



PINELANDS PRESERVATION ALLIANCE

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New Jersey Department of Environmental Protection
Division of Land Use Regulation
PO Box 420, Code 501-02A
Trenton, NJ 08625-0420
Attn: Manchester Bureau Chief

February 23, 2018

Dear Ms. Davis,

I am writing to provide the following comments of the Pinelands Preservation Alliance (PPA) on the Heritage Minerals Project Coastal Area Facilities Review Act (CAFRA) and Freshwater Wetlands permit applications, File No. 1518-03-0002, submitted by Hovsons, Inc. PPA urges the Department of Environmental Protection to reject the latest Heritage Minerals CAFRA and wetlands permit applications. The area proposed for development is exceptionally valuable both as habitat for threatened and endangered plant and wildlife species and for ecosystem services such as water filtration for Barnegat Bay. It is critical that DEP rigorously enforce applicable environmental protections and the limitations to which Hovsons, Inc. and the public agreed in the 2004 settlement agreement controlling development of this site.

The current applications violate CAFRA and Freshwater Wetlands regulations and put the ecological integrity of the area at risk. Perhaps most blatantly, the developer proposes almost 300 acres of impervious cover on a site that is less than 730 acres – approximately 40% of the site. The maximum allowable impervious cover on a site of this size is 218 acres per N.J.A.C. 7:7-13.17(e). Maintaining only a permitted percentage of impervious cover is critical for controlling runoff and resulting pollution. Barnegat Bay experiences severe eutrophication resulting from overdevelopment and resulting nutrient pollution. This fertilizing of the Bay causes harmful algal blooms, loss of healthy seagrass beds and other essential habitats, and damage to fisheries. The northern portion of Barnegat Bay has significantly higher nutrient levels than the southern, less developed portion within the Pinelands Area, indicating that restrictions on development such as those within the Pinelands Comprehensive Management Plan and CAFRA regulations can be effective at controlling the worst impacts of nutrient pollution (Kennish et al. 2007) if consistently applied. In addition to increasing nutrient pollution, impervious cover can collect particulate matter, nitrogen oxides, rubber particles, and other pollutants, which eventually enter groundwater. Increased impervious cover is also associated with increased flooding risks and erosion, which can cause direct economic harm to the community (Frazer 2005)

The applicant absurdly claims that they are entitled to use an acreage of 2,500 to determine their allowable impervious cover. The CAFRA regulation does not support or permit the applicant's interpretation. The maximum impervious cover percentage is applied to the "net land area" of the "site." N.J.A.C. 7:7-13.3(e) and -13.17(e). The regulations define "site" as "the lot or lots upon which a proposed development is to be constructed." N.J.A.C. 7:7-1.5. The proposed development is to be constructed in the CAFRA Coastal Suburban Planning Area/Pinelands Regional Growth Area, the net land area of which is approximately 730 acres. The development is not to be constructed in – and indeed could not be constructed in – the Environmentally Sensitive Planning Area/Pinelands Forest Area. These conservation areas, therefore, are not part of the "site" as defined in the regulations. Note that the boundary of the developable land established by the CAFRA rules and CMP were adopted by the state with the active concurrence of the applicant as a concession by the public to the development in the 2004 settlement.

The proposed development would also fail to protect the air quality of the region. Per N.J.A.C. 7:7-16.8, coastal development must protect regional air quality and conform with all applicable State and Federal regulations. The developers claim that the activities would not cause release of air emissions above New Jersey and National Standards – but also admit that "there are no monitoring sites for air toxins, sulfur dioxide (SO₂), carbon monoxide (CO), or nitrogen dioxide (NO₂) within the Northern Coastal Region." N.J.A.C. 7:27-13.5 specifically indicates that eight-hour average carbon monoxide concentrations shall not exceed 9ppm. In the calculated concentrations of Carbon Monoxide, the No-Build scenario is completely free of carbon monoxide for three of the five intersections. Clearly, this is inappropriate, as there is existing atmospheric carbon monoxide, even in areas without significant development – and Manchester and Berkeley Townships both have significant development and traffic pollution already. There is no attempt at calculating the emissions of other pollutants.

The Individual Permit application does not meet threatened and endangered species protections standards, which is critical for such a valuable site. The proposed development site, as well as the surrounding conservation area, is home to many threatened and endangered wildlife species, including northern pine snake (*Pituophis m. melanoleucus*), corn snake (*Pantherophis guttata*), grasshopper sparrow (*Ammodramus savannarum*), barred owl (*Strix varia*), least tern (*Sterna antillarum*), and Pine Barrens treefrog (*Hyla andersonii*), but the proposed development fails to adequately protect these and other species. For instance, the additional information in the record indicates that the applicant will be transplanting 350 Sickle-leaf Golden Asters, but fails to include a mitigation plan for this species. Sickle-leaf Golden Aster is a species listed by the Pinelands Commission for protection in the region, and protection of this species cannot be expected, nor can the Habitat Enhancement Plan be considered complete, without a detailed mitigation plan. Further, the proposed mitigation plan for the listed Grasshopper Sparrow calls for the creation of 65 acres of suitable habitat on site and 115 additional acres off site. By not including where the offsite habitat will be created and its proximity to known occurrences of this species, the mitigation plan cannot be assessed for its ability to offer suitable habitat for this species. Additionally, the applicant states that they will pay \$172,500 for mitigation of habitat disturbance. However, the parties agreed upon that amount in 2004. In 2017, that amount translates to

roughly \$230,000 and should be paid in that amount to maintain the same level of mitigation (Bureau of Labor Statistics, 2018).

