
Public Hearing

before

SENATE ENVIRONMENT AND ENERGY COMMITTEE

“A public hearing on Senate Concurrent Resolution No. 163 will be held in accordance with Article V, Section IV, paragraph 6 of the New Jersey Constitution”

Senate Concurrent Resolution No. 163

“Invalidates certain DEP rules and regulations concerning septic system density standards in Highlands Water Protection and Planning Act Rules”

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

DATE: November 20, 2017
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Richard J. Codey
Senator Christopher “Kip” Bateman
Senator Samuel D. Thompson



ALSO PRESENT:

Judith L. Horowitz
Matthew H. Peterson
Office of Legislative Services
Committee Aides

Kevil Duhon
Senate Majority
Committee Aide

Rebecca Panitch
Senate Republican
Committee Aide

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



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Chairman

LINDA R. GREENSTEIN
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New Jersey State Legislature

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATE HOUSE ANNEX
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PUBLIC HEARING NOTICE

&

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - NOVEMBER 20, 2017

The public may address comments and questions to Judith L. Horowitz or Matthew H. Peterson, 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 will meet on Monday, November 20, 2017 at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The Senate Environment and Energy Committee will also hold a public hearing immediately following the committee meeting.

The following bill(s) will be considered:

S-2389 Bucco/Oroho/Pennacchio	Establishes Lake Hopatcong Fund and dedicates \$500,000 annually from certain power vessel operator license fees to the fund.
S-3013 Greenstein/Diegnan A-261 McKeon/Spencer/ Kennedy	Prohibits installation and sale of wheel weights containing lead or mercury; prohibits sale of new motor vehicles equipped with wheel weights containing lead or mercury.

(OVER)

Senate Environment And Energy Committee

Page 2

November 20, 2017

- S-3129
Greenstein/Smith, B
A-2081 (1R)
Mukherji/Pintor Marin/
Muio/Holley/
Chiaravalloti
- Provides for priority consideration, by DCA, DEP, DOT, and municipalities, of permit applications for green building projects.
- S-3405
Turner
- Prohibits use of chlorpyrifos insecticide.
- S-3430
Scutari/Van Drew
A-5128
McKeon/Vainieri Huttle/
Tucker/Eustace/Jones/
Space/Jasey
- Requires State parks, forests, and other natural and historic areas to remain open to public for seven days if emergency is declared due to failure to enact general appropriation law as prescribed by NJ Constitution.
- S-3538
Greenstein
(pending intro and referral)
- Amends list of environmental infrastructure projects approved for long-term funding for FY2018 to include new projects and revise allowable loan amounts for already approved projects.
- S-3539
Smith, B
(pending intro and referral)
- Authorizes NJ Environmental Infrastructure Trust to expend additional sums to make loans for environmental infrastructure projects for FY2018.
- SCR-163
Smith, B
- Invalidates certain DEP rules and regulations concerning septic system density standards in Highlands Water Protection and Planning Act Rules.

(OVER)

The public hearing will be held in accordance with Article V, Section IV, paragraph 6 of the New Jersey Constitution on the following Senate Concurrent Resolution:

SCR-163 Smith, B	Invalidates certain DEP rules and regulations concerning septic system density standards in Highlands Water Protection and Planning Act Rules.
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Persons wishing to testify at the public hearing should submit 15 copies of written testimony to the committee on the day of the hearing.

Issued 11/14/17

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.

**SENATE CONCURRENT
RESOLUTION No. 163**

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED NOVEMBER 9, 2017

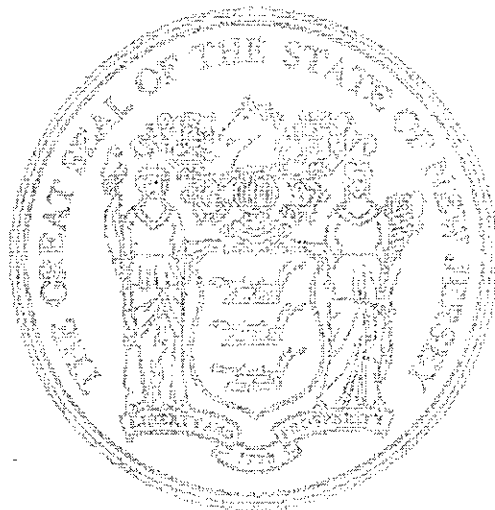
Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

Invalidates certain DEP rules and regulations concerning septic system density standards in Highlands Water Protection and Planning Act Rules.

CURRENT VERSION OF TEXT

As introduced.



1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 rules and regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey and
4 invalidating the Department of Environmental Protection rule
5 concerning septic system density standards in the Highlands
6 Water Protection and Planning Act Rules.

7
8 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
9 Constitution of the State of New Jersey, the Legislature may review
10 any rule or regulation adopted or proposed by an administrative
11 agency to determine if it is consistent with the intent of the
12 Legislature, and invalidate an adopted rule or regulation or prohibit
13 the adoption of a proposed rule or regulation if it finds that the rule
14 or regulation is not consistent with legislative intent; and

15 **WHEREAS**, Upon finding that a rule or regulation, either proposed or
16 adopted, is not consistent with legislative intent, Article V, Section
17 IV, paragraph 6 provides that the Legislature shall transmit its
18 findings in the form of a concurrent resolution to the Governor and
19 the head of the Executive Branch agency which promulgated, or
20 plans to promulgate, the rule or regulation, and the agency shall
21 have 30 days from the time the concurrent resolution is transmitted
22 to amend or withdraw the rule or regulation; and

23 **WHEREAS**, If the agency does not amend or withdraw the existing or
24 proposed rule or regulation, Article V, Section IV, paragraph 6
25 provides that the Legislature may invalidate the existing rule or
26 regulation or prohibit the adoption of the proposed rule or
27 regulation, following a public hearing held by either House on the
28 invalidation or prohibition, the placement of a transcript of the
29 public hearing on the desks of the members of each House of the
30 Legislature in open meeting followed by the passage of at least 20
31 calendar days, and a vote of a majority of the authorized
32 membership of each House in favor of a concurrent resolution
33 invalidating or prohibiting the adoption of the rule or regulation;
34 and

35 **WHEREAS**, On May 2, 2016, the Department of Environmental
36 Protection (DEP) proposed for public comment in the New
37 Jersey Register, at 48 N.J.R. 677(a), a rule proposal to revise the
38 septic system density standards in the Highlands Water
39 Protection and Planning Act Rules; and

40 **WHEREAS**, The "Highlands Water Protection and Planning Act"
41 ("Highlands Act"), P.L.2004, c.120 (C.13:20-1 et al.), establishes
42 a comprehensive, long-term approach to the protection and
43 preservation of the drinking water and natural resources of the
44 New Jersey Highlands Region, which is the source of the
45 drinking water for more than half of the residents of New Jersey
46 and contains other exceptional natural resources such as clean
47 air, contiguous forest lands, wetlands, pristine watersheds, and
48 habitat for fauna and flora, includes many sites of historic

