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COASTAL AREA FACILITY REVIEW ACT (CAFRA)
ADDENDUM TO PREVIOUSLY SUBMITTED
STATEMENT OF COMPLIANCE FOR
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

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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. A CAFRA permit application for the project was submitted in 2009 (File No. 1500-04-0001.2, CAF090001). The current application and development proposal is the direct result of a 2004 CAFRA application, the 2006 denial by the Department and the ensuing settlement discussions between the Department and the Applicant. The New Jersey Department of Environmental Protection (the Department) denied the current application on March 15, 2010 pursuant to portions of New Jersey's Rules on Coastal Zone Management (N.J.A.C. 7:7E-1.1 et seq.) and a review of the application pursuant to a review of Section 10 of the Coastal Area Facility Review Act (13:19-10). The Applicant has refuted the basis for the Department's denial and an appeal of that denial and a request for an administrative hearing was timely filed and is currently pending. As indicated within the appeal documents and hearing request, the Applicant remains confident that the project complies with all Coastal Permit Program, Coastal Zone Management, and Freshwater Wetlands rules and regulations.

This Addendum to the originally filed Statement of Compliance (SOC) represents one portion of the Applicant's response to the Department's denial (additional supporting documents such as a revised Endangered or Threatened Wildlife Habitat Impact Statement, Analysis of Conceptual Habitat Evaluation Method for Northern Pine Snakes, revised engineering documents, and other correspondence are included). This submission is being made in an effort to settle the remaining issues relative to the issuance of the CAFRA and Wetlands permits. To ease review, for regulations that the Department has found the project to be in compliance with, no additional information is provided herein. For regulations that the Department believes have not been adequately met, a response to the Department's analysis is presented, but many facts presented in the earlier SOC are omitted here for brevity. Thus, to fully address all Department policies relevant to the project, this document is intended for review in conjunction with the original Statement of Compliance dated September 23, 2009. Where mitigation parcel data and acreage differ between this addendum and the September 2009 SOC, this document is meant to supersede.

The following sections specifically address the Department's denial based on the CAFRA Section 10 Review and the following eight Coastal Zone Management regulations:

7:7E-3.38 Endangered or threatened wildlife or plant species habitats
7:7E-5B.4 Impervious cover limits for a site in the CAFRA area

7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area

7:7E-5B.6 Mainland coastal centers

7:7E-6.2 Basic location rule

7:7E-8.4 Water Quality

7:7E-8.6 Groundwater use

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

Agency	Permit/Approval	Status
NJDEP	CAFRA Individual Permit	Subject of this submission. Application denied March 15, 2010 (File No. 1500-04-0001.2, CAF090001). An appeal and administrative hearing request are currently pending.
NJDEP	Statewide General Permit No. 6	In review
NJDEP	Letter of Interpretation	Approved May 18, 2004 (File No. 1500-04-0001, FWW 040001) and extended until December 31, 2012 via the Permit Extension Act
Township of Toms River Planning Board	Site Plan	Approved
Township of Manchester Planning Board	Site Plan	Approved
Ocean County Planning Board	Site Plan	Approved
Ocean County Soil Conservation District	Soil Erosion and Sediment Control Plan	In progress
Toms River Municipal Utility Authority	Sanitary Sewer Service	Approved
NJDOT	Major Access Permit	Conditional Approval
Ocean County Utilities Authority	Sanitary Sewer Service	Approved and extended until December 31, 2012 via the Permit Extension Act
United Water Toms River	Water Service	Willingness to Serve Letter Received March 19, 2010

II. COMPLIANCE WITH APPLICABLE COASTAL ZONE MANAGEMENT RULES

The following sections describe the project's compliance with the applicable portions of NJDEP's Coastal Zone Management Rules as referenced within the Department's denial letter dated March 15, 2010.

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

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

The current proposed retail development which was described in detail in the September 2009 SOC is based on a highly modified and reduced version of a prior site plan and has been developed in conjunction with a long history of Department feedback to minimize impacts to areas that the Department considers to be endangered and threatened species habitat 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. documented two adult male pine snakes, one of which spent the winter in a hibernaculum on the site. No other State-listed species were observed on the development parcel 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 proposed numerous measures to ensure that the proposed development would not directly, or through secondary impacts, adversely impact endangered or threatened wildlife species on the site or in the surrounding area. Those measures from the 2009 submission included:

- A 9% 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 50-meter buffer.
- Construction of a 3,319-foot long, 4-foot high wall to minimize human-snake conflicts.

