

**COASTAL AREA FACILITY REVIEW ACT (CAFRA)
AND
FRESHWATER WETLANDS GENERAL PERMIT NO. 6
STATEMENT OF COMPLIANCE**

PROPOSED WALMART SUPERCENTER

**BLOCK 505, LOTS 14 AND 15
TOWNSHIP OF TOMS RIVER
AND
BLOCK 44, LOTS 2, 3, 4 (PART), AND 5
TOWNSHIP OF MANCHESTER**

**ROUTE 37 & NORTHAMPTON BOULEVARD
OCEAN COUNTY, NEW JERSEY**

Prepared for:

Jaylin Holdings, LLC
Dover Esplanade, Building 1
1027 Hooper Avenue
Toms River, New Jersey 08753
Attn: Jay Grunin, Esq.

Prepared by:

EcolSciences, Inc.
75 Fleetwood Drive, Suite 250
Rockaway, New Jersey 07866
(973) 366-9500

September 23, 2009

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. REVISED PLAN CHRONOLOGY	3
III. PROJECT DESCRIPTION	5
A. Development Description	5
B. Site Plan	5
C. Structure Description	6
D. Housing Plan	6
E. Transportation Plan	6
F. Utilities Plan	6
G. Public Services Plan	7
H. Outdoor Recreation Plan	7
IV. COMPLIANCE WITH APPLICABLE COASTAL ZONE MANAGEMENT RULES	8
A. Special Areas (7:7E-3)	8
1. Flood Hazard Areas (7:7E-3.25)	8
2. Riparian Zones (7:7E-3.26)	9
3. Wetlands (7:7E-3.27)	9
4. Wetland Buffer (7:7E-3.28)	10
5. Intermittent Stream Corridors (7:7E-3.32)	11
6. Farmland Conservation Areas (7:7E-3.33)	11
7. Historic and Archaeological Resources (7:7E-3.36)	12
8. Specimen Trees (7:7E-3.37)	13
9. Endangered or Threatened Wildlife or Plant Species Habitats (7:7E-3.38)	13
10. Critical Wildlife Habitats (7:7E-3.39)	15
11. Public Open Space (7:7E-3.40)	19
12. Special Hazard Areas (7:7E3.41)	20
13. Pinelands National Reserve and Pinelands Protection Area (7:7E-3.44)	21
14. Geodetic Control Reference Mark (7:7E-3.47)	22
B. Requirements for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas (7:7E-5)	23
1. Impervious Cover Requirements for Sites in CAFRA Areas (7:7E-5.3)	23
2. Vegetative Requirements for Sites in CAFRA Areas (7:7E-5.4), and Determining the Extent of Forested Areas on the Site (7:7E-5.5)	23
C. Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area (7:7E-5B)	24

1.	Boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores, and CAFRA nodes; Coastal Centers (7:7E5B.3).....	24
2.	Impervious Cover Limits for a Site in the CAFRA Area (7:7E-5B.4), and Mainland Coastal Centers (7:7E-5B.6)	24
3.	Vegetative Cover Percentages for a Site in the CAFRA Area (7:7E-5B.5).....	25
D.	General Location Rules (7:7E-6)	26
1.	Basic Location Rule (7:7E-6.2)	26
2.	Secondary Impacts (7:7E-6.3).....	26
E.	Use Rules (7:7E-7).....	27
1.	Commercial Facility Use Rule (7:7E-7.10)	27
F.	Resource Rules (7:7E-8)	27
1.	Marine Fish and Fisheries (7:7E-8.2)	27
2.	Groundwater Use (7:7E-8.6).....	28
3.	Water Quality (7:7E-8.4) and Stormwater Management (7:7E-8.7).....	28
4.	Vegetation (7:7E-8.8).....	31
5.	Air Quality (7:7E-8.10).....	32
6.	Public Trust Rights (7:7E-8.11).....	33
7.	Scenic Resources and Design (7:7E-8.12).....	33
8.	Buffers and Compatibility of Uses (7:7E-8.13).....	34
9.	Traffic (7:7E-8.14).....	34
10.	Solid and Hazardous Waste (7:7E-8.22).....	35
V.	COMPLIANCE WITH SECTION 10 OF THE NEW JERSEY COASTAL AREA FACILITY REVIEW ACT.....	36
VI.	COMPLIANCE WITH THE FRESHWATER WETLANDS PROTECTION ACT RULES FOR GENERAL PERMITS (N.J.A.C 7:7A-4 AND 7:7A-5).....	40
VII.	SUMMARY	46
VIII.	REFERENCES	47

LIST OF ATTACHMENTS

- ATTACHMENT A – FIGURE 1 – USGS SITE LOCATION MAP
- FIGURE 2 – OCEAN COUNTY ROAD MAP
- ATTACHEMNTN B - ANNOTATED PHOTOGRAPHS
- ATTACHMENT C - CORRESPONDENCE
- ATTACHMENT D – QUALIFICATIONS OF PREPARERS

I. INTRODUCTION

Jaylin Holdings, LLC, of Toms River, New Jersey, is proposing to construct a commercial development consisting of a Walmart retail store on a 43.341±-acre site known as Block 505, Lots 14 and 15 in the Township of Toms River and Block 44, Lots 2, 3, 4 (part), and 5 in the Township of Manchester, Ocean County. The site fronts New Jersey State Highway Route 37 and Northampton Boulevard. A Conrail railroad right-of-way forms the site's southwestern boundary. The site is vacant and is primarily characterized by pitch pine and oak-dominated forest. A small barren area containing paved surfaces is located within Lot 3 and an adjoining part of Lot 2. Lot 5 contains a grassy field. Forested wetlands are located in the southwestern and western portions of the site. The site is within the Toms River watershed of the Atlantic Coastal Basin. An unnamed tributary of Sunken Branch crosses the western corner of the site.

The Walmart project proposed in this application consists of the construction of a 187,793 square-foot (SF) retail store, a 5,703 SF seasonal garden center, parking facilities for 833 vehicles, retaining walls, 5 above-ground and 2 underground stormwater basins, and access roads off Route 37 and Northampton Boulevard. The southern part of Lot 4 will be incorporated into the project through subdivision whereas the northern portion, containing a former gas station, is excluded. Also, a 0.342-acre portion of Lot 15 in the northeastern part of the site is proposed for dedication to NJDOT for roadway improvements. In addition to the proposed development activities, the Applicant's proposal includes the purchase and preservation as open space of two off-site properties including a 21.1-acre parcel and an 89.29-acre parcel. The 21.1-acre parcel, known as Block 75.01, Lot 3 in the Township of Manchester, has already been purchased by the Applicant. The 89.29-acre parcel, known as Block 77, Lots 2, 4, 5 & 6 is currently under contract for purchase by the Applicant.

The site is within the regulated coastal zone of New Jersey and is partly within the proposed Toms River Coastal Regional Center (the Toms River Township portion) and partly within the Suburban Planning Area (PA2) (the Manchester Township portion). The site is also located within the Regional Growth Area of the Pinelands National Reserve. This Statement of Compliance (SOC) has been prepared in accordance with the Coastal Permit Program Rules (N.J.A.C. 7:7) to demonstrate project compliance with the Coastal Zone Management Rules (N.J.A.C. 7:7E-1.1 *et seq.*) in support of an application for a Coastal Area Facility Review Act (CAFRA) permit. Portions of this Statement of Compliance (SOC) have also been prepared in accordance with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) in support of a concurrent application for a freshwater wetlands Statewide General Permit No. 6. This SOC concentrates on all policies that are applicable to the proposed project, and specifically addresses the guidance provided prior to and

during a pre-application conference held between the Jaylin Holdings, LLC project team and representatives of the New Jersey Department of Environmental Protection (NJDEP) on July 2, 2009 (see Attachment C). This SOC accompanies the "Preliminary and Final Site Plan & Minor Subdivision for Proposed Walmart" (site plans) prepared by Bohler Engineering, P.C. and dated June 26, 2009.

A previous CAFRA permit application for the site was submitted in 2004 for a proposed Walmart retail store and associated structures (File No 1500-04-0001.1, CAF040001). The prior plan was for a larger development including a ±208,433 SF retail store, a ±19,554 SF garden center, and parking for 1,198 vehicles. That application was denied by the NJDEP in 2006, largely based on the potential for negative impacts to a locally-documented population of northern pine snake (*Pituophis melanoleucus melanoleucus*), a State-threatened species. An appeal of that denial was timely filed and is still pending. This application represents a significantly revised and reduced project that addresses the NJDEP concerns expressed in the denial. The applicant has redesigned the project to minimize environmental impacts and to provide specific habitat enhancements and protective measures that will benefit the local northern pine snake population, which are discussed in detail within the appropriate sections of this SOC and the Endangered or Threatened Wildlife Habitat Impact Assessment. Furthermore, 20.91 acres of preserved on-site forest and two proposed off-site mitigation sites located in Manchester Township at a combined 110.4±acres (Block 75.01, Lot 3, and Block 77, Lots 2, 4, 5 & 6) are expected to adequately offset the proposed development of a portion of the wooded habitat on the site.

A list of licenses, permits, and approvals which are required for the proposed project and the status of each are provided below:

<u>Agency</u>	<u>Permit/Approval</u>	<u>Status</u>
NJDEP	CAFRA Individual Permit	Subject of this submission
NJDEP	Statewide General Permit No. 6	Subject of this submission
NJDEP	Letter of Interpretation	Approved May 18, 2004 (File No. 1500-04-0001, FWW 040001) and extended until December 31, 2010 via the Permit Extension Act
Township of Toms River Planning Board	Site Plan	To be submitted
Township of Manchester Planning Board	Site Plan	To be submitted

- A hand marked-up concept plan was transmitted to the NJDEP on May 22, 2008. In that plan, the development was further reduced to a 176,348 SF retail store, 8,002 SF garden center, and parking for 998 vehicles (5.0/1000 parking ratio). The Route 37 access road looped around the outside of the hibernaculum and associated buffer. A snake barrier wall that extended around the buffer of the hibernaculum and ended at a significantly reduced stormwater wet basin was proposed. In addition, the building was placed closer to the railroad tracks to further reduce any encroachment of the parking fields on the pine snake corridor requested by the NJDEP. A Statewide General Permit No. 6 would be required to encroach into wetlands for a truck turnaround behind the building. Most of the western portion of the site would be preserved habitat consisting of upland forest and wetlands.
- A coverage exhibit with a revision date of April 15, 2008 was submitted to the NJDEP. This was essentially the same plan as described above except that it distinguished between the proposed developed portion of the site and the proposed undeveloped portion of the site.
- In March 2009 the coverage exhibit was revised to acquiesce to the NJDEP's requested length of snake barrier wall ($\pm 3,011$ LF). It also moved the bale and pallet area to the east to reduce the amount of disturbance in the wetlands and wetlands buffers.
- Thereafter, a new concept plan dated April 13, 2009 was prepared. That concept plan showed a 181,437 SF retail store, 3,509 SF garden center, and parking for 984 vehicles (5.0/1000 parking ratio). The preservation of the pine snake hibernaculum and associated buffer as well as upland woods and wetlands habitats in the western portion of the site remained as before. Also, the snake barrier wall was consistent with the previous plan. A Statewide General Permit No. 6 would be required for the truck turnaround and some transition area averaging would be required for a parking field.

On July 2, 2009, a pre-application conference was held between the Jaylin Holdings, LLC project team and representatives of the NJDEP to present the revised site plans enclosed with this application. During this meeting, additional guidance by the NJDEP was provided concerning the preservation and enhancement of both on-site and off-site threatened and endangered species habitats, the mitigation of impacts to vernal habitat, and stormwater management. This guidance was incorporated into the site plan, which is the subject of the current CAFRA permit application.

III. PROJECT DESCRIPTION

A. Development Description

The proposed Walmart project consists of an 187,793 SF retail store with an associated 5,703 SF outdoor seasonal garden center. Additional project elements include a parking lot (833 spaces), access roads, 5 above-ground and 2 underground stormwater basins, and a 4-foot high snake barrier wall (total length = 3,319 LF). The store and garden center are proposed in the southeastern portion of the site, within Toms River Township. The parking lots, access roads and retaining wall are proposed in the central, eastern and northern portions of the site, largely within Toms River Township and partially within Manchester Township. Stormwater basins are proposed in the northeast, northwest, southern, and central portions of the site. Western and southwestern portions of the site will be preserved as open space.

B. Site Plan

The proposed 187,793 SF retail store and associated 5,703 SF outdoor seasonal garden center will be positioned in the southeastern portion of the site near the intersection of Northampton Boulevard and Executive Drive. Two access drives off Northampton Boulevard will be constructed and an eastbound entrance/exit will be provided off Route 37 approximately 1,000 feet west of the Northampton Boulevard intersection. The proposed access drive will follow the northern site boundary before entering the parking field to avoid environmentally sensitive areas. While the Northampton Boulevard/Route 37 intersection is currently signalized, improvements will be made to the intersection in accordance with the requirements of the major access permit to be obtained from the New Jersey Department of Transportation (NJDOT).

A parking field containing 771 spaces, including 21 handicapped spaces, will be constructed in the northeastern portion of the site in front of the building. A smaller parking field containing 48 spaces will be constructed on the west side of the building. A minor parking area containing 14 spaces will be located to the east of the building along the delivery access drive. A 4-foot high snake barrier wall will extend 2,780 LF along the western perimeter of the northern parking field, along the full length of the access drive off Route 37, and along the northwestern site boundary. Combined with 539 feet of retaining wall for the main stormwater management basin, the continuous wall will total 3,319 LF. The wall will limit encroachment into environmentally sensitive portions of the site and will prevent human-wildlife conflicts that may otherwise occur from wildlife, particularly pine snakes, entering developed areas.

Stormwater management for the site will utilize five above-ground basins and two underground stormwater basins, as described in the Stormwater Management Report prepared by

Bohler Engineering, accompanying this application. The seven-basin system is designed to accommodate the Walmart store, garden center, access roads, and parking fields. The basins are proposed in the northeast, northwest, southern, and central portions of the site.

Western and southwestern portions of the site, which contain the unnamed tributary to Sunken Branch and its associated riparian zone, wetlands and its associated transition area, and a habitat corridor for northern pine snake and other wildlife, will be preserved as open space.

Proposed activities have been described in the preceding section and are detailed on the accompanying site plans.

C. Structure Description

The proposed structure is a 187,793 SF retail store with an associated 5,703 SF outdoor seasonal garden center. Additional details are provided on the accompanying site plans.

D. Housing Plan

Not applicable, no housing is proposed.

E. Transportation Plan

Access to the site is proposed via the construction of new access roads from Route 37 and Northampton Boulevard. Two access drives off Northampton Boulevard near its intersection with Executive Drive will be constructed; one for patrons that will cross in front of the building and one for deliveries that will circulate truck traffic behind the building. A turn-around will be provided behind the building to facilitate the movements of exiting trucks (see Truck Turning Plan prepared by Bohler Engineering, P.C. and dated June 26, 2009). An eastbound entrance/exit will be provided off Route 37 approximately 1,000 feet west of the Northampton Boulevard intersection. The 36-foot wide access drive will follow the northern site boundary before entering the parking field to avoid environmentally sensitive areas. This access road will also connect to the rear of Lot 4. While the Northampton Boulevard/Route 37 intersection is currently signalized, improvements will be made to the intersection, including a re-aligned ramp off Route 37, in accordance with the requirements of the major access permit to be obtained from the NJDOT (see "Proposed Roadway Construction Plan" prepared by Orth-Rodgers and Associates, Inc. and last revised June 28, 2007). The plan has been designed to provide for proposed traffic flow and access.

F. Utilities Plan

The project will be serviced by public sewer and water, natural gas, and electricity. It is estimated that the project will generate an estimated 19,827 gallons per day (GPD) of wastewater

based on retail with a fast food restaurant contained within the Walmart building. Wastewater conveyance will be provided by connection to existing facilities along Northampton Boulevard maintained by the Toms River Municipal Utilities Authority (TRMUA). This system ultimately conveys wastewater to the Ocean County Utilities Authority's (OCUA's) Central Water Pollution Control Facility in Toms River before being pumped into the Atlantic Ocean. The proposed building is located entirely within Toms River Township. Water supply will require connection to a United Water Toms River (UWTR) main located along Northampton Boulevard. A request for water service in Toms River Township has been submitted to United Water Toms River. A copy of the "will serve" letter confirming water availability will be forwarded to NJDEP upon receipt. Natural gas and electric connections will also be made to existing facilities located along Northampton Boulevard.

For additional details, see accompanying Utilities Plan prepared by Bohler Engineering, P.C. and dated June 26, 2009.

G. Public Services Plan

Not applicable.

H. Outdoor Recreation Plan

Not applicable.

IV. COMPLIANCE WITH APPLICABLE COASTAL ZONE MANAGEMENT RULES

The following sections describe the project's compliance with applicable portions of NJDEP's Coastal Zone Management Rules.

A. Special Areas (7:7E-3)

Special Areas are areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. The following fourteen Special Areas have been identified from the Subchapter 3 listing as being potentially affected by the proposed plan. Any Special Areas contained within the Subchapter 3 listing but not addressed herein are not applicable to the proposed project.

Flood Hazard Areas (7:7E-3.25)

Riparian Zones (7:7E-3.26)

Wetlands (7:7E-3.27)

Wetlands Buffers (7:7E-3.28)

Intermittent Stream Corridors (7:7E-3.32)

Farmland Conservation Areas (7:7E-3.33)

Historic and Archaeological Resources (7:7E-36)

Specimen Trees (7:7E-3.37)

Endangered or Threatened Wildlife or Vegetation Species Habitats (7:7E-3.38)

Critical Wildlife Habitats (7:7E-3.39)

Public Open Space (7:7E-3.40)

Special Hazard Areas (7:7E-3.41)

Pinelands National Reserve and Pinelands Protection Area (7:7E-3.44)

Geodetic Control Reference Marks (7:7E-3.47)

1. Flood Hazard Areas (7:7E-3.25)

Flood Hazard Areas are the floodway and flood fringe area around the rivers, creeks, and streams as delineated by DEP under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.); and areas defined or delineated as an A or V zone by the Federal Emergency Management Agency (FEMA).

A flood hazard area corresponding with the approximate 100-year flood elevation (56.12± ft) was delineated as part of a previously obtained Stream Encroachment Permit (File No. 1500-04-0001.1 FHA 0001.1) and is shown on the enclosed plans. The flood hazard area originates from the

on-site tributary to Sunken Branch, which does not meet the definition of a navigable water per N.J.A.C. 7:7E-1.8. No habitable structures are proposed within the flood hazard area, and no development is proposed within 100 feet of a navigable water. The project has been designed to comply with the applicable design and construction standards of the Flood Hazard Area Control Act (N.J.S.A 58:16A-50 et seq. and implementing rules at N.J.A.C. 7:13), the Uniform Construction Code (N.J.A.C. 5:23), and the Federal flood reduction standards (44 C.F.R. Part 60). The project is in compliance with this policy.

2. Riparian Zones (7:7E-3.26)

Riparian zones exist within and adjacent to regulated waters as defined by the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13-4.1.). Riparian zones include the land and vegetation within each regulated water as well as the land and vegetation within a specified distance from the regulated water.

An unnamed tributary of Sunken Branch crosses the western portion of the site. Because documented habitat for the pine barrens treefrog (*Hyla andersonii*), a State-threatened wildlife species included on the NJDEP's *List of Threatened and Endangered Species That Are Critically Dependent on Regulated Waters For Survival*, has been mapped within one-mile downstream of the site, the riparian zone would extend 150 feet from the top of bank of the on-site tributary of Sunken Branch. No activities are proposed within 150 feet of the on-site water or within its riparian zone and the riparian zone will be contained in the preserved open space, such that the project is in compliance with this policy.

3. Wetlands (7:7E-3.27)

Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

The locations of freshwater wetlands on the site are verified by a Letter of Interpretation (LOI) issued by NJDEP on May 18, 2004, (File No. 1500-04-0001, FWW 040001). This LOI has been extended until December 31, 2010 by virtue of the Permit Extension Act. Proposed development activities include the filling of 0.47 acres of isolated wetlands for the construction of a turn-around that will be provided behind the building to facilitate the movements of exiting trucks. This isolated wetlands was inspected by the NJDEP and determined to be vernal habitat, presumably due to evidence of use by obligate or facultative vernal species and the presence of ephemeral pools that are devoid of fish. Per guidance received at the pre-application conference with NJDEP on July 2, 2009, the disturbance to wetlands and vernal habitats meets the conditions for a Statewide General Permit No. 6 under the Freshwater Wetlands Protection Act Rules. Thus,

an application for the Statewide General Permit No. 6 is being submitted concurrently with this application.