1 significance, and provides abundant recreational opportunities
2 for the citizens of the State; and

3 **WHEREAS**, The Highlands Act states that this comprehensive
4 approach to protecting the Highlands Region includes the
5 identification of a preservation area “that would be subjected to
6 stringent water and natural resource protection standards,
7 policies, planning, and regulation,” and directs the DEP to
8 develop and enforce an environmental permitting program with
9 statutorily established standards in the preservation area of the
10 Highlands Region, and the act contains very specific standards to
11 be included in this permitting program; and

12 **WHEREAS**, With regard to septic system density, the Highlands Act
13 requires the DEP’s rules to include “a septic system density
14 standard established at a level to prevent the degradation of
15 water quality, or to require the restoration of water quality, and
16 to protect ecological uses from individual, secondary, and
17 cumulative impacts, in consideration of deep aquifer recharge
18 available for dilution”; and

19 **WHEREAS**, The DEP originally adopted septic system density
20 standards in May 2005, and subsequently readopted them in
21 2006, and the methodology used by the DEP to establish those
22 standards was found to be appropriate as part of a fact-finding
23 hearing conducted by the Office of Administrative Law in
24 response to a challenge brought by the New Jersey Farm Bureau;
25 and

26 **WHEREAS**, An Initial Decision by the Office of Administrative
27 Law, dated March 24, 2009, concluded that the originally
28 adopted septic system density standards set out in the DEP’s
29 rules were a valid exercise of the agency’s discretion, and this
30 finding, that the DEP acted properly in adopting its septic system
31 density standards, was adopted as a Final Decision on July 13,
32 2009; and

33 **WHEREAS**, The DEP’s May 2, 2016 rule proposal states that the
34 proposed standards “could result in up to 1,145 additional septic
35 systems, or about 12 percent more individual septic systems than
36 under the existing rule,” which would necessarily degrade water
37 quality in the Highlands Region; and

38 **WHEREAS**, Even properly operating and maintained septic systems
39 discharge nutrients, such as phosphates and nitrates, and some
40 bacteria or viruses to groundwater, and improperly sited or
41 maintained septic systems can discharge even more contaminants
42 to groundwater, resulting in contamination of groundwater and
43 surface water resources; and

44 **WHEREAS**, When nutrients such as phosphorus and nitrogen are
45 discharged from septic systems into the groundwater, they
46 contaminate drinking water supplies, and also represent a
47 potentially significant nonpoint source of pollution; and

1 **WHEREAS**, Septic systems may also contribute to the contamination
2 of groundwater by toxic chemicals; and the contaminants that
3 may enter groundwater through septic systems include heavy
4 metals and toxic chemicals from small commercial
5 establishments, ingredients in household products, and organic
6 chemicals typically found in septic tank cleaning products; and
7 **WHEREAS**, According to a 2015 report, "Potable Water Supplied in
8 2011 by New Jersey's Highlands," published by the New Jersey
9 Geological and Water Survey, in 2011 the Highlands Region
10 supplied 136 billion gallons of water or approximately one-third
11 of the total amount of potable water used in the State, and
12 Highlands water was distributed to 332 municipalities in 16
13 counties, home to 70 percent of the State's population; and
14 **WHEREAS**, This is an increase from estimates in 1999 which
15 calculated that 107 billion gallons of the State's potable water
16 came from the Highlands Region and was used in 292
17 municipalities, demonstrating that the Highlands Region serves
18 an increasingly important role in the State's potable water supply
19 deserving of strong environmental protections; and
20 **WHEREAS**, The provisions of the Highlands Act, with regard to the
21 septic system density standards, have not changed since
22 enactment of the act, and there is no provision in the Highlands
23 Act directing the DEP to review and weaken its originally
24 adopted rules; and
25 **WHEREAS**, The new standards contained in the May 2, 2016 rule
26 proposal and subsequently adopted on April 21, 2017 and
27 published in the New Jersey Register on June 5, 2017 do not
28 comply with the requirement in the Highlands Act for the septic
29 system density standards to be established at a level to prevent
30 the degradation of water quality, or to require the restoration of
31 water quality, and to protect ecological uses; and
32 **WHEREAS**, In establishing both the original and new septic system
33 density standards, the DEP considered nitrate data obtained from
34 wells in the Highlands Region because nitrate is generally
35 considered an indicator for groundwater quality (i.e., a
36 "surrogate pollutant"); and
37 **WHEREAS**, However, for the new standards, the DEP relied in part on
38 nitrate data generated from wells sampled between 2004 and 2011,
39 after the date of enactment of the Highlands Act and, thus, the
40 proposed standards do not accurately preserve or maintain 2004
41 water quality conditions or restore water quality, as required by the
42 act, but instead reflect the development and accompanying
43 degradation in groundwater quality that has occurred since 2004
44 and allow water quality to continue to degrade; and
45 **WHEREAS**, The DEP's rule proposal also directly contradicted the
46 language of the Highlands Act, by stating that the proposed rule
47 amendments seek to "relate the septic system density standards to
48 the . . . Highlands Regional Master Plan (RMP)," but section 34 of

SCR163 B.SMITH

5

1 the Highlands Act (C.13:20-32) requires, conversely, that the RMP
2 be based on the DEP's rules; and

3 **WHEREAS**, Assembly Concurrent Resolution No. 192 (1R) and Senate
4 Concurrent Resolution No. 148 (1R) declared that the proposal by
5 the DEP to revise the septic system density standards in the
6 Highlands Water Protection and Planning Act Rules, published for
7 public comment in the New Jersey Register on May 2, 2016, was
8 not consistent with legislative intent; and

9 **WHEREAS**, On June 8, 2017, Assembly Concurrent Resolution No.
10 192 (1R) received final approval by the Legislature and was filed
11 with the Secretary of State and transmitted to the Commissioner of
12 Environmental Protection; and

13 **WHEREAS**, Assembly Concurrent Resolution No. 192 (1R) informed
14 the DEP, pursuant to Article V, Section IV, paragraph 6 of the
15 Constitution of the State of New Jersey, that the department shall
16 have 30 days following transmittal of that concurrent resolution to
17 amend or withdraw the new rule or the Legislature may, by passage
18 of another concurrent resolution, exercise its authority under the
19 Constitution to invalidate the rule in whole or in part; and

20 **WHEREAS**, The DEP has failed to amend or withdraw, or provide any
21 notification to the Legislature of its intention to amend or withdraw,
22 the rule within 30 days after the transmission of Assembly
23 Concurrent Resolution No. 192 (1R); and

24 **WHEREAS**, Prior to voting on a concurrent resolution to invalidate an
25 adopted rule or regulation or prohibit the adoption of a proposed
26 rule or regulation, a public hearing shall be held on invalidating the
27 adopted rule or regulation or prohibiting the adoption of the
28 proposed rule or regulation, and the transcript of that hearing shall
29 be placed on the desk of each member of the Senate and each
30 member of the General Assembly; now, therefore,

31
32 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
33 General Assembly concurring):

34
35 1. Pursuant to Article V, Section IV, paragraph 6 of the
36 Constitution of the State of New Jersey, the Legislature invalidates,
37 in whole, the rule adopted by the Department of Environmental
38 Protection on April 21, 2017 and published in the New Jersey
39 Register on June 5, 2017, which revised the septic system density
40 standards in the Highlands Water Protection and Planning Act
41 Rules.

