're going to take everybody's comments, including DEP's, and see if we can get a consensus Bill. But it will have a process on both sides. We're going to have plenty of hearings.

MR. ROSS: All right; I thank you very much.

SENATOR SMITH: You're welcome.

Mr. Tim.

ASSEMBLYMAN McKEON: Tim.

MR. DILLINGHAM: So Mr. Chairman, members of the Committee, thank you once again for the opportunity to testify.

As I think Mike noted, I was also one of the Co-Chairs of the effort. I want to extend my thanks to the 80-some folks who participated. You know, the BIA, the Chamber of Commerce, the Littoral Society, and the Baykeeper don't often agree on environmental policy issues. And while we continue that fine tradition, within the task force I think we, at least, had a civil conversation. It was a good debate. I hope that the report that we provided to you is, at least, an outline of the major issues facing the challenges of providing public access and protecting the public trust.

I think the sponsors have crafted a Bill which, in the words of a recent editorial, it said, "It embeds in State law the primacy of the Public Trust Doctrine and requires that projects that receive public money, including beach replenishment projects, be consistent with the Public Trust Doctrine." And Senator Smith, I think your point earlier of taking this 1,000-year-old Doctrine -- which ought to be a bedrock of how we allow folks and protect the rights of the public to get to the shore -- and then taking that into statute, is a very important step.

I think the Bill addresses needed policies and direction for the State. It does leave a lot of issues unaddressed. I understand you're going to try to approach those in the scrum of the nonconsensus Bill.

But I do think the Bill reflects the consensus items that we came to, even though they were few and far between. I do think, with all due respect to Mr. Cantor, I think his testimony is overblown. I don't think that the impact of the Bill -- the language of the Bill does what he predicts it might do. I think clearly, though, the language of the Bill is

meant to put the State back on track in protecting the public's rights along the shoreline. There was broad opposition across the communities of people -- the fishermen, the surfers, folks in the communities who have access to beach -- in opposition to the Christie Administration's rules. So clearly, this idea of first principles of how should the State act in going forward and advancing the public trust and public access, I think, is a needed step. And I think you've done a good job in capturing that in that part of the Bill.

You know, we very much strongly support articulating that duty to protect and safeguard the public's rights. I think that the idea of a legislative definition of *public access* is very important; it will help guide the actions of the State. It will respond to questions, that have been raised in the various court cases around public access, as to what the Legislature's intent was, in terms of State aid agreements in the regulatory programs that the DEP has to carry out.

The idea that the State should have a duty to remove impediments to beach access or access to the waterfront, I think is critical. I hope that people who follow, in their testimony, who live closer to these communities will outline some of the problems that they're facing. You know, we still see towns adopting restrictive parking ordinances. If we have a little more time, I'll tell you about my experience with the Mantoloking police force a couple of weeks ago as I tried to walk through and park on one of the streets ends. I stopped to examine a ticket that had been given to a car because of a two-hour parking restriction. And I had a police officer roll up on me and ask me what I was doing as I was looking at the ticket on the car, and taking a picture of it.

You know, the impact of that -- when you walk over the walk-over structures to create private beaches. And that's going on, all up and down the coast. I would challenge the assertion that 98 percent of the coast is available at every quarter-mile. Mr. Arthur just talked about the condition of some of those access parts, where the walk-down stairs are gone; the adjacent homeowners are now taking to parking their cars on the streets in the public parking spaces, instead of in their driveways, so they can exclude people who might use the street ends.

So the problems are real; and I think it needs a more aggressive approach on the part of the State, on the part of the DEP. And I think this Bill empowers them to do that; but I think it also directs them to do that, which I think is very important and appropriate that the Legislature will give them the guidance.

I gave the Committee written testimony; I apologize for not having copies for everybody. I'm on vacation and I don't have a copier at home, so I e-mailed them to the Committee aides and perhaps they can distribute them.

But I think generally --- I think the Bill needs a little work, and we're interested and obviously available to keep working with the Committee. I appreciate Senator Smith and Assemblyman McKeon's openness to have that happen, because I think this is an important effort and initiative that we have to take at this time and get it done.

SENATOR SMITH: Thank you for your comments.

Peggy Wong, from the Hudson River Waterfront Conservancy. Peggy, you're listed as in favor of the Bill. You were kind enough to give us three pages of very specific comments; but I think they're for the

controversial bill. This is just basic principles that we're putting into this first consensus Bill, if we can ever get one consensus.

Did you want to speak, Ms. Wong?

MS. WONG: (off mike) Yes; but also Ron Klempner--

SENATOR SMITH: Come on up; come on up.

Okay, Ron, would you just identify yourself?

R O N A L D A. K L E M P N E R, Esq.: Yes; I'm--

SENATOR SMITH: The tall black microphone-- Or Peggy, whoever wants to go.

MS. WONG: Again, I am Peggy Wong, Board Member of the Hudson River Waterfront Conservancy. And Ron is here because he is going to really interpret some of the comments that are handed out.

