

Senate Environment Committee

Strengthening coastal zone protection laws

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Good afternoon, I am Bill Wolfe, director of the NJ Chapter of Public Employees for Environmental Responsibility (PEER). PEER is a national alliance of state and federal agency resource professionals working to ensure environmental ethics and government accountability.

Prior to joining PEER, I spent 13 years as a planner and policy analyst at DEP, and 7 years as Policy Director of Sierra Club, NJ Chapter. In my most recent DEP capacity, I was privileged to work with Chairman Smith and the professional staff at Office of Legislative Services in crafting the environmental regulatory framework for the introduced version of the Highlands Act.

I greatly appreciate Senator's Smith's leadership on the Highlands, and would urge the Committee to consider a similar policy approach to the need for a stronger legislative framework for managing New Jersey's precious coastal, estuarine, bay, and ocean resources.

Thank you for holding hearings on these important issues. I briefly would like to highlight one point:

Since passage of the 1993 amendments, 13 years of implementation experience, extensive land use/land cover change, and new scientific research illustrate the need to strengthen the Coastal Area Facilities Review Act (CAFRA). Unchecked coastal over-development has reached the tipping point in many areas, placing the entire shore region at risk.

Legislative Amendments

A) Overview of Need

According to DEP's 2006 federal Coastal Zone Management Act Section 309 Assessment, longstanding threats to the coast are well known, yet much needed reforms are being blocked by "**the lobbying of special interest groups**" (emphasis mine). Let me share a few key DEP findings:

*"Many parts of New Jersey's densely populated coastal area **are highly susceptible** to the effects of the following coastal hazards: flooding, storm surge, episodic erosion, chronic erosion, sea level rise, and extra-tropical storms. Reconstruction of residential development and the conversion of single family dwellings into multi-unit dwellings **continues in hazardous areas... the value of property at risk is increasing significantly.** With anticipated accelerating sea level rise and increasing storm frequency and intensity, vulnerability to the risks of coastal hazards will not abate; **it will only become more costly. ...***

***All of the impediments to meeting this 309 programmatic objective that appeared in the last [2001] New Jersey Coastal Zone Section 309 Assessment and Strategy remain. These include lobbying efforts of special interest groups, legal challenges to DEP permit decisions, provision of flood insurance through the National Flood Insurance Program, and public perception that large-scale beach nourishment projects eliminate vulnerability to coastal hazards."** (emphasis mine)*

B) Legislative amendments

To strengthen coastal protections and overcome impediments, the following amendments are necessary:

1. Close CAFRA 24 unit jurisdictional loophole.

The current CAFRA law does not apply to less than 25 unit developments. A perverse and unintended consequence of this threshold is that unregulated developments, following the path of least resistance, are proliferating and fragmenting critical natural resources and creating a patchwork land use pattern. The shore region and ocean are suffering from a death by a thousand cuts. It is important that DEP get a handle on these developments so that the shore can be protected from cumulative impacts.

2. Regulate reconstruction, redevelopment, and new construction in high hazard areas

Current law provides a right to rebuild storm/flood damaged structures and does not adequately limit new development in high hazard areas and delineated flood zones. The rebuild provisions perpetuate unacceptable risks by allowing people and property to remain in harms way. Federal flood insurance program data reveal that NJ is one of the

nation's worst states in terms of multiple filings of claims for the same property. These unnecessary risks not only adversely impact the environment, they impact the insurance rates of all NJ residents, especially those seeking flood insurance.

3. Consider cumulative impacts and enforce current CAFRA standards

The Legislature established a requirement that any CAFRA permit be consistent with a “comprehensive design strategy” for the coastal zone. That strategy and regional plan have never been developed. The Legislature set of clear permit standards and criteria to protect the coastal zone. It is apparent that these standards have not been enforced or applied by DEP, and therefore need to be strengthened to force DEP to implement necessary protections and enforce these standards.

Section 10 of CAFRA mandates that DEP make affirmative factual findings, prior to issuing any permit, that a series of standards have been met. Specifically, CAFRA provides:

NJSA 13:19-10. Denial of permit; conditional permit; additional grounds; nuclear electricity generating facility

*The commissioner shall review filed applications, including any environmental impact statement and all information presented at public hearings or during the comment period, or submitted during the application review period. A permit may be issued pursuant to this act **only upon a finding** that the proposed development (emphasis supplied):*

- a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.*
- b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.*

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- d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.*
- e. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.*
- f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.*
- g. Would result in minimal practicable degradation of unique or irreplaceable land*

types, historical or archeological areas, and existing public scenic attributes at the site and within the surrounding region.