42
43 2. Copies of this concurrent resolution, as filed with the
44 Secretary of State, shall be transmitted by the Clerk of the General
45 Assembly or the Secretary of the Senate to the Governor, the
46 Commissioner of Environmental Protection, and the Office of
47 Administrative Law.

1 3. This concurrent resolution shall take effect immediately.

2

3

4

STATEMENT

5

6 Pursuant to Article V, Section IV, paragraph 6 of the
7 Constitution of the State of New Jersey, this concurrent resolution
8 invalidates, in whole, the rule adopted by the Department of
9 Environmental Protection on April 21, 2017 and published in the
10 New Jersey Register on June 5, 2017, which revised the septic
11 system density standards in the Highlands Water Protection and
12 Planning Act Rules.

13 As required by the Constitution, the Legislature previously
14 informed the Department of Environmental Protection, through
15 Assembly Concurrent Resolution No. 192 (1R), of the Legislature's
16 finding that this rule is not consistent with legislative intent.

TABLE OF CONTENTS

	<u>Page</u>
Raymond Cantor, Esq. Chief Advisor Office of the Commissioner New Jersey Department of Environmental Protection	1
Jeffrey L. Hoffman State Geologist New Jersey Department of Environmental Protection	5
Elliott Ruga Policy Director New Jersey Highlands Coalition	9
Ed Wengryn Research Associate New Jersey Farm Bureau	11
David Pringle Campaign Director Clean Water Action	13
Jerry Arena Private Citizen	14
Doug O'Malley Director Environment New Jersey	17
Edward J. Smith Deputy Director Board of Chosen Freeholders Warren County	18
Drew Alan Tompkins Public Policy Coordinator New Jersey League of Conservation Voters	22
Amy Hansen Policy Analyst New Jersey Conservation Foundation	22

TABLE OF CONTENTS (continued)

	<u>Page</u>
David Peifer Highlands Project Director Association of New Jersey Environmental Commissions (ANJEC)	23
Alan R. Hunt, Ph.D. Executive Director Musconetcong River Watershed Association	25
Jeff Tittel Director New Jersey Chapter Sierra Club	27
APPENDIX:	
Testimony submitted by Jeffrey L. Hoffman	1x
Testimony submitted by Elliott Ruga	9x
Testimony, plus editorial submitted by Jerry Arena	11x
Testimony submitted by Amy Hansen	14x
Picture submitted by Jeff Tittel	16x

TABLE OF CONTENTS (continued)

APPENDIX (continued)

	<u>Page</u>
Testimony, plus letter addressed to G. Colin Emerle, Esq. New Jersey Department of Environmental Protection from Carol Ann Short, Esq. Chief Executive Officer New Jersey Builders Association submitted by John Kirkenir President New Jersey Builders Association	17x
Testimony submitted by Kelly Mooij Vice President Government Relations New Jersey Audubon	20x
pnf:1-32	

SENATOR BOB SMITH (Chair): So I am advised by Ms. Horowitz that we can do our hearing -- the constitutionally required hearing at the same time we do the hearing on the SCR.

So that's what this is; it is the constitutionally required hearing, and also a hearing on the SCR.

Any of the six lawyers at this table have a problem with that?
(laughter)

If Judy says it's so, it's so.

All right; and the DEP asked for the opportunity to speak first, since it's their rules.

Take it away.

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

My name is Raymond Cantor; I am Chief Advisor to Commissioner Bob Martin in the Department of Environmental Protection.

With me today is our State Geologist, Jeff Hoffman.

What I would like to do is, first, to go over a little bit of history of this rule and address some of the aspects of it. And then I will turn it over to Mr. Hoffman to talk more about the science behind some of the aspects of this rule.

DEP began its reconsideration of this rule in 2010, as a result of a lawsuit brought by the Farm Bureau. While it's true that the Office of Administrative Law had upheld some of the factual aspects of this rule, this rule was never argued before and upheld by the Appellate Division. It was while it was pending in the Appellate Division that DEP asked for a remand so we could look at all aspects of this rule, and that's what we did.

The purpose of our reconsideration was to look to see whether or not nitrate was the appropriate surrogate; whether our septic density model was appropriate; whether all the parameters were appropriate; and whether or not the background nitrate data that we were using was appropriate. We were sued by the Farm Bureau on all those aspects, and we wanted to make sure that we were confident in what we were doing and its validity.

We were determined-- During our review, again, we looked at all aspects, and we confirmed everything we had done prior, up to a point. We affirmed using nitrate as a surrogate, the conservative methods of using larger houses as representative of the Highlands, of using the drought of record as a recharge model. But we also became aware that there was new information being developed on background nitrates, and we determined that we were going to look at that data and allow that data, and the science behind it, to determine the outcome, no matter where that science led us. And that is exactly what we did.

DEP does not believe that this rule is inconsistent with legislative intent. SCR-163 gives two reasons -- two reasons in the Concurrent Resolution why it's inconsistent with legislative intent. One, it states that because we gathered data after 2000 -- for August 2004, when the Act was effective, that, per se, that data is invalid because it represents changed conditions, which was not the legislative intent, to maintain existing water quality.

Two, it states that using Land Use Capability Zones -- which were established by the Highlands Council in their RMP -- is somehow inconsistent with the Act, which the Act says we should develop our septic

density model in the Highlands independent of the RMP. The RMP should look to DEP.

It is our position that both of those reasons listed in the Concurrent Resolution to invalidate this rule are factually and legally unsound.

The issue of whether or not the data used, post-2004, represents conditions at the time the Act was passed is really a factual issue. You cannot just state in a Resolution that using data after 2004 does not represent background conditions at the time the Act was passed. That is a very complicated, factual issue that is science-based; and again, Mr. Hoffman, in a moment, will talk about the science behind all of that.

Just because the Resolution says it, does not make those facts true. It's not a legal conclusion; it's not a statement of intent. It is a factual decision.

The SCR also talks about our use of Land Use Capability Zones. And again, it makes some argument that we should not be looking at the RMP at all, I'm assuming, in order to apply the subject density standard.

The fact of the matter is, when we came up with our initial septic density standard, every aspect of that standard -- from using nitrate, the dilution models, all the aspects of that -- the data -- we're not looking at the RMP. They were developed by DEP, and we adopted that. The Highlands Council, in doing their RMP, then looked at the DEP's data, and applied it as they thought appropriate.