- Preservation of 20.91-acres of on-site open space linking on-site habitats to the off-site habitats, including off-site parcels purchased by the Applicant consisting of a 21.1 acre contiguous lot and 89± acre parcel, resulting in an excess of 131 acres of pine snake and\or other rare species habitats which will be maintained by the Applicant as open space.
- Purchase and preservation of off-site parcels totaling approximately 110 acres of open space containing mapped habitat for pine snake and numerous other endangered and threatened species, which connects the development property to approximately 13,660 acres of lands protected through the Crossley Preserve, Manchester WMA, Whiting WMA, and Heritage Minerals settlement.
- Construction of artificial hibernacula on site and off site at the 21.1-acre and 89± acre mitigation parcels.
- Placement of stump/slash and timbers/logs to mimic documented critical snake habitats on site and off site at the 21.1-acre and 89± acre mitigation parcels.

As set forth in the previously submitted SOC, it is expected that the combination of those 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.

Despite those initiatives, the Department decided not to approve the 2009 permit application for the project and determined that the development is prohibited as a result of impacts to pine snake habitat and impacts to what would be the remaining pine snake habitat, both on-site and off-site, post-development. The Department asserted that "This project would result in the direct loss of approximately 50% of the on site threatened species habitat, which is prohibited by this rule." This is an incorrect assertion. According to the Rule, this prohibition is true "**unless** [emphasis added] 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." If it were intended to prohibit all development of endangered or threatened wildlife or plant habitat, then N.J.A.C. 7:7E-3.38(b) could have concluded after the first phrase. However, it did not; instead, it provides an exception to the general prohibition against development. The second clause of the section states that if it can be demonstrated through an Endangered or Threatened Wildlife or Plant Species Impact Assessment

that endangered or threatened wildlife or plant species habitat would not be adversely affected, then development is permitted on the site.

N.J.A.C. 7:7E-3C.2 sets forth standards that "shall be used by applicants who choose not to dispute the Department designation of the site as endangered or threatened wildlife species habitat." As such, a site's classification as endangered or threatened species habitat does not in and of itself prohibit its development. These standards set forth required information "to demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened wildlife species that resulted in identification of the site, or an area abutting the site, as endangered or threatened wildlife species habitat." The impact assessment must consider the likely affects of the proposed development on the local **population** of the particular species. N.J.A.C. 7:7E-3C.2(c) [emphasis added]. The clear import of the regulation is that the Department may still permit development, even when endangered or threatened wildlife species habitat has been found. An Endangered or Threatened Wildlife Habitat Impact Assessment was submitted in support of the CAFRA Permit application that described numerous measures to reduce the development, construct enhancements, and preserve lands that would mitigate the impact of the project on endangered or threatened wildlife species. Although a portion of the on-site threatened species habitat would be removed by the project, the project would not negatively affect the population(s) or habitat of threatened wildlife species because of the proposed mitigative measures and because of the presence of extensive areas of threatened wildlife species habitat contiguous with the site.

The Department also contended that secondary impacts attributed to this development will adversely impact remaining northern pine snake habitat both on and off site due to the "failure of the proposed 21.4 acre development to provide an adequate buffer to the remaining threatened species habitat, as is specifically required by the Rule at N.J.A.C. 7:7E-3.38(a)3." This Rule states that "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." This Rule in no way defines a specific buffer that must be established around endangered and threatened species habitat. Rather, N.J.A.C. 7:7E-3.38(a) clarifies that "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." As documented in the submitted Endangered or Threatened Wildlife Habitat Impact Assessment, the site is contiguous with a 7,025± acre forest polygon containing documented northern pine snake habitat and slightly further west is a 21,741± acre forest polygon containing documented northern pine snake habitat. Significant portions of both of these polygons are already permanently protected open space. The preservation of 20.9 acres of on-site open space as well as the acquired mitigation parcels will provide additional contiguity among the already permanently protected lands. To say

that a failure to provide adequate buffers on the 21.5-acre development site located within a major developed area along Route 37 at the fringe of this extensive habitat will adversely affect the continued survival of the population of northern pine snake is inaccurate.

Notwithstanding the legal arguments in support of the application, pursuant to N.J.A.C. 7:7E-3C.2, a revised Endangered or Threatened Wildlife Habitat Impact Assessment dated November 2, 2010 (the report) specifically addressing this Special Area policy, has been included in this application to demonstrate the additional steps taken by the Applicant to ensure that the proposed development will not adversely impact endangered or threatened wildlife species on the site or in the surrounding area. The report has been updated to reflect the current mitigation proposal based on ongoing discussions between the Applicant and the Department's Endangered and Nongame Species Program staff and recent or anticipated acquisitions of additional proposed mitigation parcels. The revised report supersedes the previous version dated September 23, 2009. Please refer to the complete report for additional information.

