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State of New Jersey  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Division of Land Use Regulation  
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JON S. CORZINE  
Governor

LISA P. JACKSON  
Commissioner

Dr. John Crow  
C&H Environmental, Inc.  
216 Stiger Street  
Hackettstown, NJ 07840

JUN 01 2006

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. 7:7E-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. 7:7E-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.

## 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 FWW040001.

The applicant, Jaylin Holdings, LLC, 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, LLC, 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 E/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.

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 DEP'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 this 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 7:7E-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.

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.

**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 (c)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/fgw/ensphome](http://www.state.nj.us/dep/fgw/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

(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](http://www.state.nj.us/dep/fgw/ensphome), or by writing to the Division at PO Box 400, Trenton, New Jersey 08625-0400.

(g) – (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, Coopers Hawk, Corn Snake, Herptile 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  $\frac{3}{4}$  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 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.

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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 7:7E-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 My 2, 2006) submitted to the Department by EcolSciences, 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.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." 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, egrets, 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.

- (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-5B.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.



### **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-8.4 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.

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.

### ANALYSIS

Mr. John Greg, NJDEP 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 jughandle 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 ration 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:

- 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 Whale Creek and the Atlantic Ocean and/or Strathmere Bay and the Atlantic Ocean; and
  - iv. Lower Township, Cape May County: Those portions of this municipality which are not between Lower Thorofare 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 (e) 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.

#### CAFRA 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.

- 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.
- 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, e, & 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;

- c. Realignment of the eastbound NJ Route 37 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