All we are really doing in this rule -- now that that standard is there and all the science is there -- is saying that maybe the way we apply it

by using forested/non-forested -- which is not at all referenced in the RMP -- should be changed. And we thought it would be very appropriate; we thought it would be consistent with legislative intent, that we would look at the RMP at this point in time to try to be consistent. So you have standards for subject density applied in the same manner that the Highlands Council for the RMP is applying its Land Use provisions. Again, we think that is consistent with legislative intent, not inconsistent.

There's also a significant-- While we thought it was very appropriate to use the Land Use Capability Zones in applying the septic density standards, there's also another reason that we did not lay out -- because, again, we didn't think it was necessary -- but there was a significant legal reason why we did not believe we could continue to use the forested/non-forested dichotomy.

When we began to review this rule -- and again, as I mentioned to begin with, we looked at all aspects of this -- we determined -- or discovered, really -- that we used *forest* in our rule in two different and incompatible ways. When we looked at the data for background nitrate, we used a definition of *forest* that looked at 90 percent forested, or wetland, or open water areas -- pristine areas. Those are the seven wells that everyone keeps talking about; 90 percent coverage pristine areas. However, when the rule was adopted and applied in fact, the definition of *forest* that's in the rule itself only requires 33 percent forested area. Therefore, we were applying a pristine standard for nitrate and applying it to areas that were not pristine.

During our early discussions, where we were looking at this rule, we were advised by our Attorney General's Office that we would have

to correct this if we're to move forward; that you cannot have two different definitions of *forested area* and apply them differently. It was apples and oranges. We didn't pursue that because we decided it was more appropriate to use Land Use Capability Zones.

So if this Resolution were to pass, if these rules were to be invalidated, we would be, one, left with a nitrate standard that we believe is not scientifically justified, giving all that we know right now; and two, we'd be left with the old definition of *forested/non-forested* that we believe is also legally and fundamentally flawed. Both of those things would set up legal challenges that we don't believe are defensible.

What we would recommend instead is to send this back to DEP. Rules are very complicated creatures. This rule, in itself, took us over six years' worth of study, scientific analysis, debate, understanding, meeting with stakeholders; and we came up with a rule that we thought was legally defensible, scientifically defensible.

This Administration, this DEP believes that we got it right. Perhaps a new Administration may look at it differently. So if you are going to address any issues that you think may be in this rule, I would strongly suggest that the best method to do that would be to allow the next DEP, the next Administration, to re-look at all of these issues.

Having said that, I will turn it over to Mr. Hoffman, who will talk more specifically about the data and the post-2004 implications.

J E F F R E Y L. H O F F M A N: Thank you for this chance to speak here today.

I'd like to comment on two subjects. First, on the supposition that nitrate data collected after 2004 should not be used to characterize

groundwater quality in the New Jersey Highlands for the purpose of determining background. And second, in support of the research of the past few years done to estimate those background nitrate values.

First, groundwater quality under a parcel of land in the Highlands Preservation Area may be expected to have changed if the land use has changed since then. If the land use hasn't changed, there will be no change in water quality. A monitoring well that was in a stand of trees in a State Park in 2004 should have the same water quality now, in 2017.

A monitoring well surrounded by an unchanged land use -- whether that be woods, agriculture, or homes on septics -- will have no significant change in groundwater quality. It is scientifically valid to include newer data for such unchanged areas in any estimation of what groundwater quality was in 2004.

The Highlands Preservation Area is predominantly undeveloped and will remain that way. Seventy-eight-point-nine percent the Preservation Area is in the protection subzone, as delineated by the Highlands Council. Also, 74 percent of the Preservation Area is forested, wetlands, or open water. For three-quarters of the Preservation Area, current groundwater quality should be the same as it was in 2004. This zone has had little, if any, change since then.

The available land use data for 2007 and 2012 support this. Between those two years there was no change in the acres of pristine land -- that's forest, water, and wetlands -- in the Preservation Area. There was an increase of 1,600 acres of urban land -- which is 0.4 percent of the total Preservation area -- but a corresponding decrease in agricultural and barren

land. These three land uses I group as *non-pristine land uses*. I expect similar changes between 2012 and today.

Because the land use change has been from one non-pristine source to another non-pristine land use, and on a very small percentage of the Preservation Area, I'd expect the regional impact to be very small.

The conclusion that there have been only minor changes is supported by the number of domestic well permits issued. All wells in New Jersey must get a permit before being drilled. In the Preservation Area, there were 448 permits issued in 2004. This has dropped significantly since then; it was 294 in 2005. The number dropped to 224 in 2006, and 212 in 2007. After 2007, the number of new domestic well permits in the Preservation Area has varied between 44 and 88 permits a year. In the years 2008 through 2012 -- which is corresponding to the time that there was a 0.4 percent change in urban land use -- there were only a total 332 domestic well permits issued, each of which probably had its own septic system in the Preservation Area. This is a very small number compared to the 414,000 acres that make up the Preservation Area.

My conclusion is that the vast majority of the Highlands Preservation Area has the same land use in 2017 that it did in 2004. Groundwater quality measurements in these areas show no significant change in the time since 2004.

Additionally, in 2004 DEP was only able to find seven data points from wells totally surrounded by pristine areas -- woods, water, or wetlands. This is because in order to install an observation well, a drill rig must drive up to the site and set up. This requires a road and sufficient cleared space. Thus there are very few observation wells in the middle of

totally pristine areas. I am unaware of any new observations wells in the Preservation Area totally surrounded by these pristine land uses.

My second point deals with the research done over the past few years to better characterize groundwater quality in the Highlands Preservation Area. This research added recent data from observation wells, and added data from the Private Well Testing Act, and then developed a model to estimate nitrate values by correlating observed concentrations to land uses. The process involved overlying a grid consisting of 2,000-by-2,000-foot cells over the entire Highlands, determining median value in each cell which had any observed values, and then developing a model which correlated the median nitrate value to the land use. The model was applied to predict the median nitrate concentration in all the grid cells that did not have any observations.

The approach was done in a very conservative fashion. Water samples which did not contain detectable limits of nitrate were assumed to have a value of 0.0 milligrams per liter, not a higher concentration at or near detection limits.

Also, the median of all values in the cell was used in the modeling so that cells with a number of observations -- such as might occur in a development where all homes were on wells and septics -- would not bias the results. This approach was validated by the DEP's Science Advisory Board, and determined to be a valid way to estimate nitrate values. This research was done by the United States Geological Survey, and they have a documented report on this work.

The resulting model correlates land use with nitrate. It could be applied to land use in 2004 or 2017. The modeling effort does group all

land use in each 92-acre cell. Those cells with a combination of land use will have an estimated nitrate value that reflects these land uses. This approach allowed many more observation wells in or near pristine areas to be used in the approach. Not allowing an approach, based on integrating nearby land use in order to predict groundwater quality, may result in no additional data points for estimating background nitrate in those pristine areas. This may open up the analysis process to the same critical comments made in 2005 and 2006 about the sparse data set -- only seven points -- that the first analysis effort was based on.

The developed model, based on a much larger data set than available in 2004, has been peer-reviewed and judged to be both an appropriate tool for this application and a good use of the data. I encourage the continued use of it.

