



SAVE BARNEGAT BAY



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February 23, 2018

Division of Land Use Regulation
New Jersey Department of Environmental Protection
PO Box 420, Code 501-02A
Trenton, NJ 08625-0420
Attn: Manchester Bureau Chief
Via electronic submission
lindsey.davis@dep.nj.gov, janet.stewart@dep.nj.gov,
Ginger.Kopkash@dep.nj.gov

Re: CAFRA Permit Application: Hovsons Inc.
Block 75.01, Lot 1
Route 70 and Colonial Drive
Manchester, NJ
Project: Heritage Minerals Project
CARFA Individual Permit & Freshwater Wetlands
General Permit NJDEP File # 1518-03-0002.3
CAF170001 & FWW170001

Dear Chief,

Please accept these comments on behalf of Save Barnegat Bay a 501c3 nonprofit environmental organization working to restore and protect Barnegat Bay. Save Barnegat Bay has worked with the citizens of Ocean County for almost 50 years in an effort to protect the watershed of the Barnegat Bay, which is threatened by overdevelopment and a lack of stormwater management controls.

As a result of local publicity, we became aware of this application and a renewed effort to overdevelop the old Heritage Minerals site with more than 4,000 residential units and approximately 40,000 square feet of commercial space. This proposal nearly doubles the size (from 2,450 units to 4,000 units plus commercial) and is an increase in density and in excess of the 2004 Consent Order or settlement agreement.

Please accept our comments in **opposition to the issuance of the above referenced CAFRA permit**. We respectfully urge the NJDEP to **extend the public comment period** to allow for more thorough review and comment on this massive development proposal. The application itself is composed of some 400 pages and is in our view incomplete. In particular, it does not include adequate analysis of stormwater impacts to critical water resources, a thorough study of potential impacts to threatened and endangered species and their habitat, potential impacts to critical drinking water supplies, and a transparent plan for cleaning up the toxic pollution and radioactive uranium and thorium on site to meet public safety and health concerns. We request that you **deny this application**.

Save Barnegat Bay feels that this application violates the regulations of the Pinelands Comprehensive Management Plan (PCMP) and Coastal Area Facilities Review Act (CAFRA.) The NJDEP has identified protection of the Barnegat Bay as a critical component of its overall environmental policy. This inappropriate and overly intense development should not be allowed.

We have reviewed the information available for the project through the Open Public Record Act process and find that the proposal contains deficiencies in several areas, including but not limited to the following:

- I. **This application fails to provide adequate protection of the waters of the United States, specifically the streams and tributaries of Barnegat Bay, a Category One (C1) waterway to meet the Surface Water Quality Standards (SWQS).**
 - A. <http://www.nj.gov/dep/transformation/c1/docs/c1-final-integrated-paper201211.pdf> New Jersey Category One Waterways
 - B. Both the Union Branch and the Wrangle Brook branches of the Toms River are in the within the bounds of the Hovsons property drainage area or sub-watershed.
 - C. They are "protected from any measurable change in water quality because of their exceptional ecological significance, exceptional recreational significance, exceptional water supply significance or exceptional fisheries resources." NJAC 7:9B

- D. Studies by the New Jersey Department of Environmental Protection (NJDEP) and the United States Geological Survey on the relation of Water Quality to Land Use in the drainage basins of four tributaries to the Toms River prove the impact of dense land use to water quality degradation. (USGS) <http://www.nj.gov/dep/dsr/barnegat/report-99-4001-usgs.pdf>
- E. The proposed development does not demonstrate the use of adequate green infrastructure to handle runoff and instead proposes to "use" existing natural resources, like wetlands, to absorb the run-off and create excessive density and impervious surface cover. Non-structural measures to mitigate nutrient pollution and discharge to streams are not adequate.
- F. In addition, soil compaction will decrease soil permeability, thereby affecting groundwater flow and storm runoff.
- G. This recently released 40 year trend study demonstrates that the continued development of this watershed has degraded the surface waters of the Toms River and that phosphorous and nitrogen loading from land use continue to be the problem. <https://www.usgs.gov/news/40-year-trend-study-finds-signs-improved-water-quality-new-jersey-streams-0>
- H. The required vegetative cover limits for a project is set forth in the regulations at NJAC 7:7-13.18. The project is not compliant.
- I. The regulations at 7:7-13.18(a)2 require herb/shrub vegetation preservation or planting on the site, which state to *"subtract both the acreage of the impervious cover allowed under NJAC 7:7-13.17 and the acreage of tree planting and/or preservation required under (a)1 from the acreage of the net land area on the site."*
- J. Additional lawns and landscaping at 4,000 residential units will exacerbate the current problems.
- K. The proposed application will increase flooding and stormwater runoff to surrounding areas, including forests, streams and wetlands that are in the Pinelands and run to Barnegat Bay tributaries.
- L. The proposed development would deplete the Kirkwood-Cohansey aquifer of approximately 2 million gallons of fresh water a day and dry out wetlands and deplete streams.