SENATOR SMITH: No, he's not.

MS. WONG: No? All right.

SENATOR SMITH: No, no. The reason being -- this is for the controversial one. There are very specific things that you want that, if we put them into the consensus Bill, the consensus bill would never happen. We're going to get to a nonconsensus Bill with very specific points and recommendations, costs, whatever -- that's the next Bill.

So if you want to give us an overview; but don't go into the specifics.

MR. KLEMPNER: Okay.

MS. WONG: All right.

SENATOR SMITH: We're saving that for that bill.

MS. WONG: There's actually -- we had a little bit of a snafu. He has a preamble that did not get onto the handout.

SENATOR SMITH: It's okay. Just give us the overview, all right?

MR. KLEMPNER: The intent of the-- I'm Ron Klempler, from the Hudson River Waterfront Conservancy.

SENATOR SMITH: Right.

MR. KLEMPNER: The intent of the changes that I've listed as the first five changes are what I would hope would be part of the consent Bill -- less controversial. And these changes expand -- not to expand the scope of the legislation, but achieve the limited purpose of building into the concept of perpendicular access to traditional tidal lands the concept of lateral access along the tidal lands.

The second set of -- the last set of comments are getting into something that's beyond the consensus, which we hope to take up in the future bill -- and that is bringing in the concept of recovering fair market value for those who are blocking lateral access by their use of tidal lands, similar to when the State recovers fees when they lease out riparian rights to adjacent landowners in waterway areas.

And that's the sum of my comments.

SENATOR SMITH: Okay, thank you. We appreciate you participating today.

Peggy, anything else for you?

MS. WONG: Yes, I have a few comments.

Basically, it's where we are now with the public access to the waterfront in urban areas, which is to say northern New Jersey and, specifically, the almost 18-and-a-half mile Walkway.

SENATOR SMITH: Right.

MS. WONG: It's not gotten a whole lot of attention in these hearings, nor in the newspaper articles. And in fact, *nj.com* yesterday published a story on this, and referred to the Meadowlands and Hackensack River as *beachfronts*. (laughter) I said, "There's something drastically wrong there if the reporter can't get his facts straight."

Our concern is that-- We have been incorporated as a nonprofit since 1988, so we're about 28 years old. We've been working with the DEP as a partner, in some respects, although we're not officially recognized by them as partners; but we have been working with them on the installation of the Walkway. Because we give walking tours every year in the fall and spring -- there's a total of about six or seven walking tours -- and we do segments of the Walkway; we don't try and do the whole thing at once. And as a result, because of that and our website, we're exposed to the public and we get public complaints about the Walkway. I think we're the primary vehicle for letting the DEP know when there's a problem with the Walkway because of the public input.

SENATOR SMITH: I believe Senator Sacco had a bill four years ago to try and provide some funding for the needed repairs to the Walkway.

MS. WONG: That's-- You are not--

SENATOR SMITH: It came out of our Committee.

MS. WONG: You are very-- I mean--

SENATOR SMITH: I am very old; yes. (laughter)

MS. WONG: Yes, and that's why I originally thought about speaking for the Bill, for 311; but then I said, "No, let me roll it into this."

And yes, Senator Sacco did -- was approached by a number of homeowners, and he was successful in getting the bill.

SENATOR SMITH: He tried his best.

MS. WONG: But our beloved Governor, I understand, did not sign it. It's very upsetting to everyone; and for us -- we're not homeowners, but we oversee the Walkway.

SENATOR SMITH: Right.

MS. WONG: And we've seen the damages that were wrought through Hurricane Sandy, which is the worst of it. There have been other hurricanes that have caused damage, but Hurricane Sandy was the worst.

And I am here to-- One of the reasons why I decided to come here today was to plead for the attention of the Legislature to the plight of the homeowners who are making repairs to the Walkway -- normal repairs, which they are required to do. But when they're hit with something like a Hurricane Sandy-- And particularly, there was one property in Jersey City -- Port Liberté -- their Walkway was totally ripped up. It was almost like it was flung up in the air, which is not an easy thing to do.

SENATOR SMITH: Right.

MS. WONG: Their combined loss -- and this includes landscaping and other things, not just the Walkway -- but their combined loss from Hurricane Sandy, they tell me was \$9 million. I don't know any homeowners' association that can sustain that, even with insurance coverage. Because I think they turned around and assessed some of their property owners.

So what I'm asking for is, at some point, in the future, we're going to come back with this request again. But I wanted to bring it to your attention today, especially since you were looking at Bill 311.

Something has to be done to help the homeowners in northern New Jersey with property on the Walkway, which is mandated by the State. I mean, it wasn't that the homeowner wanted the Walkway; I mean, if they wanted to live there, they had to have the Walkway.

SENATOR SMITH: Right.

MS. WONG: And they have to maintain it. But in a situation like Hurricane Sandy, I think it goes beyond the pale. I don't think the State anticipated that.