Thank you.

SENATOR SMITH: Thank you for your comments.

Our next witness is Elliott Ruga, New Jersey Highlands Coalition.

Mr. Ruga.

E L L I O T T R U G A: Thank you, Mr. Chairman and members of the Committee.

In 1988, a dedicated group of organizations and individuals saw the need to pool resources and focus their knowledge, expertise, and convictions, and to form the New Jersey Highlands Coalition to collectively advocate for the protection of the Highlands' water and other natural and cultural resources.

Working with legislative champions, and with the support of the Governor and many others, this Coalition succeeded in having planning and regulatory frameworks legislated by enacting the 2004 Highlands Water Protection and Planning Act.

In 2007, when I was hired by the Coalition, we represented the interests of 37 member organizations. Today, we are a Coalition of 100 member organizations, representing hundreds of thousands of people across the state and in every one of the seven Highlands' counties, and in every one of the Highlands' 88 municipalities. We live in the Highlands, we are Highlands' landowners, we are Highlands' farmers. We also live outside of the Highlands, and we drink Highlands' water, and we consume Highlands' water in the manufacturing of our products.

We are not a special interest; we come from all walks of life and society. We are Democrats as well as Republicans. What we have in common is the insight and conviction to realize that the protection of the Highlands' water resources is in the best interest of everyone in New Jersey. And we recognize the necessity that the New Jersey Legislature exercises its Constitutional police power to regulate land use to secure the health, safety, and security of its citizens, in order to protect the vital water resources of the Highlands from being permanently degraded, diminished, and destroyed for short-term gain by special interests.

As land values in northern New Jersey continue to rise, the pressure to develop the Highlands will only increase. We celebrated, in 2004, when the Highlands Act was passed. But as we see with the current attempt to weaken Highlands' protections, we can't put our feet up and relax.

Senator Smith, we thank you for your continuing leadership in the Legislature in protecting the Highlands' resource. This is a goose that continues to give us golden eggs by way of an abundant supply of clean water, accessible outdoor recreation, a great reserve of biodiversity, and a forest resource whose value in mitigating the impacts of a warming climate will only increase.

Thank you for sponsoring this Resolution that, with concurrence by the Assembly, will invalidate the Department of Environmental Protection's scheme to rollback important regulations that protect New Jersey's clean and abundant water supply in the Highlands. We cannot understand why any member of this Committee would vote against passing this Resolution favorably out of the Committee for a full Senate vote.

Thank you.

SENATOR SMITH: Thank you, Mr. Ruga.

Next, Ed Wengryn, New Jersey Farm Bureau, in opposition.

E D W E N G R Y N: Mr. Chairman, members of the Committee, thank you again for holding this hearing.

I would echo some of -- well, the history that DEP relayed in the Farm Bureau lawsuit. It really was over what we thought DEP did at the time. They passed, according to the Act, emergency rules and regulations on septic; and then they were supposed to take some time and do further research. And all they did was, sort of, adopt their emergency rule as a final rule, and we feel they missed really good science and data collection -- using seven wells to determine the water quality of a seven-county region, five counties almost totally in it. It's a large land area with a

myriad of land uses. And to pick seven wells that have not been -- that aren't reflective of the region at all, we felt was bad science.

So that was part of our lawsuit, along with saying that despite the population of, like, 2.3 people per house, and then using 4 people per house, and increasing the density of the region artificially -- were all things we looked at. Using drought of record -- you don't have recharge when you have a drought; you get recharge when you have rainfall. Those were things we questioned in our lawsuit.

The other thing is, there are inconsistencies in the Act because the regulatory power to regulate septic is all over at DEP. And then you have the plan and the planning process, which is supposed to address growth, development, infrastructure investment -- where all of the good things you want at a planning to come, come from the plan. And if the regs don't talk to the plan, you're always going to have conflict. So when DEP, in their rewrite, actually took the planning areas of the RMP and said, "This is how we're going to apply our standards," you finally have the plan and the regulations talking to each other, and it makes sense to us. We think that's the correct thing to do.

So like DEP, we would disagree with the statement in the Resolution that they're inconsistent. If anything, it becomes consistent by having the plan; growth zones reflect the regulation zone -- the regulation as it applies in those zones.

So those are the things we support. We think the proposal -- first time I'm hearing it from DEP -- is, "Let the next DEP look at it." That's how we got here in the first place; it was a change of Administrations. They looked at our lawsuit before going to court, and

we've set it aside. We can keep it on the side and let the new DEP review their science and everything this group did. We'd be very happy to do that, rather than start a whole new lawsuit process all over again upon the repeal.

So, thank you.

SENATOR SMITH: Thank you for your comments.

MR. WENGRYN: Any questions?

Dave Pringle, Clean Water Action.

DAVID PRINGLE: Thank you, Mr. Chairman.

I'll be brief.

This is really quite simple. The Highlands Act is about preserving water quality; quadrupling the density in the most important part, of the most important part, of the most important part of the state's water supply is going to impact water quality. That's the intention of the Act.

We are fortunate that many of the legislators who passed the Act in 2004 -- including the majority; I think all four of you who are here right now all were in the Legislature back in 2004. I did a rough count a moment ago; I count about 40 to 45 legislators who are still in.

So I think it's fair to say the Legislature gets to decide what legislative intent is, and you've been doing that. So we're especially fortunate that the prime sponsor of the Bill is Chair of this Committee.

SENATOR SMITH: And I think the second prime sponsor, too. You have both.

MR. PRINGLE: Were you-- In 2004?

SENATOR BATEMAN: No, no, no; but the original--

MR. PRINGLE: The current one; yes, yes.

SENATOR BATEMAN: This last time.

MR. PRINGLE: So I'd also add that the primary flaw with the well testing data is that, by definition, a private well -- which is where the water quality data came from -- is, by definition, *developed*. So that's not original condition, and that's what the Highlands Act is all about preserving.

So, thank you; and Godspeed with this Bill.

SENATOR SMITH: Thank you very much.

Mr. Jerry Arena for-- I don't know if it's a group; it says, "Time to Reassess Highlands Act."

Mr. Arena.

J E R R Y A R E N A: (off mike) I lost my glasses here; and Mark will-- Okay.

I own land in the Highlands Act (*sic*); I think it's time--

SENATOR SMITH: Sit and be comfortable.

MR. ARENA: I think it's time to reassess it, as far as what the previous people were talking about.

Newark owns the Watershed; the Wanaque Watershed. They get paid. Budweiser-- Articles I read in the paper about the water, and the quality, and everything else -- Newark owns its own Watershed, it's the Wanaque.

I own land on Route 517 in Allamuchy; next to me is a State Park, a thousand acres. The new regulations come into play without the fact that the new septic systems of low-flush toilets -- of 1.1, or something like that-- They're using the old system of toilets, which are banned completely. So the new toilet systems go up to 1.1 gallons.

I, a couple of times, tried to sell the property. The State has no money.

