

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF FISH AND WILDLIFE
ENDANGERED AND NONGAME SPECIES PROGRAM
ENVIRONMENTAL REVIEW**

Comments and/or recommendations regarding nongame resources relative to:

PROJECT NAME: #1500-04-0001.1 - Jaylins Holdings, LLC

COUNTY: Ocean **MUNICIPALITY:** Dover/Manchester

APPLICANT: Jaylins Holdings, LLC

PROJECT DESCRIPTION: Walmart

AGENCY REQUESTING REVIEW: LURP

PROJECT REVIEW OFFICER: Eric Virostek

REVIEW DATE: March 30, 2005, April 18, 2005, January 17, 2006, April 28, 2006, May 12, 2006

Final Comments, May 12, 2006

I have received, and reviewed, the report prepared by EcolSciences, Inc. (Dated May 2, 2006), regarding the 2005 pine snake survey conducted on the Jaylins Holdings, LLC property (Block 44, Lots 2, 3, and parts of 4 & 5). Although the report is well prepared and nicely organized, most of the information that it contains regarding the use of the project site by pine snakes has already been presented to ENSP in various forms. Therefore, the report lacks any new data that would compel ENSP to change its opinion on the suitability of the habitats on the site for the northern pine snake.

The EcolSciences' report does include a number of conclusions, forwarded by the consultants, where it is suggested that mitigation measures could be carried out to make up for the loss of pine snake habitat on the Jaylins Holdings, LLC. Because the pine snake is a "threatened" species its habitats are provided with an elevated level of protection under the Coastal Zone Management (CZM) rules. It is ENSP's understanding that the loss of T&E habitat within the Coastal Zone is not something that can be mitigated for since these habitats are considered "irreplaceable" within the statute. The term "irreplaceable" implies that mitigation is not an option. Furthermore, the CZM rules themselves state that development of T&E habitat is "prohibited". The rules therefore also make it clear that mitigating for the destruction of pine snake habitat is not an option for the applicant.

In addition to other evidence that would suggest that pine snake habitat exist on this site, an active pine snake hibernaculum was found on the center of the property in 2005. This finding

substantiated ENSP's original determination (March 20, 2005) that the site contained suitable habitat for this species. The applicant has failed to demonstrate that the proposed construction activities would not have a direct adverse impact on pine snake habitat and the application should therefore be denied.

Finally, despite several requests by ENSP, the applicant has not addressed the issue of Critical Wildlife Habitat (7:7E-3.39) on the project site. ENSP believes that much of the habitat on site meets the definition of Critical Wildlife Habitat. This policy is separate from that of T&E species Habitat (7:7E-3.38) and requires that mitigation take place if Critical Wildlife Habitat is destroyed. ENSP therefore requests that the applicant address this issue.

Additional Comments, April 28, 2006:

ENSP has reevaluated all the application materials provided to them by the applicants in regard to the above project. Based on the presence of a pine snake hibernaculum on the site, and for the reasons provided in previous reviews of this application, ENSP is left with no option but to recommend the denial of this application since the proposed development will have a direct adverse impact on pine snake habitat at the site. Approval of this application will therefore violate Section 7.7E-3.38 of the Coastal Zone Management Rules, which state that "development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or surrounding area be adversely affected." The applicant has failed to adequately show that the project would not have and adversely affect pine snake habitat.

Additional Comments, January 17, 2006:

ENSP has reviewed the supplemental materials provided to NJDEP by the above applicant. These materials consist of a modified footprint of disturbance (with development restricted to northern portion of the site along Route 37) and a series of maps depicting the northern pine snake radio-telemetry data collected by the applicant's environmental consultants. While we recognize that the applicant has made attempts to reduce the footprint of disturbance on this site, the redesigned site plan still falls short of satisfying Section 7:7E-3.38 of the Coastal Zone Management Rules. ENSP therefore has no choice but to stand by their original comments (dated 3/30/05) and recommend denial of this application since the proposed development will have significant negative impacts on northern pine snakes and their habitat.

Telemetry data show that pine snakes are making full use of the site and that one of the two pine snakes radio tracked during 2005 is currently denning in the area where the development is proposed. Habitat at this den location would be destroyed and converted into a parking lot if the application were approved. This sort of activity is simply not permissible under the CZM Rules.

Finally, the supplemental materials provided to ENSP dealt entirely with T&E species habitat and failed to elaborate on the issue of critical wildlife habitat (7:7E-3.39). As such, this application remains incomplete with regard to this portion of the rules.

Additional Comments, April 18, 2005:

In Section 7:7E-3.38 of the CAFRA rules, it is clearly specified that development is prohibited if it will have a direct, or secondary, effect on threatened or endangered species habitat. Furthermore, within this section of the CAFRA rules it is explained that appropriate buffers areas can also be protected and that these buffers may extend beyond the habitat boundaries mapped by the DEP's Landscape Project for a particular species. Based on the information provided in my original comments (dated 3/30/05), it is clear that this site meets the definition of Northern pine snake habitat. Based on the CAFRA rules, the application must be denied as proposed since the proposed activities would lead to the permanent loss of pine snake habitat.

Original Comments, March 30, 2005:

Based on the materials provided to the Endangered and Nongame Species Program, it appears that the proposed project will have an irreversible effects on Northern pine snake habitat and should therefore be denied as proposed. If the applicant believes that no such habitat exists on the project site they should be directed to conduct a more detailed habitat assessment for this species. The applicant will also need to address the issue of "critical habitat" in more detail, as defined in the CAFRA regulations (7:7E-3.39), since "critical habitats" do not only consist of Natural Heritage Priority Sites as implied by their EIS.

ENSP is concerned about pine snakes at this site for the following reasons: 1) There is a 1993 documented record of a pine snake within 500 feet off 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. Given these three factors, this site is considered to be pine snake habitat.

Reviewed by: **David M. Golden - Senior Zoologist**

4/28/06

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