There are other things that the State did not anticipate when they prepared the regulations for the Walkway that we're coping with now. Every day we're getting -- not every day, but it's not uncommon for us to have the public come to us and raise complaints about the Walkway. And right now, we are faced with two situations: One, on August 24, we're going to have an inspection of a particular section of the Walkway because a new restaurant owner decided to ban the public from the Walkway, for at least one day that we know of; we're not sure what else he's done. There's another section which is even more egregious. There is a walkway that was newly installed in Edgewater; brand new, very lovely. But there was also an existing pier there. This is an area that was part of the industrial area of Edgewater; it's the old Unilever site. There was an existing pier there. That shows up on the project plans, but does not show up on the easement plans. So therefore--

SENATOR SMITH: You know what? You're making very good points; the only thing is, we really need to focus on this beach access Bill.

MS. WONG: All right. But what I'm saying is--

SENATOR SMITH: I think the plight of the homeowners that you represent is absolutely legitimate; but that's another day and another time. Maybe we'll get Senator Sacco to put the Bill back up again; maybe with the new Administration, we can get funds.

MS. WONG: All right; but let me just say the last thing. On this Edgewater situation, it is-- If you were to see it, it is an absolute poker in the eye if you're a Public Trust Doctrine adherent. This is just a violation. The developer has put up a gate barring the public from that pier.

SENATOR SMITH: Have you notified the DEP of that?

MS. WONG: Excuse me?

SENATOR SMITH: Have you notified the DEP of that?

MS. WONG: Yes, they were there with us when we inspected it.

MR. CANTOR: (off mike) I am not aware of it, but we'll look into it when--

SENATOR SMITH: So you guys talk -- you want to talk to Mr. Cantor and Ms. Kopkash today?

MS. WONG: Yes, I will.

And the last thing I want to tell you is -- you all have a map of the Walkway.

SENATOR SMITH: Yes.

MS. WONG: We have given that map to a representative of the DEP who is working on the public access site. We gave it to her a couple of weeks ago when we met her. And so--

SENATOR SMITH: I think she's here.

MS. WONG: Well, I don't know; Rebecca Foster, or Becky--

SENATOR SMITH: She's right here.

MS. WONG: Becky Foster?

R E B E C C A F O S T E R: (off mike) I'm here; good morning.
(laughter)

MS. WONG: I thought it was you; I'm sorry. I didn't recognize her; sorry.

SENATOR SMITH: Okay.

MS. WONG: So anyway, thank you very much.

SENATOR SMITH: Thank you very much for participating today.

ASSEMBLYMAN McKEON: Thank you.

There are-- I'm going to go through about five names here who I believe are all from the marine industry and marinas, which may have been taken care of by previous discussions. Fred Brueggemann of the Key Harbor Marina Association, requests an amendment, with no need to testify. I'm going to call the other names; if you feel you need to testify, that's fine. But if your issue was what we discussed already, I would ask that you, because of the hour, defer.

Mike Moore of Sportsmen's Marina; Jim Donofrio of RFA/Viking Yacht Company; Melissa Danko, the Executive Director of the

Marine Trades Association of New Jersey; and Edward Kelly of the Maritime Association of the Port of New York/New Jersey.

MELISSA DANKO: (off mike) Yes, I would like to testify.

ASSEMBLYMAN McKEON: And is it Melissa?

MS. DANKO: Yes.

ASSEMBLYMAN McKEON: Okay, Melissa.

Are the other three individuals okay, or do we need you to--

EDWARD J. KELLY: (off mike) I would like to say something.

ASSEMBLYMAN McKEON: It's Ed? Right.

MR. KELLY: Edward Kelly, of the Maritime Association.

ASSEMBLYMAN McKEON: Great.

MS. DANKO: We're here for different issues.

ASSEMBLYMAN McKEON: Terrific. So why don't you both come up; and Jim and Michael -- thank you both for deferring; and we promise that we'll work on that issue relative to marinas and their security.

MS. DANKO: Good afternoon. Actually, we have different issues.

ASSEMBLYMAN McKEON: Good afternoon. And we respect everyone; but Bob is nicer than I am. So I am really going to keep everybody to a three-minute limit, going forward.

MS. DANKO: Sure. I talk very fast, so--

Good afternoon; thank you, Mr. Chairman, members of the Committee.

My name is Melissa Danko; I'm Executive Director of the Marine Trades Association of New Jersey. We're a nonprofit trade

organization representing over 300 recreational marina businesses; and, specifically, I'm here today to comment on the marina issue.

Personally I have been involved in this issue for over a decade. We participated in every task force meeting that was held, most recently, on this issue. At the time there were not any issues whatsoever raised regarding marinas. It actually was a clear consent item. It was issue number 9, marinas, page 21 of the task force report. So marinas were a consent item.

We're here today to respectfully request -- as there are exemptions that are written into this current legislation -- that there be language added to specifically prevent marinas -- or state that marinas do not need to provide additional public access.