I put up a *For Sale* sign; no one wants to be bothered with the regulations. The area -- the topography of the area flows towards the Delaware River; it does not flow towards Newark or anywhere else. The rivers and streams--

SENATOR SMITH: Mr. Arena, let me hold you up for one second, because you have made a factually incorrect statement that the State has no more money. The State had no money for eight years, the last eight years. Two years ago we passed a constitutional amendment to dedicate 4 percent of the Corporate Business Tax for Open Space acquisition, Farmland Preservation, and Historic Preservation. This past year, we forced the Administration to actually spend that money, and now you have about \$200 million in the pipeline. But every year, you're going to have about \$100 million; and in 2019, that's going to go up to about \$140 million when it goes to 6 percent.

The other thing that you should know is that the law in New Jersey, as of 10 years ago, requires that when the State buys farmland or easements, the top criteria -- there's actually a priority list -- the top priority is to buy land that is protective of the water supplies. And what that means is, that I think you would now be -- if you offered your property to the State DEP, I think you might find a more receptive ear, because they now have money, and they also have a law that says buy land that's protective of water supplies.

MR. ARENA: I have approached them; they have--

SENATOR SMITH: How long ago?

MR. ARENA: About six months or a year ago.

SENATOR SMITH: Okay; and what did they say?

MR. ARENA: They kept me on a list. My land is not large enough that would qualify for-- I own 18 acres. Even though it's on Route 517, with over 500 feet of road frontage, it has no value. A couple of hundred thousand dollars-- I've owned it since 1985; it's not that I just came aboard. I use the land properly; I had a farm.

SENATOR SMITH: Just FYI, again: The original Highlands Act says that when the State buys property, or buys easements on the property, they have to do it based on the valuation at the time of the passage of the Act, which I think is now 2004. So whatever your land was valued at that time, that's the valuation they should use, not a diminished value. I wouldn't give up hope -- that you talked to them six months ago. You know, this money is now starting to come in the pipeline, so keep your application active, because I think you may do better than you expect.

MR. ARENA: Well, it goes beyond that, though.

When you have road frontage, you end up having a different type of value to the land -- commercial use. This is not a rural area, in a sense. There are buildings all around the place. We have Panther Valley; we have (indiscernible) Street from my building -- an office building. There are multi-dwellings in the entire area. You go to Independence; you have, on Bilby Road -- you have a bunch of condos; maybe a thousand condos. The area is not that rural; but I'm paying a price -- even though I'm on an area that should have a value to it -- because of State regulations.

And like I say, the topography of the area runs into the Delaware River; not anywhere else. It doesn't support anything. And

Newark has its own water system, too. Wanaque is a very efficient water system; millions of dollars they make on that water system. I make nothing.

Can I add anything to that? Did I leave anything out?

UNIDENTIFIED MEMBER OF AUDIENCE: No, I think you got your point across.

MR. ARENA: Thank you, Chairman.

SENATOR SMITH: Thank you for your comments.

MR. ARENA: And I have an article that ran in the *Bergen Record*, in the editorial section, this past Wednesday.

SENATOR SMITH: We'd be happy-- We'd love to receive it, if you want to send it to us.

Doug O'Malley, in favor, from Environment New Jersey.

MR. ARENA: Thank you.

DOUGLAS O'MALLEY: Thank you, Mr. Chairman.

The Highlands Act was clearly an incredibly contentious Bill when it was passed, and has proven to be continually contentious.

It is arguably the strongest environmental legacy of this still-young century; and that's because the battle to protect the Highlands started way before, in the 2000s, or the 1990s, or the 1980s. There was a clear move, over the course of the last hundred years, to make sure the Highlands is protected.

What we're seeing right now by the DEP is a clear attempt to go around the Legislature and to use a regulatory unwinding of one of the strongest protections in the Highlands Act. And we've heard, based on

previous testimony, an attack on the pristine groundwater standards that were used.

And there is very clear reason why they're going after that -- because it is pristine, and because the data the DEP is peddling for the U.S.G.S. study comes from the Private Well Testing Act; 96 percent of the data comes from the Private Well Testing Act. That is obviously data that is not relevant to deep -- to aquifer recharge. And that's, I think, one of the, kind of, central points; and clear moments for the Highlands Act is making sure that we're protecting our water quality.

The DEP proposal will ensure that we're seeing more development in the Highlands; more than a thousand septic tanks. And it doesn't take a scientist to realize that we're going to see degradation of water quality based on this rule. And so that's why it's imperative, obviously, the Legislature act and work to override this.

And I just want to conclude my testimony just by referencing a comment by Governor Christie in a Town Hall in West Milford in 2012; when he went after the Highlands Act and said it was one of the worst measures that was passed by the Democratic Legislature. He also said that he could not overrule the Act through the Legislature, but he could try to unwind it through regulatory means. This is clearly the Governor following through on his promise.

And I want to thank you, Mr. Chairman, for helping to lead the fight.

SENATOR SMITH: Thank you Mr. O'Malley.

Ed Smith, Warren County Freeholder, in opposition.

F R E E H O L D E R E D W A R D J . S M I T H: Thank you, Chairman.

Edward Smith, Warren County Freeholder.

I oppose SCR-163.

And I know we've had a rather contentious relationship over the Highlands Act through the years. But I really think that the things that I'm going to be talking about are totally science-based, partially through just a series of unfortunate events personally.

The Comprehensive Well Testing Act -- which was probably something that you were a sponsor of, I would imagine; or certainly involved in -- was to provide us with data regarding the quality of the water that we have in real estate transfers. And obviously the purpose of that was to come up with testing.

Now, the Department is left with the challenge here of having to remain anonymous because they're -- obviously data was collected for the purpose, collectively, for house sales. Partly through a series of unfortunate circumstances personally, my mother passed away in March of this past year, and I was assigned as the executor. I will say that, through the years, subsequent to the Highlands Act, there was a great concern over what the nitrate impact would be on her well and the fact that her septic was so close; and it was very primitive one at that. And plus the fact that within a 5-acre period -- place, there are five homes.

So we have this basis of a presumption that the nitrate model -- which was based on the nitrate dilution model -- is sound science. So one would be able to take a look, then, and see, "Well, what's the data from a baseline?"

My father built the house 62 years before, so I had to put it up for sale thinking, “My goodness, the water is going to be polluted. What am I going to do?”

The bottom line is that this test dated November 7, 2017: *nitrates non-detect*.

So my question is, if we’re talking about whether or not there’s a validity to the science tied fast -- that the Department has put forward, there’s no better than *non-detect*. Yet here are probably five homes within a small parcel of land -- probably talking maybe an acre a piece -- that all have subsurface systems. And there’s a non-detect on the well test that was done; and the septic was less than 50 feet away, which is totally verboten, at this point.

So how else would we take the establishment, in the Highlands Act, which established an authority to the Department to promulgate regulations to implement the purposes of the Act. And if we were looking to maintain water quality, the fact of the matter is that you can’t do better than *non-detect*; which means for 62 years this subsurface septic system was discharging nitrates, which should have turned up in a water supply, but yet didn’t. And the fact that the density of the number of homes that were within that also is one per acre; yet I had a non-detect.

