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March 04, 2011

Commissioner Robert Martin
NJ Department of Environmental Protection
401 East State Street, 7th floor
P.O. Box 402
Trenton, NJ 08625-0402

IN THE MATTER OF: Jaylin Holdings, LLC
File # 1500-04-0001.2, APL100001, FWW090001
Township of Toms River, Ocean County, New Jersey
Block 505, Lots 14 & 15
Township of Manchester, Ocean County, New Jersey
Block 44, Lots 2, 3, 4(part) & 5

Dear Commissioner Martin,

The proposed settlement agreement between the Department of Environmental Protection (DEP) and Jaylin Holdings, LLC to construct a Wal-Mart in Toms River and Manchester Townships is entirely inappropriate, violating Coastal Area Facility Review Act (CAFRA) regulations and destroying habitat for the threatened Northern Pine Snake. In addition, the public has not been afforded adequate time and access to related information and surveys to assess the impacts to protected species and other resources resulting from this project to provide meaningful comment.

The public comment period on this settlement agreement must be extended further. The Department must also provide access to information on how the settlement would address the issues beyond pine snake impacts including CAFRA violations and increased impervious cover. These issues form the grounds on which DEP denied the permit earlier in the year and these issues must be addressed in any settlement negotiations. The public has also been denied access to the actual terms of a proposed settlement such as financial guarantees.

The Sierra Club strongly opposes the settlement agreement and the DEP must rejected it as impacts to Northern Pine Snakes will not be mitigated under the current proposal. This proposal simply rationalizes the destruction of habitat and the taking of pine snakes, in hopes that measures taken by the developer to preserve existing pine snake populations may be successful. Permits for this project have been denied twice under CAFRA regulations due to the high habitat value of the site and the CAFRA rules do not permit the use of off-site mitigation to justify on-site destruction of threatened and endangered species habitat. Although the agreement calls for mitigation in the form of a 212 acre set aside for the northern pine snake, the proposed mitigation sites are not contiguous, contain barriers to pine snake movement, and have low habitat value. The proposed sites are piecemeal, fractured habitats that are crossed by roads, trails, and utility right-of-ways (ROWS) exposing the snakes to more threats including mortality from cars and All

Terrain Vehicles (ATV), vibrations from roads, and contact with dogs and cats which molest, and can potentially kill, the snakes and destroy nesting sites.

The success of proposed enhancements to these sites to increase habitation by pine snake cannot be guaranteed. Surveys of the proposed sites have shown they are subject to heavy ATV use, jeopardizing successful establishment of pine snake populations on site. Three of the five proposed mitigation sites (Block 73 Lots 31 and 32, Block 73 Lot 21, Block 77 Lots 2,4,5, and 6) are incompatible wetland habitats with vegetation that is not suitable for foraging or breeding. The developers consultant EcolSciences recognizes the challenges in establishing pine snakes on these sites stating, "There is no realistic means to enhance wetland habitats for pine snakes," in the notes from their meeting with Department employee Dave Golden (12). On Block 75.01 Lot 3 the mitigation proposal calls for potential nesting habitat in a ROW for overhead transmission lines but contains no studies or information on how ROW maintenance activities by the utility company would impact the nesting site. Essentially the DEP is giving away known, successful habitat to developers in exchange for speculative habitat that may not sustain breeding and foraging populations of pine snake.

The developer proposes major restoration work to the mitigation sites to create pine snake habitat including clear-cutting for basking areas and nesting. The impacts on other species currently utilizing the landscape from these adjustments have not been studied by the Department or the developer.

The modeling formula used by EcolSciences and the Department to determine the pine snake habitat value on the existing site and the proposed mitigation site raises serious concerns and cannot guarantee no net loss of habitat value is achieved. Mitigation sites that are wetland habitats are ranked highly due to a low threat level, meaning the sites are not close to roads and trails or have limited public access. However it does not matter if there are no threats to the pine snakes on the site if the site is not suitable habitat and snakes will not be able to breed and forage there. The remote sensing scores for wetland sites were much higher than what the actual on the ground surveys concluded. When these sites were actually visited their habitat value ranked very poorly. The habitat value collective scores cannot accurately assess if a no net loss of habitat will be achieved and snakes will inhabit those areas since such weight is given to the threat and remote sensing scores which are moot if the actual ground surveys find the site is not viable pine snake habitat.

Northern pine snakes are in serious decline in New Jersey due to destruction and fracturing of their habitat as a result of development. Allowing further development at existing dens will simply destroy the snake population. Instead of entering into this settlement agreement and allowing a giveaway, the developer should be required to utilize a redevelopment site along the Route 37 corridor or expand the existing Wal-Mart, literally yards east on Route 37 of this proposed development. This settlement agreement is just a ruse to avoid endangered species regulations and have a Wal-Mart approved.

The Sierra Club remains concerned that this settlement agreement will have similar results to what occurred at the Ocean Acres Development in Berkeley Township. That site also had pine snake dens and an agreement was made with the developer to exclude that portion of the site

from construction. However the intense construction and use of the development caused the snakes to abandon the site and now development of that land is being considered.

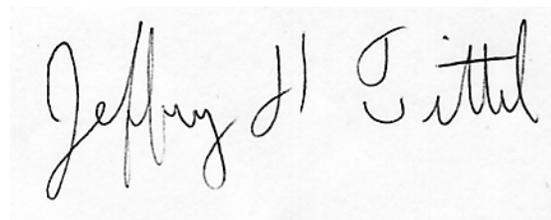
Another example of pine snakes not surviving following construction on their habitat is the Stafford Business Park in Stafford Township. The development is located on what was previously Northern Pine Snake habitat. During construction the snakes were moved to an adjacent parcel of land being preserved by the developer. Almost all of the snakes died and the State House Commission recently approved a diversion of the land for a solar farm. The Club is concerned that the proposed mitigation commitments in this settlement agreement do not guarantee successful establishment of pine snake populations on the new sites and will result in those individual snakes being lost, as occurred at the Stafford site.

Further allowing this development to move forward contradicts the Governor's plan to restore Barnegat Bay by reducing the nutrient loads and non-point source pollution that enter the waterbody. This development will introduce more pollution and sediments into the Bay and compliance with stormwater regulations has not been made clear in the settlement negotiations.

This settlement agreement will allow the degradation of critical habitat and resources to move forward simply for developers profit. This agreement violates CAFRA standards by allowing off-site mitigation to be considered in an permit application to destroy threatened and endangered species habitat. The Department must not enter this settlement agreement and instead encourage the developer to locate a suitable site that meets the standards of CAFRA and Pinelands regulations, preferably a redevelopment site. This settlement agreement is just an environmental ponzi scheme that will destroy pine snakes and their habitat, leading to the further decline and eventually extinction of the Northern Pine Snake in New Jersey.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey H. Tittel". The signature is written in a cursive style with a large, stylized 'J' and 'T'.

Jeff Tittel
Director, New Jersey Chapter of the Sierra Club

Cc: Chris Dolphin, Ocean County Section Chief, Division of Land Use Regulation
Raymond Cantor, Chief Advisor