

# Memorandum

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*J. H. Heilferty* 3/10/10

To: Eric Virostek, Project Manager  
Division of Land Use Regulation

RE: CAFRA Compliance Review  
DLUR File No. 1500-04-0001.2  
Applicant: Jaylin Holdings, LLC  
Block: 5055, Lots: 14 & 15  
Township of Dover  
Block: 44, Lots: 2, 3, 4 (part) & 5  
Township of Manchester  
Ocean County, New Jersey

Date: March 10, 2010

Review findings and recommendation concerning CAFRA Application # 1500-04-0001.2  
Applicant: Jaylin Holdings

**Applicable regulatory standard: N.J.A.C. 7:7E-3.38, "Endangered or Threatened Wildlife or Plant Species Habitats"**

The Coastal Area Facilities Review Act, N.J.S.A. 13:19, requires among its findings in Section 10 that a proposed development in the coastal area cause minimal feasible interference with the natural functioning of animal life processes at the subject site and within the surrounding region, and that development must result in minimal practicable degradation of unique or irreplaceable land types at the subject site and within the surrounding region. Among the unique or irreplaceable land types recognized as being specifically critical for animal life processes are habitats for State or federally listed endangered and threatened plant or wildlife species.

The implementing regulations (Coastal Zone Management Rules, N.J.A.C. 7:7E) address this coastal resource via the "Endangered or threatened wildlife or plant species habitats" rule at N.J.A.C. 7:7E-3.38. This rule states that "[e]ndangered 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 includes a sufficient buffer area to ensure continued survival of the population of the species. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat.” 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 Project maps) are subject to the requirements of this rule unless an applicant successfully demonstrates that a mapped habitat is in fact not suitable for the endangered or threatened wildlife species documented by the Landscape Project maps. Buffer areas, which are part of the endangered or threatened wildlife species habitat, may extend beyond the areas mapped by the Landscape project mapping.

In the subject case, the Landscape Project maps document the on-site habitat as being suitable for northern pine snake. The subject application conceded that the 43.3 acre site is suitable northern pine snake habitat.

According to the rule at N.J.A.C. 7:7E-3.38(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.” Prohibited is defined at N.J.A.C. 7:7E-1.8 to mean “that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal.”

Accordingly, in order to demonstrate compliance with the regulatory standard of the “Endangered or Threatened Wildlife or Plant Species Habitats” rule, the applicant in this case must demonstrate that the proposed project would:

- a. not have direct adverse affects upon on-site endangered and threatened species habitat;
  - b. not have secondary (indirect) adverse affects upon endangered and threatened species habitat on the relevant site, or;
  - c. not have secondary (indirect) adverse affects upon endangered and threatened species habitat in the surrounding area,
- as any such adverse affects are prohibited by the rule.

### **Proposed project's compliance assessment**

The applicant included an “Endangered or Threatened Wildlife or Plant Species Impact Assessment” (“Assessment”) for the proposed development. The Assessment acknowledges that the site is documented and suitable for northern pine snake, and on page 12 of the Assessment, the author confirms that “site plan activities will impact this pine snake habitat.” Overall, the Assessment opines that “the project’s relative impact on the locally available pine snake habitat is expected to be negligible.” This initial finding is based upon the position that only 14.9 acres of impervious coverage are proposed on

the 43.3 acre site, and also due to the site's location "in an outlying area from the majority of the adjacent pine snake habitat". Despite characterizing the site as being located in an "outlying area", the Assessment acknowledges the fact that the Landscape Project mapping already valued the existing forest patch within which the site occurs with one northern pine snake occurrence. The Assessment also notes that application-related on-site survey efforts trapped two additional northern pine snakes while they were occupying the subject site. The Assessment also concedes that one of the northern pine snakes captured while occupying the site was later documented to overwinter on the subject site in a newly discovered northern pine snake hibernaculum. Six (6) additional northern pine snake occurrences have been documented within 1,500 feet of the subject site, and these records include 4 area northern pine snake nest sites, one of which is located less than 500 feet from the property boundary. The Assessment proposed seven "on-site and off-site habitat enhancement and preservation initiatives that will provide permanent benefits to the local pine snake population and to minimize the human disturbance of their habitats."

#### **Division of Land Use Regulation compliance assessment**

The DLUR solicited comments on the submitted application from the New Jersey Division of Fish and Wildlife, Endangered and Nongame Species Program (ENSP). The ENSP has reviewed the submitted Assessment and has submitted formal review findings (attached) to the DLUR via a memorandum dated March 10, 2010. The ENSP has made the finding that the proposed project *would* have direct adverse affects upon threatened species habitat on site, due to the direct loss of approximately 21.4 acres of northern pine snake habitat. Additionally, the ENSP has found that the proposed project would result in a number of secondary impacts, and that these impacts would be adverse to the remaining northern pine snake habitat found on the subject site. Significantly, their findings indicate that secondary impacts are likely to include the abandonment of the existing northern pine snake hibernaculum on site, due to the failure to adequately buffer this den from the proposed development. These comments assist the DLUR in assessing compliance with the Rules on Coastal Zone Management.

As was originally established, the relevant rule concerning endangered and threatened species habitats **prohibits** development of threatened or endangered wildlife species habitats. Here, the applicant proposed 14.9 acres of new impervious cover, plus an additional 6.5± acres of clearing and grading for associated development such as detention basins, grading and road shoulders. As a result, the proposed development will result in the direct development of approximately 21.4 acres of suitable northern pine snake habitat which is currently available for movement or use on-site, *including* critical seasonal movements made by snakes to and from the existing hibernaculum which was discovered on-site. This would result in the direct loss of approximately 50% of the on-site threatened species habitat, which is prohibited by this rule, and the applicant has failed to demonstrate that this 21.4 acre development would not negatively affect the populations or habitat of threatened species that resulted in the identification of the site as threatened species habitat.