To compensate for the proposed isolated wetland disturbances and to fulfill the mitigation requirements at N.J.A.C. 7:7E-3.27(h), the applicant proposes the on-site creation of a 1-acre isolated wetland/vernal habitat. The proposed wetland creation is at a ratio of 2.12:1 and exceeds the minimum 2:1 ratio required under CAFRA, thus the project is in compliance with this policy. The created wetland is proposed to be constructed in uplands immediately northwest of the existing on-site isolated wetland. Because the created wetland, in addition to meeting the regulatory definition of wetlands contained within the Freshwater Wetlands Protection Act, must function as a vernal habitat, the presence of surface water (ponding) from late winter through mid-summer is imperative to support the breeding ecology of vernal species. As a result, the proposed location was selected only after obtaining data, in June and July of 2009, on the observed free water elevation from several on-site locations as well as from an adjacent 21.1-acre parcel that is being preserved as open space as part of the project. Data was collected by digging test pits with an excavator or auger and observing the depth to water. On the off-site parcel, free water was observed at depths from 48 inches to 82 inches below existing ground level, and in most cases (6 out of 8 test pits) free water was not observed until depths greater than 5 feet. In comparison, on-site free water in the vicinity of the proposed wetland construction on the site was obtained within 1-3 feet of the surface, thus indicating a shallower and more accessible source of hydrology and an increased likelihood for successful vernal habitat creation. Additional details on the proposed created wetland are provided on the "Wetland Mitigation Plan" prepared by Bohler Engineering, P.C. and dated June 26, 2009. Upon approval of the concept plan, a detailed "Vernal Habitat Mitigation Report" including target species and their ecology, project goals, design information, and maintenance plans will be provided to the Department for final approval prior to commencement of any construction activities.

4. Wetland Buffer (7:7E-3.28)

Wetland buffers or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem.

Within the LOI issued for the site (File No. 1500-04-0001, FWW 040001), the NJDEP has determined that the on-site wetlands are of intermediate resource value with a standard transition area (buffer) of 50 feet. Proposed development activities include the filling of 0.47 acres of isolated wetlands and an associated 0.45 acres of transition area. Per the pre-application conference with NJDEP on July 2, 2009, these disturbances may be authorized under the Freshwater Wetlands Protection Act Rules through a Statewide General Permit No. 6 and its accompanying waiver for access. An application for the Statewide General Permit No. 6 is being submitted concurrently with

this application. In addition, a "Wetland Mitigation Plan" prepared by Bohler Engineering, P.C. and dated June 26, 2009 has been prepared for the proposed 1-acre wetland creation that is required to offset disturbances to on-site wetlands. This created wetland will receive a 50-foot transition area (buffer) that will be preserved via a conservation easement recorded on the deed for the site. The proposed project is in compliance with this policy.

5. Intermittent Stream Corridors (7:7E-3.32)

Intermittent stream corridors are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of the channel banks, whichever is greater.

An intermittent stream corridor associated with the tributary of Sunken Branch is located in western portion of the site. No activities are proposed within the intermittent stream, its riparian zone, flood hazard area, or associated wetlands, all of which will be contained within the preserved open space. The project is in compliance with this policy.

6. Farmland Conservation Areas (7:7E-3.33)

Farmland conservation areas are defined as any contiguous area of 20 acres or more (in a single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II, and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm dependent purposes is not economically feasible. Farmland conservation areas shall be maintained and protected for open space or farming purposes. Farming or farm-dependent uses are permitted in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use rule (N.J.A.C. 7:7E-7.8).

According to the Ocean County Soil Survey (SCS, 1980, Sheet 25) as prepared by the United States Department of Agriculture Soil Conservation Service, three soil mapping units are located in the portion of the site for which site plan activities are proposed: Lakehurst sand, 0 to 3 percent slopes (LhA); Lakewood sand, 0 to 5 percent slopes (LwB); and Mullica sandy loam (Mu). The Lakehurst and Lakewood soils mapped on the site are in Capability Classes IV and VII, thus they do not qualify as Farmland Conservation Areas. The Mullica soils mapped on the site are in Capability Class III and are potentially suitable for blueberries and late-season vegetables. However, the on-site Mullica soils are part of a mapped area that is less than four (4) acres in size, and are not contiguous with any other areas meeting the definition of Farmland Conservation Areas. Thus, no contiguous area of twenty (20) or more acres meeting the definition of Farmland

Conservation Areas will be impacted by the proposed activities. The project is in compliance with this policy.

7. Historic and Archaeological Resources (7:7E-3.36)

Historic and archaeological resources include objects, structures, shipwrecks, buildings, neighborhoods, districts, and man-made or man-modified features of the landscape and seascape, including historic and prehistoric archaeological sites, which either are on or are eligible for inclusion on the New Jersey or National Register of Historic Places. Development that detracts from, encroaches upon, damages, or destroys the value of historic and archaeological resources is discouraged. Development that incorporates historic and archaeological resources in sensitive adaptive re-use is encouraged.

The site is vacant and does not contain any structures. According to reviews of the New Jersey and National Registers of Historic Places (NJDEP, HPO, 7/7/2009), the GIS layers “NJDEP Merged Inventory Historic Properties of New Jersey (NJDEP, NHR, HPO, 2004), “NJDEP Archaeological Site Grid of New Jersey,” “NJDEP Historic Districts of New Jersey,” and “NJDEP Historic Properties of New Jersey” (NJDEP, NHR, HPO. 2008), no known historical or cultural resources are listed on the site. A prior search of HPO records was also conducted by C&H Environmental, Inc. in association with the 2004 CAFRA submission. That file search located a cultural resources survey that included Block 44, Lot 2 in Manchester Township (Wilson, 1987) and concluded that any remnants of the iron industry or cranberry bogs that may be present on the study site were representative of industries that were present elsewhere in the Pine Barrens and were not significant enough for placement on either the State or National Registers. In addition, EcolSciences made inquiry to the Manchester Township and to Toms River Township regarding the presence or absence of known historical or archaeological resources on the project site. Manchester Township does not have a Historical Commission or similar body, however, the Toms River Township Historic Preservation Commission (the Commission) responded in a letter, dated September 21, 2009 (Attachment C), that the Commission is not aware of any historical resources pertaining to the portion of the site within Toms River Township (Block 505, Lots 14 and 15).

Because the proposed activities are located on a site that is not documented to contain historic or archaeological resources and is not immediately adjacent to any listed or known eligible historic or archaeological resource, no impacts to any listed or known eligible resources will result from the proposed activities. The project is in compliance with this policy.

8. Specimen Trees (7:7E-3.37)

Specimen trees are the largest known individual trees of each species in New Jersey. The Department's Bureau of Parks and Forestry maintains a list of these trees. In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.

Although the site is primarily forested, no unusually large trees approaching the diameter of the known largest specimen trees occur on the site.

9. Endangered or Threatened Wildlife or Plant Species Habitats (7:7E-3.38)

Endangered or threatened wildlife or plant species habitats are areas known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife or plant identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for either State or Federal listing. The definition of endangered or threatened wildlife or plant species habitats includes a sufficient buffer area to ensure continued survival of the population of the species. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat. Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through Endangered or Threatened Wildlife or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.2, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected. Coastal policy prohibits the development of such Special Areas unless it can be demonstrated that this habitat would not be directly or indirectly affected.

Pursuant to N.J.A.C. 7:7E-3C.2, a report providing an Endangered or Threatened Wildlife Habitat Impact Assessment, specifically addressing this Special Area policy has been included in this application to demonstrate that the proposed development will not adversely impact endangered or threatened wildlife species on the site or in the surrounding area. A summary of the report's conclusions is below; however, please refer to the complete report for additional information.

The current proposed retail development is based on a highly modified and reduced version of a prior site plan and has been developed to minimize impacts to endangered and threatened species and to preserve or enhance critical wildlife habitats on and off-site. Based on nearby records of northern pine snake and a coincidence of appropriate vegetative land cover, the site is mapped as habitat for northern pine snake by the Landscape Project, as are nearby parcels located to the south and west. In addition other State-listed wildlife including northern pine snake, corn snake, pine barrens treefrog, barred owl, and Cooper's hawk are also documented off-site. EcolSciences conducted an assessment of the potential impacts to the mapped habitats and listed species located on and adjacent to the site. A 2005 field study conducted by EcolSciences, Inc. confirmed the

presence of pine snake habitat on the site and documented 2 adult male pine snakes and 1 pine snake winter hibernaculum on the site. No other State-listed species were observed on-site during EcolSciences' field study. Based on the presence of mapped critical habitats, NJDEP comments, and the results of the 2005 field study, the Applicant is proposing numerous measures to ensure that the proposed development will not directly, or through secondary impacts, adversely impact endangered or threatened wildlife species on the site or in the surrounding area. These measures include:

- A 10% reduction from the originally proposed building, a 71% reduction from the originally proposed garden center, a 30% reduction from the originally proposed parking lots, and a 33% reduction in overall proposed impervious cover.
- Preservation of the on-site pine snake hibernaculum and a 50-meter radius open space buffer surrounding the den.
- Preservation of a 20.91-acre open space corridor linking on-site habitats to the off-site habitats.
- Construction of a 3,319 LF (total with retaining wall), minimum 4-foot high snake barrier to minimize human-snake conflicts.
- Purchase and preservation of approximately 110.4 acres of off-site open space containing mapped habitat for pine snake and other endangered and threatened species.
- Construction of artificial hibernacula.
- Placement of stump/slash and timbers/logs to mimic documented critical snake habitats

It is expected that the combination of these measures will enhance the northern pine snake habitat in the vicinity of the site and provide permanent ancillary benefits to other State-listed species that are documented nearby. The project will preserve, to the maximum extent feasible, the vegetation and soils upon which these species are mapped, will minimize human disturbance within critical wildlife habitats, will not disrupt the overall hydrology of the site or adjacent areas, and will not result in any adverse impacts to the State-listed species via an influence on competitors, parasites, or predators.

10. Critical Wildlife Habitats (7:7E-3.39)

Critical wildlife habitats are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating. Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless minimal feasible interference with the habitat can be demonstrated; there is no prudent or feasible alternative location for the development; and the proposal includes appropriate mitigation measures.

Portions of the site are located in or near habitats that may be critical wildlife habitat as defined at N.J.S.A. 7:7E-3.39, including the following:

- **Upland portions of the site mapped in the Landscape Project as, and confirmed via field survey to be, habitat for the State-threatened northern pine snake.**

As discussed in the Endangered or Threatened Wildlife Habitat Impact Assessment, summarized above, proposed construction activities occur in habitats that are mapped as and documented to be pine snake habitat. As a result, the Applicant has demonstrated a concerted effort at minimization of impacts to this habitat, while still seeking an economically viable use of the property. As compared to the previously proposed development plan submitted as part of the prior CAFRA Permit application, the current proposed development plan includes significant revisions resulting in a greatly diminished development footprint. The prior site plan sought approval for a 208,433 SF store, a 19,554 SF. garden center, and 1,198 parking spaces. The current plan requests approval for a 187,793 SF store (a 10% reduction), a 5,703 SF garden center (a 71% reduction), and 833 parking spaces (a 30% reduction). Overall impervious cover associated with the site plan has been reduced by 7.24 acres (a 33% reduction). Many of the large, protected, vacant parcels in the area also contain mapped habitats for northern pine snake, including the adjacent 21.1 acre parcel, which is a key link between the den site and over 13,660 acres of open space associated with Crossley Preserve (2,948 acres), Manchester Wildlife management Area (3,362 acres), and Whiting Wildlife Management Area (1,190 acres) as well as land which is being permanently protected through the Heritage Minerals settlement (approximately 6,140 acres). As a result of the totality of measures undertaken by the Applicant relative to both on-site and off-site protection and because the Applicant has reduced and limited disturbances occurring on the site, the overall habitat will not be adversely affected, either directly or through secondary impacts.

- **A pine snake winter hibernaculum, documented on the site.**

As a result of the presence of a documented on-site hibernaculum, the Applicant has re-designed the northern portion the project in order to avoid disturbing the winter den. Prior to the

den's discovery in 2005, previously proposed site plan activities were located within this area and would have resulted in the inadvertent destruction of this resource. The revised proposal now includes a re-routed access road that follows the site's northern boundary in order to avoid disturbance to this critical habitat as well as the creation of a permanently preserved 50-meter wide open space buffer surrounding the den in order to further minimize human impacts to the den site. In addition, a portion of the snake barrier (shown on the site plans and discussed above) passes around the hibernaculum, outside of the 50-meter buffer, and will prevent any snakes from inadvertently entering developed areas as they approach the den or utilize the surrounding preserved areas.

- **Adjacent off-site parcels mapped as habitat for the State-endangered corn snake and the State-threatened northern pine snake, pine barrens treefrog, barred owl, and Cooper's hawk.**

The proposed site plan activities do not occur in off-site areas documented to be habitat for corn snake, northern pine snake, pine barrens treefrog, barred owl, and Cooper's hawk and are not expected to result in adverse impacts to populations of these species due to competitor, parasite, or predator species. The site is currently located near significant existing commercial and residential development. Unimproved roads along and through the property are currently subject to unauthorized use for recreation by off-road vehicles and for the dumping of household trash and construction debris. As such, the proposed activities are not anticipated to introduce new vectors of parasite transmission, competition, or predation to the area. In addition, no site plan activities are proposed within the on-site portions of the riparian zone or flood hazard area adjacent to the unnamed tributary of Sunken Branch, and any potential temporary adverse effects (such as erosion or sedimentation) to on-site or off-site wetlands and waters during construction activities will be avoided through strict adherence to the Soil Erosion and Sediment Control Plans prepared by Bohler Engineering, P.C., and as approved by the Ocean County Soil Conservation District. Thus, the project will not have an impact on the water quality or overall hydrology of any downstream waters located off-site. Finally, the purchase (and preservation as open space) of the adjacent 21.1-acre parcel, which links the development property to thousands of acres of lands protected through State owned open space and the Heritage Minerals settlement, and the 89.29-acre parcel will permanently protect areas containing documented habitat for these species.

- **Forested and vegetated portions of the site that may function as a corridor for wildlife movement.**

In order to provide freedom of movement for wildlife, including northern pine snake, the site plan proposes permanent preservation of 20.91-acres of forested/vegetated open space to serve as a corridor linking on-site habitats with other preserved habitats located off-site. This corridor will consist of undeveloped lands west and northwest of the development footprint and will extend to the northwestern and southwestern property boundaries. Within this preserved corridor, the Applicant proposes additional habitat enhancement initiatives, such as construction of artificial hibernaculum and stump/slash piles (see below) as well as the revegetation and restoration of existing unauthorized ATV and 4WD trails traversing the area. In addition, the on-site corridor will be located directly across the Conrail railroad right-of-way from an additional 21.1-acres of undeveloped land, mapped within the Landscape Project as critical habitat for several State-listed species that the Applicant also intends to preserve in an undeveloped state for wildlife habitat.

- **An on-site isolated wetland meeting the definition of a vernal habitat.**

Based on a site inspection by the NJDEP, the on-site isolated wetland meets the criteria of a vernal habitat. As such, the wetland may provide breeding habitat for obligate or facultative vernal species. Because proposed development activities include the filling of 0.47 acres of this isolated wetland for the construction of a turn-around that will be provided behind the building to facilitate the movements of exiting trucks, a Statewide General Permit No. 6 is required. In addition, to compensate for the proposed isolated wetland disturbances and to fulfill the mitigation requirements at N.J.A.C. 7:7E-3.27(h), the applicant proposes the on-site creation of a 1-acre isolated wetland/vernal habitat that equals or exceeds the functions of the wetland to be filled. Because the created wetland must function as a vernal habitat, the presence of surface water (ponding) from late winter through mid-summer is imperative, in order to support the breeding ecology of vernal species. As a result, the proposed location was selected only after obtaining data indicating a shallow and accessible source of hydrology and a likelihood for successful vernal habitat creation. Additional details on the proposed created wetland are provided on the "Wetland Mitigation Plan" prepared by Bohler Engineering, P.C. and dated June 26, 2009. Upon approval of the concept plan, a detailed "Vernal Habitat Mitigation Report" including target species and their ecology, project goals, design information, and maintenance plans will be provided to the Department for final approval prior to commencement of any construction activities.

- **Forests and forested wetlands located on-site and nearby likely to be used as stopover habitat for neotropical migrant bird species.**

Like most of the region, forested areas of the site appear to be suitable for use as opportunistic stopover habitat by various neotropical migrant bird species, including flycatchers, warblers, vireos, and tanagers, and short-distance migrants such as some woodland raptors, woodpeckers, sparrows, and finches. However, the site is not documented to be an essential habitat in this regard (such as well known stopover areas around Cape May, certain other coastal sites, and certain mountain ridges in North Jersey). It is not a "coastal" forest and is outside of the Coastal Landscape Region valued in the Landscape Project for neotropical migrants. In addition, the site is not on the list of "Important Bird Areas in NJ" prepared by the New Jersey Audubon Society. According to the Audubon Society, Important Bird Areas (IBA) are sites that provide essential habitat for one or more species of birds and are important to the survival of bird species by supporting a species of conservation concern, supporting a restricted-range species, exhibiting a specific habitat inhabited by a vulnerable species, or by supporting a species known to congregate in large numbers.

While the site may be utilized by migrant bird species, it does not provide essential habitats above and beyond what is widely available on many of the nearby undeveloped and preserved lands, and thus, impacts to the site will not adversely affect the overall populations or long-term viability of any migrant bird species. Furthermore, 20.91-acres of preserved on-site forest and two proposed off-site mitigation parcels at a combined 110.4± acres are expected to adequately offset the proposed development of a portion of the wooded habitat on the site. An evaluation of the two proposed mitigation parcels was conducted to determine the potential value of the habitats present for breeding and migratory birds. Land use/land cover mappings as well as supplemental information from the New Jersey Breeding Bird Atlas, NJDEP Natural Heritage Program, and Landscape Project critical habitat map were considered. Based on the evaluation, both of the proposed mitigation parcels provide either equal or better habitats for breeding and migratory birds when compared with the habitats of the proposed development site. The two mitigation parcels can provide habitat to a wide variety of terrestrial birds during migration and in winter. The development site and adjacent mitigation parcel are roughly equal in this regard, providing habitat for various long-distance Neotropical migrants such as some flycatchers, warblers, vireos, and tanagers, and short-distance migrants such as some woodland raptors, woodpeckers, sparrows, and finches. In comparison, the 89.29-acre mitigation parcel would likely hold a greater number and diversity of birds at any season based on its more varied habitats and greater area. Threatened and endangered birds are among the potential species that may use these off-site parcels.

- **Ecotones between uplands/wetlands and forests/shrublands, grasslands, or barren land grasslands that are located on or near the site.**

Areas defined as ecotones may be found on the site. These include interfaces between uplands and wetlands and between forests and shrublands, grasslands, or barren land. Many wildlife species are attracted to or dependent upon such areas due to the availability of food, shelter, sunlight, breeding areas, etc, that may not be present in sufficient quantities within an otherwise uniform habitat. As discussed above, most of the areas meeting the definition of ecotones will be preserved as open space within the proposed 20.91-acre wildlife corridor extending from the on-site pine snake hibernaculum to the western property corner. In addition, no permanent disturbances are proposed along the site's southwestern boundary (the ecotone between forested and grassland or barren land) or within the riparian areas surrounding the on-site tributary of Sunken Branch (an ecotone between upland and wetland habitats). Minor construction activities are proposed within a portion of the on-site isolated wetland, however, these disturbances will be more than offset via the construction of a 1-acre wetland immediately west of the wetland to be disturbed. The constructed wetland will increase the amount of upland/wetland interface occurring on the site and will provide additional habitat for species adapted to such habitats.

In summary, most undeveloped lands in the vicinity of the proposed development meet the definition of one or more critical wildlife habitats. As a result, the development has been designed and positioned in such a way as to avoid, to the maximum extent practicable, these critical areas. No feasible or prudent alternative nearby locations, meeting the overall purpose of the project, are available that would avoid all impacts to critical wildlife habitats. Nevertheless, on-site impacts to critical wildlife habitats have been avoided where possible and minimized where they are unavoidable. When impacts to critical wildlife habitats are required they have been mitigated via preservation of other undeveloped lands or via the construction of habitats (hibernacula, vernal pools, etc) that add to habitats or enhance the habitat values of the undeveloped and preserved areas. As a result of these combined efforts and initiatives, the project complies with this policy.

11. Public Open Space (7:7E-3.40)

Public open space constitutes land areas owned or maintained by State, Federal, County and municipal agencies or private groups and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Coastal policy encourages new or expanded public or private open space development at locations compatible or supportive of adjacent and surrounding land area uses. Development that adversely affects existing public open space is discouraged. Development within existing open space is conditionally acceptable, provided that the development is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists. Development in Atlantic City is acceptable within existing public open space provided the

public open space is a street right-of-way or the Boardwalk and the development meets the standards of N.J.A.C. 7:7E-3.49(e) through (j). Provision of barrier free access to public open space is encouraged. All new development adjacent to public open space will be required to provide adequate buffer area and to comply with the Buffers and Compatibility of Use rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

The proposed development does not take place within or interfere with any existing public open space. In addition, western and southwestern portions of the site will remain undeveloped and will be preserved as forested open space. Finally, several off-site parcels located in Manchester Township (Block 75.01, Lot 3, and Block 77, Lots 2, 4, 5 & 6) totaling approximately 110.4 acres will be purchased by the applicant and preserved as open space, thus supplementing the 13,660 acres of existing open space associated with Crossley Preserve (2,948 acres), Manchester Wildlife management Area (3,362 acres), and Whiting Wildlife Management Area (1,190 acres) as well as land which is being permanently protected through the Heritage Minerals settlement (approximately 6,140 acres).