The Applicant has filed a timely request for an administrative hearing, appealing the Department's permit denial. However, as part of settlement discussions, the Applicant has agreed to purchase additional off-site property to add to the 110 acres of off-site and 20.9 acres of on-site open space already proposed for permanent protection. The Applicant's purchase of these additional parcels will add another 81± acres to the permanently protected lands previously proposed. In addition, the Applicant has proposed to engage in habitat enhancements on all but one of those off-site parcels, which total 192± acres. Several habitat enhancements have been discussed with DEP including the construction of artificial hibernacula, selective tree thinning, blocked access, the creation of upland forest clearings for nesting, and scarifying the ground that will benefit the already existing pine snake habitat on those parcels. The habitat value gained via the proposed enhancements to the mitigation parcels and the preserved portion of the project site will exceed the value lost on the project site post-construction according to the Endangered and Nongame Species Program's draft Conceptual Habitat Evaluation Method (HEM) for Northern Pine Snake. With the inclusion of these properties, the Applicant is proposing the permanent protection of over 200 acres of on-site and off-site lands that are suitable for pine snakes and other threatened and endangered species.

To the extent that the Department felt that the previous submission did not meet the rules related to threatened and endangered species, the Applicant's legal arguments coupled with the additional land and habitat enhancements proposed, requires the Department to approve the CAFRA permit application.

For ease of reference, the following is a list of the numerous measures now proposed to ensure that the proposed development does not directly, or through secondary impacts, adversely impact endangered or threatened wildlife species on the site or in the surrounding area.

- A 9% 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 50-meter buffer.
- Construction of a 3,319-foot long, 4-foot high wall to minimize human-snake conflicts.
- Preservation of 20.9-acres of on-site open space linking on-site habitats to the off-site habitats, including off-site parcels purchased by the Applicant, resulting in 212.9 acres of pine snake and/or other rare species habitats which will be maintained by the Applicant as open space.
- Purchase and preservation of several off-site mitigation parcels totaling 192 acres of open space containing mapped habitat for pine snake and numerous other endangered and threatened species, which connects the project site to approximately 13,660 acres of lands protected through the Crossley Preserve, Manchester WMA, Whiting WMA, and Heritage Minerals settlement.
- Habitat enhancements including selective tree thinning, blocked access, the construction of artificial hibernacula, the creation of upland forest clearings for nesting, and scarifying the ground.
- The habitat value gained via the proposed enhancements to the mitigation parcels and the preserved portion of the project site will exceed the value lost on the project site post-construction according to the Endangered and Nongame Species Program's draft Conceptual Habitat Evaluation Method (HEM) for Northern Pine Snake.

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

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

In response to the DEP's denial on the bases of Impervious Cover Limits, Vegetative Cover Percentages and Mainland Coastal Centers, it is clear that this application should relate back to the original 2004 application by the Applicant, since the current proposal was submitted to resolve the original CAFRA denial.

The DEP's original denial of the CAFRA application in June 2006 found that the development was subject to the Coastal Center impervious coverage limit of 80% and vegetative cover percentage of 10% tree preservation for the forested portion of the site and 0% tree preservation for the unforested portion of the site. The proposal for which the current denial has issued is directly related to that 2006 denial. In fact, the 2004 proposal and the current proposal bear the same DLUR number 1500-04-0001. After the appeal was filed, the Applicant entered into the alternate dispute resolution ("ADR") process with the DEP. The current development proposal resulted from that ADR process. Since the current proposal for development stems directly from the original proposal, the requirements of N.J.A.C. 7:7E-5B.6(f) have been met. The application was received by the Department prior to February 7, 2005 and was deemed complete for final review prior to March 15, 2006. As such, the same impervious coverage and vegetative cover requirements should apply.

In addition, the 2006 DEP denial which found that the impervious and vegetative cover requirements would be met by the proposal was appealed and is still pending. Since the time of the appeal, the Permit Extension Act of 2008, N.J.S.A. 40:55D-136.1 et seq., (the "Permit Extension Act") was passed. In short, it provides that the running of the period of any government approval in existence during the defined extension period is automatically suspended for the extension period. The extension period is defined as beginning January 1, 2007 and continuing through December 31, 2012. An approval is defined very broadly and includes "any other government authorization of any development application . . . whether that authorization is in the form of a . . . permission, determination, interpretation . . ." N.J.S.A. 40:55D-136.3. As a result of the appeal of the 2006 denial, the DEP's determination that the development was in a Coastal Regional Center, and that the 80% impervious coverage limits and corresponding vegetative cover percentages would govern, remained in effect as of January 1, 2007. Under the clear wording of the Permit Extension Act, the Department's determination that the site was subject to the impervious coverage and vegetative cover percentages of a coastal center are extended to the cover the current proposal. Any determination to the contrary would limit the Permit Extension Act to actual permits and approvals and would render nugatory the additional terms in the definition of approval, including use of the word determination.