DEP has issued CAFRA permits regardless of the fact the virtually every standard in Section 10 of CAFRA has been violated. The shore region suffers from DEP issued CAFRA permits that have resulted in:

- a) numerous surface and ground waters, and DEP regulated pollutant discharges exceed the receiving waters' assimilative pollutant capacity, violate water quality standards, and/or are classified by DEP as legally "water quality impaired". For example, Barnegat Bay is showing signs of severe ecological distress, and potential collapse, due to high pollutant loadings from over development and loss of freshwater replenishment. More than 30% of natural freshwater flows to the Bay are now used by development and then discharged to the ocean by massive regional sewage treatment plants up and down the shore. Toxic algal blooms that have occurred in places like North Carolina are plausible, and would have devastating impacts on the tourism and recreational based shore economy. Ecologically rich estuarine waters are threatened by pollutant loads and increasingly listed by DEP as "impaired" under the Clean Water Act. ;
- b) in many localized towns and entire regions, the shore lacks sustainable water supply. Few shore residents are aware of the fact that to meet growing summer peak demand, private water purveyors blend polluted groundwater with cleaner water to attain drinking water standards.
- c) salt water intrusion. The Legislature already established a moratorium on new water allocation permits in Cape May peninsula where saltwater intrusion forced a costly \$5 million desalination plant. Lack of fresh water has placed shore towns under emergency development moratoria and mandatory water conservation;
- d) loss of habitat of various threatened or endangered species and/or rare ecological communities mapped by DEP's "Landscape Project" and "Natural Heritage Priority" databases.

4. Make regulation of CAFRA Flood Hazard risks consistent with state inland stream encroachment rules pursuant to NJ Flood Hazard Area Control Act

The NJ Flood Hazard Protection Act restricts development and fill in inland delineated flood hazard areas in order to protect against loss of life and property. The same inland risk and management standards should be applied to high hazard areas along the coast.

5. Amend MLUL and CAFRA to require global warming adaptation strategies, improve hazard planning, and establish requirements for emergency response/evacuation plans

Recent NJ and national experience has shown that the FEMA model is extremely inadequate and that towns and the state need better tools and more resources to prevent, manage, and respond to storm events.

6. Amend CAFRA and State Planning Act to modify or decouple current linkage to “close coordination with state plan” provisions

The 1993 amendments to CAFRA required that the CAFRA rules be "closely coordinated with the State Plan". After a 7 year delay, DEP finally adopted controversial CAFRA rules in 2000. These rules sunset early this year, but were recently partially extended by DEP. The state plan coordination provision has proven a huge failure. To force unwanted growth on shore towns, DEP arbitrarily mapped over 100 coastal growth centers with impervious cover limits of 60-80% (urban densities, akin to Manhattan Island). This failed approach is totally incompatible with the shore's fragile environment and needs to be terminated. Based upon the lessons learned in this 13 year debacle, the CAFRA law needs to be strengthened to protect environmentally sensitive landscape features and better manage growth and redevelopment. A good first start is to decouple linkage with the State Plan.

7. authorize DEP to consider coastal impacts caused by activities outside the CAFRA zone

Current coastal zone boundaries were arbitrarily established. Activities that occur outside the coastal zone boundary have a huge impact on the coast. The CAFRA boundaries need to be revised to follow watershed boundaries, which are a manageable scale and are a scientifically based consensus approach to environmental management and land use planning.

8. legislatively establish buffers around exceptionally valuable features and ecosystems, like ocean tributary stream buffers, critical habitat, and fish/shellfish growing waters.

Current water quality laws and DEP regulations authorize DEP to establish special water resource protections, including 300 foot buffers, for “exceptional water supply, ecological, fisheries/shellfisheries, or recreational waters” (NJAC 7:9B-1).

DEP has evaluated data and determined that several ocean tributaries, bays, estuaries, warm water fisheries, and shellfish growing waters meet the current “exceptional” criteria and warrant “Category 1 waters” designation and special protections. DEP proposed this “candidate waters” list for public comment in the March 2003 NJ Register. While DEP has adopted several “category One” designations to protect North Jersey reservoirs and the Manasquan, Shark, and Metedeconk rivers, over three years later, DEP has failed to designate over 1600 waterbodies that DEP scientists have already found meet these C1 “exceptional” criteria.

Because DEP has failed to protect critical resources, similar to the legislative designation of buffers to protect critical Highlands waters, the Legislature should designate these waters as “Category One” and establish necessary protections.

9. expand coastal zone boundaries to protect the headwater areas of critical coastal watersheds

Coastal watersheds drain to and impact coastal ocean, estuarine and bay water quality and water supply. DEP regulated activities located beyond the coastal zone impact the coastal zone, yet these impacts are not considered by DEP in existing planning and permitting decisions. To address this set of problems, the CAFRA regulated coastal zone should be revised to include coastal watersheds. .

10. Establish a Regional Planning entity for the Delaware Bayshore

The legislature should consider creating a new regional planning body to manage the Delaware Bayshore. The Delaware Bayshore is one of NJ's last remaining rural and environmentally sensitive regions that, while increasingly threatened by development pressures, lacks a regional focus and effective governing structure.