And I want to just talk about, quickly, some reasons why we feel this way -- specifically regarding the fact that marinas should not be compared to other methods of waterfront access; they are very unique. They are a gateway to the waterfront. They provide slips, public boat services, ramps, fuel, fishing supplies. Access to the water and access to the services that they offer are provided to the general public. They provide the important boating infrastructure and services that allow people seeking recreation in the water to safely begin and end their excursions.

The very nature of marina business operations ensures that the public has use of public trust waters. It is essential to their livelihood.

However, some of the concerns stem from, they need to be able to reasonably control and manage their properties; care, custody, control, and attendant infrastructure is a responsibility of the marine owner. These

are very small business owners on a small footprint in most places throughout the state.

Issues relating to 24/7 unlimited access or restrictions on expanding facilities have the potential to be disastrous to our industry.

Some of our concerns state that, again, this legislation does not exempt marinas providing additional access; specifically Section 4 states that any application for a change in the existing footprint would require the Department to review additional access. So our concerns, similar to those stated here before from other organizations and the DEP, is that is sort of a gray area for our industry, and that it may open the door for marina permit applications to have to go above and beyond providing additional access that they are not able to do.

The 2012 rules were amended to take into consideration the nature of marinas in the state to the access that they already provide, and the need for a reasonable and realistic permitting process.

So those changes were supported during all the hearings that were held on this issue, years ago. And again, I'll just repeat that marinas were a consent item in the task force report, and there were no issues raised. So we respectfully request that Senate Bill 2490 be amended to specifically request the unique nature of marinas and not further require them to provide access.

ASSEMBLYMAN McKEON: Thank you, Ms. Danko; that's the time. And if that is submitted -- you may not have enough copies with you, but please go ahead.

MS. DANKO: We submitted a letter to Senator Smith; we'd be happy to resubmit our letter.

ASSEMBLYMAN McKEON: Thank you very, very much.

And before Mr. Kelly starts, just so everybody understands. Everybody here travelled at least an hour to get here; but it's not our time. We, I think, lose the room at 1:30, which is why I'm getting nervous and want, at least, to give everybody a little bit of a shot to speak.

Mr. Kelly.

MR. KELLY: I'll be succinct and do my bit to get some good time management into these proceedings.

My name is Edward J. Kelly; I'm the Executive Director of the Maritime Association of the Port of New York and New Jersey. My over-540 paid members include commercial maritime operations, deep sea ship operators, marine terminals, tug and barge operations, marine pilots, etc. We are the commercial people who make this Port run.

Our comment, in this case, is that we feel that there needs to be an amendment of the language in Section 3, somewhat similar to what has been put forward by Mike and Sara before. All of my members are governed by Federal statutes, which are very specific as to what is required, and what is security sensitive infrastructure operations. That would apply to the Maritime Transportation Security Act of 2002 and, as amended, we can quote CFR references for facility security plans, as well as the U.S. Coast Guard regulated navigation area and limited access area -- we can quote that from the CFR as well.

We believe that those should be the defining statutes, as far as what we're governed by, that make us a security-sensitive exempted organization. And we feel this is necessary because these are existing, well-defined statutes with very clear requirements, exemptions, etc. They are

inspected by the U.S. Coast Guard; you can come in or out of force over time. And we do not believe that the Jersey Office of Homeland Security is specific enough in this to grant those exemptions.

Thank you.

ASSEMBLYMAN McKEON: Thank you, sir, very much.

Kieran Pillion, who is a Councilman in Island Heights -- I'm sure you have a unique perspective on things; please.

And Tony Pizzutillo from NAIOP; Tony.

We have three more groups of two after this. So if we keep with our three minutes or so, we should not cause the Mayor to eject us.

K I E R A N E. P I L L I O N Jr.: Thank you, Mr. Chairman, and Senate Chairman Smith. My name is Kieran Pillion Jr.; I live in Island Heights, New Jersey. I am also a member of the Council there; but I'm speaking as an individual.

Earlier Chairman Smith asked what aspect of the Bill would you like to see changed. And after listening to the testimony and thinking about it, I can give him an answer. On page 2, paragraph F, the last two words, "and restrooms." If those two words were taken out, I think the Bill would be an excellent Bill. The concern I have with restrooms is, you're addressing concern -- which I think relates to the availability of restrooms up in the northern communities of Bay Head and Mantoloking -- where, because of the lack of restrooms, people aren't using those beaches.

I've been coming to the Jersey Shore, specifically Ocean County, since 1959; and in the early 1970s I worked for six years at Island Beach State Park as a ranger. I currently live in Island Heights; I have no desire to go up to Bay Head or Mantoloking to go to the beach. Even if

they had parking and restrooms, I consider the beach a less-desirable beach. The drop-off is sharp, the beach is narrow; it's not a place where I want to be.