Statutory language should be given its ordinary meaning and construed in a common sense manner to accomplish its legislative purpose. Town of Morristown v. Woman's Club of Morristown, 124 N.J. 605, 610 (1991). The stated purpose of the Permit Extension Act is "to prevent the wholesale abandonment of approved projects and activities due to the present unfavorable economic conditions. N.J.S.A. 40:55D-136.2(m) The extension sought by the Applicant, and to which it is entitled under the Permit Extension Act, is absolutely necessary to

move this project forward. The Permit Extension Act extended center designations pursuant to CAFRA as well as center determinations made pursuant to the State Planning Act. N.J.S.A. 40:55D-136.3. This is confirmed through the Department's own website and the document contained on that website entitled "Mainland Coastal Center Boundaries Extended Under the Permit Extension Act of 2008." The only areas excepted from the reach of the Permit Extension Act were those within environmentally sensitive areas as defined by the Act. Those include areas in Planning Area 4B and Planning Area 5. Specifically excluded from the definition of environmentally sensitive areas were growth areas designated in the Comprehensive Management Plan ("CMP") of the Pinelands Commission pursuant to the Pinelands Protection Act. The site in question is not located in any defined environmentally sensitive area and, as such, enjoys the protection of the Permit Extension Act. The subject property is designated as a Regional Growth Area in the CMP. Since the Permit Extension Act is statute, it preempts any of the Department's regulations which may be in contradiction to the Act.

Finally, the factual history surrounding this application supports the impervious coverage and vegetative cover requirements of a coastal center and the issuance of a permit in this matter. Following the 2006 denial and subsequent appeal of the original proposal, the Applicant and Department engaged in significant and prolonged discussions regarding all aspects of the project. The Applicant has worked diligently to create a development that complies with the DEP's regulation and results in the issuance of a permit. The resulting development application accomplishes this feat.

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

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 previously submitted SOC , the net land area on the Toms River 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 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.

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

As set forth above, the long regulatory history of this application dating back to 2004 and subsequent proposed settlements clearly demonstrate that the calculations presented in the original SOC demonstrate compliance with this section and therefore the Department has erred in determining that the site no longer qualifies as a coastal center. Thus, 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. Approximately 1.062 acres of existing forest would be disturbed to create the vernal pool. 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.

C. General Location Rules

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 Applicant reasserts that, for the reasons set forth in the Endangered or Threatened Wildlife Habitat Impact Assessment, the Analysis of Conceptual Habitat Evaluation Method for Northern Pine Snakes, and the responses provided in the SOC and this addendum under the Special Area rules for Endangered or Threatened Wildlife or Plant Species Habitats (7:7E-3.38), the project complies with this rule.

D. Resource Rules

1. Water Quality (7:7E-8.4)

Based on the information provided to the Department by the Applicant and a review by Dhruv Patel, DLUR Engineer, the Department has determined that the proposed project meets the Department's requirements with regard to water quality and stormwater management.

A request for water service in Toms River Township with a water demand of 25,290 gallons per day, has been approved by United Water Toms River and a copy of the "willingness to serve" letter dated March 19, 2010 confirming water availability is enclosed.

A request for sewer service in Toms River Township with a daily flow of 19,827 gallons per day has been approved by The Ocean County Utility Authority and a copy of the approval dated April 1, 2010 confirming available sewer service is enclosed. Also, on December 2, 2009 Toms River Municipal Utilities Authority provided correspondence that preliminary application for sanitary sewer service was approved. A copy of that correspondence is enclosed.

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

As previously submitted, no groundwater withdrawals are proposed. Water supply is to be provided by a connection to a United Water Toms River (UWTR) main located along Northampton Boulevard. A request for water service in Toms River Township has been approved by United Water Toms River and a copy of the "will serve" letter dated March 19, 2010 confirming water availability is enclosed.

III. COMPLIANCE WITH SECTION 10 OF THE NEW JERSEY COASTAL AREA FACILTIY 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 Section 10 standards. The Department asserts that the project does not comply with criterion a, b, d, e, and g of CAFRA Section 10 Review. A response to the denial based upon these criteria is below

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

In addition to other information previously provided to the Department, water and sewer commitment letters have been obtained from the respective utility or authority. Copies of these approvals are enclosed. In addition, NJ DOT has conditionally approved the proposed intersection improvements which will enable the development to comply with 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.*

In addition to other information previously provided to the Department, water and sewer commitment letters have been obtained from the respective utility or authority. Copies of these approvals are enclosed. NJ DOT has conditionally approved the proposed intersection improvements which will enable the development to comply with air quality standards.