12. Special Hazard Areas (7:7E3.41)

Special Hazard Areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones, and areas where hazardous materials are used or disposed, including adjacent areas and areas of hazardous material contamination. Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety. Approvals from the Department's Division of Solid and Hazardous Waste shall be obtained prior to the commencement of any hazardous substance investigations or cleanup activities at contaminated sites.

The project site is not located near any airports or seaplane landing areas nor is it known to be contaminated. The project site is located along the south side of Route 37, northwest of its intersection with Northampton Boulevard. According to the New Jersey Office of Emergency Management, Route 37 is a mapped coastal evacuation route as well as an evacuation route for the Oyster Creek Nuclear Generating Station. During construction, all site plan activities associated with work in or on Route 37, or associated with improvements to Route 37 will be conducted in accordance with plans approved by NJDOT and in accordance with County and local requirements and will not adversely impact the function of the evacuation route. No adverse impacts to Special Hazard Areas are expected from the proposed development.

13. Pinelands National Reserve and Pinelands Protection Area (7:7E-3.44)

Coastal development shall be consistent with the intent, policies, and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A1 et seq.).

The site is located within an overlap area between the Coastal Zone and the Pinelands National Reserve and, more specifically, within the Regional Growth Area of the Pinelands National Reserve. Per the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-5.13), lands within the Regional Growth Area are areas of existing growth or lands immediately adjacent thereto which are capable of accommodating regional growth influences while protecting the essential character and environment of the Pinelands. Accordingly, the proposed construction of a retail center is consistent with surrounding land uses characterized by commercial development, residential development, and transportation infrastructure. Utilities servicing the site (water, sewer, gas, electricity, etc.) are capable of accommodating the proposed development. Modifications to transportation infrastructure (Route 37 and Northampton Boulevard) required to accommodate the development will be in accordance with a major access permit application that has been submitted to NJDOT.

The site plan includes the permanent preservation of approximately 20.91-acres of on-site open space to serve as a corridor linking on-site and off-site wildlife habitats. The development will also result in the preservation of two parcels that the Pinelands Commission has included in the Forest Area (a 21.1-acre parcel in the Pinelands National Reserve and an the 89.29-acre parcel located in the Pinelands Protection Area). Per the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-5.13), Forest Areas serve to provide a suitable ecological reserve for the maintenance of the pinelands environment. Accordingly, the proposed on-site and off-site preserved areas are generally characterized as pine-oak forests located upon a substrate of sandy soils and they include uplands, wetlands, and grassland habitats representing a variety of Pinelands ecological communities. As previously discussed, several State threatened or endangered wildlife species endemic to Pinelands habitats are documented within these areas, thus, preservation of these lands, in addition to the thousands of acres of existing open space in adjacent areas, will contribute to the protection of the essential character and environment of the Pinelands in the vicinity of the project site.

In addition to the Pinelands National Reserve, the site is located within two CAFRA areas. The eastern portion of the site, within Toms River Township, is located within the Toms River Coastal Regional Center. The remaining portion of the site, within Manchester Township, is located within the Suburban Planning Area (PA2). The majority of the site plan activities occur within the

Toms River Coastal Regional Center that is allowed 80% impervious coverage under CAFRA rules, indicating a high development intensity. The remaining activities occurring in Manchester are within a Suburban Planning Areas that is allowed 30% impervious coverage under CAFRA Rules. Because the proposed development meets the requirements of CAFRA (which by design is consistent with the Pinelands National Reserve), is consistent with its Regional Growth Area designation set forth by the Pinelands Comprehensive Management Plan, and preserves lands contained within habitats that are characteristic of the Pinelands environment, the proposed construction of a retail center is consistent with the intent, policies and purposes of the State and federal Pinelands legislation.

14. Geodetic Control Reference Mark (7:7E-3.47)

Geodetic Control Reference Marks are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey. They include monuments, disks, points, rivets, and marks that collectively serve for horizontal and vertical control points. Coastal policy discourages the disturbance of such marks, and stipulates that whenever a mark is to be moved, raised, or lowered, that the New Jersey Geodetic Survey shall be contacted at least sixty days prior to the disturbance and arrangements made to protect the position.

According to the National Geodetic Survey (NGS, NOAA, 2009), no impacts to geodetic control reference marks will occur as no geodetic control reference marks are located on or adjacent to the property. The project is in compliance with this policy.

B. Requirements for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas (7:7E-5)

This subchapter sets forth the requirements for impervious cover and vegetative cover on sites in the CAFRA area as defined at N.J.A.C. 7:7E-5.2. For a site in the CAFRA area, the applicable impervious cover limits and vegetative cover percentages are determined under N.J.A.C. 7:7E-5B, based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

1. Impervious Cover Requirements for Sites in CAFRA Areas (7:7E-5.3)

This section sets forth impervious cover requirements that apply to sites in CAFRA areas. Impervious cover percentages, specific to each of these areas, are found at N.J.A.C. 7:7E- 5B.

The acreage of the total land area on the site is ±43.341 acres. The eastern portion of the site within Toms River Township is located within the Toms River Coastal Regional Center and contains approximately 17.471 acres, including a 0.342 acre portion that will be dedicated to NJDOT for roadway improvements. The Special Water's Edge Areas within the Toms River Coastal Regional Center consist of part of the on-site isolated freshwater wetland and its associated transition area. The acreage of these areas is 1.807 acres (1.19 acres of wetlands + 0.617 acre of transition area). The net land area for this portion of the site is 15.664 acres.

The remaining portion of the site within Manchester Township contains 25.87 acres and is located within the Suburban Planning Area (PA2). The Special Water's Edge Areas within the Suburban Planning Area consist of freshwater wetlands (including the intermittent stream corridor associated with the tributary to Sunken Branch) and their associated transition areas. The acreage of these areas is 4.868 acres (2.637 acres of wetlands/intermittent stream corridor + 2.231 acres of transition area). The net land area for this portion of the site is 21.002 acres. The total net land area for the entire site is 36.666 acres (15.664 acres + 21.002 acres).

2. Vegetative Requirements for Sites in CAFRA Areas (7:7E-5.4), and Determining the Extent of Forested Areas on the Site (7:7E-5.5)

These sections set forth vegetative cover requirements that apply to sites in CAFRA areas. Vegetative cover percentages, specific to each of these areas, are found at N.J.A.C. 7:7E- 5B. The vegetative cover percentage that apply to a site under N.J.A.C. 7:7E- 5B vary depending on whether the site is forested. If only a portion of a site is forested, separate vegetative cover percentages shall be calculated for the forested and unforested portions of the site.

According to data provided by C&H Environmental and shown on the accompanying "Pre-Development Forested Area Plan" developed by Bohler Engineering P.C. and last revised October 12, 2005, 31.68 acres of the overall site is forested. The site is located within two CAFRA Areas. The eastern portion of the site within Toms River Township is located within the Toms River

Coastal Regional Center. The net land area for this portion of the site is 15.665 acres, of which 15.083 acres is forested. The remaining portion of the site within Manchester Township is located within the Suburban Planning Area (PA2). Net land area of this portion is 21.002 acres, of which 11.862 acres is forested. The vegetative cover percentage is determined under N.J.A.C. 7:7E-5B.

C. Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area (7:7E-5B)

This subchapter sets the impervious cover limits and vegetative cover percentages for sites in the CAFRA area. For a site in the CAFRA area, impervious cover limits and vegetative cover percentages are based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

1. Boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores, and CAFRA nodes; Coastal Centers (7:7E5B.3)

The boundaries of the Planning Areas, the community development boundaries of centers, and the boundaries of cores and nodes formally approved by the State Planning Commission as of August 1, 1999 are incorporated by reference into this subchapter.

The site is located within two CAFRA Areas. The eastern portion of the site within Toms River Township is located within the Toms River Coastal Regional Center. The net land area for this portion of the site is 15.665 acres. The net land area of the remaining portion of the site within Manchester Township contains 21.002 acres and is located within the Suburban Planning Area (PA2). The vegetative cover percentage is determined under N.J.A.C. 7:7E-5B.

2. Impervious Cover Limits for a Site in the CAFRA Area (7:7E-5B.4), and Mainland Coastal Centers (7:7E-5B.6)

The impervious cover limit for a site in a Mainland Coastal Center and a Suburban Planning Area is determined at N.J.A.C. 7:7E-5B.4 and 7:7E-5B.6(g), as described below.

To determine the amount of allowable impervious cover for the entire development occurring on a site in both a Mainland Coastal Center and a Suburban Planning Area, the acreage of the net land area for each respective portion of the site as determined under N.J.A.C. 7:7E-5.3(d) is multiplied by the respective impervious cover percentage found in Table H under 7:7E-5B.4.

According to Table H at N.J.A.C. 7:7E-5B.4, the percentage of impervious coverage allowed for the portion of the site within the Toms River Coastal Regional Center is 80 percent of the net land area. As was calculated in the previous section of this report, the net land area on this portion of the site totals 15.665 acres. This translates to an allowable 12.532 acres of impervious cover. The percentage of impervious coverage allowed for the portion of the site within the Coastal

Suburban Planning Area is 30 percent of the net land area. The net land area on this portion of the site totals 21.002 acres, which translates into 6.3006 acres of allowable impervious cover. The total allowable impervious cover for the entire development is 18.8318 acres. The proposed impervious cover for the entire site is 14.851 acres (including 0.175 acres within the proposed NJDOT dedication) and is thus in compliance with this policy.

3. Vegetative Cover Percentages for a Site in the CAFRA Area (7:7E-5B.5)

The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is based on the site's location within CAFRA. The percentage of a site that must be planted or preserved with trees and/or herb/shrub vegetation is found in Table I: Tree Preservation and Planting Percentages for Forested and Unforested Sites.

According to Table I of this section, 10 percent of the existing forested areas within the net land area of Toms River Coastal Regional Center portion of the site must be preserved. This portion of the site contains 15.083 acres of forest, of which 1.5083 acres (ten percent) must be preserved. No tree planting or preservation is required in the unforested portions of the site that are within the Coastal Regional Center. For the portion of the site within the Suburban Planning Area, 35 percent of the existing forested areas within the net land area must be preserved and 5 percent of the unforested areas within the net land area must be planted or preserved with trees. This portion of the site contains 11.862 acres of forest, of which 4.1517 acres (35 percent) must be preserved and 9.142 acres of unforested area, of which 0.4571 acre (5 percent) must be planted or preserved. The total amount of tree preservation and tree planting required for the entire site is 6.1171 acres. The proposed tree preservation and tree planting for the entire site is 8.708 acres (including 0.588 within the Toms River portion of the site and 8.12 acres within the Manchester portion of the site) thus the project is in compliance with this policy.

The area of herb/shrub vegetation preservation or planting for the entire site is equal to the net land area minus acreage of allowed impervious coverage and the acreage of required tree preservation/planting for the site (36.666 acres – [18.8318 acres of allowable impervious + 6.1171 acres of required tree preservation/planting]). This equals 11.7171 acres that need to be preserved/planted as herb shrub vegetation on the entire site. This requirement has been satisfied by the proposed preservation or planting of 9.657 acres of herbs/shrubs and the preservation of 2.5909 acres of existing trees in addition to that which is required for the tree preservation or planting requirements previously described above.

Please note that disturbances to existing forest as a result of the proposed vernal pool creation are not included in the above figures. In the event the NJDEP approves the positioning of the pool as proposed, approximately 1.062 acres of existing forest would be disturbed. The site

wide forest preservation and planting requirement would still be met (6.1171 acres required versus 7.646 acres proposed (the original 8.708 proposed acres minus the new 1.062-acre disturbance). In addition, the disturbances to vegetation associated with the vernal pool creation are temporary, and transition areas and shallows disturbed during construction will be re-planted with shrubs and herbs that are adapted to wetland environments, in quantities sufficient to meet the required preservation or planting of herbs/shrubs.

D. General Location Rules (7:7E-6)

1. Basic Location Rule (7:7E-6.2)

A location may be acceptable for development under the specific location regulations in N.J.A.C. 7:7E-6.1, but the DEP may reject or conditionally approve the proposed development of the location as reasonably necessary to: promote the public health, safety, and welfare; protect public and private property, wildlife and marine fisheries; and preserve, protect, and enhance the natural environment.

The project will not adversely affect the public health, safety, and welfare nor negatively impact any public or private property. It has been designed to avoid, to the maximum extent practicable, environmentally sensitive areas and it will not adversely affect marine fisheries or jeopardize the continued survival of the population of any threatened or endangered wildlife species. For the reasons set forth in this Statement of Compliance as well as the Endangered or Threatened Wildlife Habitat Impact Assessment, the project complies with this rule.

2. Secondary Impacts (7:7E-6.3)

Secondary impacts are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which affect the site and surrounding region. Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Coastal Zone Management rules. The Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas and to protect and preserve coastal resources.

The project is located within an area presently characterized with mixed commercial uses and is bordered on all sides by development or transportation infrastructure. Service infrastructure, including potable water, sanitary sewer, electric, and natural gas lines are currently in place to support the project. Other than service connections and transportation improvements to address traffic impacts, no new infrastructure is proposed that could promote new development and resultant secondary impacts. Being a commercial development, the need for schools will not be increased. The State Development and Redevelopment Plan designates the site within the Suburban Planning Area (PA2) and within the proposed Toms River Regional Center (New Jersey Department of

Community Affairs, 2001). The project meets the intent of the Suburban Planning Area as it is located within an existing Center, has been designed to protect natural resources, and will not contribute to sprawl or induce further development. The project is in compliance with this policy.

E. Use Rules (7:7E-7)

Many types of development seek locations in the coastal zone. The second stage in the screening process of the Rules on Coastal Zone Management spells out a set of rules for particular uses of coastal resources. Use rules are rules and conditions addressed to particular kinds of development. Use rules do not preempt location rules, which restrict development, unless specifically stated.

1. **Commercial Facility Use Rule (7:7E-7.10)**

In the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that development complies with all applicable Location and Resource rules, is compatible in scale, site design, and architecture with surrounding development, and where appropriate, utilizes the water area as a central focus of the development.

The project involves the construction of a retail building and associated structures. The project site is bordered to the east and southeast by Northampton Boulevard and existing commercial development, to the northeast and north by State Highway Route 37 and existing commercial development, to the northwest by existing commercial development, and to the south by a Conrail railway. This project complies with all applicable Location and Resource Rules as stated previously in this report. It has been designed to be compatible in scale, site design, and architecture with the surrounding development. The project complies with this rule.

F. Resource Rules (7:7E-8)

The third step in the screening process of the Rules on Coastal Zone Management involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These rules serve as standards to which proposed development must adhere.

1. **Marine Fish and Fisheries (7:7E-8.2)**

Marine fish are marine and estuarine animals other than marine mammals and birds. Marine fisheries means 1) one or more stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and 2) the catching, taking, harvesting of marine fish. Any activity that would adversely impact on the natural functioning of marine fish, including the reproductive spawning and migratory patterns or species abundance or diversity of marine fish, is discouraged. In addition, any activity that would adversely impact any New Jersey based marine fisheries or access thereto is discouraged.

The proposed activities will not negatively impact any tidal or fresh waterbodies that may be used by marine fish and thus will not negatively impact marine fish or fisheries.

2. Groundwater Use (7:7E-8.6)

Groundwater is all water within the soil and subsurface strata that is not at the surface of the land, including wells and springs. Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other groundwater diversions proposed or existing within the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

A well permit (No. 3300045604) has been obtained for the Manchester Township portion of the site, however, because the proposed building is located entirely within Toms River Township, it is not anticipated that this well will be installed. Thus, no groundwater withdrawals or installed wells are proposed. Water supply will require connection to a United Water Toms River (UWTR) main located along Northampton Boulevard. A request for water service in Toms River Township has been submitted to United Water Toms River. A copy of the "will serve" letter confirming water availability will be forwarded to NJDEP upon receipt.

By meeting the state standards to reduce the post-construction load of total suspended solids (TSS) from the water quality storm by 80 percent, the on-site stormwater management system meets State water quality improvement requirements. In addition, by utilizing the infiltration capacities of the underlying soils, 100 percent of the site's average annual pre-developed groundwater recharge will be maintained, thus the project will not degrade groundwater quality, and will not lower the water table or decrease the base flow of adjacent water sources. For specific details regarding the proposed stormwater management system, refer to the Stormwater Management Report prepared by Bohler Engineering.

3. Water Quality (7:7E-8.4) and Stormwater Management (7:7E-8.7)

As required by Section 307 (f) of the Federal Coastal Zone Management Act (P.L. 92-583), Federal, State and local water quality requirements established under the Clean Water Act (33 U.S.C. 1251) shall be the water resource standards of the coastal management program. These requirements include not only the minimum requirements imposed under the Clean Water Act, but also the additional requirements adopted by states, localities and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act. In the Delaware River Basin, the requirements include the prevailing "Basin Regulations-Water Quality" adopted by the Delaware River Basin Commission as part of its

Comprehensive Plan. Coastal development, which would violate the Federal Clean Water Act, or State laws, rules and regulations enacted or promulgated pursuant thereto, is prohibited.

Stormwater runoff is the flow of water on the surface of the ground, resulting from precipitation. Coastal development shall employ a site design which, to the extent feasible, minimizes the amount of impervious coverage on a project site. In addition, the development shall use the best available technology to minimize the amount of stormwater generated, minimize the rate and volume of off-site stormwater runoff, maintain existing on-site infiltration, simulate natural drainage systems and minimize the discharge of pollutants to ground or surface waters. Consistent with the provisions of the Stormwater Management rule, the overall goal of the post-construction stormwater management system design shall be the reduction from the predevelopment level of total suspended solids (TSS) and soluble contaminants in the stormwater.

The site is located within the drainage basin of the Toms River. An unnamed tributary to Sunken Branch crosses the western corner of the site. Sunken Branch is located approximately one-half mile to the southeast of the site. Sunken Branch flows into Wrangle Brook, which then flows into Toms River. The waters draining the site are classified by the NJDEP as non-trout/saline estuarine (FW2-NT/SE) surface waters (NJDEP, 2009).

The construction of the proposed project is expected to have only minimal impacts to the surface water resources in the vicinity of the project area. Potential short-term impacts to surface water quality are generally associated with soil loss, erosion, and sedimentation during construction activities. Soil disturbance will be largely confined to areas surrounding the proposed commercial buildings and parking area construction. Any adverse impacts will be minimized by the installation and maintenance of proven soil erosion and sediment control measures presented in the plans. These measures will retain disturbed soil sediment within the areas of construction, and will mitigate the potential for sediment being transported to the on-site wetlands.

After development, stormwater from the developed portions of the site will be collected by a proposed stormwater management system, including 5 above-ground and 2 underground basins. Proposed Basin #1 is an infiltration/detention basin and consists of two portions. The aboveground portion is located to the west of the front parking field and has a six-inch (6") sand layer at the basin bottom. The underground portion consists of watertight RCP pipe with varying diameters located at the front parking field. It has an outlet structure which discharges to proposed Basin #2. A valve is also proposed within this overflow structure so that the basin can be drained completely for maintenance purposes. Proposed Basin #2 is an infiltration/detention basin similar to Basin #1, and has a six-inch (6") sand layer at the bottom. It has an outlet structure which discharges to the existing drainage ditch via an existing stormwater pipe. A valve is proposed within this outlet structure so the basin can be drained completely for maintenance purposes. Proposed Basin #5, #6 and #7 are all aboveground infiltration basins, and similar to Basin #1 and #2, they all have a six-inch (6") sand layer at the basin bottom. The stormwater collected by these basins is expected to infiltrate into the ground. Proposed Basin #3 is an underground infiltration basin and consists of Cultec Recharger V8 chambers surrounded by clean stone. This underground basin primarily collects storm runoff from the proposed roof area, and infiltrates to the ground. An overflow structure is proposed for this basin, and overflow will be discharged to proposed Basin #4. A valve is also proposed within the overflow structure so the basin can be drained completely for maintenance purposes. Proposed Basin #4 is an underground detention basin and consists of 36" HDPE pipe as well as 18" RCP pipe. This underground basin primarily collects storm runoff from a portion of Northampton Boulevard and the Walmart access drive. The water quality storm will be treated by a proposed Jelly Fish Unit with an 80% TSS removal rate. Stormwater from storms with higher intensities will be released in a controlled manner to the existing drainage ditch via existing conveyance located in Northampton Boulevard. The stormwater management system has been designed to be in compliance with the requirements of the NJDEP's Stormwater Management Rules (N.J.A.C. 7:8) for runoff volume and water quality. This design conforms to the state standards to reduce the post-construction load of total suspended solids (TSS) from the water quality storm by 80 percent, therefore meeting the water quality improvement requirements. By utilizing the infiltration capacities of the underlying soils, there will be the required decrease in runoff from the site for storm events up to the 100-year storm event, and, as required, 100 percent of the site's average annual pre-developed groundwater recharge will be maintained. For specific details regarding the proposed stormwater management system, refer to the Stormwater Management Report prepared for the project by Bohler Engineering.

Wastewater generated by the development, estimated to be 19,827 gallons per day, will be exclusively domestic and will be conveyed to the OCUA's sewage treatment plant for treatment and disposal. This off-site treatment and disposal of wastewater by a regional municipal facility will

eliminate the potential for contamination of ground water by wastewater effluent. As proposed, the project will comply with the Clean Water Act and the New Jersey Water Pollution Control Act. Additionally, the proposed project has been designed to be consistent with the Water Quality Management Plan (208) under the New Jersey Water Quality Planning Act. The project complies with these rules.