What I would like to see from the New Jersey Legislature in terms of funding, and from the Executive Branch, in terms of taking some action, is improving the facilities at Island Beach State Park so that the residents of New Jersey and the County of Ocean have a premier beach to go to -- which is an excellent beach. Wide -- naturally wide, it doesn't need beach replenishment. It has sand bars; it has restrooms in two major pavilions; and each has parking lots with a capacity of 800 cars, in addition to parking further south of those bathing beaches. Those two pavilions were constructed as new pavilions, to replace old ones built in the 1950s, when I worked there in the early 1970s.

There has been no expansion of the bathing beach area in Island Beach State Park; and, in fact, when I visited recently, the very pavilions, which were a showcase, are now looking very shabby and could use a whole lot of upgrading. My suggestion would be that any monies that we could get -- either from this prior Bill, S-311, or from the State budget -- should be directed to adding one more bathing beach at Island Beach State Park with a capacity of at least 800 cars. And that instead of blacktopping it and paving it, you put down crushed white shells. Build a facility comparable to the two nice facilities that were built in the early 1970s, and you would increase the capacity of ocean bathing with restrooms and showers, and help alleviate what happens on a weekend -- almost every weekend in the summer -- which is that Island Beach State Park gets closed,

sometimes as early as 11 a.m. And that, I think, would be a better direction of the efforts and limited resources that the State of New Jersey has.

So if you would consider that suggestion in removing the last two words “and restrooms,” I think you have an excellent Bill.

Thank you very much.

ASSEMBLYMAN McKEON: Thank you, Councilman.

Tony.

MR. PIZZUTILLO: Chairman, thank you again for this opportunity to speak on the public access measure.

And not to belabor the point -- again, here, representing commercial and industrial development in New Jersey.

Respectfully, we see this legislation as really a beach access Bill; and this is a good start in that respect. But however, as we go forth with this consensus bill, and the need to lace in amendments that are of a more contentious matter in order to make this a real program, I think it's important for us to really take a hard look at the industrial sector and how we have a Homeland Security exclusion; and how the industrial sector needs to be included in that sector for all the reasons that you've heard before.

I mean, again, respectfully, we look at industrial use as something that needs to be coddled, almost as an endangered species. And if we're going to retain, expand, or attract 21st century manufacturing jobs in this state, I think we need to be real. We're talking about the Raritan Center; we're talking about the Meadowlands; we're talking about the South Jersey Port Region -- which are areas that could attract significant

employment for non-college bound, middle class salaried jobs for a labor market that is highly in need of work.

And I think what we need to do is make sure that it is clear to that industry sector that this issue is not of concern or part of public access. And again, not to belabor the point -- I think you've heard a lot of reasons why the industrial use is questionable. But to include it here-- And I understand this is a first step, and I appreciate that. But I think for the matter of the record, I think we need to make sure that the industrial sector is entirely removed -- not the commercial sector, not the mixed-use sector, not the retail sector; but the industrial sector, which is warehousing, and manufacturing, and what we call *21st century manufacturing*, where final assemblage will be made in New Jersey before it is traded -- either exported or brought into the country.

So thank you again for your time.

ASSEMBLYMAN McKEON: Thank you, Tony, very, very much.

Jeff Kolakowski and Michael Gross of New Jersey Builders.

Is Mike--

MR. KOLAKOWSKI: Chairman and members of the Committee, I greatly appreciate the opportunity to testify.

I'm Jeff Kolakowski with the New Jersey Builders Association.

I just wanted to say at the outset that the New Jersey Builders Association is supportive of public access under the Public Trust Doctrine. We were an active participant in the stakeholders group, and we look forward to being a part of the continuing dialogue around public access here in New Jersey.

We had a chance to review the Bill, and we do have some concerns with the way it's drafted. There is some vague terminology that could use better definitions. I think they have a better way to give guidance to the administrative agency, the DEP, on it.

ASSEMBLYMAN McKEON: Move the mike in front a little closer. (referring to PA microphone)

MR. KOLAKOWSKI: Sorry, sorry.

We could give a little bit more guidance to the DEP--

SENATOR SMITH: Get it really close.

MR. KOLAKOWSKI: Close, close; okay.

And lastly, we could better define the role of municipalities in the whole planning process.

But I think our overriding concern with the draft before you is that it doesn't strike the proper balance, in that it doesn't acknowledge and is not consistent with the well-established private property principles that are in the New Jersey and U.S. Constitutions. We've provided you with detailed copies of our legal analysis that we submitted to the stakeholders group toward the conclusion of the stakeholders' process. But with me here today is Michael Gross; Michael Gross is NJBIA's Environmental Counsel and a partner with the law firm of Giordano, Halleran, and Ciesla. And Mike will briefly highlight and emphasize NJBIA's legal position.

MICHAEL J. GROSS Esq.: Thank you very much, members of the Committee.

One of the things that we'd like to do is help you in making this a consensus Bill. So we will be submitting comments to you to, hopefully, get to that point.