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

Based on the information provided to the Department by the Applicant and a review by Dhruv Patel, DLUR Engineer, the Department has determined that the proposed project meets the Department's requirements with regard to water quality and stormwater management. In addition to other information previously provided to the Department, water and sewer commitment letters have been obtained from the respective utility or authority. Copies of these approvals are enclosed.

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. 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.

While no construction activity is without some impact to the land resources on which it is located, this project 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 and by making every effort, short of project abandonment, to accommodate a threatened species (northern pine snake) potentially located within or adjacent to the project area. As discussed at length in the Endangered or Threatened Wildlife Habitat Impact Assessment and the Analysis of Conceptual Habitat Evaluation Method for Northern Pine Snakes, the Applicant has repeatedly demonstrated a willingness to accommodate pine snake issues in order to fulfill their obligation to minimize impacts as required under this section. Many of these accommodations, now codified in the proposed plan, were suggested by the Department as a potential way to resolve potential conflicts posed by the development of the site. These negotiations have continued to the present, and the Applicant has been amenable to every reasonable conservation measure that has been requested. Efforts on the part of the Applicant have included pine snake field studies with trapping and radio telemetry, multiple revisions in layout and reductions in the size of the site plan activities, permanently protected conservation buffers and corridors that surround an on-site pine snake den or link undeveloped on-site and off-site habitats (approximately 50 percent of the site (20.9± acres) will remain undeveloped following construction), and the purchase of an additional 192 acres to be permanently preserved as open space. Given these facts, the Applicant contends that not only does the project fully comply with the requirement to cause *minimal feasible impact* to natural processes, but that approval would enhance the long term stability and viability of these processes within the

How much is wet?

region via permanent protection of approximately 212 acres of suitable threatened and endangered species habitats, including a significant quantity that is suitable for northern pine snake.

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.*

As with the response to criteria e above, the Applicant asserts that the proposed activities will not result in the degradation of an irreplaceable land types (pine snake habitat) as referenced within the Department's denial. Direct permanent impacts (approximately 15 acres) to undeveloped areas mapped as habitat or containing records of pine snake are minimal, given the size of the development parcel (43 acres) and the adjacent multiple thousands of acres of preserved habitats associated with several State holdings and the tracts of the Heritage Minerals site that will be permanently preserved. As a result of the Applicant's proposed preservation of approximately 212 acres of pine snake habitat, and other threatened and endangered species habitat, the long term viability and quality of pine snake habitat in the vicinity of the site will be further expanded and improved, not degraded. Numerous proposed habitat enhancements, including hibernacula creation, soil/timber piles, selective tree thinning, etc. have been proposed. It has been observed by EcolSciences and documented elsewhere in literature that pine snake populations will react favorably to enhancements such as those that are proposed. By enhancing existing habitats that contain pine snakes and by improving marginal habitats so that they may support additional snakes, it is likely that the proposed activities will result in a more fully protected and robust local pine snake population than might otherwise occur.

IV. 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. Negotiations with the Department over these revisions have proceeded, unabated, for the duration of the application history, yielding a project that 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 negative environmental impacts are anticipated from the development of the site as proposed.

APPENDIX A

Correspondence

THE OCEAN COUNTY UTILITIES AUTHORITY

Serving Ocean County & Southern Monmouth County

April 1, 2010

RECEIVED 4/2/10

FILE #030354

Mr. Michael S. Moonan, P.E.
Bohler Engineering
35 Technology Drive
Warren, NJ 07059

Re: Extension of Sewer Project Approval
Proposed Wal-Mart
Route 37
Toms River Township / Manchester Township
OCUA Project #C-07-552

Dear Mr. Moonan:

This is in response to your recent request dated March 24, 2010, concerning the extension of this Authority's approval for the above-referenced project. In accordance with the terms of the amended Permit Extension Act of 2008, the previously issued 2-year approval dated February 26, 2007, is tolled through the end of the extension period. Furthermore, the Authority approval is entitled to an additional six (6) month extension until June 30, 2013.

Accordingly, this Authority agrees to extend the approval and treatment capacity commitment date to June 30, 2013. This Authority also acknowledges a reduction in average daily flow from the originally approved 22,799 gpd to 19,827 gpd due to design modifications.

Should you have any questions concerning this matter, please do not hesitate to contact me at extension 8328.

Sincerely,

Keith B. Marcoon, P.E.
Planning Engineer

KBM:tm
c. Toms River MUA
Manchester Township Department of Public Works
Robert Shea, Esq.