- II. This application fails to meet the Phase Two Stormwater Management regulations required by the Clean Water Act that are essential to the protection of the Bay and implement the non-degradation policy.**
- A. New Jersey Stormwater Regulations http://www.nj.gov/dep/rules/rules/njac7_8.pdf
 - B. In reviewing the application, it is quite clear that the stormwater management plans are insufficient.
 - C. The proposed application violates the intent of the CAFRA Subchapter 13: Requirements for Non-porous Cover and Vegetative Cover for General Land Areas and Certain Special Areas
 - D. Impervious cover and vegetation percentage calculations have been erroneously performed and submitted by combining allowable coverage limits and tree planting requirements in the two (2) planning areas on the site.
 - E. The arbitrary and capricious application of the regulations, effectively combining the calculations of the Suburban Planning Area and the Environmentally Sensitive Planning Areas to generate more density benefits the developer at the cost of the environment and is in direct conflict with the intent of the law. (Impervious Cover Limits NJAC7:7-13.17 and Vegetative Cover Percentages Requirements NJAC 8:7-13.18)
 - F. The applicant must apply the requirements of each planning area separately.
 - G. Coastal Zone and CAFRA http://www.nj.gov/dep/landuse/coastal/cp_main.html
 - H. The combined effect of removing thousands of trees and paving over almost 300 acres could increase flooding to surrounding areas and cause rainfall to pick up pollutants as it returns to the streams and flows to Barnegat Bay.
- III. This application proposes to destroy critical habitat for identified threatened and endangered species, including sickle leaved golden aster, Knieskern's beaked rush, Grasshopper Sparrow, Northern Pine Snake.**

- A. The Pinelands is a regional or national and international significance and is designated as the New Jersey Pinelands UNESCO Biosphere Reserve (<http://www.unesco.org/mabdb/br/brdir/directory/biores.asp?code=USA+43&mode=all>). Its habitat, plants and animals receive special protections. Its creatures are sensitive and unique. This proposal is an extreme example of overdevelopment and is especially offensive because development will destroy habitat.
- B. Pinelands Comprehensive Management Plan <http://www.nj.gov/pinelands/cmp/CMP.pdf>
- C. The application is based on old survey information and new studies should be conducted.
- D. Disturbance to existing populations of threatened and endangered species should be minimized and the development envelope restricted to non-disturbance areas.

IV. This application proposes to fill and cap wetlands as well as the use of wetlands to handle stormwater and is a violation of the Freshwater Wetlands Act.

- A. Freshwater Wetland Protection Act http://www.nj.gov/dep/landuse/download/13_9b.pdf
- B. The Wetlands Permit is dated December 15th for delineation. Must be done during the wet season.

V. The developer claims that they have been in "active" remediation for the removal of free product and contaminated groundwater since 1988. The site has not been fully remediated for 30 years.

- A. The developer proposes to remediate pollutants by filling and capping a wetland which is above drinking water supplies and has been polluting local waters for the past 30 years which they have owned the property. This is not acceptable or responsible.
- B. The property should be cleaned-up using the highest and best methods and practices.
- C. No further development approvals should be granted until at which time the property is certified as clean.

- D. The NJDEP should consider taking over the remediation of the site to ensure adequate clean-up and safe drinking water.
- E. The site is not far from Ciba-Geigy and Reich Farms, which are two well-known chemical Super-Fund sites in Toms River. Many families and children have suffered due to groundwater pollution and cancer clusters.
- F. We all share the responsibility to ensure that this does not happen at the Heritage Minerals site.

VI. There is significant local opposition to this proposal and it should not receive approvals from the State.

- A. *"Myself and the township are not in favor of the 4,000 units,"* said Mayor Ken Palmer. *"More kids, more schools, more teachers. I think that's a tax obligation the residents are not ready to accept right now."*Palmer said that even if the Department of Environmental Protection approves Hovsons' permit request, the Township Council would still have to approve the project for it to move forward. That approval is not coming, he said. *"At this point, we are not in agreement (with Hovsons),"* Palmer said. **(Asbury Park Press February 8, 2018)**
- B. In speaking with Mayor Palmer on Friday, February 16, 2018, he remains open to alternative proposals for the property that would benefit the short, mid and long term goals of the Township - **including possible open space acquisition.**
- C. In June 2016, Mayor Palmer vetoed Hovsons plan to build more than 6,500 new homes in the township, a proposal that could have swelled the population in Manchester by an estimated 15,000 people.
- D. At an earlier juncture, Hovsons proposed 10,000 units and was denied by the NJDEP.
- E. The applicant continues to attempt to force additional density on the local government, community services and environment. The property was polluted when they bought it and they have focused on exhausting the

public will and political structures to seek approvals for their idea of highest and best use of the property.

Lastly, the project fails to uphold several of coastal goals that the Coastal Zone Management Rules and New Jersey Coastal Management Program strive to achieve. They are listed with **emphasis added** where we feel the proposal falls short.