Let me give you the context from our membership -- and that is, we require permits in many cases to develop property adjacent to tidal waters, not only adjacent to beaches. Because the tidal waters do extend, in New Jersey, up to Trenton, as a matter of fact, on the Delaware.

So Federal case law basically says that there has to be a reasonable nexus between the permit conditions that's imposed with respect to public access and what the permit is for. So for instance, if you're merely replacing a bulkhead on your property, the Federal case law would probably say that that's not a reason to require public access because it doesn't implicate public access itself.

So we would like an acknowledgement in this legislation that there is both Federal and case law that does modify and expand on the rights of private property owners with respect to the Public Trust Doctrine. And the Legislature can't override that case law, because it's based upon both the New Jersey Constitution and the Federal Constitution. So we believe there has to be acknowledgement in this Bill of those constitutional principles.

Just two specific comments: We think that Section 7, paragraph 17 -- which requires municipalities to address public access in their Master Plan revisions -- is a good provision; we have no problem with it. However, if both the municipality and DEP get to determine what reasonable public access is, that's a duplicative review; it's red tape. We think there should be only one review. And we'd like to see those merged; either the municipality has the final say or DEP has the final say, but not both.

And we also feel that Section 4, with respect to modifications, is much too broad. It talks about changes in footprints; what if you're reducing the footprint -- should there be a public access requirement? And again, we think those constitutional principles have to be worked into that section also.

Thank you.

SENATOR SMITH: Thank you for your comments.

ASSEMBLYMAN McKEON: Thank you; thank you both very much.

Melissa Danko; and I'm not sure-- Oh, MTA of New Jersey; and Jeff Tittel of the Sierra Club.

MS. DANKO: I went already.

ASSEMBLYMAN McKEON: Oh, I'm sorry, Melissa. I remembered your first name, not your last.

Jeff.

MR. TITTEL: Sure; thank you.

ASSEMBLYMAN McKEON: And you get to fly solo; and then we have Tom Fote and John Weber, and that's all we have.

MR. TITTEL: Thank you, and I think this is an important hearing and important legislation.

I just want to say, as you know from many other bills, no good deed goes unpunished.

ASSEMBLYMAN McKEON: Always.

MR. TITTEL: And thank you for the good deed.

And we strongly believe in the right of the people of New Jersey to have access to the beaches and waterfronts that belong to all of us. And

for far too long, there have been communities out there that want us to pay to replenish or fix their beaches, but do not want those taxpayers and citizens of New Jersey to have access to those beaches or waterfronts.

And that's why we applaud this legislation as an important step forward in putting the *trust* back into the Public Trust Doctrine. We strongly believe that this legislation has been needed for a long time; especially since what's happened in the last few years, from decisions like the *Avalon* decision; or the Christie Administration's dismantling or getting rid of the 2007 beach access rules. We strongly believe that this legislation makes a lot of sense.

And I was part of the stakeholder process, and I know there will be more legislation later because this is a first step; but it's an important first step. We see how this legislation sets up not only in defining *public access* and *beach access*; but also how it will interplay in rules coming forward -- in agencies, in DEP -- like with CAFRA, making sure that the Public Trust Doctrine is put into those rules; or in funding mechanisms going forward. Because once the Legislature codifies the Public Trust Doctrine -- as it does in this legislation -- it starts to be part of other programs and rules. And what we really think is important is including it in the Municipal Land Use law as an element of the Master Plan, like we do for open space or affordable housing. Because in many communities, they don't plan for this, and they don't even look at it. And I think it also sets up a public process where people in those communities can come to the Master Plan hearings and raise issues and raise concerns; or applaud good things and help push for better things.

And so I think that's also important, because it sets up a public process at the local level where people can actually have a say in the planning in their towns when it comes to public access.

And so, you know, this bill has -- it may need some amendments here and there; but it's really an important step forward.

And I also want to say that it's really needed. I mean, when DEP came out with those rules a couple of years ago that were struck down by the court, they were not good rules. And hearing the DEP today is disheartening because, quite frankly, they're supposed to be the stewards of our lands and our environment. And, quite frankly, having access to the waterfronts is important from an environmental standpoint, from a recreational standpoint. And to my friend, Tony -- and from an economic standpoint, because when we put in walkways or have public access, it encourages economic development and redevelopment in our urban areas, and all along our bays and waterfronts. And we think this Bill is important also from an economic standpoint as well as from an environmental-- And basically, it's just right. The people of New Jersey, for far too long, have been blocked from the places that belong to them; and this starts the process to open those areas up again.

So thank you very much for this legislation.

ASSEMBLYMAN McKEON: Thank you, Jeff.

Tom Fote and John Weber.

MR. WEBER: I am definitely going to give Tom the last word.

(laughter)

ASSEMBLYMAN McKEON: And we do have someone -- there is one more; I'm sorry to everybody. Is there anyone else who wants to

testify? Debbie Mans always has something to say; I see her in the back. You have a slip? I'm not starting your time yet. If anyone else has a slip, bring it up so we can try to get you in before we get kicked out.