Further, the proposal also violates Freshwater Wetlands regulations. The proposed activity does not comply with General Permit #6. Specifically, the wetland at issue is an exceptional resource value wetland per N.J.A.C. 7:7A-3.2. That regulation specifically states that a wetland that is “a documented habitat for threatened or endangered species, and which remains suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat.” Per the NJDEP Landscape Maps, the wetland is habitat for a state-endangered species, the corn snake (*Pantherophis guttata*) and a state-threatened species, the Northern pine snake *Pituophis m. melanoleucus*). Corn snake often inhabits areas with a water source, such as this wetland, and both snakes use open areas such as this one for activities such as foraging and basking. Northern pine snake also uses disturbed areas for hibernacula and summer dens (New Jersey Department of Environmental Protection). Moreover, the applicant claims that mitigation is not required for the fill of the wetland, but that claim comes from a deliberate misreading of the regulations. N.J.A.C. 7:7A-7.6 states that mitigation “shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters that are also waters of the United States.” The applicant essentially claims that this regulation should be read instead as *shall be performed for all permanent loss ... of freshwater wetlands that are also waters of the United States or State open waters that are also waters of the United States*. However, if that were the intention of NJDEP, that is what the regulation would say. It is impossible to argue that the filling of .44 acres of a freshwater wetland does not require mitigation.

During the settlement agreement process in 2004 and 2005, the public, as represented by the federal, state, and municipal governments, as well as PPA, sacrificed certain rights to reach an agreement with the developer. It is inappropriate and illegal for Hovsons to now violate the settlement agreement when other bodies have already taken their respective actions to allow the development. For instance, the New Jersey State Planning Commission designated the development area as a Suburban Planning Area, and this designation was incorporated into the CAFRA regulations, to allow for the development of the site consistent with the settlement agreement. The State Planning Commission designated the remainder of the property as an Environmentally Sensitive Planning Area. The Pinelands Commission amended the CMP, with the agreement of the U.S. Secretary of the Interior, to designate the development site as Regional Growth Area. Similarly, NJDEP designated the Development Area as a sewer service area and took steps to insure there was water available to allocate for the proposed project. NJDEP also extended a Letter of Interpretation from 1998 to apply to the site today, 20 years later. These sacrifices are not insignificant, and they represent the lengths to which the state went to appease the developer. Manchester Township also amended its zoning and Master Plan to allow development on this site. In exchange, Hovsons agreed to limit development to 2,450 units in the federal agreement. The public has sacrificed and amended regulations to allow this project, and the developer must uphold their agreement at this time.

This application proposes over 1500 units beyond those agreed upon by the state, federal, and municipal governments, and PPA. These additional units exacerbate the ecological damage caused by development. The average daily demand of the development is almost 700,000 gallons of water – a

number which rises to over a million gallons at peak demand. Just a few unexpected days of increased demand could lead to the Western Manchester Township Water Utilities violating its water allocation permits and overdrawing the aquifer. More people living in this development also increases the risks of off-road vehicle damage in the surrounding preserved land. More cars would lead to more air pollution and water pollution through runoff on pavements. It is essential that the Department of Environmental Protection holds Hovsons to its promise and rejects this application.

Sincerely,

A handwritten signature in black ink, appearing to read "Carleton Montgomery".

Carleton Montgomery
Executive Director

Bureau of Labor Statistics, 2018. <https://data.bls.gov/cgi-bin/cpicalc.pl>

Frazer, L., 2005. Paving Paradise: The Peril of Impervious Surfaces. *Environmental Health Perspectives*, 113(7) pp. A456-A462.

Kennish, M.J., Bricker, S.B., Dennison, W.C., Glibert, P.M., Livingston, R.J., Moore, K.A., Noble, R.T., Paerl, H.W., Ramstack, J.M., Seitzinger, S., Tomasko, D.A., and I. Valiela, 2007. Barnegat Bay-Little Egg Harbor Estuary: Case Study of a Highly Eutrophic Coastal Bay System. *Ecological Applications*, 17(5) Supplement, pp. S3-S16.

New Jersey Department of Environmental Protection. Corn Snake, *Elaphe g. guttata*.
<http://www.nj.gov/dep/fgw/ensp/pdf/end-thrtened/cornsnake.pdf>.

New Jersey Department of Environmental Protection. Northern Pine Snake, *Pituophis melanoleucus melanoleucus*. <http://www.nj.gov/dep/fgw/ensp/pdf/end-thrtened/norpinesnake.pdf>