4. Vegetation (7:7E-8.8)

Vegetation is the plant life or total plant cover that is found on a specific area, whether indigenous or introduced by humans. Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate native coastal species, to the maximum extent practicable.

The existing vegetation on the site consists of upland woodlands and forested wetland vegetative communities dominated by pitch pine, oaks, black gum, and red maple. As discussed above, the project complies with CAFRA requirements at 7:7E-5B.5 for tree preservation, tree planting, and herb/shrub preservation or planting. One portion of the upland disturbance (1.56± acres) will be associated with the construction of a dry detention basin in the center of the site that will contain a sand bottom and sides planted with native grasses so as to remain available as habitat for foraging by pine snakes. A second portion of the upland disturbance (1.243-acres) will be associated with the construction of a new wetland that is required as an offset for wetland impacts elsewhere on the site. This area, while altered from uplands to wetlands, will be replanted with appropriate native wetland-associated vegetation and will be permanently preserved as open space. Permanent disturbance to existing vegetation will be limited only to areas designated for development. Approximately fifty percent of the entire site will be retained as open space. In addition, an extensive landscaping plan will be implemented to mitigate the loss of natural vegetation and to enhance the aesthetic features of the developed areas. The proposed vegetation will consist of a mixture of native species as well as ornamental species adapted to the site's conditions. Please refer to the Landscape Plan prepared for the project and included as part of this submission.

In addition, the site plan also proposes permanent preservation of 20.91-acres of forested/vegetated open space to serve as a corridor linking on-site habitats with other preserved habitats located off-site. This corridor will consist of undeveloped lands west and northwest of the development footprint and will extend to the northwestern and southwestern property boundaries. The Applicant's proposal also includes the purchase and preservation as open space of two properties including 21.1-acre and 89.29-acre parcels in the Township of Manchester. The 21.1-acre parcel, known as Block 75.01, Lot 3, is located in the Forest Area of the Pinelands National Reserve and the 89.29-acre parcel, known as Block 77, Lots 2, 4, 5 & 6, is located in the Forest Area of the

Pinelands Protection Area. Per the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-5.13), Forest Areas serve to provide a suitable ecological reserve for the maintenance of the pinelands environment.

The project complies with this rule.

5. Air Quality (7:7E-8.10)

The protection of air resources refers to the protection from air contaminants that injure human health, welfare, or property, and to attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

The development as proposed consists of the construction of a 177,557 SF retail store with an associated 3,509 SF outdoor seasonal garden center. The operation of the proposed commercial development will result in minimal emission of pollutants into the air and will not result in the violation of any air quality standard. Heating and air conditioning equipment will be energy efficient and comply with applicable emission regulations. No emission of radiation is anticipated. Short-term air quality impacts may occur during the construction phase of the project and are related to the production of fugitive dust and the generation of emissions from exhausts of construction vehicles. Mitigating measures, including dust control practices and the use on construction equipment of efficient air pollution control devices meeting applicable State/Federal specifications, will minimize adverse effects on local air quality. In addition, construction vehicles that are to operate upon the public highways of the State of New Jersey will comply with the regulations as required by N.J.A.C. 7:27-14 and 15. Exhaust systems and emission control devices on all construction machinery will be maintained in good operating condition. Long-term air quality impacts will be related primarily to automobile exhaust emissions, primarily carbon monoxide (CO), hydrocarbons, and nitrogen oxides (NO_x). However, due to emission control technology and New Jersey's vehicle inspection requirements, the automobiles of the customers and staff of this retail store are required to conform to all applicable air quality standards.

In addition to the above, per comments from Mr. John Greg, NJDEP Bureau of Air Quality, provided during his review of the prior CAFRA application, the Level of Service of the surrounding transportation infrastructure should improve as a result of the proposed development. The plans currently under review by DOT reflect various comments that we have received from DOT (see "Proposed Roadway Construction Plan" prepared by Orth-Rodgers and Associates, Inc. and dated June 28, 2007). The plans comply with NJDEP items 1, 3, and 4 provided in the denial letter as follows: 1(an additional westbound right turn lane on Route 37); 3 (realignment of the eastbound Route 37 jughandle to provide additional queing; and 4 (a new three phased signal operation). As to item 2 (widening to the Northampton Boulevard approaches to provide a dedicated left turn lane, a

dedicated thru lane, a shared thru lane and left turn lane, and a dedicated right turn lane), the plans show the following for Northampton Boulevard: a dual left southbound lane, an exclusive left southbound lane, a thru southbound lane, a shared thru/right turn southbound lane, a dual left northbound lane, a thru northbound lane, and a dedicated right turn northbound lane. Based upon the reduced size of the store as well as the removal of the proposed pad site, these proposed improvements to Northampton Boulevard are believed to comply with the air quality requirements in N.J.A.C. 7:7E-8.10 and are consistent with comments previously received from NJDOT regarding the intersection improvements.

The proposed development prevents air emissions in excess of the existing dilution, assimilative, or recovery capacities of the air environment at the site and within the surrounding region. Because one of the purposes of existing regulations is to prevent air emissions in excess of the existing dilution, assimilative, or recovery capacities of the air environment, compliance with these regulations ensures compliance with this policy.

6. Public Trust Rights (7:7E-8.11)

Public trust rights to tidal waterways and their shores (public trust rights) established by the Public Trust Doctrine include public access which is the ability of the public to pass physically and visually to, from and along lands and waters subject to public trust rights as defined at N.J.A.C. 7:7E-3.50, and to use these lands and waters for activities such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking, and boating. Public trust rights also include the right to perpendicular and linear access. Public accessways and public access areas provide a means for the public to pass along and use lands and waters subject to public trust rights. Development on or adjacent to all tidal waterways and their shores shall provide on-site, permanent, unobstructed public access to the tidal waterway and its shores at all times, including both visual and physical access.

The proposed activities are not located along a coastal water body and will not interfere with the public's access to the waterfront or to any lands subject to public trust rights as defined at N.J.A.C. 7:7E-3.50. No impacts to any existing public open space will occur from the proposed project. Therefore, the project is in compliance with this policy.

7. Scenic Resources and Design (7:7E-8.12)

Scenic resources include the views of the natural and/or built landscape. New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

The proposed project is a retail development that is visually compatible with its surroundings in terms of building and site design. The project site is bordered to the east and southeast by Northampton Boulevard and off-site commercial development beyond, to the northeast and north by State Route 37 and off-site commercial and residential development beyond, to the northwest by commercial development, and to the south by a Conrail railway with undeveloped forest (southwest) and residential development (southeast) beyond. Western and southwestern portions of the site will remain undeveloped to be preserved as forested open space. The project complies with this policy.

8. Buffers and Compatibility of Uses (7:7E-8.13)

Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts. Development shall be compatible with adjacent land uses to the maximum extent practicable.

The proposed project is a commercial (retail) development that is compatible with the surrounding land uses, which consist of a mixture of commercial development, residential development, and major transportation corridors.

Freshwater wetlands have been identified on the site and verified by the NJDEP through a Letter of Interpretation. These wetlands have an associated 50-foot transition area (buffer). A portion of the proposed activities are located within the on-site wetlands and transition areas. Per guidance received at the pre-application conference with NJDEP on July 2, 2009, these activities can be authorized under the Freshwater Wetlands Protection Act Rules via a Statewide General Permit No. 6. An application for the Statewide General Permit No. 6 is being submitted concurrently with this application. As such, the project complies with this rule.

9. Traffic (7:7E-8.14)

Traffic is the movement of vehicles, pedestrians or ships along a route. Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

Access to the site is proposed via the construction of new access roads from Route 37 and Northampton Boulevard. Two access drives off Northampton Boulevard near its intersection with Executive Drive will be constructed; one for patrons that crosses in front of the building and one for deliveries that will circulate truck traffic behind the building. A turn-around will be provided behind the building for facilitating the movements of exiting trucks. An eastbound entrance/exit will be provided off Route 37 approximately 1,000 feet west of the Northampton Boulevard intersection. To avoid environmentally sensitive areas, the 36-foot wide access drive will follow the

northern site boundary before entering the parking field. This access road will also connect to Lot 4. While the Northampton Boulevard/Route 37 intersection is currently signalized, improvements will be made to the intersection, including a re-aligned ramp off Route 37, in accordance with the requirements of the major access permit to be obtained from the NJDOT (see "Proposed Roadway Construction Plan" prepared by Orth-Rodgers and Associates, Inc. and dated June 28, 2007). The plan has been designed to provide for proposed traffic flow and access

10. Solid and Hazardous Waste (7:7E-8.22)

Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid, or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitibility, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity. Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26:G.

Bulk solid waste generated by the Development will be reduced by a compactor at the rear of the building. Non-recyclable trash will be compacted and collected by a hauler for transport off-site to an approved landfill. Recyclable cardboard will be baled and wood or plastic pallets will be stacked for reuse or recycling as appropriate. Mixed recyclables (such as glass, aluminum, metal cans, plastic, magazines, and newspaper) will be addressed inside of the building in accordance with the recycling requirements of Township of Toms River and Ocean County.

V. COMPLIANCE WITH SECTION 10 OF THE NEW JERSEY COASTAL AREA FACILITY REVIEW ACT

Section 10 of the New Jersey Coastal Area Facility Review Act states that the Commissioner shall review filed applications, including any environmental impact statement and all information presented at public hearings or during the comment period, or submitted during the application review period. A permit is issued pursuant to this act only upon a finding that the proposed development will comply with the following standards:

- a. Conforms to all applicable air, water, and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.*

The development as proposed consists of the construction of a 177,557 SF retail store with an associated 3,509 SF outdoor seasonal garden center. The operation of the proposed commercial development will result in minimal emission of pollutants into the air and will not result in the violation of any air quality standard. Heating and air conditioning equipment will be energy efficient and comply with applicable emission regulations. No emission of radiation is anticipated. Short-term air quality impacts may occur during the construction phase of the project and are related to the production of fugitive dust and the generation of emissions from exhausts of construction vehicles. Mitigating measures, including dust control practices and the use on construction equipment of efficient air pollution control devices meeting applicable State/Federal specifications, will minimize adverse effects on local air quality. In addition, construction vehicles that are to operate upon the public highways of the State of New Jersey will comply with the regulations as required by N.J.A.C. 7:27-14 and 15. Exhaust systems and emission control devices on all construction machinery will be maintained in good operating condition. Long-term air quality impacts will be related primarily to automobile exhaust emissions, primarily carbon monoxide (CO), hydrocarbons, and nitrogen oxides (NO_x). However, due to emission control technology and New Jersey's vehicle inspection requirements, the automobiles of the customers and staff of this retail store are required to conform to all applicable air quality standards.

The proposed Development prevents air emissions in excess of the existing dilution, assimilative, or recovery capacities of the air environment at the site and within the surrounding region. Because one of the purposes of existing regulations is to prevent air emissions in excess of the existing dilution, assimilative, or recovery capacities of the air environment, compliance with these regulations ensures compliance with this policy.

The wastewater from the proposed development, estimated at 19,827 gallons per day, will be exclusively domestic and will be conveyed to the OCUA's sewage treatment plant in Bayville

for treatment and disposal. The off-site treatment and disposal of this wastewater by a regional municipal facility will ensure compliance with applicable water quality standards.

The proposed development will not result in the violation of any applicable water quality standard. Through strict adherence to the Soil Erosion and Sediment Control Plans prepared by Bohler Engineering, P.C., and as approved by the Ocean County Soil Conservation District and through the treatment of stormwater within the proposed on-site stormwater management system, the construction activities will not have an adverse impact on water quality of the local water resources.

- b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.*

The proposed Development prevents air emissions and water effluents in excess of the existing dilution, assimilative, or recovery capacities of the air and water environments at the site and within the surrounding region. Because one of the purposes of existing regulations is to prevent air emissions and water effluents in excess of the existing dilution, assimilative, or recovery capacities of the air and water environments, compliance with these regulations ensures compliance with this policy.

- c. Provides for the collection and disposal of litter, recyclable material and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.*

Bulk solid waste generated by the Development will be reduced by a compactor at the rear of the building. Non-recyclable trash will be compacted and collected by a hauler for transport off-site to an approved landfill. Recyclable cardboard will be baled and wood or plastic pallets will be stacked for reuse or recycling as appropriate. Mixed recyclables (such as glass, aluminum, metal cans, plastic, magazines, and newspaper) will be addressed inside of the building in accordance with the recycling requirements of Township of Toms River and Ocean County.

- d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.*

The stormwater management system for the project has been designed to comply with the latest stormwater regulations adopted by the NJDEP. These regulations include design standards for infiltration and for water quality treatment of stormwater. Per the stormwater regulations, existing infiltration on the site will be maintained following development by a series of detention

basins that will receive stormwater from catch basins located throughout the developed portions of the site. These basins will slow the velocity of runoff occurring on the site and will allow the settling of sediments and/or contaminants before the runoff waters discharge onto the site or infiltrate into the ground. These measures will ensure that there is minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies. Please refer to the enclosed Stormwater Management Report and site plans prepared by Bohler Engineering, P.C. for additional details regarding the design of the on-site stormwater collection and treatment systems.

- e. *Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.*

The proposed project involves construction of a commercial retail project consistent with Toms River Township and Manchester Township zoning ordinances and the State Development and Redevelopment Plan. It has been designed to cause minimal feasible interference with the natural functioning of the plant, animal, fish, and human life processes at the site and in the surrounding region by complying with applicable municipal and State land use regulations. Overall, approximately 50 percent of the site (21± acres) will remain undeveloped following construction and an additional 110.4± acres will be purchased and preserved as open space. The project design includes best management practices and mitigation measures to minimize impacts to human life processes, including dust control practices, the use of efficient air pollution control devices, the operation of machinery during work periods permitted by local law, and the use of noise abatement devices on all construction machinery.

- f. *Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.*

The proposed Development will not endanger human life or property nor otherwise impair public health, safety, and welfare. It is located within a municipal land use zone where the proposed use is allowed. The public welfare and safety will be protected through compliance with state and local permits and ordinances, and the implementation of best management practices during construction activities.

- g. *Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes at the site and within the surrounding region.*

The Development is located within a site bordered by existing commercial development and major transportation infrastructure and is not located in areas immediately adjacent to any listed or

eligible historic or archaeological resource. The site is characterized by pine-oak woodland common in the region. Proposed activities will not result in the degradation of unique or irreplaceable land types, historical or archaeological areas, or existing public scenic attributes at the site or within the surrounding region. The project has been designed to avoid the majority of the site's environmentally sensitive areas, however a portion of the proposed activities will require disturbances to an on-site isolated freshwater wetland. The activities within wetlands meet the requirements for a Statewide General Permit No. 6 pursuant to N.J.A.C. 7:7A-5.6.

VI. COMPLIANCE WITH THE FRESHWATER WETLANDS PROTECTION ACT RULES FOR GENERAL PERMITS (N.J.A.C 7:7A-4 AND 7:7A-5)

STATEWIDE GENERAL PERMIT (CONDITIONS FOR ALL PERMITS)

The proposed Statewide General Permit activities comply with all the standard General Permit conditions listed at N.J.A.C. 7:7A-4.3 including:

Activities performed under a general permit shall be associated with a proposed project. The Department shall not authorize activities under a general permit for the purpose of eliminating a natural resource in order to avoid regulation.

The proposed wetland and transition area encroachments are minor incursions into regulated areas that are not proposed for the purpose of eliminating a natural resource. The proposed activities represent a minor disturbance to regulated areas and are associated with the construction of a retail building project.

The regulated activity shall not occur within the proximity of a public water supply intake.

The proposed activities do not occur within close proximity to a public water supply intake.

The activities shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species.

Please refer to the Endangered or Threatened Wildlife Habitat Impact Assessment provided with this application.

The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system while the river is in an official study status; except that the activity may occur in these waters if approved by the National Park Service in accordance with 40 CFR § 233.

The activity does not occur within a component of a Federal or State Wild and Scenic River system or study river.

The activity shall not adversely affect properties which are listed or is eligible for listing on the New Jersey or National Register of Historic Places unless the applicant demonstrates to the Department that the proposed activity avoids or minimizes impacts to the maximum extent practicable or the Department determines that any impact to the affected property would not impact

the property's ability to continue to meet the criteria for listing at N.J.A.C. 7:4-2.3 or otherwise negatively impact the integrity of the property or the characteristics of the property that led to the determination of the listing or eligibility.

The site is vacant and does not contain any structures. According to reviews of the New Jersey and National Registers of Historic Places (NJDEP, HPO, 7/7/2009), the GIS layers "NJDEP Merged Inventory Historic Properties of New Jersey (NJDEP, NHR, HPO, 2004), "NJDEP Archaeological Site Grid of New Jersey," "NJDEP Historic Districts of New Jersey," and "NJDEP Historic Properties of New Jersey" (NJDEP, NHR, HPO. 2008), no known historical or cultural resources are listed on the site. A prior search of HPO records was also conducted by C&H Environmental, Inc. in association with the 2004 CAFRA submission. That file search located a cultural resources survey that included Block 44, Lot 2 in Manchester Township (Wilson, 1987) and concluded that any remnants of the iron industry or cranberry bogs that may be present on the study site were representative of industries that were present elsewhere in the Pine Barrens and were not significant enough for placement on either the State or National Registers. In addition, EcolSciences made inquiry to the Manchester Township and to Toms River Township regarding the presence or absence of known historical or archaeological resources on the project site. Manchester Township does not have a Historical Commission or similar body, however, the Toms River Township Historic Preservation Commission (the Commission) responded in a letter, dated September 21, 2009 (Attachment C), that the Commission is not aware of any historical resources pertaining to the portion of the site within Toms River Township (Block 505, Lots 14 and 15).

Because the proposed activities are located on a site that is not documented to contain historic or archaeological resources and is not immediately adjacent to any listed or known eligible historic or archaeological resource, no impacts to any listed or known eligible resources will result from the proposed activities. The project is in compliance with this policy.

Any discharge of dredged or fill material shall consist of clean, suitable material free from toxic pollutants (see 40 CFR 401) in toxic amounts, and shall comply with all applicable Department rules regarding use of dredged or fill material.

All fill material to be placed in regulated areas will consist of clean, suitable material free from toxic pollutants.

Any structure or fill authorized shall be maintained as specified in the construction plans.

All structures and fill will be maintained as specified in the construction plans.

During construction activities, all excavation must be monitored for the presence of acid-producing deposits. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13.

The site is not located in an area of acid producing deposits; however, during construction activities, all excavation will be monitored for the presence of acid-producing deposits. If any such deposits are encountered, the applicant will implement the mitigation and disposal standards in the Flood Hazard Control Act Rules at N.J.A.C. 7:13.

The activity will not result in a violation of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13.

The activity will not result in a violation of the Flood Hazard Area Control Act. No activities are proposed within regulated waters, flood hazard areas, riparian zones, or other areas that are regulated under the Act.

If activities under the general permit meet the definition of “major development” at N.J.A.C. 7:8-1.2, then the project of which the activities are a part shall comply in its entirety with the Stormwater Management Rules at N.J.A.C. 7:8 apply.

The proposed activities meet the definition of a “major development,” and as such the Stormwater Management Rules apply. The project has been designed to conform to the Stormwater Management Rules. Please refer to the Stormwater Management Report prepared by Bohler Engineering.

If activities under the general permit involve excavation or dredging, the applicant shall use an acceptable disposal site for the excavated or dredged material. No material shall be deposited or dewatered in freshwater wetlands, transition areas, State open waters or other environmentally sensitive areas. The Department may require testing of dredged material if there is reason to suspect that the material is contaminated. If any dredged material is contaminated with toxic substances, the dredged material shall be removed and disposed of in accordance with the Department-approved procedures.

With the exception of fill authorized under the Statewide General Permit No. 6, no material will be deposited or dewatered in freshwater wetlands, transition areas, State open waters, or other environmentally sensitive areas. All authorized fill material to be placed in regulated areas will consist of clean, suitable material free from toxic pollutants. For additional information, please refer to the Soil Erosion and Sediment Control Plans prepared by Bohler Engineering, P.C. for details concerning the storage of excavated soils.

The amount of rip-rap or other energy dissipating material shall not exceed the minimum necessary to prevent erosion as calculated under the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

No rip-rap or other energy dissipating materials are proposed within regulated wetlands or transition areas.

Best management practices as defined at N.J.A.C. 7:7A-1.4 shall be followed whenever applicable.

Best management practices as defined by at N.J.A.C. 7:7A-1.4 will be followed. Please refer to the site plans prepared by Bohler Engineering for a list of best management practices to be incorporated.

If the general permit activities are subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15, the activities shall be consistent with those rules and with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

The activities are consistent with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

The timing requirements at N.J.A.C. 7:7A-4.3(c) shall be met.

The construction activities will conform to all applicable timing requirements as indicated at N.J.A.C. 7:7A-4.3(c).

With the exception of activities associated with general permits 1, 6, 6A, and 16, activities authorized under a general permit shall not take place within a vernal habitat, as defined at N.J.A.C. 7:7A-1.4, or in a transition area adjacent to a vernal habitat.