501 Hickory Lane • P.O. Box P • Bayville, New Jersey 08721
Phone: (732) 269-4500 • Fax: (732) 269-4173 • E-mail Address: mailbox@ocua.com
www.ocua.com

Mansur Masood
Engineering/New Business
UNITED WATER TOMS RIVER
15 Adafre Avenue
P.O. Box 668
Toms River, New Jersey 08754-0668
Tel: (732) 349-0227
Fax: (732) 349-6132
Mansur.Masood@unitedwater.com

March 19, 2010

Jay A. Grunin, Esq.
Grunin Properties
1027 Hooper Avenue
Dover Esplanade, Building 1
Toms River, New Jersey 08753

RE: Super Wal-Mart (A2009-14)
Block 505, Lots 14 & 15
Toms River, New Jersey
Willingness to Serve

Dear JAY A. GRUNIN, ESQ.:

This is to advise that water service may be made available to the above referenced property subject to the following conditions:

1) Prior to the installation of any services or the extension of any mains, hydraulic data pertinent to the project must be provided to us, for our Engineering Department's review and approval.

2) If, as a result of such review, it is decided that any extension of mains or pipes or modification of other facilities is required in order to meet the hydraulic needs of the project, those mains or facilities will be installed or extended by UWTR at your cost in accordance with the terms and conditions of this Company's standard agreements for extension. The applicant must have reviewed this project with the fire officials and have approved hydrant locations prior to submitting any drawings to United Water.

3) Service will be provided in accordance with the terms and conditions set forth in the Company's filed Tariff, as amended or modified from time to time.

4) This project must be in compliance with the New Jersey Safe Drinking Water Act and the Water Supply Management Act Rules.

This willingness to serve letter for the property located at Route 37 West and Northampton Blvd, with a water demand of 25,290 gallons per day, is valid for one year from the date of issuance. If the project is not completed within one year from the date this letter is issued, a new willingness to serve letter will be required.

If you have any question concerning the above, please contact this office at (732) 349-0227 ext. 3018.

Very truly yours,

Mansur Masood
New Business Manager

cc: Robert J. Chankalian, Assistant Toms River Township Engineer
Dina Vicari – R. Shea & Associates

S:\GRP_ENGR\New Business\Water Main Estimate Investigation\2009\A2009-14 37 West Block 505 Lots 14 & 15 Super Walmart\Walmart_Masood WillServe Ltr 3-19-10.docx

NEW SERVICE

Water Service Installation Procedures

1. When you have started construction on your project, please contact United Water Toms River (UWTR) for a service application and information regarding Road Opening Permit (ROP) fees.

2. After you submit the executed service application and ROP fees, UWTR will apply for a ROP.

3. When UWTR receives the ROP permit for your project we will schedule the installation of the water service to the curb line of your street in front of your project.

4. Before UWTR can start the water service installation, the following items must be completed:
   - All underground utilities "marked out". UWTR will arrange for mark-out of only the public utilities, **the applicant shall be responsible for mark-out of all private utilities, (i.e. irrigation lines, etc).**
   - You must indicate the location of your water service with a wooden stake. When locating your service it:
     i. Must be on your property.
     ii. Must be 10' from the sewer lateral.
     iii. Must be 10' from septic systems.
     iv. Must be 5' from any other underground utility, Cable, Electric, Gas, Oil Tank, Etc.
     v. Must not be within 5' of a utility pole.
     vi. Cannot be installed in or within 3' of a driveway, sidewalk.

     United Water Toms River will endeavor to install the service line as close as possible to the desired location. Sometimes it is not possible to install the service at the desired location due to existing conditions. **The applicant shall be responsible for making the final connection to the service on the customer's side.**

5. After you complete the construction of your structure, the meter spread has been installed and you are ready to have your service activated, please contact UWTR to arrange for a meter installation. Please note that UWTR can only activate your service by installing a meter, in an enclosed structure, secure (lockable) and heated. Your plumber will have to install a "meter spread" to allow UWTR to install the water meter. For additional information regarding meter spread see web link below. www.unitedwater.com/tomsriver/r-tools-and-resources.aspx

6. Accessible room and keys must be provided to UWTR in advance of installation. Crawl space areas are not acceptable installation locations.

ONLY UWTR PERSONNEL CAN TURN YOUR WATER SERVICE ON!

TOMS RIVER MUNICIPAL UTILITIES AUTHORITY
340 West Water Street • Toms River, New Jersey 08753-6533
Telephone (732) 240-3500 • Fax (732) 244-4691 • www.tomsrivermua.org

Deborah L. Clement, Chairman
Joseph Bilotta, Vice-Chairman
Juan Carlos Bellu, Commissioner
Alfonso Manforti, DC, Commissioner
Virginia Haines, Commissioner
Charles Valvano, Alternate Commissioner
Thomas Horn, P.E., Executive Director

December 2, 2009

Jaylin Holdings, LLC
c/o Grunin Properties
1027 Hooper Ave, Dover Esplanade, Bldg #1
Toms River, NJ, 08753

Re: TRMUA #D-915C
Block 505, Lots 14 & 15
Walmart
Preliminary Application

Dear Mr. Grunin:

The above referenced application was discussed at a recent meeting of the Toms River Municipal Utilities Authority. It was moved to approve this application in accordance with the recommendations as set forth by the attached Engineering Report.

