



PINELANDS PRESERVATION ALLIANCE

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Jean Montgomerie
Pinelands Commission
15 Springfield Road
PO Box 7
New Lisbon, NJ 08064

Re: Ocean Acres Conservation Overlay Zone – Threatened and Endangered Species Habitat

Dear Ms Montgomerie,

I am writing on behalf of the Pinelands Preservation Alliance in response to the Commission's invitation for public comment, to express our very strong opposition to the proposed redesignation of the Ocean Acres Overlay Zone for development based on the Ecolsciences snake survey submitted by Walters Group, and to submit the attached expert report of Dr. Joanna Burger and Dr. Emile DeVito demonstrating that the Ecolsciences survey does not provide a basis for concluding the subject land is no longer protected habitat under the Pinelands Comprehensive Management Plan. Ecolsciences argues that this area no longer qualifies as protected habitat because it failed to find any pine snakes during its survey conducted between September 2005 and July 2007. We wish to highlight the following considerations that negate the basis for this conclusion:

First, as the Burger/DeVito report verifies, the Ecolsciences survey results demonstrate that one cannot draw any statistically significant conclusion from its failure to trap pine snakes in the recent survey, even if one assumed that the survey was conducted properly. Ecolsciences managed to catch so few snakes, even of more common species, that its failure to catch any pine snakes provides no legitimate scientific basis for concluding that pine snakes are not currently using the area. At a minimum, the Commission should seek an opinion from its science staff on the statistical significance of the Ecolsciences trapping results.

The Burger/Devito report also notes deficiencies in the implementation of the survey that vitiate its conclusions. Given Ecolscience's failure to use reliable methods, its report cannot provide a basis for redesignating the Overlay Area.

Second, there is no dispute that the subject land was critical habitat within the definition of the CMP in 2003. Indeed, that was the reason this area was included in the protected area in the first place. It is well-known that some pine snakes shift their nesting and hibernation locations from time to time, leaving and returning to favored sites, or using new holes near but not identical to prior sites. It is also noteworthy that in another Walters Group development, Stafford Business Park, pine snakes have lately returned to the Business Park area despite extremely intensive efforts to attract them to new nearby

home ranges. If in fact a subject area or specific den was not used by pine snakes during the survey period, it does not follow that this area is not part of the local population's critical habitat. Because of these habits of pine snakes, even if one accepts the Ecolsciences survey findings, it would be illogical for the Commission to conclude that the Overlay Area is ceased to be critical habitat just because no pine snakes were found using it during the survey period. It would also undermine the protection of pine snake populations, since developers could simply do repetitive surveys, as Walters Group has done, in the hopes of not finding snakes in a given location they had previously used, thereby eating away at habitat as snakes shifted their foraging, nesting or hibernation sites around their critical habitat range.

Third, Ecolsciences and Walters Group need to explain why land that was denning and foraging habitat in the prior year has ceased to be such starting when they began their survey. Ecolsciences presents the only possible explanation for its conclusion that the land is no longer habitat for pine snakes – that the increased development authorized by the 2004 conservation plan on adjoining lots has so diminished the value of the land in question that pine snakes have abandoned the area.

Its consultant's argument creates a dilemma for Walters Group: if the Pinelands Commission accepts this argument, then allowing construction of the Overlay Area will have a similar effect on the adjoining lands still within the Conservation Zone. If the Commission rejects this argument, then the Commission cannot rationally accept the conclusion that the Overlay Zone has randomly and spontaneously ceased to be part of the local population's critical habitat just because no snake was found during the recent survey period.

The Ecolsciences survey fails to demonstrate that the Overlay Area is no longer pine snake habitat, or that the impact of the adjacent development has been so severe as to render the Overlay Area no longer suitable as critical habitat. The premise that adjoining development has a negative impact on most wildlife species native to an undeveloped area like the Ocean Acres Conservation Zone is, however, well-founded. It is the premise of the Pinelands Commission's own Ecological Integrity Assessment (EIA), which gives a lower Pinelands habitat value to forest that has more development in its 1000-meter vicinity than to forest that does not. Indeed, the EIA report includes an extensive literature review on the habitat significance of buffers and the edge effects of development. [See Zampella, R. et al., *An Ecological-Integrity Assessment of the New Jersey Pinelands*, NJ Pinelands Commission, April 2008, esp. pp. 7-11 & 50-56.] The importance of buffers as part of critical habitat is also embedded in the Commission's wetlands delineation model, which requires greater wetlands buffers when threatened or endangered species are present.

It would be arbitrary and capricious for the Commission to base its ruling on the Walters Group petition on the assumption that the Overlay Area has not been adversely affected by the adjoining development, or that development of the Overlay Area will not have an irreversible adverse impact on the remaining critical habitats of the Conservation Zone.

Fourth, the argument that the Overlay Zone can now be developed under the CMP because adjacent development has caused pine snakes to cease to using the area also rests on a fundamental misreading of the CMP's threatened and endangered wildlife protection rule. The CMP states:

No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local

populations of those threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J.,S.A. 23:2A-1 et seq. N.J.A.C. 7:50-6.33.

This provision protects habitats “*that are critical* to the survival of any local populations” from irreversible adverse impacts of development. To extent buffer habitat between development and active range is critical to the habitat value of the active range, it is critical to the local population’s survival, whether or not the area is itself actively used by individuals of the species in any given time period. This understanding is mandated not only by the plain language of the rule, but also by simple logic: If one requires that every piece of land be actively in use to constitute protected habitat, then development would be permitted to encroach one small chunk of land at a time for any species that does not actively and safely use the ecotone zone right up to a road or homeowners’ lawns.

The illogic of permitting Walters Group to develop the Overlay Zone on the premise that its development of adjoining land has driven pine snakes from the Overlay Area has been highlighted by David Jenkins, chief of the Endangered and Nongame Species Program, in his letter to the Commission dated April 13, 2009.

For all the reasons stated above, we submit that the CMP and sound policy mandate that the Overlay Zone remain within the Conservation Zone of the Ocean Acres development.

Respectfully submitted,

Carleton Montgomery
Executive Director