Go ahead.

MR. WEBER: Thanks, Mr. Chairman.

And I should have said before -- John Weber, with the Surfrider Foundation -- we are a coastal environmental group. Our issues are water quality, and beach access, and coastal preservation. So, congratulations, because you're hitting them all today. (laughter)

And Senator Smith, especially, I just want to say -- you did a great job putting together-- The four Chairpersons worked really hard on this. I know you know that; and they corralled a very large group. So the process was great; the result--

SENATOR SMITH: By the way, the punishment fits the crime.

MR. WEBER: The punishment fits the crime? Okay. (laughter)

SENATOR SMITH: You want us to do something, you have to work for it.

MR. WEBER: Right; you did make them do it; they worked hard, and it was great. But from a process standpoint, to be in the room with people who don't always agree with us; and just to be in the room, and eat lunch, and all that stuff is great. So I really appreciate that you did that.

Your final product is good, and I don't even have anything to say about that. Except that in that process I raised an issue; it became sort of a minority report amid even an extreme minority report. It's about

beach fees; and I'm going to say it here knowing that you're not going to address it in this Bill; you're not even probably going to address it in a nonconsensus Bill; maybe not even in the rules, but I'm going to make a request. Before I make the request I'm going to say -- I know we're not going to get rid of beach fees tomorrow. I find myself defending beach fees sometimes, just as somebody who's involved in my town very much. I like to explain to people what it does pay for. But I'm going to ask you to form a commission to study the problem; because people do think it's a problem. They go to other places, other parts of the world, and they say, "Why is this the only place in the world that we do it this way?"

SENATOR SMITH: Did you come to the hearing last year, where we had the beach fee bill? (laughter)

MR. WEBER: And I was the one guy who said, "This is a good idea, and you should do it." Do you remember? Okay.

SENATOR SMITH: You made me remember.

MR. WEBER: So study the problem, just because-- If it really is the best system, then great; and we can, with a straight face, go to the people of New Jersey and say, "This is the best system, and this is why it's the best system." Because we're not doing that right now. People go elsewhere, and they just think something wrong is going on here.

So I'm usually saying, "Study the problem," is, like, we don't want anything to happen. I'm saying, from the get-go, form a commission; do something to study the problem of beach fees, or we're just going to keep hearing about it forever and ever.

But otherwise, on your product here, with this Bill -- thank you, and great.

ASSEMBLYMAN McKEON: Thank you very much.

Tom.

MR. FOTE: Tom Fote; I represent Jersey Coast Anglers Association and New Jersey State Federation of Sportsmen.

John and I didn't talk about this, but what I was thinking about, sitting in the audience, was my good friend Robert Moses. And why I brought up Robert Moses is because he provided access, but only to a limited personnel.

I'm from Brooklyn; so the first thing you do, as a 10-year-old kid -- the first thing he did was, basically, move the Brooklyn Dodgers out of -- he was responsible for moving the Brooklyn Dodgers out of Brooklyn because he didn't want to have it where we had public access. He didn't want to have it by a subway station, because that's where they wanted to build the stadium; that's where the owner wanted it. And so he wanted it -- you had to drive your car. so it was limited to certain people.

Then Robert Moses did something even better than that. When he designed the beaches for Jones Beach -- the access points for Jones Beach -- he made bridge a very shallow height so you couldn't bring the buses in from Brooklyn; he didn't want us at his beaches out in Long Island.

So when we talk about public access, we need to talk about full public access. We need to talk about public transportation for the people from Edison, the people from Jersey City -- they can basically get down by a bus or a train into the beaches, and find a reasonable way of doing it.

And especially for the poor. I grew up in Brooklyn; I used to go fishing at Manhattan Beach, and Sheepshead Bay, and Jones Beach; and all

I needed was 15 cents for the bus to get there. That's a long time ago; it's a lot more expensive for the bus.

But we talk about public access. That's also our duty -- is to make sure-- This country was built on-- Basically, whether it's hunting or fishing, we have access for the fishermen and the hunters to do that, because the game does not belong to the earls, and the dukes, and everybody up there. It belongs to the public; it belongs to the State; it belongs to the public as the Public Trust Doctrine so everybody can harvest the fish, whether you have a million dollars, or whether you have-- We don't have those kinds of streams that the public is allowed to use. So this is one of the things, you know?

And also, you need to put it in writing. We got into this argument today; DEP says, "Well, trust us." I said, "No, I want to see it spelled out." They said, "Well, trust us." I said, "You know, I'm a Vietnam vet who grew up with Johnson saying, 'Trust me' about Tonkin Bay. Westmoreland said, 'Trust me.'" And I did the body counts, where I reported on the body counts in Vietnam. They said "Trust me;" and Kissinger and Nixon saying "Trust me." And then, I won't say-- Dick Cheney and Rumsfeld -- "Trust me," and costing a lot of soldiers' lives. So both bipartisan -- Democrats and Republicans; so I don't trust anybody; I want to see it in writing.