1. Healthy coastal ecosystems

- i. **Protect, enhance and restore coastal habitats and their living resources to promote biodiversity, water quality, aesthetics, recreation and healthy coastal ecosystems; and***
- ii. Manage coastal activities to protect natural resources and the environment;*

2. Effective management of ocean and estuarine resources

- i. **Develop and implement management measures to attain sustainable recreational and commercial fisheries;***
- ii. Manage commercial uses to reduce conflict between users and encourage water-dependent uses; and*
- iii. Administer the safe and environmentally sound use of coastal waters and beaches to protect natural, cultural and aesthetic resources, promote safe navigation, and provide recreational opportunities;*

3. Meaningful public access to and use of tidal waterways and their shores

- i. Preserve public trust rights to tidal waterways and their shores;*
- ii. Preserve and enhance views of the coastal landscape to enrich aesthetic and cultural values and vital communities;*
- iii. **Conserve and increase safe, environmentally sound, and meaningful public access from both the land and water to the tidal waterways and their shores for recreation and aesthetic experiences;***
- iv. Enhance public access by promoting adequate affordable public facilities and services;*
- v. Balance diverse uses of tidal waterways and their shores; and*

vi. Protect, enhance and promote waterfront parks;

4. Sustained and revitalized water-dependent uses

- i. Encourage, sustain and enhance active port and other water-dependent facilities, and maritime uses;
- ii. Encourage the redevelopment of inactive and under-utilized waterfront facilities for port, water-dependent and maritime uses;
- iii. Conserve waterfront sites for water-dependent activities; and
- iv. Manage dredging in an environmentally sound manner, promote environmentally sound and economically feasible dredged material management practices and preserve historic dredged material placement sites;

5. Coastal open space

- i. Preserve, enhance and restore open space including natural, scenic, historic and ecologically important landscapes that:**
 - (1) Provide opportunities for passive and active recreation;**
 - (2) Protect valuable wildlife and plant habitats and ecosystem health, foster aesthetic and cultural values;**
 - (3) Minimize natural hazards; and**
 - (4) *Abate impacts from non-point sources of pollution;***
- ii. Promote and enhance public access to and use of open space where appropriate; and**
- iii. Promote strategies for the creation of open space;**

6. Safe, healthy and well-planned coastal communities and regions

- i. Manage coastal activities and foster well-planned communities and regions that:**
 - (1) Encourage mixed-use redevelopment of distressed waterfront communities including underutilized, abandoned and contaminated sites;**
 - (2) Promote concentrated patterns of development;**

- (3) ensure the availability of suitable waterfront areas for water dependent activities;
- (4) Sustain coastal economies;
- (5) Create vibrant coastal communities and waterfronts;
- (6) Conserve water supply;**
- (7) Protect the natural environment;**
- (8) Minimize the threat of natural hazards to life and property;**
- (9) Provide meaningful public access to tidal waterways and their shores; and
- (10) Preserve and restore significant historic and cultural resources and aesthetic coastal features;
- ii. Maintain, enhance and encourage maritime uses;
- iii. Preserve and enhance beach and dune systems and wetlands, and manage natural features to protect the public from natural hazards;
- iv. Promote public health, safety and welfare;**
- v. Promote and implement strategies for the development of hazard mitigation plans; and**
- vi. Promote and implement strategies that eliminate or reduce risks to human health and the ecosystem from coastal activities;**

7. Coordinated coastal decision-making, comprehensive planning and research

- i. Promote the attainment of the New Jersey Coastal Management Program goals by encouraging other government agencies to employ the policies which supplement the goals;**
- ii. Encourage incorporation of the coastal goals and supplemental policies into State, regional and municipal land use management, funding and acquisition programs within the coastal zone;**
- iii. Coordinate cooperative government sponsored and academic coastal research and information dissemination to foster informed decision-making;
- iv. Ensure opportunities for public participation in coastal decision-making;**

v. Encourage the preparation of comprehensive plans, including:

(1) Land acquisition plans that further the goals and supplemental policies of New Jersey's Coastal Management Program; and

(2) Special area management plans that protect significant natural resources and provide the opportunity for sound coastal dependent economic development; and

8. Coordinated public education and outreach

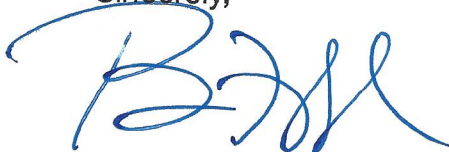
i. Coordinate education and outreach activities on coastal issues; and

ii. Encourage coastal related education and participation opportunities for the public.

We reiterate our **opposition to this project as currently proposed** for the numerous reasons listed above. We request that the NJDEP not issue the permit at this time and request the further detailed information in order to make an informed decision about the project both in terms of compliance with the applicable rules and the most environmentally beneficial protection for this site.

Thank you for the opportunity to comment.

Sincerely,



Britta Wenzel
Executive Director

cc: Honorable Governor Murphy
Acting NJDEP Commissioner Catherine McCabe