The proposed activities authorized under a General Permit No. 6 will take place in a portion of an isolated wetland that has been identified by the NJDEP as a vernal habitat, as defined in at N.J.A.C. 7:7A-1.4, and in a portion of the transition area adjacent to this vernal habitat. On-site compensation for the 0.47-acre of proposed wetland impacts is required under CAFRA rules. As such, the applicant proposes the construction of a new 1-acre vernal habitat adjacent to the wetland that will be disturbed. Please refer to the "Wetland Mitigation Plan" prepared by Bohler Engineering, P.C. and dated June 26, 2009 for additional details.

Statewide General Permit No. 6

General permit 6 authorizes regulated activities in freshwater wetlands, transition areas adjacent to those wetlands, and/or State open waters, if the freshwater wetlands and/or State open waters are not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream.

The permit activities are in accordance with the specific standards and conditions for a Statewide General Permit No. 6 listed at N.J.A.C. 7:7A-5.6, as follows:

The activity shall disturb no more than one acre of a freshwater wetland and/or State open water, which is not a water of the United States, as defined at N.J.A.C. 7:7A-1.4 and no more than one-half acre of a freshwater wetland and/or State open water, which is a water of the United States, as defined at N.J.A.C. 7:7A-1.4

The proposed activities disturb only 0.47 acres of an isolated freshwater wetland that is not a water of the United States, as defined at N.J.A.C. 7:7A-1.4.

The activity shall not take place in a wetland of exceptional resource value, as described in N.J.A.C. 7:7A-2.4.

The proposed activity does not take place within a wetland of exceptional resource value. Per the LOI issued by the NJDEP on May 18, 2004 (File No. File No. 1500-04-0001, FWW 040001) and extended via the Permit Extension Act, all wetlands on the site are determined to be intermediate resource value.

The activity shall not take place in a State open water that is a special aquatic site, as defined at N.J.A.C. 7:7A-1.4

The proposed activity does not take place in a State open water defined as a special aquatic site as defined at N.J.A.C. 7:7A-1.4.

The activity shall not take place in USEPA priority wetlands.

The isolated wetland in which disturbances are proposed is not a USEPA priority wetland as it does not have a surface water tributary connection to the Barnegat Bay watershed and it is located outside of the site's delineated 100-year floodplain.

The activity shall not take place in a State open water that is larger than one acre.

The proposed activities do not take place in a State open water.

The activity shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3 and 13.2.

The proposed Statewide General Permit activities comply with all of the applicable General Permit conditions listed at N.J.A.C. 7:7A-4.3 (see above) and 13.2.

VII. SUMMARY

The project has been carefully designed to comply with all of the relevant policies and rules of CAFRA. This application represents a significantly revised and reduced project that is protective of wetlands, waters, and transition areas. The project will not adversely affect surface water quality. It has been designed to avoid, to the maximum extent practicable, environmentally sensitive areas and it will not adversely affect marine fisheries or jeopardize the continued survival of any population of any threatened or endangered wildlife species. No significant environmental impacts are anticipated from the development of the site as proposed.

VIII. REFERENCES

- Bohler Engineering, P.C. 6/26/2009.** "Preliminary and Final Site Plan & Minor Subdivision for Proposed Walmart"
- Bohler Engineering, P.C. 6/26/2009.** "Pine Snake Habitat Enhancement Concept Plan"
- Bohler Engineering, P.C. 8/6/2004, last revised 10/12, 2005.** "Pre-Development Forested Area Plan"
- Bohler Engineering, P.C. 6/26/2009.** "Wetland Mitigation Plan"
- National Oceanic and Atmospheric Administration, National Geodetic Survey (NOAA). 2009.** Datasheet retrieval website (http://www.ngs.noaa.gov/cgi-bin/ds_radius.prl).
- New Jersey Department of Environmental Protection (NJDEP). 1987.** Freshwater Wetlands Protection Act, P.L. 1987, c. 156.
- NJDEP, Division of Fish and Wildlife, Endangered & Nongame Species Program. 2008.** The Landscape Project, Version 2.1.
- NJDEP. 2002.** Coastal Permit Program Rules. N.J.A.C. 7:7.
- NJDEP. 2002.** Rules on Coastal Zone Management. N.J.A.C. 7:7E-1.1 et seq.
- NJDEP. 2009.** New Jersey and National Registers of Historic Places. New Jersey Department of Environmental Protection – Historic Preservation Office website: <http://www.state.nj.us/dep/hpo.htm>.
- New Jersey Department of Community Affairs, 2001.** New Jersey State Development and Redevelopment Plan. New Jersey Office of Smart Growth
- United States Geological Survey (USGS). 1971.** Keswick Grove, New Jersey Quadrangle.

ATTACHMENT A

Figure 1 – USGS Site Location Map
Figure 2 – Ocean County Road Map

EcolSciences, Inc.

Environmental Management & Regulatory Compliance

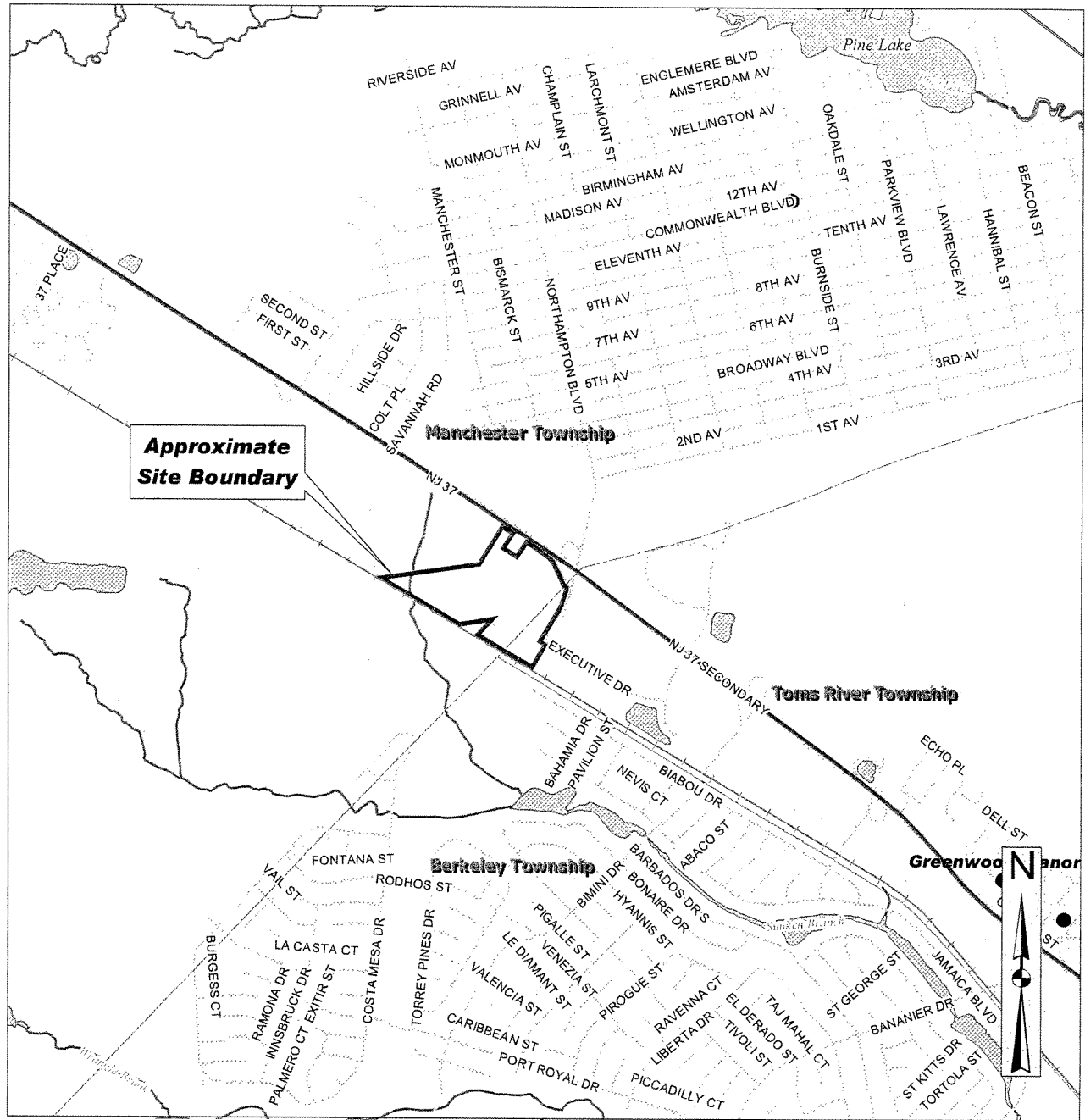


FIGURE 2: LOCAL ROAD MAP

Block 44, Lots 2, 3, 4, 5 -Township of Manchester
 Block 505, Lots 14 and 15 - Township of Toms River
 Ocean County, New Jersey

Source: NJDOT, BTDD. 2008. 2008 NJ Roadway Network.

EcolSciences, Inc.
 Environmental Management & Regulatory Compliance

Date: 8/25/2009
 F:\Jobs05\EN05-071\CAFRA009\roadmap.mxd

ATTACHMENT C

Correspondence

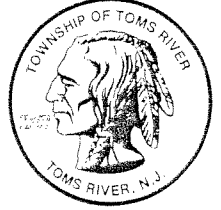
EcolSciences, Inc.

Environmental Management & Regulatory Compliance

TOWNSHIP OF TOMS RIVER

County of Ocean

Toms River, New Jersey 08753



Reply To:
Office of the Township Clerk

Telephone: (732) 341-1000 Ext. 8200
Fax Number: (732) 341-3586

September 21, 2009

EcolSciences, Inc.
Attn: Scott McDonnell, Environmental Scientist
75 Fleetwood Drive
Suite 250
Rockaway, NJ 07866

RECEIVED

SEP 23 2009

ECOLSCIENCES, INC

Re: **Block 505, Lots 14 and 15**
Route 37 and Northampton Boulevard
Toms River Township, Ocean County, New Jersey

Dear Mr. McDonnell:

Your correspondence of July 17, 2009 referencing the above named property was reviewed by our Historic Preservation Commission at the September 17, 2009 meeting.

The Commission is not aware of any historical resources pertaining to this particular property and, as such, we take no position as to this property.

Very truly yours,

A handwritten signature in cursive script that reads "J. Mark Mutter".

J. Mark Mutter
Member of/and Historian
On behalf of the Toms River Township
Historic Preservation Commission

JMM:srb
Cc: file



State of New Jersey

Department of Environmental Protection

Land Use Regulation Program

P.O. Box 439, Trenton, NJ 08625-0439

Fax # (609) 292-8115

Fax # (609) 777-3656

www.state.nj.us/landuse

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

Ian M. Borden
Property Development Services, Inc.
700 Hooper Avenue
Toms River, NJ 08755

MAY 18 2004

RE: Letter of Interpretation/Line Verification
File No.: 1500-04-0001.1
Activity No: FWW040001
Applicant: Jaylin Holdings, LLC
Block: 44, Lots: 2, 3 & 5
Township of Manchester, Ocean County
Block: 505, Lots: 14 & 15
Township of Dover, Ocean County

Dear Mr. Borden:

This letter is in response to your request for a Letter of Interpretation to verify the jurisdictional boundary of the freshwater wetlands and waters on the referenced property.

In accordance with agreements between the State of New Jersey Department of Environmental Protection, the U.S. Army Corps of Engineers Philadelphia and New York Districts, and the U.S. Environmental Protection Agency, the NJDEP, Land Use Regulation Program is the lead agency for establishing the extent of State and Federally regulated wetlands and waters. The USEPA and/or USACOE retain the right to reevaluate and modify the jurisdictional determination at any time should the information prove to be incomplete or inaccurate.

Based upon the information submitted, and upon a site inspection conducted on May 4, 2004, the Land Use Regulation Program has determined that the wetlands and waters boundary line(s) as shown on the plan map consisting of one sheet entitled "WETLANDS LOCATION SURVEY, BLOCK 44, LOTS 2, 3 & 5, MANCHESTER TOWNSHIP, BLOCK 505, LOTS 14 & 15, DOVER TOWNSHIP, OCEAN COUNTY, NEWJERSEY," dated 6/21/95, last revised 10/23/96, and prepared by Lynn M. Robinson, PLS of Christie-Werner Associates, Inc. is accurate as shown for the property in question.

Any activities regulated under the Freshwater Wetlands Protection Act proposed within the wetlands or transition areas or the deposition of any fill material into any water area, will require a permit from this office unless exempted under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and implementing rules, N.J.A.C. 7:7A. A copy of this plan, together with the information upon which this boundary determination is based, has been made part of the Program's public records.

Jaylin Holdings, LLC
File #1500-04-0001.1 Activity #FWW040001
Page 2 of 2

Pursuant to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1 et seq.), you are entitled to rely upon this jurisdictional determination for a period of five years from the date of this letter.

The freshwater wetlands and waters boundary line(s), as determined in this letter, must be shown on any future site development plans. The line(s) should be labeled with the above LURP file number and the following note:

"Freshwater Wetlands/Waters Boundary Line as verified by NJDEP, File #1500-04-0001.1, Activity #FWW040001."

In addition, the Department has determined that the wetlands on and adjacent to the property are of intermediate resource and the standard transition area or buffer required adjacent to these wetlands is 50 feet. It should be noted that this determination of wetland classification is based on the best information presently available to the Department. The classification is subject to change if this information is no longer accurate, or as additional information is made available to the Department, including, but not limited to, information supplied by the applicant.

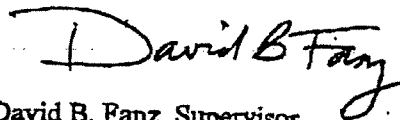
In addition, all wetlands that are a tributary to Barnegat Bay are designated as a "Priority Wetland" by the U.S. Environmental Protection Agency. This classification may affect the requirements for an Individual Wetlands Permit (see N.J.A.C. 7:7A-7), the types of Statewide General Permits available for the wetlands portion of this property (see N.J.A.C. 7:7A-4) and any modification available through a transition area waiver (see N.J.A.C. 7:7A-6). Please refer to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and implementing rules for additional information.

This letter in no way legalizes any fill, which may have been placed, or other regulated activities, which may have occurred on-site. Also this determination does not affect your responsibility to obtain any local, State, or Federal permits which may be required.

In accordance with N.J.A.C. 7:7A-1.7, any person who is aggrieved by this decision may request a hearing within 30 days of the decision date by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist.

Please contact Ryan J. Anderson of our staff at (609) 292-8262 should you have any questions regarding this letter. Be sure to indicate the Program's file number in all communication.

Sincerely,



David B. Panz, Supervisor
Bureau of Coastal Regulation

- c: Manchester Township Clerk
Manchester Township Construction Official
Dover Township Clerk
Dover Township Construction Official



State of New Jersey
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Division of Land Use Regulation
 P.O. Box 439, Trenton, NJ 08625-0439
 Fax # (609) 292-4115
 Fax # (609) 777-3656
 www.state.nj.us/landuse

LISA P. JACKSON
 Commissioner

JON S. CORZINE
 Governor

Dr. John Crow
 C&H Environmental, Inc.
 216 Singer Street
 Hackensack, NJ 07840

RE: CAFRA Individual Permit Application
 DLUR No. 1500-04-0001.1 CAF040001
 Applicant: Jaylin Holdings, LLC
 Block 505, Lots 14 & 15
 Dover Township, Ocean County
 Block 44, Lots 2, 3, 4, & 5
 Manchester Township, Ocean County

Dear Dr. Crow:

The Division of Land Use Regulation (Division) acting under the provisions of New Jersey's Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et. seq.), New Jersey's Coastal Zone Management Rules at N.J.A.C. 7:7B-1.1 et. seq., and New Jersey's Coastal Permit Program Rules at N.J.A.C. 7:7-1.1 et. seq. has decided not to approve the above referenced CAFRA permit for the reasons set forth below.

I. INTRODUCTION

The Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et. seq.) of 1993 requires a permit be obtained from the Department for the construction of certain facilities within New Jersey's Coastal Zone, including a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in a commercial development having 50 or more parking spaces or equivalent parking area.

The Freshwater Wetlands Protection Act (N.J.S.A. 13:9B et. seq.) requires that a permit be obtained from the Department for the following activities within a freshwater wetlands and/or transition areas: 1) the removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind; 2) the drainage or disturbance of water level or water table; 3) the dumping, discharging or filling with materials; 4) the driving of pilings; 5) the placing of obstructions; and 6) the destruction of plant life which would alter the character of a freshwater wetlands.

In accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7B-1.1 et. seq., which implement CAFRA, a CAFRA Individual Permit is required for the proposed activity. In addition, in accordance with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1.1 et. seq.) which implement the Freshwater Wetlands Protection Act, the proposed activity also requires a Transition Area Waiver.

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
1500 04-0001.1

II. SITE AND PROJECT DESCRIPTION

The proposed project site is a 43-acre parcel that straddles the municipal border between Dover and Manchester Townships to the south of Route 37 and west of Northampton Boulevard in Ocean County, New Jersey. Approximately 40% of the site (17.13 acres) is located in Dover Township, and is identified as Block 505, Lots 14 & 15. The remaining 60% (25.87 acres) is located in Manchester Township, and is identified as Block 44, Lots 2, 3, 4, & 5. With the exception of an existing gas station at the north end of Lot 4 in Manchester Township, the entire site is undeveloped and mostly forested. Wetlands are present at the southern edge of the site in both townships, and their location was verified by the Division via a Letter of Interpretation (LOI) dated May 18, 2004, File No. 1500-04-0001.1 PWW040001.

The applicant, Jaylin Holdings, I.L.C., proposes a Wal-Mart store with outdoor garden center, parking, and two outparcels reserved for future use. The two outparcels are adjacent to Route 37 and Northampton Boulevard and the Wal-Mart store and garden center is to be located behind the outparcels. The applicant is also proposing 1,049 parking spaces for the 203,091 SF store and 19,884 SF garden center. A stormwater management system has been designed to accommodate the Wal-Mart, garden center, parking, existing gas station, and outparcels. There are no wetland or State open water disturbances, however, the applicant seeks approval of a Transition Area Waiver - Averaging Plan for the disturbance of wetland transition areas.

III. ADMINISTRATIVE HISTORY

On November 8, 2004, a CAFRA Individual Permit, Stream Encroachment, and Transition Area Waiver application was submitted by Dr. John Crow of C & H Environmental, Inc. on behalf of Jaylin Holdings, I.L.C. to construct a 203,091 SF Wal-Mart store, a 19,884 SF garden center, associated parking and two outparcels. A site inspection was conducted by Division staff on March 30, 2005. The stream encroachment permit was issued on March 4, 2005 and was conditioned on receiving the CAFRA permit and freshwater wetland transition area waiver - averaging plan.

On December 13, 2004, the Division sent Dr. Crow a letter indicating that the application was "complete for public comment". However, the letter indicated that based upon preliminary review, the Division provided/requested the following information, as follows: 1) The B/T habitat evaluation has been sent to Mr. Dave Golden, NJDEP, for separate review and approval; 2) Please submit a copy of the traffic report as soon as possible; 3) Please address Air Quality; 4) Please submit sewer and water commitment letters; 5) Stormwater and water quality is being reviewed by Lisa Schaefer, Project Engineer. If any concerns regarding stormwater and water quality arise, Ms. Schaefer will contact you directly.

On December 29, 2004, the Department published a notice announcing the commencement of the 30-day public comment period for the above referenced permit application in the DEP bulletin. The public comment period commenced on December 29, 2004 and ended on January 27, 2005, at which time the application was declared complete for final review. The decision deadline was set for March 26, 2005.

In a January 6, 2005 correspondence, the agent responded to some of the Division's initial concerns. Specifically, the Traffic Impact Statement and the Air Quality compliance statement were provided. This letter also included proof of notice for the Public Comment Period. The agent mentioned in this letter that the sewer and water commitment letters would be provided upon receipt. The commitment letters for Dover Township were received by the Division shortly thereafter. Commitment letters for Manchester Township were never submitted.

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
1500-04-0001.J

On March 21, 2005 the Division received correspondence from Mr. Dave Golden, NJ Division of Fish & Wildlife, Endangered & Non-Game Species Program (ENSP) stating that he agreed with this Division's wetland threatened and endangered species determination of March 4, 2004, that the site is not a suitable habitat for wetland threatened and endangered species. However, Mr. Golden stated that the site is suitable habitat for Northern Pine Snake. Mr. Golden noted that based on ENSP models, the site has the highest possible rank for being suitable pine snake habitat. Mr. Golden went on further to say that there are 4 pine snake records within $\frac{1}{4}$ of a mile to the site. The Division requested a formal report from Mr. Golden at this time, which was transmitted via email on March 30, 2005 and received by the Division on the same date.

On March 21, 2005 the Division received a request by the applicant's agent to extend the decision deadline by 30 days. The extension was requested to resolve any pending issues pertaining to endangered and/or threatened species. The request was granted by the Division and a new deadline of April 25, 2005 was assigned.

On March 30, 2005, the official environmental review by Mr. Golden was received by the Division. This report recommends that the CAFRA application be denied since it appears that the proposed project will have an irreversible impact on northern pine snake habitat. The report also requests the applicant to address the issue of critical wildlife habitat in more detail. The Division of Fish & Wildlife, ENSP, is concerned about pine snakes for the following reasons: 1) There is a 1993 documented report of a pine snake within 500 feet of the site, 2) There are several other pine snake records in the immediate vicinity of the site; and 3) The vegetation and soil characteristics make the habitat suitable for pine snakes.