And while I certainly hope that my prior comments have not prejudiced my position, the fact of the matter is that this was done -- and I would be glad to provide the outcome of this -- I think that the nitrate dilution model is flawed; it’s flawed on its outcome. We have used it as the basis for the implementation of development based upon a septic density model where we were looking for outcomes. And I would argue that the

outcome can't possibly be better than zero, and that we have already had this.

As a Freeholder, I have spoken to this Committee before about the impacts of what this has done to us economically. And I would be the last to suggest that we should turn into cluster development. But this only provides for 1,100 homes across the whole area. And if the purpose of the Act was supposed to be based upon information that would be determined by the Department, the Department would have never have this because this is proprietary information; nor would they know the specifics. This was a very primitive septic system that was put in 60 years ago, and a zero detect.

So I would ask that this be tabled; I would ask that we allow, certainly at a bare minimum, to look into this deeper. But I really think that we have to question the validity of the science behind the nitrate dilution model when we're using it as a basis to determine the density of development. I don't think it's an adequate indicator; and all we've tried to do here -- and I, obviously, as a Warren County Freeholder, would hope that there would be an easing of the regulations. And I know that that's not what this Bill is about; but this Bill is about the science. And through all of this we have continually talked about science today, as I listened to one bill after another -- what possible outcome. When we're talking about proving the negative, the actual point is, how can you point out that the septic density should have impacted that well that was less than 50 feet away, and it didn't. Nothing; zero baseline, non-detect.

Thank you, Chairman.

SENATOR SMITH: Thank you, Freeholder.

Our next speaker is Drew Tompkins, New Jersey League of Conversation Voters, in favor.

DREW ALAN TOMPKINS: Thanks Chairman, members of the Committee.

I'll be extremely quick. I don't want to repeat what a lot of other people have said.

But we are supportive, with the Highlands Coalition and other environmental groups, of this resolution, basically because it comes down to what the Highlands Act says -- which is, any new rules shall not degrade existing water quality. Development, by definition, increased development, increased septic systems will degrade water quality; therefore, this doesn't -- this rule should not go through.

And that's all I really had to say.

So thank you, guys, for your time.

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

Grant Lucking, New Jersey Builders Association, is in opposition; and he submitted written testimony, which we all have.

Amy Hansen, New Jersey Conservation, in favor.

AMY HANSEN: Hi; I'm wearing a different hat this time, with New Jersey Conservation Foundation.

I'm Amy Hansen, and I appreciate the ability to speak today on SCR-163.

New Jersey Conservation Foundation strongly supports the Bill, and we appreciate your hard work and determination to get this passed.

I wanted to talk about the preservation issue, because there is money, as you said. And New Jersey Conservation Foundation helps

preserve thousands of acres across the state of New Jersey, and we would be happy to work with people to protect the land in the Preservation Area, which is mostly forested. And we desperately need those forests to remain, to protect -- to continue the protection of our water quality.

We do have the Highlands Council Open Space Funding Partnership Program; they are up and running. The Federal Highlands Conservation Act and Federal Legacy Programs -- Forest Legacy Programs have provided funds to preserve forested lands in the Highlands region, and the New Jersey Highlands Council is now the official State recipient of that money. In addition, Green Acres funding, county, municipal, and nonprofits such as ours can match Open Space grants with the Council's Open Space Funding Partnership Program in order to preserve more land in this area.

So there are preservation opportunities, and we fully support upholding the protection of water in this very important area.

Thank you.

SENATOR SMITH: Thank you, Amy.

Kelly Mooij, from New Jersey Audubon; in favor, no need to testify.

David Peifer, Association of New Jersey Environmental Commissions, in favor.

Mr. Peifer.

DAVID PEIFER: Thank you, Mr. Chairman, and members of the Committee.

I'm here today to urge you to move this action forward.

I've been around a while in environmental protection in New Jersey; I started practicing in 1979. And because of that I was present at the development and the adoption of the nitrate dilution model. We originally applied this in 1988 to the State plan. The basic idea is sound; the basic concept is good science.

I want you to be aware, though, that modeling takes place in a context that's controlled, to a large degree, by the politics around the modeler. It's very important to realize that selection of assumptions in the model can be manipulated to acquire a different result. I could tell you a story about having some young landscape architecture students using geographic information systems for the first time. And after about two weeks, they came to us and said, "Geez, we don't understand. We can make these maps say anything." And the fact is, that you can when you use a model.

Now, to its credit, the Department did a pretty thorough job in trying to figure out how they could get a different result out of the model. And they did; they figured out a non-controversial way that comports with what most people believe to be good science: more data is good science. I was asked one time by a local official about data; and he said, "David, we don't need more data. We need information."

Well, what we have here is an application of what we believe, at ANJEC, to be questionable data from the Private Well Testing Act. There's a lack of quality control on those samples. There are a lot of them, and they tend to be located in areas that have already been developed.

So the water quality underneath the forested areas -- the areas that the Legislature deemed to be most important of protection in 2004 --

still remains unaddressed, in terms of its quality. But I can tell you that in a purely natural situation, the level of nitrate is very low.

So in any case, what I think we have is politics capturing science for political objectives, in this case. And we urge you to move this forward.

And I'll read just one quick line out of a 1898 U.S. Supreme Court case here in New Jersey, which applies to the State's right and duty to protect its common resources, particularly its water resources. And, in this case, the *it* is the State.

"It finds itself in possession of what all admit to be a great public good, and what it has it may keep and give no one a reason for its will."

That's from Oliver Wendell Holmes (*sic*) and the U.S. Supreme Court.

So protect the public trust, make sure that your legislative intent was followed, and hopefully we won't see you again for a while.
(laughter)

Thank you.

SENATOR SMITH: Thank you, Mr. Peifer.

Alan Hunt, Musconetcong Watershed Association, in favor.

A L A N R. H U N T, Ph.D.: I'm Alan Hunt; I'm with the Musconetcong Watershed Association. We're a small, community-based Watershed Association located in Asbury, New Jersey, with a mission to promote natural resources, cultural resources, scenic resources, and historic resources in the Musconetcong.

The Musconetcong is a 46-mile Watershed; it runs from the headwaters of Lake Hopatcong down to Riegelsville. It's about 156 square miles. It's the only Watershed with its entire drainage in the Highlands area.

Most of the mountains and the valley ridges are forested headwaters for streams, and also classed as *trout producing* by the State. And the Musconetcong itself is a Category 1 nondegradation water.

Most of the Watershed is also underlain with porous limestone or carbonate rock through which groundwater and surface water can mix. And that provides a mechanism for septic effluent to reach the Musconetcong River and its streams.

The Highlands Act requires DEP to set a septic density that can prevent degradation and requires restoration, while protecting ecological uses. It is hard to see how increasing the septic density promotes protection; it's also really hard to see how it promotes restoration.