Thank you very much.

ASSEMBLYMAN McKEON: Tom, we all bless you for your service; and thank you for your testimony.

Andrea Leshak.

And Deb, did you want to testify? No? Oh, Andrea is.

A N D R E A L E S H A K, Esq.: Yes, I'm testifying on behalf of New York/New Jersey Baykeeper and Hackensack Riverkeeper. I'm the Staff Attorney for those organizations.

ASSEMBLYMAN McKEON: Welcome.

MS. LESHAK: Thank you for the opportunity to testify.

ASSEMBLYMAN McKEON: You look like you're 12.
(laughter) So go ahead.

MS. LESHAK: I just look young.

So our organizations support the Bill, but I just want to give some background on the procedure.

The Chairman did a great job of the overview of the court decision and the legislation. There were some steps after that legislation was passed. In February of this year, the DEP filed a motion to the Appellate Division requesting that the court reconsider the decision from December, based on the legislation. And they said that the legislation retroactively reauthorized the rules.

The Court denied that motion for reconsideration. And following that, in June 2016, the New Jersey Supreme Court denied the DEP's petition for certification to appeal the decision.

So with those actions of the courts, the case is now complete and it has been fully litigated. So the issue of whether the DEP had the authority to promulgate the 2012 rules has been fully litigated. So it is our professional opinion that the 2012 rules are no longer in effect; and that underscores the importance of the Bill that is before us today.

We do think it's a very important Bill, and we support it; especially Section 1(e). We are strongly supportive of codifying the Public

Trust Doctrine. Section 4, we think, could use some fine-tuning; a little more specificity would, maybe, address some of the concerns about the vagueness of Section 4. And I have some questions laid out that I submitted in written comments.

SENATOR SMITH: Great.

MS. LESHAK: So I'll keep this short. Thank you for the opportunity to testify.

ASSEMBLYMAN McKEON: Thank you very much, Counselor.

SENATOR SMITH: So one quick question.

MS. LESHAK: Yes.

SENATOR SMITH: So where does that leave the rules -- the 2012 rules? You're saying that the Supremes in the State have invalidated them?

MS. LESHAK: Yes. We believe-- And in the December opinion, that's very clear that the rules were struck down. They didn't parse through the rules; they were completely invalidated. And with the denial of the motion for reconsideration, we believe they are still struck down.

SENATOR SMITH: So does that mean that the DEP has to start over on these rules?

MS. LESHAK: Yes; correct.

SENATOR SMITH: Where's Ray when you need him?
(laughter)

UNIDENTIFIED MEMBERS OF AUDIENCE: Hey, Ray!
Ray! Ray!

He's ordering lunch; don't worry about him. (laughter)

ASSEMBLYMAN McKEON: Who said he's at the keg?

UNIDENTIFIED MEMBER OF AUDIENCE: He's at the house. (laughter)

SENATOR BATEMAN: He's smart; he left.

SENATOR SMITH: Is he out there? Ray, you missed Ms. Leshak, representing the New York/New Jersey Baykeeper, saying that, as a result of the Supreme Court decision of June, the 2012 rules are up in smoke. Is that your view? Yes?

Come on up; yes, I'd love to hear what you think of it. She believes that you have to start over.

MR. CANTOR: I understand their viewpoint.

Again, several things happened, as you know. The Appellate Division vacated our rules entirely; the Legislature acted, we believe-- When the Legislature acted, as you said in your Committee statements, that you restored our rules. We went back; we asked the Appellate Division for reconsideration. Without opinion, without anything, they denied reconsideration. We looked for certification; we did not get certification. But again, as you know, Senator, a denial of certification is not a denial of the opinion. It's not an affirmative finding.

SENATOR SMITH: No, but it leaves the prior opinion as the opinion.

MR. CANTOR: And we believe, again, legally, that the Legislature had the ability to restore rules, which you specifically said in the Committee statement, and we believe that our rules are in full force and effect; and we're implementing them as such.

SENATOR SMITH: Wow. (laughter)

MS. LESHAK: Right.

SENATOR BATEMAN: That's a big difference of opinion.

SENATOR SMITH: Have you checked with the Attorney General on this?

MR. CANTOR: Obviously.

SENATOR SMITH: And they agree?

MR. CANTOR: That is our opinion; yes.

SENATOR SMITH: Wow; what a great note to end the hearing on. (laughter)

Let me thank John McKeon and the Assembly Committee, and my Committee for coming down. Everybody has given us a lot to think about.

John-- If anybody wants to say anything, they're more than welcome to.

ASSEMBLYMAN McKEON: Any of my members want to say anything? (no response) No?

Just thanks to Matt Peterson; Brian Quigley; to Thea; and to Carrie, and to all partisan and nonpartisan staff. And to our Chairman, Bob Smith.

SENATOR SMITH: Thank you.

(MEETING CONCLUDED)