On April 18, 2005, Mr. Golden further commented on his previous report of March 30, 2005. This addendum reinforced his original comments by citing the specific CAFRA regulation that requires an application be denied if it will have a direct or secondary effect on threatened and/or endangered species habitat. He also stated that appropriate buffer areas can also be protected and that they may extend beyond the habitat boundaries mapped by the DBP's Landscape Project.

On April 22, 2005, the decision deadline for the application was mutually waived in order to provide the applicant sufficient time to conduct a more substantial habitat survey for Northern Pine Snake. The applicant advised the Division that the survey would be conducted in June of 2005. The applicant confirmed, during an October 3, 2005 meeting with DEP representatives, the survey was conducted and pine snakes were found on the site. The applicant has chosen not to submit the results of the survey, in writing, to the Division.

During an October 3, 2005 meeting, Mr. Golden's comments on the application and habitat assessment were discussed with Division staff and the applicant.

In a January 17, 2006 supplemental report, Mr. Golden confirmed that radio telemetry data submitted by the applicant's environmental consultant shows that pine snakes are making full use of the site and that one of the two pine snakes with telemetry devices is currently denning in an area of proposed disturbance. Mr. Golden also stated that the materials provided to him, by the applicant, dealt entirely with threatened / endangered species habitat, and failed to elaborate on the issue of critical wildlife habitat.

On April 28, 2006, Mr. Golden re-evaluated all of the application materials provided by the applicant. Mr. Golden concluded that, based on the presence of a pine snake hibernaculum on the site and for the reasons provided in previous reviews of this application, the proposed development will have a direct adverse impact on pine snake habitat at the site. Mr. Golden goes on further to say that approval of this application will violate Section 7:7F-3.38 of the Coastal Zone Management Rules. The applicant has not adequately shown that the project would not have an adverse effect on pine snake habitat.

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
1500-04-0001.1

It should be noted that throughout the review period, numerous letters were received by the Division from concerned citizens opposing to the project. The letters addressed the public's concerns on impervious cover, threatened & endangered species habitat, freshwater wetlands & transition areas, local zoning, groundwater recharge, and commercial industries in the vicinity of the project site. It should also be noted that the Division considered all comments and concerns when reviewing this application.

IV. ANALYSIS

The following analysis is based on New Jersey's Coastal Zone Management Rules (N.J.A.C. 7:7E-1.1 et seq.).

7:7E-3.28 Wetlands buffers

- (a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem (see Appendix, Figure 7). Wider buffers than those noted below may be required to establish conformance with other Coastal Rules, including, but not limited to, 7:7E-3.38 and 3.39.
1. A wetlands buffer or transition area of up to 150 feet in width shall be established adjacent to all wetlands defined and regulated under the Freshwater Wetlands Protection Act. (Refer to the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A, for further guidance).
 2. For all other wetlands, including wetlands regulated under the Coastal Wetlands Act of 1970, a wetlands buffer of up to 300 feet shall be established.
- (b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.
- (c) Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and surrounding upland. The precise geographic extent of the actual wetlands buffer required on a specific site shall be determined on a case-by-case basis using these standards.
- (d) In areas of the coastal zone which are within the Hackensack Meadowlands District, the appropriate buffer width shall be determined in accordance with the requirements set forth in the Hackensack Meadowlands District Zoning Regulations.

ANALYSIS

The wetlands on site have been designated as intermediate resource value wetlands with a standard transition area of 50'. A Letter of Interpretation (LOI) was issued on May 18, 2004. The applicant has applied for a transition area waiver averaging plan (TAW) as a part of this application. The TAW application meets the requirements of the Freshwater Wetlands Protection Act and Rules, however, since the CAFRA portion of this application is being denied, the Division is unable to issue the TAW as there will be no proposed activity. The Division, therefore, suggests that the applicant submit a request to withdraw the TAW portion of the application.

Therefore, the proposed facility would meet this Rule if a permit was being issued.

Dover/Manchester Wal-Mart CAPRA Individual Permit Application
1500-04-0001.1

7:7E-3.38 Endangered or threatened wildlife or plant species habitats

- (a) Endangered or threatened wildlife or plant species habitats are areas known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife or plant identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing. The definition of endangered or threatened wildlife or plant species habitats include a sufficient buffer area to ensure continued survival of the population of the species. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat.
1. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (known hereafter as Landscape Maps) are subject to the requirements of this section unless excluded in accordance with (a)2 below. Buffer areas, which are part of the endangered or threatened wildlife species habitat, may extend beyond the mapped areas. The Department's Landscape Maps, with a listing of the endangered and threatened species within a specific area, are available from the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, www.state.nj.us/dep/fwy/ensphome.
 2. Information on the areas mapped as endangered or threatened plant species habitat on the Department's Landscape Maps and the occurrence of endangered or threatened plant species habitat is available from the Department's Office of Natural Lands Management, Natural Heritage Database at PO Box 404, Trenton, New Jersey 08625-0404.
 3. The required endangered or threatened wildlife or plant species habitat buffer area shall be based upon the home range and habitat requirements of the species and the development's anticipated impacts on the species habitat.
- (b) ~~Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated through an Endangered or Threatened Wildlife or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.2, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.~~
- (c) Applicants for development of sites that contain or abut areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps shall either:
1. Demonstrate compliance with this Rule by conducting an Endangered or Threatened Wildlife Species Impact Assessment in accordance with N.J.A.C. 7:7E-3C.2; or
 2. Demonstrate that the proposed site is not endangered or threatened wildlife species habitat and this Rule does not apply by conducting an Endangered or Threatened Wildlife Species Habitat Evaluation in accordance with N.J.A.C. 7:7E-3C.3
- (d) If the Department becomes aware of an occurrence of an endangered or threatened wildlife species on a site that is not mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps, and the Department determines that the habitat may be suitable for that species, the Department shall notify the applicant and the applicant shall demonstrate compliance with or inapplicability of this Rule in accordance with (c) above.
- (e) N/A

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
1500-04-0001.1

- (f) The Department is responsible for the promulgation of the official Endangered and Threatened Wildlife lists pursuant to the Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A et seq. These lists include wildlife species that are endangered and threatened in New Jersey as well as wildlife species officially listed as endangered or threatened pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq. Because the lists are periodically revised by the Department in accordance with N.J.S.A. 23:2A-1 et seq., the lists are not published as part of this Rule. The lists are found at N.J.A.C. 7:25-4.13 and 7:25-4.17, the Rules adopted pursuant to the Endangered and Non-Game Species Conservation Act. To obtain a copy of the most current Endangered and Threatened Wildlife lists, please contact the Department, Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, www.state.nj.us/dep/fgw/ensphome, or by writing in the Division at PO Box 400, Trenton, New Jersey 08625-0400.

(e) - (i) N/A

ANALYSIS

A review of the Department's Landscape Project 2.0 revealed that the proposed project site is mapped as Rank IV for the following species: Barred Owl, Cooper's Hawk, Corn Snake, Herpessid Priority Species, Bird Priority Species, Invertebrate Priority Species, Northern Pine Snake, Pine Barrens Tree Frog, and Timber Rattlesnake. Mr. Larry Torok, the Division's Endangered and Threatened Species specialist commented on the project during his review of the Letter of Interpretation (LOI) application on March 24, 2004. Mr. Torok stated that the proposed project site is not a suitable habitat for the listed species with regard to freshwater wetland applications.

On March 21, 2005 the Division received correspondence from Mr. Dave Golden, NJ Division of Fish & Wildlife, stating that he agreed with this Division's wetland threatened and endangered species determination of March 4, 2004, that the site is not a suitable habitat for wetland threatened and endangered species. However, Mr. Golden stated that the site is a suitable habitat for Northern Pine Snake. Mr. Golden noted that based on ENSP models, the site has the highest possible rank for being suitable pine snake habitat. Mr. Golden went on further to say that there are 4 pine snake records within ¼ of a mile to the site. The Division requested a formal report from Mr. Golden at this time, which was transmitted via email on March 30, 2005 and received by the Division on the same date.

On March 30, 2005, the official environmental review by Mr. Golden was received by the Division. This report recommended that the CAFRA application be denied since it appears that the proposed project will have an irreversible impact on northern pine snake habitat. The report also charged the applicant to address the issue of critical wildlife habitat in more detail. The Division of Fish & Wildlife, ENSP, is concerned about pine snakes for the following reasons: 1) There is a 1993 documented report of a pine snake within 500 feet of the site; 2) There are several other pine snake records in the immediate vicinity of the site; and 3) The vegetation and soil characteristics make the habitat suitable for pine snakes.

On April 18, 2005, Mr. Golden further commented on his previous report of March 30, 2005. This addendum reinforced his original comments by citing the specific CAFRA regulation that requires an application be denied if it will have a direct or secondary effect on threatened and/or endangered species habitat. He also stated that appropriate buffer areas can also be protected and that they may extend beyond the habitat boundaries mapped by the DEP's Landscape Project.

During an October 3, 2005 meeting, Mr. Golden's comments on the application and habitat assessment were discussed with Division staff and the applicant.

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
1500-04-0001.1

In a January 17, 2006 supplemental report, Mr. Golden confirmed that radio telemetry data submitted by the applicant's environmental consultant shows that pine snakes are making full use of the site and that one of the two pine snakes with telemetry devices is currently denning in an area of proposed disturbances. Mr. Golden also stated that the materials provided to him, by the applicant, dealt entirely with threatened / endangered species habitat, and failed to elaborate on the issue of critical wildlife habitat.

On April 28, 2006, Mr. Golden re-evaluated all of the application materials provided by the applicant. Mr. Golden concluded that, based on the presence of a pine snake hibernaculum on the site and for the reasons provided in previous reviews of this application, the proposed development will have a direct adverse impact on pine snake habitat at the site. Mr. Golden goes on further to say that approval of this application will violate Section 7:7E-3.38 of the Coastal Zone Management Rules. The applicant has not adequately shown that the project would not have an adverse affect on pine snake habitat.

On May 12, 2006, Mr. Golden reviewed a report (dated May 2, 2006) submitted to the Department by EcoSciences, Inc. This report was intended to reinforce the 2005 pine snake study on the subject property. Mr. Golden determined that most of the information in the report was already transmitted to the Department in various forms over the review period. Mr. Golden still concludes that the subject property would suffer an adverse impact if developed as proposed.

It is for the above reasons that the proposed project does not satisfy 7:7E-3.38 Endangered or threatened wildlife or plant species habitats and is thereby prohibited.

In summary, the site is actively used by northern pine snakes, which are an endangered species in New Jersey. In fact, the den area would be located within an area that is proposed to be disturbed.

Section (b) of this Rule states "Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an Endangered or Threatened Wildlife or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.7, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected." The applicant has not submitted the results of the required Endangered or Threatened Wildlife or Plant Species Impact Assessment conducted by his/her consultants. However, DLUR has ample information before it to find the proposed facility will have a negative impact on the site's northern pine snake population and habitat.

Therefore, this Rule is not met.

7:7E-3.39 Critical wildlife habitats

(a) Critical wildlife habitats are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating.

1. Rookeries for colonial nesting birds, such as herons, egret, ibis, terns, gulls, and skimmers; stopovers for migratory birds, such as the Cape May Point region, and natural corridors for wildlife movement merit a special management approach through designation as a Special Area.
2. Ecotones, or edges between two types of habitats, are a particularly valuable critical wildlife habitat. Many critical wildlife habitats, such as salt marsh water fowl wintering areas, and muskrat habitats, are singled out as water or water's edge areas.
3. Definitions and maps of critical wildlife habitats are currently available only for colonial waterbird habitat in the 1979 Aerial Colony Nesting Waterbird Survey for New Jersey (NJDEP, Division of Fish and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish Wildlife.

Driver/Manchester Wal-Mart CAFRA Individual Permit Application
1500-04-0001.1

8

- (b) Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless:
1. Minimal feasible interference with the habitat can be demonstrated;
 2. There is no prudent or feasible alternative location for the development; and
 3. The proposal includes appropriate mitigation measures.
- (c) The Department will review proposals on a case-by-case basis.
- (d) N/A

ANALYSIS

The applicant's EIS states that "No critical wildlife habitat (as a Natural Heritage Priority Site) was identified in the Natural Heritage Report referenced above." The application did not adequately address the above Rule since critical wildlife habitats are not limited to Natural Heritage Priority Sites, as implied by the submitted EIS. Critical wildlife habitat can also consist of areas known to serve as an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating. These special areas consist of Rookeries for colonial nesting birds, stopovers for migratory birds, and natural corridors for wildlife movement. The application did not address these types of critical wildlife habitats.

Therefore, the application is not in compliance with this Rule.

7:7E-5B.4 & 7:7E-5D.5 Impervious cover limits and vegetative cover percentages for a site in the CAFRA area

This section addresses the requirements for impervious cover and vegetative cover for sites in the CAFRA area.

At the time the application was submitted to the Division, the entire site was located in the Toms River Coastal Regional Center. On February 7, 2005, the Toms River Coastal Regional Center designation expired, however, it was readopted on March 16, 2006. Because the application was declared complete for review prior to February 7, 2005, the site remains governed by the impervious cover percentages allowed by a Coastal Regional Center.

The maximum impervious cover percentage for a site in the Toms River Coastal Regional Center is 80% of the net land area. The applicant has proposed 23.47 acres of impervious cover, which is 64.5%. The applicant is well within the 80% requirement.

The tree preservation percentage for the forested portion of a site in the Toms River Coastal Regional Center is 10% of the forested area. The tree preservation and/or planting percentage for the non-forested portion of a site in the Toms River Coastal Regional Center is 0%. The applicant has proposed to preserve approximately 6.9 acres, or 22% of the forested area.

Therefore, if a permit was being issued, this Rule would be met.

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
1500-04 0001.1

7:7E-6.2 Basic Location rule

- (a) A location may be acceptable for development under N.J.A.C. 7:7E-3, 4, 5, 5A, 5B, and 6, but the Department may reject or conditionally approve the proposed development of the location as reasonably necessary to:
1. Promote the public health, safety, and welfare;
 2. Protect public and private property, wildlife and marine fisheries; and
 3. Preserve, protect and enhance the natural environment.

ANALYSIS

The proposed project does not comply with the above Rule since the development would have an adverse impact on wildlife, specifically northern pine snake, and would not preserve and protect the northern pine snake's natural environment.

7:7E-9.4 Water Quality

- (a) As required by Section 307(f) of the Federal Coastal Zone Management Act (P.L. 92-583), Federal, State and local water quality requirements established under the Clean Water Act (33 U.S.C. 1251) shall be the water resource standards of the coastal management program. These requirements include not only the minimum requirements imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act. In the Delaware River Basin, the requirements include the prevailing "Basin Regulations-Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan. In the waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Sanitation Commission's Water Quality Regulations. Department Rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. 7:9-4), the Rules concerning Wastewater Discharge Requirements (N.J.A.C. 7:9-5), the Ground-Water Quality Standards (N.J.A.C. 7:9-6), and the Regulations Concerning the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A).
- (b) Coastal development which would violate the Federal Clean Water Act, or State laws, Rules and regulations enacted or promulgated pursuant thereto, is prohibited. In accordance with N.J.A.C. 7-15 concerning the Water Quality Management Planning and Implementation process, coastal development that is inconsistent with an approved Water Quality Management (208) Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., is prohibited.

ANALYSIS

The proposed site is within an approved 208 Plan area. However, a letter from the Dover Municipal Utilities Authority was received by the Division on December 20, 2004 requesting more information from the applicant to complete their review of the project. No further correspondence was received by the Division subsequent to this letter.

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
1500-04-0001.1

It should be noted that the Dover Municipal Utilities Authority states in their letter dated October 8, 2004, that they have no objection to the future services of this parcel with the sanitary sewer provided the Township of Manchester enters into an agreement with the DMUA that this will be a DMUA customer to bill and service. This agreement was also never received by the Division.

Therefore, since the applicant has not provided the required commitment letters for sewer service nor has an agreement been reached between Dover and Manchester Townships regarding what system the development will tie into, the Division is not able to make the positive findings required by this Rule. Accordingly, this Rule has not been met.

7:7E-8.6 Groundwater use

- (a) Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water that is within the earth that supplies wells and springs.
- (b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.
1. Coastal development shall conform with all applicable Department and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversion rights.

ANALYSIS

A letter from United Water Toms River was received by the Division on December 20, 2004 stating that water service is available to Block 505, Lots 14 & 15 in Dover Township. However, United Water Toms River does not supply water service to Block 44, Lots 2-5 in Manchester Township. Since a commitment letter from Manchester Township was not submitted as part of this application, the application is not in compliance with this Rule.

7:7E-8.10 Air quality

- (a) The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and the attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.
- (b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27 and New Jersey SIP for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.
- (c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportation services, in accordance with the Traffic Rule, N.J.A.C. 7:7E-8.14.

Dover/Manchester Wal-Mart CAPRA Individual Permit Application
1500-04-0001.1

ANALYSIS

Mr. John Greg, NIDEP Bureau of Air Quality reviewed the traffic impact statement provided by the applicant and concluded that the applicant needs to make the following roadway improvements in lieu of an air quality analysis since the Levels of Service (LOS) under build conditions should improve over no build conditions. The intersection will need: 1) an additional westbound right turn lane on NJ Route 37; 2) widening to the Northampton Boulevard approaches to provide a dedicated left turn lane, a dedicated thru lane, a shared thru and left turn lane, and a dedicated right turn lane; 3) realignment of the eastbound NJ Route 37 interchange to provide additional queuing; and 4) a new three phased signal operation.

Should this application have been approved, the above requirements would have been included in the permit conditions.

Therefore, if a permit was being issued, this Rule would be met.

7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, where feasible, incorporated into the design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, the satisfaction of the New Jersey Department of Transportation and any regional agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e) 1, 2 or 3 below, shall provide sufficient on-site and/or offsite parking for its own use at a ratio of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the parking facility Rule, where applicable.

1. The non-oceanfront portions of the following municipalities which border the Atlantic Ocean are excluded from the parking requirement at (e) above:

Dover/Manchester Wal-Mart CAPRA Individual Permit Application
1500-04-0001.1

12

- i. Neptune Township, Monmouth County: Those portions of this municipality which are west of State Highway 71;
 - ii. Brick, Dover and Berkeley Townships, Ocean County: Those portions of these municipalities which are not located between Barnegat Bay and the Atlantic Ocean;
 - iii. Upper Township, Cape May County: Those portions of this municipality which are not located between Whales Creek and the Atlantic Ocean and/or Stranmore Bay and the Atlantic Ocean; and
 - iv. Lower Township, Cape May County: Those portions of this municipality which are not between Lower Thorofair and the Atlantic Ocean and/or Jarvis Sound and the Atlantic Ocean;
2. The department shall reduce the parking requirement for developments restricted to senior citizen housing that is restricted to persons at least 62 years of age or those persons meeting the definition of "senior citizen tenant" pursuant to the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61, upon documentation that the parking needs of the development are less than two spaces per unit; or
 3. Nursing homes and assisted living facilities are excluded from the parking requirement at (c) above.

ANALYSIS

The applicant submitted a traffic impact statement as part of the application. While the applicant addressed the fact that the Level of Service for the site under build conditions should improve over no-build conditions, they did not supply sufficient supporting documentation that would allow the Division to make a positive finding under this Rule. Therefore, the Division is unable to determine if the roadway will operate at a Level of Service "D" or better and cannot determine compliance with this Rule.

Should the permit have been issued, it would have included a condition for the applicant to receive approval from the New Jersey Department of Transportation.

CAPRA Section 10 Review (N.J.S.A. 13:19-10.)

The commissioner shall review filed applications, including any environmental impact statement and all information presented at public hearings or during the comment period, or submitted during the application review period. The Department shall issue a permit pursuant to the Coastal Area Facility Review Act (CAFRA) only upon a finding as required by N.J.S.A. 13:19-10 that the development:

- a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.
 - b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.
 - c. Provides for the collection and disposal of litter, recyclable material and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.
 - d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.
-

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
 1500-04-0001.1

- c. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.
- f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.
- g. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing public scenic attributes at the site and within the surrounding region.

The proposed development does not comply with criterion a, b, d, c, & g above, as there are actual records of northern pine snakes utilizing the site and surrounding area, there is not sufficient water and sewer commitment by the respective Townships, and the development would result in the degradation of irreplaceable land types (pine snake habitat). Therefore, the Division can not make a positive finding under Section 10 of the Act.

V. SUMMARY

In summary, the proposed project is prohibited under Endangered or Threatened wildlife or plant species habitats (7:7E-3.38), Water quality (7:7E-8.4), and discouraged under Critical wildlife habitats (7:7E-3.39), Basic location Rule (7:7E-6.2), Groundwater usage (7:7E-8.6), Traffic (7:7E-8.14), and Section 10 "Prohibited" means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal, (7:7E-1.8) "Discouraged" means that a proposed use of coastal resources is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred and developers should be dissuaded from proposing such uses, (7:7E-1.8). Therefore, based on the noncompliance status of the proposed development with the Rules listed above, and negative findings under Section 10, the CAFRA permit is hereby denied.