One of the other things I did want to mention is that I, myself, live on the Musconetcong River; I have property in the Highlands, in the Planning and Preservation Areas. I do have buildable lots in the Preservation Area. Because the Highlands Act passed, it does not prohibit development there. If you have pre-existing lots, you can build a single-family home. That has continued since the Act was passed. So I think it's worthwhile to point out that not all of the Preservation Area is pristine, and that there is existing development; and that if you are aiming for a restoration standard, perhaps that development level on the remaining land that's not developed shouldn't be the same.

So I'd like to thank you for the opportunity to comment. And if there are any questions, I'll take those.

SENATOR SMITH: Any questions for Mr. Hunt? (no response)

Thank you, Mr. Hunt.

And our anchor witness is Mr. Tittel.

J E F F T I T T E L: (off mike) Thank you.

I just want to pass this picture around, because I think it's sort of important--

MS. HOROWITZ: He has to speak into the microphone.

SENATOR SMITH: Yes, you have to speak into the microphone--

MR. TITTEL: Oh, sorry.

SENATOR SMITH: --so people know what's going on.

MR. TITTEL: Sorry.

Jeff Tittel, Director, New Jersey Sierra Club.

And I want to pass this picture around so you get an understanding what we're talking about. (passes picture to Committee)

Because there's a lot of, I think, sleight-of-hand, or apples-and-oranges being compared here. Just the picture on the cover; the cover of the postcard. If you turn it over and look at the picture -- that picture was given to me by George Aronson in 1984. That is a picture of the Wanaque Highlands across the Wanaque Reservoir in Ringwood.

The reason I'm showing you that is that when you talk about the forest preservation area, that is the area we're talking about. Those are

the mountains above our reservoirs. These are not farmlands, these are not flatlands, these are not the areas near the lakes. These are the mountains.

And the reason I wanted to do that is because that is what this was all about. And the reason I strongly believe the Legislature needs to move this forward is, the law is very clear. It said that the nitrate dilution model had to be based on a deep aquifer recharge. And the reason was you wanted to test for the most pristine waters under those rocks, above those reservoirs, where those streams start in those little fissures coming out of those mountains. It was very clear.

Secondly, the law very clearly states that it had to be based on the water quality at the time of the Act. Ninety-plus percent of the data in the Private Well Testing Act in the U.S.G.S. study came after that. So it can't be used.

And that's sort of the point -- that this is not about economic development in the Highlands, this is not about jobs -- though we should be doing ecotourism and all these things -- this is about taking the most environmentally sensitive lands and opening them up for development, pure and simple.

What the DEP also fails to recognize in their study and in their rule is that in the Highlands itself there are thousands of grandfathered lots. So when you start allowing roads to go into build these McMansions in the sky -- as what would happen there-- Because what you would see, if this rule were to go into effect and you start getting development up there, you'd be seeing roads going up those mountains. And in the process of those roads going up those mountains, you'd see deep cuts in the forest, you'd see a tremendous amount of erosion affecting streams. But you

would also be opening up some of these isolated lots and grandfathered lots for more development, which they did not take into consideration.

In West Milford alone, in the Preservation Area, there are more than a thousand undeveloped lots that are grandfathered. Ringwood has over 500. That's in two towns. How many in the Preservation Area? None of that was taken into consideration.

Also what wasn't taken into consideration -- the additional housing that would have to be built to meet the town's Affordable Housing obligation. Because in S-500, that's the first thing the towns have to plan for. How many additional houses is that? What are the water quality impacts of all that?

And that's part of the problem with what they did. You know, first and foremost, they looked at the water testing in the shallow aquifers-- Because in the Highlands, you have the rock; and at the bottom of the valleys, you have sand that was scraped there by the glaciers. That's the shallow aquifer, that's where most of the development is, that's where the lakes are. And that's a very different geology and, actually, that's where all the development is. So the water quality is going to be much less there. When you deal with the mountains -- which we're trying to protect -- the water quality is much more pristine.

And by the way, if you're well tester didn't find any nitrates, I'd get a new tester, because there are nitrates in our rainfall, so either they set the parameters too low, or somebody's playing a game.

Also, in a critical piece of the mountains, the people who live in the areas that are more developed -- they get their dilution from the mountains. And that's also very clear.

So the point I just want to leave with-- And I just want to say that I'm a third-generation property owner in the Highlands. My family formed a camp in the Highlands, back in the 1920s, that we've preserved; and it's open for the public. The point is that when you look at the Highlands -- the Highlands Act was passed to preserve the drinking water quality for 6 million people. When I was on the Planning Board in Ringwood 20-plus years ago and head of the Environmental Committee, we had to fight all kinds of things, whether it was chemical plants, a power plant, thousands of condos, sewers. The Highlands Act was to say that it was not just up to the towns anymore, and local citizen groups, to protect the Highlands; it's a State responsibility. And I believe very clearly that the DEP has violated the public trust and has neglected their responsibility by using political science instead of sound science. And it's the Legislature's job -- and that's why we have the legislative veto -- to go forward with this veto, based on the fact that their study -- their rule clearly violates legislative intent on the date and on the deep water aquifer; besides all the other benefits of the Highlands Act in protecting that water quality.

Thank you.

SENATOR SMITH: Thank you, Mr. Tittel.

Mr. Tittel is the last witness, and then I'm going to step outside my role as Chairman for a minute just to say, I was there; I was the prime sponsor of the Highlands Preservation Act. And after having -- how many hearings on this? -- and after listening to all the scientists and to the State DEP, there's no question in my mind that if we allow the rules to stay in place, it will result in degradation of the water supply coming out of the Highlands.

So that's my factual statement.

So, anything else that we members want to say?

Senator Bateman, do you want to move for the release?

SENATOR BATEMAN: I would move that we release this, Mr. Chairman.

SENATOR GREENSTEIN: Second.

SENATOR SMITH: And Senator Greenstein would second.

Let's take a roll call on the release.

MS. HOROWITZ: On Senate Concurrent Resolution 163, Senator Bateman.

SENATOR BATEMAN: Yes.

MS. HOROWITZ: Governor Codey left a "yes" vote.

Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes; and the Resolution is released.

And just for the information of the public, Kevil, what are the rules on this, now? What has to happen?

MR. DUHON (Committee Aide): Once it passes the Legislature--

SENATOR SMITH: Hit your mike so everybody can hear it.

MR. DUHON: Once the Resolution passes both houses of the Legislature, I think that rule is automatically repealed.

SENATOR SMITH: Right; but we have a requirement to place--

MR. DUHON: Oh, oh. The process--

SENATOR SMITH: Please.

MR. DUHON: We put -- the transcript of the hearing goes on the desks in both houses for 20 days before we can vote it out of the -- before we can have a floor vote.

SENATOR SMITH: All right. So that we're going to do everything we can to expedite the transcript and get it on the desks. And with a little bit of a tailwind, we can get this done before this session ends.

So that's the plan; and that concludes this session of the most interesting Committee in the Legislature.

(HEARING CONCLUDED)