Sincerely,

Nicholas Otten, P.E.
Authority Engineer

NO:cj
cc: Toms River Township Agencies
Bohler Engineering
Inspection Dept
Kris Pitcher (via e-mail)

TOMS RIVER MUNICIPAL UTILITIES AUTHORITY

ENGINEER'S REPORT

DATE APPROVED: November 24, 2009

TRMUA #D-915C

Applicant: Jaylin Holdings, LLC, c/o Grunin Properties

Project Name: Walmart

Units (EDU): 99.1 Acres: 17.13

Location: Rt 37 & Northampton Blvd Block: 505 Lot: 14 & 15 Tax Map #54

Preliminary approval is given in accordance with the requirements and conditions below:

1. This approval is subject to any Township, County, State or Federal requirements

2. All elevations are to be based upon U.S.G.S datum, with a note on the plans indicating thusly.

3. Tentative/Final application to the TRMUA shall include the following:

   - Detail of the proposed connection to the existing manhole.
   - Detail of "DSA" manhole cover (Prop. San MH #1).
   - TRMUA cost estimate forms for construction associated with Prop. San MH #1, to downstream existing manhole (Exhibit "K" pp. 1-2, available from www.tomsrivermua.org>Plan Submission>Download TRMUA Rules& Regs)
   - OCUA application
   - NJDEP applications: TWA-1, WQM-003, WQM-006
   - Engineer's Report/Specifications

4. The proposed 10" Ø sanitary sewer pipe at minimal slope appears oversized for the proposed flow. This flow situation can be conducive to causing odor problems. The 10" Ø pipe should be downsized. Consideration may also want to be given to possibly downsizing the on-site 8" Ø piping.

5. The plan(s) approved by this report were prepared by Bohler Engineering, Inc., and received by the Toms River Municipal Utilities Authority on October 23, 2009, and are as follows:

TITLE	DWG. #	DATE	LAST REV. DATE
DRAINAGE & UTILITIES PLAN	Sheet 3 of 5	6/26/2009	10/7/2009
PROPOSED SANITARY...PROFILES	Sheet 4 of 5	6/26/2009	10/7/2009
DETAIL SHEET	Sheet 5 of 5	6/26/2009	10/7/2009

Sincerely,

Nicholas Otten, P.E.
Authority Engineer

NO:cj
cc: Toms River Township Agencies
Bohler Engineering
Inspection Department
Kris Pitcher (via e-mail)

Extra Copy

State of New Jersey

DEPARTMENT OF TRANSPORTATION
P.O. Box 600
Trenton, New Jersey 08625-0600

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JAMES S. SIMPSON
Acting Commissioner

February 25, 2010

Kim Rochester
Orth – Rodgers Associates, Inc.
810 Bear Tavern Road
West Trenton, NJ 08628

RE: A-37-C-C059-09 & S-37-C-0017-09
Grunin Properties – Wal-Mart
Route 37 EB, MP 3.00
Dover Township, Ocean County

Dear Ms. Rochester:

Our office has reviewed the revised plans transmitted to our office on November 23, 2009 for the subject project and the Department intends to approve your access application for the subject project. Enclosed are two original counterparts of the each Access Permit for signatures which the Department will execute once the following items have been addressed in accordance with Department Standards and the Access Code:

Traffic Signal and Safety Engineering:

A. TRAFFIC SECTION: (Dharmesh Patel, 609-530-5664 / Joseph Fatatis, 609-530-2640)

We have performed a review of the revised Traffic Signal Plan, Traffic Signal Timing Schedule, Signing & Striping Plans, and Traffic Control Plans.

Traffic Signal Plan - Sheet No. 15

1. Relocate the R6-1L, R1-2 and R5-1 signs on the northwest corner of the intersection so that they would be located within the curbline, as shown in red on the plan (refer to Signing & Striping Plan sheet no. 13).
2. Remove the image detection cameras from the traffic signal plan in accordance with sheet no. 31 of the 2007 NJDOT Sample Plans.

3. Mast arm sign "B" is to be revised to contain cardinal directions with arrows as shown in red on the plan in accordance with current Department practice. In addition, mast arm sign "B" located on the signal pole on the northeast corner of the intersection is to be deleted from the plan as noted in red.