Please be advised that had the Division issued a permit, in addition to the conditions listed above, any CAFRA permit would have included the following conditions:

1. Prior to site preparation, the permittee shall obtain all other necessary local, State and Federal construction approvals including but not limited to Ocean County Soil Conservation Service, Treatment Works Approval, NJDOT approvals, and Manchester Township approval for potable water and sewer.
2. The applicant would have to have made specific arrangements to ensure the continuous maintenance and efficient operation of all proposed water quality measures on site. This includes, but is not limited to, the cleaning and inspection of all water quality inlets at least twice a year and after every major storm, and the continuous implementation of appropriate soil conservation practices within any grassed swales, storm water outfall structures and other similar appurtenances throughout the site in order to limit soil erosion and sediment discharge into adjacent waterways or wetlands.
3. The following roadway improvements for air quality purposes would have to be operational prior to opening of the facility:
 - a. An additional westbound right-turn lane on NJ Route 37;
 - b. Widening to the Northampton Boulevard approaches to provide a dedicated left-turn lane, a dedicated thru lane, a shared thru and left-turn lane, and a dedicated right-turn lane;

Dover/Manchester Wal-Mart CAFRA Individual Permit Application
 1500-04-0001.1

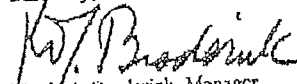
- c. Realignment of the eastbound NJ Route 77 jughandle to provide additional queuing; and
 - d. A new three-phased signal operation.
4. The permit would have required the applicant make any and all improvements to the adjacent roadway and intersections as required by NJDOT prior to occupancy of the facility.
 5. Prior to site preparation, obtain Manchester Township MUA approvals for potable water and sewer.

If you or anyone is aggrieved by this permit decision, an administrative appeal may be filed in accordance with the Coastal Permit Program Rules, (N.J.A.C. 7:7-5).

Any interested person who considers himself or herself aggrieved by this permit decision may request a hearing by addressing a written request for such hearing to the following address: Office of Legal Affairs, Department of Environmental Protection, P.O. Box 402, Trenton, NJ 08625-0402, Attention: Adjudicatory Hearing Requests. This written request must include a completed copy of the attached Administrative Hearing Request Checklist and all information identified in Section III of that list.

I am sharing a copy of the denial with the appropriate local and federal agencies to promote inter-governmental cooperation in managing natural resources. If you have any questions on this decision, please contact Eric M. Virostek of my staff in writing at the above address or by telephone at (609) 984-0288.

Sincerely,


 Kevin J. Broderick, Manager
 Bureau of Coastal Regulation

June 1, 2006
 Date

- c: Bureau of Coastal and Land Use Enforcement, Toms River
- Dover Township Municipal Clerk
- Dover Township Planning Board
- Manchester Township Municipal Clerk
- Manchester Township Planning Board
- Mr. John Aubin
- Mr. Ronald Gasiorowski
- Mr. Richard Hluchan



JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

ANNE MILGRAM
Attorney General

TAYSEN VAN ITALLIE
Director

July 15, 2009

Facsimilied and Regular Mail

William Harrison, Esquire
Genova, Burns & Vernioia
494 Broad Street
Newark, NJ 07102-3230

Re: CAFRA Individual Permit Application
Block 505, Lots 14 & 15
Toms River Township, Ocean County
Block 44, Lots 2, 3, 4 & 5

Dear Mr. Harrison:

I have forwarded to the Department of Environmental Protection Division of Land Use Regulation ("DEP") your July 9, 2009 letter concerning the above-captioned property and anticipated CAFRA permit application and the July 2nd pre-application meeting.

In response to your letter, I have been reminded by Assistant Land Use Director Piel that since the July 2nd meeting was a pre-application conference, the discussions were only nonbinding guidance. DEP thinks the guidance offered was good, but DEP's guidance was not a binding commitment that the proposed project meets or would meet any particular regulation or regulatory standard.

In addition, DEP reiterates that it is the applicant's burden to demonstrate that the project meets all of the applicable regulations. Assistant Director Robert Piel specifically identified the Threatened and Endangered Species Habitat and Critical Wildlife Habitat regulations, N.J.A.C. 7:7E-3.38 and N.J.A.C. 7:7E-3.39, as difficult challenges, reviewing portions of the existing regulations. DEP made no representation that the proposed concept meets the regulations.



July 15, 2009

Page 2

With regard to the endangered species habitat concerns, Dave Jenkins, Chief of the Endangered Non-game Species Program adds that any application should focus on appropriate terminology, and focus on enhancements on preserved portions of the property and/or added preserved land and ensure that there is no diminution in the capacity of the area to sustain pine snakes. In other words, the proposed application should show that any lost "habitat capacity" or lost habitat value is offset by enhanced capacity or value on adjoining lands.

Further, Mr. Heilferty notes that any newly found minimizations in required footprint should be used to further reduce impacts to endangered and threatened species habitat.

With regard to the Permit Extension Act, Mr. Piel did not confirm the extension of the letter of interpretation, but instead said that he was reviewing the request.

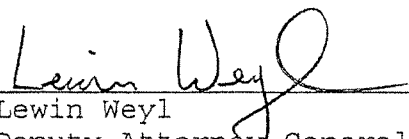
Finally, Mr. Piel noted that the anticipated application would be a new application and would be reviewed under the revised design and the current regulations.

Thank you for your attention to this matter. If you have any questions, please feel free to call me.

Sincerely yours,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Lewin Weyl
Deputy Attorney General

c Tom Micai, DEP
Robert Piel, DEP
Dave Jenkins, DEP
Dave Golden, DEP
John Heilferty, DEP
Eric Virostek, DEP
Rachel Horowitz, Assistant Section Chief

walmart3

ANGELO J. GENOVA ◊+*
 JAMES M. BURNS ◊
 FRANCIS J. VERNIOIA ◊
 JOHN C. PETRELLA ◊
 JAMES J. MCGOVERN III ◊
 LAURENCE D. LAUFER +
 JEFFREY R. RICH ◊+
 SANDRO POLLEDRI ◊◊
 KATHLEEN BARNETT EINHORN ◊+
 CELIA S. BOSCO ◊+
 BRIAN W. KRONICK ◊
 JAMES BUCCI ◊*
 PATRICK W. MCGOVERN ◊+
 PETER R. YAREM ◊
 WILLIAM F. HARRISON ◊
 DOUGLAS E. SOLOMON ◊+

RALPH J. SALERNO ◊
 KEITH A. KRAUSS ◊^
 HARRY G. KAPRALOS ◊+
 REBECCA MOLL FREED ◊+
 JENNIFER MAZAWAY ◊+
 JOHN R. VREELAND ◊+
 JENNIFER BOREK ◊+
 JOHN W. BARTLETT ◊^

COUNSEL

NORMAN J. PEER ◊+
 GEORGE L. SCHNEIDER ◊+
 GREGORY E. NAGY ◊
 DAVID P. COOKE ◊+

OF COUNSEL

HOLLIE B. KNOX *
 DENA B. CALO ◊*
 CHRISTINA B. MURPHY ◊+^
 SHIRIN SAKS ◊+
 JASON L. SOBEL ◊+
 DINA M. MASTELLONE ◊+
 JOSEPH M. HANNON ◊+
 PETER F. BERK ◊
 GREGORY E. TOMCZAK ◊+*
 JORDANA S. ELROM ◊+
 JISHA V. DYMOND ◊+

LISA A. JOHN ◊
 LAUREN W. GERSHUNY +
 NICHOLAS J. REPICI ◊*
 CAROLYN BUCCERONE ◊*^
 MICHAEL E. MCMAHON ◊
 MICHAEL L. MOORE ◊
 ALEXANDER L. D'JAMOOS ◊+
 KRISTINA E. CHUBENKO ◊+
 RAJIV D. PARIKH ◊+
 GINA M. SCHNEIDER ◊

LISA CHAPLAND ◊+^
 SHANNON A. MORALES ◊+
 STACEY J. LIPITZ ◊+
 DAVID K. BRODERICK ◊+
 LI JING ◊
 MICHAEL J. JURISTA ◊+
 JONATHAN B. KING ◊+
 ERIC W. RUDEN ◊+

RONALD H. DEMARIA
 (1939-2004)

MEMBER OF NEW JERSEY BAR ◊
 MEMBER OF NEW YORK BAR +
 MEMBER OF PENNSYLVANIA BAR *
 MEMBER OF DISTRICT OF COLUMBIA^
 CERTIFIED CIVIL TRIAL ATTORNEY ◊
 CERTIFIED CRIMINAL TRIAL ATTORNEY *

July 9, 2009

VIA REGULAR MAIL AND E-MAIL

Lewin Weyl, Esq.
 State of New Jersey
 Department of Law and Public Safety
 PO Box 1112
 Trenton, New Jersey 08625

Re: **CAFRA Individual Permit Application**
DLUR No. 1500-04-0001.1 CAF040001
Block 505, Lots 14 & 15
Toms River Township, Ocean County
Block 44, Lots 2,3,4,& 5
Manchester Township, Ocean County

Dear Mr. Weyl:

As you know, this office represents Wal-Mart in reference to its interests in the above-entitled Coastal Area Facility Review Act ("CAFRA") permit application submitted by Jaylin Holdings, LLC ("Jaylin"). Please allow this correspondence to confirm the events of our meeting held on July 2, 2009. As part of the resolution of the denial of the aforementioned CAFRA application, Jaylin will submit a new CAFRA application for review by the Division of Land Use Regulation ("DLUR").

Present at the meeting were: William F. Harrison, Esq., Jennifer Mazawey, Esq., Dave Moskowitz ("Moskowitz") of Ecolsciences, Inc., Tom Pugsley, P.E. and Mike Moonan P.E. of Bohler Engineering on behalf of Wal-Mart and Jaylin; and Eric Virostek ("Virostek"), Senior Geologist in the DLUR, John Heilferty ("Heilferty"), Principle Environmental Specialist in the DLUR, Dave Jenkins ("Jenkins"), Bureau Chief of the Division of Fish & Wildlife ("DFW"), Robert Piel ("Piel"), Assistant Director of the DLUR, and Lewin Weyl

494 BROAD STREET ■ NEWARK, NJ 07102-3230

TELEPHONE 973-533-0777 FACSIMILE 973-533-1112 WEBSITE www.gbvlaw.com

NEW YORK, NY ■ CAMDEN, NJ ■ RED BANK, NJ ■ PHILADELPHIA, PA

Lewin Weyl, Esq.
July 9, 2009
Page 2

("Weyl"), Deputy Attorney General on behalf of the Department of Environmental Protection ("DEP").

In the first instance, it was confirmed that Virostek will be the contact person for the application and that a new fee will be required. We indicated that we are attempting to have the new application submitted by August 14. You requested to receive a copy of the cover letter and CAFRA compliance statement when the CAFRA submission is made and we agreed to that request.

Substantively, we discussed several issues related to the application. Preliminarily, we discussed the applicability of the Flood Hazard Area Regulations to the project. Based on our discussions, the DEP did not believe that a permit under the Flood Hazard Regulations would be necessary. With regard to the Wetlands Letter of Interpretation received in May 2004, the DEP representatives agreed that it would be extended until December 31, 2010 pursuant to the Permit Extension Act. Moreover, Heilferty agreed that an application for a general permit ("GP") 6 (fill of isolated wetlands) would be sufficient to cover all proposed disturbance and discharge into the wetlands and transition areas on the site. He did not believe that a separate application for a GP-11 (stormwater outfall structures) would be necessary. The CAFRA application will also have to include information on historic and archeological resources, and while the application would be reviewed by the Historic Preservation Office, your professionals did not foresee any necessary further action regarding that application component.

We also discussed the vernal pool mitigation proposed by the applicant. Moskowitz indicated that the DEP-preferred area for the vernal pool had an excessive depth to the seasonal high water table, which would result in significant disturbance to the land. It was agreed that Heilferty and Dave Golden ("Golden") of DFW would meet with Moskowitz at the site to discuss alternative locations for the vernal pool. However, since that meeting may not take place by the time the CAFRA application has been submitted, Moskowitz is to provide his preferred proposal for the vernal pool mitigation in the application submission.

Jenkins indicated that the new application should focus on addressing how the proposed plans will provide pine snake habitat enhancement. A compliance statement should be written to focus on all of the enhancements, such as providing sources of food and shelter, which will compensate for the amount of lost habitat. In terms of critical habitat, the DEP instructed Moskowitz to create a report which speaks to how the 87 and 21-acre parcels relate to other adjacent and nearby permanently protected lands in providing an overall large area of protected pine snake habitat.

You also indicated that you would revisit the issue of ultimate ownership of the 87-acre parcel and whether the pay-to-play laws would have an impact.

Lewin Weyl, Esq.
July 9, 2009
Page 3

It was the consensus of the meeting participants that the Toms River Center designation still applies and as such we are entitled to 80% site coverage limitation. The proposed development was well within that limitation.

In terms of water quality as well as groundwater use, your professionals established that current "will serve" letters from MUA and United Water will be required. Additionally, in the areas of air quality and traffic, Piel indicated that it would be helpful if the DOT could review the major access permit application and make findings in the context of the DEP rules on air quality. Further, Piel recommended going back to the DOT now to receive the permit, which would assist in the review of the traffic-related issues.

As it relates to stormwater, the DEP professionals indicated that the basin at the south west corner of the proposed development may be a wet basin and, in fact, may be preferable as such if it would mean that the size of the basin may be reduced, thereby reducing any encroachment on the pine snake corridor. They also indicated that they will look at efforts to protect threatened & endangered ("T&E") species as a paramount concern over other CAFRA items, like stormwater. They requested that we investigate whether we can lessen the encroachment on the T&E and Critical Wildlife Habitat. They recognized that if we could not reduce the impacts, the submitted concept plan would be sufficient based on the significant reduction in disturbance from the plan that was originally denied. They also indicated that stormwater discharge into the wetlands may be preferable if the development would result in less water entering the isolated wetlands on the site. Roof runoff would be the best, but in any event, we should try to make the discharge as pristine as possible if there is a direct discharge to the wetlands.

With regard to the pine snake barrier, Heilferty indicated that we should count the barrier wall disturbance as impact on the site. We also discussed the wall's impact on the maintenance of the stormwater basin. In that regard, there were suggestions as to how to construct the wall with a gate to be used to allow maintenance to the basin without interfering with the barrier's intended purpose of keeping pine snakes off of the development. The DEP representatives indicated that we should clearly identify all engineering enhancements which were undertaken to assist in the overall T&E protection plan. This would assist them in making their determination that our proposed development meets the CAFRA rules regarding T&E and Basic Location.

Finally, we discussed some of the permit conditions which would attach once CAFRA approval was received. Jenkins clarified that preservation safeguards for the 21-acre and 87-acre parcels must be in place before there is site disturbance. Additionally, there must be a plan for long term maintenance and management of the habitat. The plan must include aspects that can be adapted to remedy issues that may arise over time.

Lewin Weyl, Esq.
July 9, 2009
Page 4

If you disagree with our summary of the meeting, please provide us with your written rationale for the disagreement. If you have any questions and wish to speak with me, please do not hesitate to contact me.

Very truly yours,

GENOVA, BURNS & VERNIOIA


WILLIAM F. HARRISON

WFH:JM:dmc

- c: Matt Sitton, Real Estate Manager, Walmart (via e-mail only)
Brad Adams, Design Manager, Walmart (via e-mail only)
Rick Martin, Esq., Walmart Legal (via e-mail only)
Jay Grunin, Esq., Jaylin Holdings, LLC (via facsimile only)
Thomas F. Pugsley, P.E., Bohler Engineering (via e-mail only)
David Moskowitz, Ecolsciences, Inc. (via e-mail only)

ATTACHMENT D

Qualification of Preparers

EcolSciences, Inc.

Environmental Management & Regulatory Compliance

ECOLSCIENCES, INC.

CORPORATE HISTORY

EcolSciences, Inc., was founded in 1973 in response to the growing need for responsible environmental planning, as mandated by NEPA, The National Environmental Policy Act. EcolSciences specializes in performing environmental investigations relating to permit acquisition and regulatory compliance, demonstration of "due diligence", waste management, impact analysis, mitigation and remediation. EcolSciences' strength is a proficiency in current environmental and waste management laws, regulations, and policies, coupled with a practical problem-solving approach to analyzing the environmental consequences of projects.

During its thirty-three years, EcolSciences has successfully completed more than 10,000 studies for private, quasi-public and public clients. EcolSciences has represented many of the country's leading industries, corporations, developers, and financial institutions including AT&T, American Cyanamid Company, Lucent Technologies, Merck, Johnson & Johnson, Hartz Mountain Industries, Exxon, K. Hovnanian Companies, Roseland Property Company, Trammell Crow Company, Principal Real Estate Investors, PNC Bank, The Bank of New York, and JP Morgan Chase. Among the many utilities that EcolSciences has served are Jersey Central Power & Light, New Jersey Natural Gas Company, Verizon Wireless, Sprint, Elizabethtown Gas Company, Essex and Hudson County Improvement Authorities, Ocean County Utilities Authority, and numerous municipal utilities authorities. Representative government agency clients include the U.S. Environmental Protection Agency, New York City Economic Development Corporation, New York City Department of Design and Construction, and New York City Department of Sanitation.

EcolSciences' interdisciplinary staff of environmental engineers, geologists, biologists and scientists has extensive experience in a diversity of studies related to biological assessment and toxic and hazardous materials management. EcolSciences has performed environmental assessments and has acquired appropriate permits and approvals under a wide variety of federal, state, regional, and local jurisdictions. These include, but are not limited to: federal Section 404 and Section 10 authorizations; New York SEQRA and CEQR approvals; New Jersey CAFRA, Waterfront Development, and Freshwater Wetlands Protection Act permits (both general and individual); NJ Pinelands Commission certifications; Hackensack Meadowlands Development Commission (HMDC) approvals; and Delaware & Raritan Canal Commission

approvals. EcolSciences' senior staff is experienced in the delivery of expert testimony; senior staff of the firm have testified in public hearings, Administrative Law proceedings, and county, regional and municipal planning boards.

Since the promulgation of the New Jersey Environmental Cleanup Responsibility Act (ECRA) and its successor, the Industrial Site Recovery Act (ISRA), EcolSciences has been involved in the implementation of the entire ECRA/ISRA program for its industrial clients. More recently, as the demonstration of "due diligence" has become a leading industry standard, EcolSciences has completed numerous Phase I environmental audits per ASTM E1527-05 and AAI and follow-up Phase II studies to clarify the level of environmental risk and liability associated with past and current practices at a particular site or facility. These audits typically include such activities as hazardous materials inventories, building and site inspections, subsurface soil investigations, groundwater monitoring, tank testing, asbestos bulk sampling, development of remediation plans and supervision of cleanup activities. The firm and technical staff members are also certified by the NJDEP for the performance of underground storage tank installation, closure, and subsurface evaluation. All work is conducted under the supervision of a licensed professional engineer.

The biological staff of EcolSciences has conducted over 4,000 wetland delineations and environmental assessments throughout the eastern and central portions of the United States. Our staff is skilled in all technical aspects of wetland identification and delineation methodologies established by the ACOE, USFWS, EPA and SCS; the assessment of wetland functions and values using techniques such as HEP, WET, and IVA; the assessment of development-related wetland impacts, the acquisition of wetland permits, and the development and implementation of mitigation plans. Key members of our staff are certified as Professional Wetland Scientists and provisionally certified by the ACOE. Additionally, EcolSciences' biologists routinely perform specialized studies related to federally- and state-listed threatened and endangered plant and animal species, wildlife habitat surveys, and the assessment of development-related impacts. Three of EcolSciences' biologists are USFWS Qualified bog turtle surveyors and two are NJDEP Qualified Ornithologists.

EcolSciences is a multi-disciplinary firm that has the experience and capabilities to provide a full range of environmental services. Studies are conducted in a manner that emphasizes the balance of environmental, engineering and cost factors. This approach provides the information necessary for sound and practical project decisions.

DAVID P. MOSKOWITZ

- EDUCATION:** *B.A., 1984 - Environmental Studies
George Washington University, Washington, D.C.*
- M.S. 2000 - Environmental Policy Studies
New Jersey Institute of Technology, Newark, N.J.*
- Ph.D. Program – Ecology and Evolution
Rutgers University, New Brunswick, N.J.*
- PROFESSIONAL AFFILIATIONS:** *Society of Wetland Scientists
Association of Field Ornithologists
ASTM Environmental Committee (1998-2002)
Dragonfly Society of the Americas*
- PROFESSIONAL CERTIFICATIONS:** *Professional Wetland Scientist - SWS
Certified Wetland Delineator - Corps of Engineers
USEPA Wetland Delineation - WTI
Qualified Ornithologist - NJDEP
Qualified Bog Turtle Surveyor, NY/NJ - USFWS*
- OTHER:** *Wetland Journal Technical Review Board (2000-2002)
SWS Certification Review Panel (1998-2001)
Porey Park Board of Directors (1999-2002)
East Brunswick Environmental Commission
USFWS N.J. Breeding Bird Survey Coordinator (1995-1997)
Identification of Sedges and Rushes - Rutgers University
Field Identification of Raptors - University of Maine
Identification of Adult Dragonflies - University of Maine
Identification of Larval Dragonflies - University of Maine
Systematics & Conservation of Lepidoptera - University of Maine
Identification of Microlepidoptera – University of Maine*

EXPERIENCE:

Mr. Moskowitz is a Senior Vice President with EcolSciences, Inc. During the past 20 years, Mr. Moskowitz has conducted more than 4,000 environmental studies for a wide range of clients including government agencies, and the development, legal, engineering and financial professions. These studies have focused on wetland and wildlife issues including delineations, mitigation, field surveys and regulatory compliance as well as Phase I, Phase II and Brownfields Redevelopment. Mr. Moskowitz has also provided expert testimony before numerous municipal boards and the New Jersey Meadowlands Commission and has been qualified as an expert in Superior Court of New Jersey, New Jersey Office of Administrative Law, New Jersey Condemnation Commission, and the Morris County Board of Taxation. Mr. Moskowitz has published more than two-dozen technical and popular papers on wildlife, wetland, and threatened and endangered species related topics and has lectured widely on numerous environmental topics.



