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## AMERICAN LITTORAL SOCIETY

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January 20, 2012

By Email (Eric.Virostek@dep.state.nj.us)

Ocean County Section Chief  
Division of Land Use Regulation  
Department of Environmental Protection  
501 East State Street - 2nd Floor  
Post Office Box 420 501-02A  
Trenton, New Jersey 08625  
Attn: Eric Virostek, Senior Geologist

**Re: CAFRA Application #1500-04-0001.2 - CAF090001  
Wal-Mart, Ocean County  
Block 505, Lots 14 & 15  
Toms River Township, Ocean County  
Block 44, Lots 2, 3, 4 & 5  
Manchester Township, Ocean County**

Dear Sir or Madam:

In 2006, the American Littoral Society, Inc. ("ALS") opposed an initial application furnished by the present applicant to construct a Super Wal-Mart retail store at the above location. The Department denied a CAFRA permit for noncompliance with numerous CAFRA rules, including:

- Endangered or Threatened Wildlife or Plant Species Habitats (7:7E-3.38)
- Critical Wildlife Habitats (7:7E-3.39)
- Basic Location Rule (7:7E-6.2),
- Section 10 (N.J.S.A. 13:19-10).

Nearly two (2) years ago, ALS furnished comments in opposition to the above application, which was again for the construction of a Super Wal-Mart and would result in the destruction of more than 21 acres of threatened and endangered species habitat and 39 acres of critical wildlife habitat in the CAFRA zone, and create impervious cover over 40% of the site. The Department denied a CAFRA permit for noncompliance with numerous CAFRA rules, including:

- Endangered or Threatened Wildlife or Plant Species Habitats (7:7E-3.38)
- Critical Wildlife Habitats (7:7E-3.39)
- Impervious Cover Limits for Site in the CAFRA Area (7:7E-5B.4)

- Vegetative Cover Percentages for Site in the CAFRA Area (7:7E-5B.5)
- Mainland Coastal Centers (7:7E-5B.6)
- Basic Location Rule (7:7E-6.2)
- Section 10 (N.J.S.A. 13:19-10).

The application has nevertheless persisted.

Less than one (1) year ago, ALS furnished comments in opposition to a Notice of Intent to Settle regarding the above application without substantive change (although the size of the proposed Super Wal-Mart actually increased). The proposed project would have again resulted in the destruction of more than 21 acres of threatened and endangered species habitat and 39 acres of critical wildlife habitat in the CAFRA zone, and created impervious cover over 40% of the site. At that time, the applicant made the novel assertion that CAFRA permits off-site mitigation to justify the destruction or degradation of on-site threatened or endangered species habitat. DEP did not respond to these comments, and ALS certainly anticipated that DEP was preparing to deny this longstanding project for a third time.

Nevertheless, ALS is once again furnishing comments in opposition to this ill-advised project, this time to a Stipulation of Settlement between the applicant and DEP that will result in the destruction of more than 21 acres of threatened and endangered species habitat and 39 acres of critical wildlife habitat in the CAFRA zone, and create impervious cover over 40% of the site. ALS is alarmed that the agency charged with “preventing the yard-by-yard destruction of environmentally sensitive land” would waive critical CAFRA requirements to allow this project to proceed. The Department is apparently convinced that its “common sense” approach—which allows for the replacement of protected lands with parcels of unproven habitat value—is superior to the approach codified by the legislature and prescribed by the Department’s own regulations. The fact remains that the proposed settlement still violates numerous provisions of CAFRA, and those violations cannot legally or practically be cured by mitigation.

Because this is the fourth time ALS is presenting its opposition to this Super Wal-Mart project, ALS will incorporate by reference all of its comments to date, including, without limitation, its joint comment with the Pinelands Preservation Alliance (PPA) of January 14, 2010, its comments of March 10, 2011, as well as those of the Pinelands Preservation Alliance submitted in March of 2011. For reasons stated therein, we urge the Department to change its course and stand by its prior denials of this project.

During the past year, ALS has become aware of two additional matters that bear mentioning here as additional bases for its opposition. First is the position of Hovsons, Inc. and Heritage Minerals, Inc. (collectively, “Hovsons”), the owners of an adjacent tract consisting of thousands of acres. By letter dated February 16, 2011, General Counsel for Hovsons advised DEP that the proposed settlement is “precedent setting” and that Hovsons expects DEP to treat it similarly, notwithstanding their existing settlement agreement (which Hovsons suggests is voidable). It is clear that DEP, by agreeing to the proposed settlement, would expose vast swaths of

undeveloped land proximate to the proposed project area (and Barnegat Bay) to intensive and injurious development.

Secondly, DEP appears to be adopting and employing a policy of allowing threatened and endangered species habitat to be traded for mitigation lands of unproven habitat value. ALS has recently learned of a CAFRA permit (#1520-07-0036.1) issued less than a month ago for the construction of a road extension through T/E and critical habitat because the applicant offered mitigation lands in return. ALS is concerned that DEP has started a trend that cannot be allowed to continue if sensitive lands in the CAFRA zone are to avoid destruction.

In closing, ALS notes that the record is clear that the proposed settlement should be rejected and the proposed project to construct this Super Wal-Mart in T/E habitat should be denied once and for all.

Thank you for your consideration of these comments.

Very truly yours,

*Tim Dillingham*

Tim Dillingham,  
Executive Director