4. Additional comments are noted in red on the plan and are to be incorporated by the applicant's engineer.

Traffic Signal Timing Schedules

Sheets Nos. 19 & 20

We have no further comments on the traffic signal timing schedules. The traffic signal timing schedules are to be shown on Electrical Plan sheets in accordance with sheet no. 34 of the 2007 NJDOT Sample Plans. A CD containing the electronic format of the traffic signal timing schedules is to be forwarded to our office as part of the subsequent.

Traffic Signing and Striping Plans

Sheet No. 12

1. Provide additional fabrication details for mast arm sign "B" as shown in red on the plan based on the addition of the cardinal directions and arrows.

2. The legend of the R(NJ)3-8GG sign does not match the lane use on the northbound Northampton Blvd. approach and is to be revised in accordance with the NJ Standard Sign Manual.

Sheet No. 14

We have no further comments on this plan sheet.

Traffic Control Plans - Sheets Nos. 24, 27, & 29

A review of the Traffic Control Plans revealed that lane shifts would be required on the NB & SB Northampton Blvd. approaches in Stages 1, 2, & 3. As a result, the bagged signal heads, lane control signing, and lane line striping shown on the Interim Traffic Signal Plan (Sheet no. 20) would be required to be modified for each of these stages. We request that the applicant's engineer overlay the proposed signal equipment over the work zone for each stage shown on sheets nos. 24, 27, & 29 in order to determine which signal heads would be required to be disconnected and bagged and to specify the appropriate lane control signage. Sheets nos. 24, 27, & 29 would then be designated as the "Interim Traffic Signal Plans" for this project. The signal legend and sign legend are also to be shown on the Interim Traffic Signal Plans.

Interim Traffic Signal Timing Schedule - Sheet No. 21

Based on our comments on the Traffic Control Plans noted above, the Interim Traffic Signal Timing Schedule (Sheet no. 21) would be required to be modified for Stages 1, 2, & 3 to indicate which signal heads would be disconnected and bagged during each stage. We request that the applicant's engineer provide the Interim Traffic Signal Timing Schedules for each stage on the "Interim Traffic Signal Plans" for this project.

General Comment

Our office requests that the applicant's engineer submit a Comment Resolution Letter addressing all of the comments listed in this memorandum.

B. ELECTRICAL SECTION: (Michael Gray, 609-530-3793)

1. As per the 2007 Sample Plans, the aluminum traffic signal standard callouts are to be labeled with the type of standard, such as "TSS-T", "TSS-C", or "TSS-K".
2. All mast arm signs are to be labeled on the electrical plan as noted in red on the attached plans.
3. "3-1/C#8 AWG" are to be used for the two 120 volt lighting circuits as per the 2007 Sample Plans.
4. Please return the red lined plans with your next submission.

C. CADD SECTION: (Wayne Heath, 609-530-2615)

The revised CADD disk was not received with this submission. Please provide the CADD disk incorporating the agreed upon corrections in your "response to comments" letter for our review.

In addition, upon completion of construction of the traffic signal installation, the Designer must submit as-built traffic signal and electrical CADD files to this office for review and approval. State maintenance forces will not accept the traffic signal installation from the electrical subcontractor until this is completed.

Major Access:

1. Please note that this project will be constructed under Development Agreement. Also submit the latest construction cost within the state's right of way and fill the required information on the attached sheet.
2. Please submit Land Dedication package as per attached document.
3. See attached redlined plans for specific corrections.

Please address the above comments individually and resubmit four (4) sets of revised plans to this office to enable us to issue this permit. Please return our redlined plans with your submission.

Fees:

1. Enclose a permit fee of $3,000.00 (A-37-C-C059-09) & $3,000.00 (S-37-C-0017-09), total of **$6,000.00** either by money order or certified check, payable to The New Jersey Department of Transportation.

If you are in agreement with the permit to be issued, please sign and date both copies where indicated. Also, have a notary or an attorney complete the upper portion of the attached certification form.

Please note that you have **180 calendar days** from the date of this correspondence to the return the signed permits, permit fees, and certification as noted above. **If these are not received by the Office of Major Access Permits within the 180 days, the Application will be considered withdrawn without notification pursuant to N.J.A.C.16: 47-4.5 (c).**

Please return the signed Permit and fees to:

Jerry Domino
New Jersey Department of Transportation
Major Access Permits

1035 Parkway Avenue, P.O. Box 600
Trenton, NJ 08625-0600

We will return one fully executed permit to you once we receive the properly completed documents and fees. If you have any questions, please don't hesitate to call me at (609) 530-8283 or your case manager Rajendra Desai at (609) 530-2825.

Sincerely,

Jerry Domino
Project Engineer
Major Access Permits