Wetland Studies

Directed and participated in more than 3,000 field studies in NJ, NY, PA, MD and CT evaluating all aspects of wetland ecology. Representative experience includes:

- The evaluation of more than 10,000 acres in the New Jersey Highlands.
- The evaluation of more than 7,500 acres in the complex red soils of the New Jersey Piedmont.
- The evaluation of nearly 3,000 acres on Staten Island, New York.

Brownfields and Site Investigation Studies

Principal in charge of numerous Phase I Environmental Assessments, historic pesticide investigations and remedial activities, hazardous waste investigations and brownfields redevelopment projects.

Wetland Mitigation Studies

Numerous mitigation plans have been prepared to remedy regulatory violations of various State and Federal wetland laws, and to compensate for wetland losses resulting from permitted wetland fills. Two examples of the wide variety of studies include:

- Preparation of mitigation plans and specifications for the remediation of wetlands and shorelines of the Freshkills Sanitary Landfill, Staten Island, New York.
- Design and implementation of a 13-acre wetland restoration project in Morris County, New Jersey utilizing air conditioning condensation as a hydrologic supplement.

Threatened and Endangered Species Studies

Designed, directed and participated in numerous field studies for rare plant and animal species including Bog Turtle, Bald Eagle, Wood Turtle, Northern Pine Snake, Long-eared owl, Blue Spotted Salamander, Long Tailed Salamander, Pine Barrens Tree Frog, Great Blue Heron, Coopers Hawk, Grasshopper Sparrow, Savannah Sparrow, Upland Sandpiper, Barred Owl, Swamp Pink, Knieskern's Beaked Rush, Curly Grass Fern and Barrett's Sedge.

Ornithological Studies

Numerous studies conducted throughout the northeast designed to evaluate and census individual species, avian communities and habitats, to assess potential impacts upon the species and habitats associated with land development proposals, and to comply with State and Federal Wildlife regulations. Two examples of the wide variety of studies include:

- Long-eared owl habitat evaluation, pellet analysis and management plan in Somerset County, New Jersey.



- Two-year avian census, habitat evaluation and regulatory assessment for the proposed redevelopment of Flushing Airport in Queens, New York by the New York City Economic Development Corporation. Breeding, wintering and migratory utilization of the site was comprehensively evaluated and barn owl pellet analysis was conducted to augment small mammal population studies.

Commercial/Residential/Industrial Studies

More than 3,000 properties have been evaluated throughout NJ, NY, PA, and CT to assess potential environmental impacts from proposed development and to insure regulatory compliance with various Local, State and Federal environmental laws. Tasks have included wetland delineation, permit acquisition and mitigation planning.

Corridor Studies

Designed, directed and participated in ecological studies and regulatory assessments for more than 350 linear miles of road corridors, gas and electric transmission right of ways and sewer and water alignments. Studies have been performed for the New Jersey Turnpike Authority, New Jersey DOT, Jersey Central Power and Light, New Jersey Natural Gas, and numerous local governments.

Special Environmental Studies

A wide range of ecological studies have been conducted for various private clients, the USEPA and other government agencies. Representative studies include:

- Bird, mammal, dragonfly, damselfly, butterfly and floral surveys for the proposed Catskill/Delaware Water Treatment Facility in Westchester County, New York.
- Habitat assessments for Pine Barrens Tree Frog and River Otter in New Jersey.
- An avifaunal study of a 500-acre proposed incinerator ash landfill site in New York, conducted for a county agency, to evaluate FAA concerns about bird strike hazards to aircraft passing over the site, resulting in the preparation of a Bird Deterrent Plan.
- Biological studies of the impacts of Folcroft Landfill upon ecological communities of Tinicum National Environmental Center, Philadelphia, PA for the USEPA, Region III.
- Red-Headed Woodpecker evaluation of two central New Jersey properties.



Publications/Articles

- Moskowitz, D.P., 1996. Swamp Pink: A Federally-Listed Threatened Species. *Wetland Journal* 8(3): 14-16.
- Moskowitz, D., Auffenorde, T. and M. Kovacs, (1997). Vegetation and Surrounding Landscape Characteristics of Long-Eared Owl (*Asio otus*) Winter Roosts in Central New Jersey. *Records of New Jersey Birds*. (23)1: 2-6.
- Moskowitz, D.P., 1997. Wetland Restoration Using Non-Contact Cooling Water and Stormwater Runoff as a Supplemental Hydrologic Source. *Wetland Journal* 9(1): 17-20.
- Moskowitz, D.P., 1997. Hine's Emerald Dragonfly (*Somatochlora hineana*): The First Federally Endangered Dragonfly. *Wetland Journal* (9)3: 12-14.
- Moskowitz, D.P., 1997/98. Fall Migrant Landbird Observations at Sea. *Records of New Jersey Birds*. (23)4: 95.
- Moskowitz, D.P., 1998. Build a Wetland Garden. *Water Gardening Magazine*.(2)6: 58-60.
- Moskowitz, D.P., 1998. Tips Offered on Negotiating N.J.'s Mining, Dredging Rules. *Mine Regulation Reporter*. 11(4): 86-87.
- Moskowitz, D.P., 1998. Vegetation Change in a Forested Wetland after a Bird Roost. *Northeastern Naturalist*. 5(1): 61-66.
- Moskowitz, D.P., 1998. A Wetland Delineation Primer for the Professional Land Surveyor. *Professional Surveyor Magazine*. 18(1): 22-28.
- Moskowitz, D.P. and D.M. Bell., 1998. *Archilestes Grandis* (Great Spreadwing) in Central New Jersey, with Notes on Water Quality. *Bulletin of American Odonatology*. 5(3): 49- 54.
- Moskowitz, D.P., 1999. The Pine Barrens Treefrog (*Hyla Andersonii*): An Ecologist's Dream. *Wetland Journal* 11(4): 8-13.
- Moskowitz, D.P., 2000. A Comparison of Field-Delineated Wetlands to the New Jersey Freshwater Wetland Maps. M.S. thesis - New Jersey Institute of Technology.
- Moskowitz, D.P., 2000. Old Maps and Wetland Regulation. *Professional Surveyor Magazine*. 20(6): 22-30.
- Moskowitz, D.P. and T.A. Auffenorde., 2000. Persistence of Skunk Cabbage (*Symplocarpus foetidus* [L.] Nutt.) in a Drained Wetland. *Wetland Journal* 12(3): 23-29.
- Moskowitz, D., 2000. A New County Record for *Archilestes Grandis* in New York with Notes on Habitat and Water Quality. *ARGIA* 12(4): 7-8.



- Moskowitz, D.P., 2000. Habitat Notes on a Winter Saw-whet Owl (*Aegolius acadicus*) Roost in Central New Jersey. Records of New Jersey Birds. 26(4): 138-139.
- Moskowitz, D., 2000. Book Review: Dragonflies through Binoculars - A Field Guide to Dragonflies of North America. Wetland Journal 12(4): 41.
- Poricy Park Citizens Committee. 2001. A Checklist and Guide to the Butterflies of Poricy Park. Pamphlet.
- Moskowitz, D. P. 2001. First Record of the Queen Butterfly (*Danaus gilippus* Cramer) in New Jersey. News of the Lepidopterists' Society 43(3): 72, 74.
- Moskowitz, D., J. Moskowitz, S. Moskowitz and H. Moskowitz. 2001. Notes on a large dragonfly and butterfly migration in New Jersey. Northeastern Naturalist 8(4): 483-490.
- Moskowitz, D. P. 2002. An unusual interaction between a banded hairstreak butterfly (*Satyrium calanus*) Lycaenidae and a stink bug (*Banasa dimidiata*) Pentatomidae. Entomological News 113:(3) 183-186.
- Moskowitz, D. P. 2002. Was there an invasion of the Queen butterfly (*Danaus gilippus* Cramer) in the northeastern United States in 2001? News of the Lepidopterists' Society 44(2): 66-67.
- Newgard, L. and D. Moskowitz. Bog turtle: It's small, secretive, rare, and it's in our hiking region Trailwalker 29(4): p. 5.
- Moskowitz, D.P. and C. Westphal. 2002. Notes on the larval diet of the Painted Lichen moth *Hypoprepia fucosa*: Hubner (Arctiidae:Lithosiinae). Journal of the Lepidopterist's Society 56 (4): 289-290.
- Moskowitz, D. P. and T. M. Auffenorde. 2003. Bird Use at Two Simulated-Tree Cellular Towers in New Jersey. Records of New Jersey Birds. 28(4): p. 88-91.
- Moskowitz, D.P. 2003. The Queen Dilemma in the Northeastern United States. New York State Butterfly Records 2002. New York Chapter, North American Butterfly Association. p. 49-51.
- Moskowitz, D.P., Kovacs, M. and J. Tesauro 2003. *Glyptemys* (*Clemmys*) *muhlenbergii* (Bog Turtle). Abnormal Coloration. Herpetological Review. 34(3): p. 240.
- Moskowitz, D.P. 2004. The Queen (*Danaus gilippus* Cramer) Dilemma in the Northeastern United States. News of the Lepidopterist's Society. 45(2): 62-63.
- Moskowitz, D.P. 2004. A new late flight record for *Lestes* congener in North America. ARGIA 15(4):22-23.



MICHAEL KOVACS

- EDUCATION:** *B.S., 1979 - Natural Resource Management
Rutgers University, New Jersey*
- AREAS OF EXPERTISE:** *Aquatic, Wetlands, and Terrestrial Ecology
Threatened and Endangered Species
Wetlands Construction and Restoration
Environmental Impact Assessment and Mitigation Planning
Project Management*
- CERTIFICATIONS:** *Professional Wetland Scientist (SWS)
Qualified Bog Turtle Surveyor in New York & New Jersey (USFWS)
Wetland Construction and Restoration (WTI)
Qualified Ornithologist (NJDEP)
Habitat Evaluation Procedure (USFWS)
Health and Safety for Hazardous Waste Site Investigation Personnel
(NJ/NY HMWTC)*
- PROFESSIONAL ASSOCIATIONS:** *Society of Wetland Scientists
American Fisheries Society
Association of Field Ornithologists
New Jersey Audubon Society*

EXPERIENCE:

Mr. Kovacs is a **Vice President** with EcolSciences, Inc. with over 27 years experience in the environmental consulting field. His areas of expertise lie in the inventory and evaluation of terrestrial, aquatic, and wetland systems, and with the assessment and mitigation of impacts associated with major development. Mr. Kovacs has directed and has participated in a wide variety of comprehensive ecological field studies providing a high degree of competence in sampling protocols and procedures as well as in the identification and ecology of aquatic/terrestrial vertebrate and invertebrate animal species, particularly threatened and endangered species. Elements of Mr. Kovacs' wetlands-related projects include: the delineation of wetlands through an analysis of soils, hydrology, vegetation and aerial photography; the characterization of wetland type; the evaluation of associated functions and values; assessment of development-related impacts; impact mitigation; wetlands construction and restoration; and permit acquisition. A summary of Mr. Kovacs' relevant project experience includes:

Threatened and Endangered Species Studies

- Numerous field surveys of Federally- and State-listed threatened and endangered species in NJ, NY and PA. Surveyed species included, but were not limited to: Swamp Pink, Knieskern's Beaked-rush, Blue-spotted Salamander, Long-tailed Salamander, Pine Barrens Treefrog, Cope's Gray Treefrog, Wood Turtle, Bog Turtle, Timber Rattlesnake, Northern



EcolSciences, Inc.
Environmental Management & Regulatory Compliance

Pine Snake, Corn Snake, Cooper's Hawk, Red-shouldered Hawk, Bald Eagle, Peregrine Falcon, Barred Owl, Long-eared Owl, Red-headed Woodpecker, Bobolink, Grasshopper Sparrow, Vesper Sparrow, Savannah Sparrow, and American Bittern.

- A multi-year comprehensive survey of T&E plants and animals on a 1,000± acre site in Ocean County including trapping and radio-telemetry studies of Northern Pine Snake and surveys for the Federally-listed plant Knieskern's Beaked-rush.
- An inventory of various T&E species and other wildlife within a 2,000± acre site in Cumberland County, New Jersey for a sand mining concern.
- A survey of Timber Rattlesnake within the 2,300± acre Tuxedo Reserve site in Orange County, New York.
- An evaluation of eight NJ Superfund sites for the potential occurrence of the Federally-threatened plant species, Swamp Pink and Knieskern's Beaked-rush, for the USEPA, Region II.

Avifaunal and Other Wildlife Studies

- Intensive avifaunal field and literature studies associated with the preparation and implementation of a Bird Deterrent Plan required by the Federal Aviation Administration for a proposed ash-bypass landfill in Onondaga County, NY.
- Wintering/migratory bird field studies for the proposed redevelopment of Flushing Airport by the NYC Economic Development Corp. (formerly Ports and Trade).
- Seasonal wildlife field surveys associated with a SEQRA EIS for the Bloomingdale Park Eastern Recreational Facilities Program proposed by the NYC Department of Design and Construction.

Landfill Studies

- Aquatic/terrestrial field and literature studies associated with the preparation of a wetlands/shoreline remediation plan for the Fresh Kills Sanitary Landfill in NY.
- Biological studies of the impacts of Folcroft Landfill upon ecological communities of Tinicum National Environmental Center, Philadelphia, PA for the USEPA, Region III.
- Wetland and wildlife studies for the construction of a resource recovery facility and ash landfill for the Hudson County Improvement Authority.



Mining Studies

- Evaluation of the impacts of peat extraction on the functions and values of peatlands in the Pocono Mountain area of PA for the USEPA, Region III.
- Baseline environmental studies conducted for a proposed copper/zinc mine and associated NPDES permit in northern ME for the Superior Mining Company.
- Baseline aquatic surveys of two estuarine marsh systems proposed for phosphate mining for North Carolina Phosphate Company.
- Wetland impact assessment through photo-interpretation for a proposed phosphate mining project in FL for Farmland Industries, Inc.

Transmission Routing Studies

- Environmental inventory, impact assessment and mitigative planning for a power transmission line through CAFRA and Pinelands areas and for a transmission line in Newton, NJ for Jersey Central Power and Light Company.
- Environmental inventory, impact assessment and wetland permitting for a natural gas transmission line through Gloucester County, NJ for South Jersey Gas Company.

Oil Refinery and Port Studies

- Baseline ecological studies for a proposed oil refinery and port in North Carolina for the Brunswick Energy Company.

Special USEPA Studies

- Field studies and report preparation for the Advance Identification of Wetlands along Moshannon Creek near Philipsburg, PA for the USEPA, Region III.
- Field studies and report preparation for the Advance Identification of Wetlands along Bog Run near Quakertown, PA for the USEPA, Region III.
- A Status and Trends Analysis of Wetlands of Orange and Rockland Counties, NY through photointerpretation and ground-truthing for USEPA, Region II.



- An evaluation of wetlands creation for stormwater treatment within a proposed regional sedimentation pond in the Lickinghole Creek Watershed in VA for USEPA, Region III.
- An evaluation of the U.S. Army Corps' Nationwide Permitting process through study of headwater stream systems in northern NJ conducted for the USEPA, Region II.
- Preparation of a draft Advance Identification of Wetlands Technical Procedures Handbook for the USEPA, Region III.

Wetlands Mitigation Studies

- Preparation of a draft manual for USEPA, Region III entitled Creation of Wetland Banks for Mitigation of Impacts from Superfund Sites in New Castle County, DE.
- Preparation of Phase I and Phase II reports for USEPA Headquarters concerning the appropriateness of wetlands mitigation planning at Superfund sites.
- Preparation of wetland mitigation plans and specifications in conjunction with permits issued by the U.S. Army Corps of Engineers and various State agencies.
- Preparation of mitigation plans and specifications for the remediation of wetlands and shoreline areas of the Fresh Kills Sanitary Landfill, Staten Island, NY.

Wastewater Facility Studies

- Preparation of CAFRA EIS's and Freshwater Wetlands Permit applications for Ocean County Utilities Authority's Crestwood Interceptor, Ortleigh Beach-Alternate Bay Crossing, Toms River Crossing Relief Interceptor and Mill Creek Relief Interceptor projects.
- An evaluation of the State of Ohio's environmental plans and specification requirements for 201 facilities construction for the USEPA, Region V.
- Environmental compliance inspection of 201 facilities construction for the Manasquan River Regional Sewerage Authority and Ocean County Utilities Authority.
- Wastewater facilities planning for Atlantic Highlands/Highlands Sewerage Authority, Bayshore Regional Sewerage Authority, Long Branch Sewerage Authority, Tri-Borough Sewerage Authority, and Tri-Municipal Sewerage Commission.



Michael Kovacs

Page 5

Commercial/Industrial/Residential Studies

- Wetlands delineation, impact assessment, permit acquisition and mitigation planning for more than 1,500 development projects in NY, NJ, PA, CT, ME and NH.
- Preparation of NJ CAFRA, Waterfront Development, and Stream Encroachment EIS's and NY SEQRA and CEQR EIS's.
- Preparation of EIS's for major developments for use in submissions to municipalities and the provision of expert testimony.



EcolSciences, Inc.
Environmental Management & Regulatory Compliance

SCOTT E. MCDONNELL

EDUCATION:

*B.S. Ecology & Natural Resources, May 2007, with Honors
Rutgers University, New Brunswick, New Jersey*

*B.S. Environmental & Business Economics, May 1998
Rutgers University, New Brunswick, New Jersey*

*Environmental Geomatics Certificate, May 2007
Rutgers University, New Brunswick, New Jersey*

AREAS OF EXPERTISE:

*Wetland Delineation and Permitting
Threatened and Endangered Species Surveys
Wildlife Habitat Assessment
Geographic Information Systems*

PROFESSIONAL CERTIFICATIONS:

*Rutgers University Office of Continuing Professional Education
Wetland Delineation Certificate Series (2007)*

EXPERIENCE:

Mr. McDonnell is an Environmental Scientist with EcolSciences, Inc. His responsibilities include: the implementation and documentation of wildlife habitat assessments and species surveys, the delineation of wetlands based on the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, the preparation of applications for Letters of Interpretation, Statewide General Permits, and Transition Area Waivers in accordance with the New Jersey Freshwater Wetlands Protection Act, and the use of Geographic Information Systems (GIS) in its capacity as an instrument of environmental analysis.

Prior to joining EcolSciences, Inc., Mr. McDonnell was employed as a Supply Chain Analyst and Senior Planner at Givaudan Fragrances Corporation and as a Manufacturing Planner at Sankyo Pharma. A summary of Mr. McDonnell's relevant experience includes:

- Performed wetland delineations based on the Federal Manual three-parameter approach using indicators of hydrophytic vegetation, hydric soils, and wetland hydrology.
- Assisted in numerous field surveys and habitat evaluations for the Federally-threatened and State-endangered bog turtle (*Glyptemys muhlenbergii*), State-endangered blue-spotted salamander (*Ambystoma laterale*), State-endangered



EcolSciences, Inc.
Environmental Management & Regulatory Compliance

southern gray treefrog (*Hyla chrysoscelis*), State-endangered timber rattlesnake (*Crotalus horridus*), State-threatened wood turtle (*Glyptemys insculpta*) and State-threatened pine barrens treefrog (*Hyla andersonii*).

- Conducted species-specific surveys, approved by New Jersey Department of Environmental Protection (NJDEP) and New Jersey Pinelands Commission, for the State-threatened northern pine snake (*Pituophis melanoleucus melanoleucus*) on proposed development properties in the Counties of Atlantic, Burlington, Cape May and Ocean, New Jersey. Such studies employed drift fences, funnel traps, grid searches and radio telemetry equipment.
- Conducted vernal habitat surveys in accordance with survey protocols developed by NJDEP and New York Department of Environmental Conservation (NYDEC). Pertinent information was gathered on hydrology, vegetation, observed reptile and amphibian species, and weather conditions.
- Conducted call surveys for the State-endangered red-shouldered hawk (*Buteo lineatus*), State-threatened red-headed woodpecker (*Melanerpes erythrocephalus*), barred owl (*Strix varia*) and Cooper's hawk (*Accipiter cooperii*) on proposed development properties in Counties of Atlantic, Burlington, Essex, Gloucester, Morris, Ocean and Sussex, New Jersey.
- Conducted surveys for rare plants including the Federally-threatened and State-threatened small whorled pogonia (*Isotria medeoloides*) and the NJ Pinelands Commission listed little ladies' tresses (*Spiranthes tuberosa*).

