



Pinelands Preservation Alliance

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Eric Virostek
Project Manager
NJ Department of Environmental Protection
Land Use Regulation Program
P.O. Box 439
501 East State Street
Trenton, New Jersey 08625-0439

**Re: CAFRA Application # 1500-04-001.2-CAF090001
Proposed WalMart, Block 505, Lots 14 & 15 Toms River Township and Block
44, Lots 2, 3, 4 & 5 Manchester Township, Ocean County.**

Dear Sir:

The Pinelands Preservation Alliance and the American Littoral Society have reviewed documents for the proposed CAFRA application referenced above to construct a WalMart Supercenter in Toms River and Manchester Township in Ocean County.

A CAFRA permit can only be issued if the applicant demonstrates that the project meets the requirements of all applicable Coastal Zone Management Rules ("Coastal Rules"). N.J.A.C. 7:7E1. Because it is within the Pinelands National Reserve, the project must also meet the requirements of the Pinelands Protection, N.J.S.A. 13:18A-1 et seq., and Comprehensive Management Plan, N.J.A.C. 7:50-1.1et seq.; 7:7E-3.44. We respectfully request that the Department deny the application due to the fact that it does not meet all applicable rules as outlined below.

7:7E-5.3 Impervious Cover Requirements for sites in CAFRA Areas

The site is designated Planning Area 2, a Suburban Planning Area, where CAFRA rules permit a maximum Impervious Cover of 30%. The application, however, proposes 73.11% Impervious Cover. The application, therefore, exceeds the maximum allowable Impervious Coverage of 30% and fails to meet the minimum Forest Preservation requirement of 35% for Planning Area 2.

The applicant incorrectly claims the site is eligible to take advantage of the extension of the coastal centers under the Permit Extension Act of 2008. The Department provides the following explanation of what areas are, and are not, inside coastal centers affected by the Permit Extension Act:

Mainland Coastal Center Boundaries Extended under the Permit Extension Act of 2008

*For purposes of N.J.A.C. 7:7E-5 and 5B, this document contains the boundary descriptions of the mainland coastal centers whose March 15, 2007 expiration has been extended until July 1, 2010 under the Permit Extension Act of 2008. **The areas listed at N.J.A.C. 7:7E-5B.6 (e) shall not be considered part of a mainland coastal center, except for the purposes of N.J.A.C. 7:7E-5B.6 (f).** In addition, the areas that are within the Environmentally Sensitive Area defined by the Permit Extension Act were not extended by the Act and therefore are not part of the mainland coastal center. The Environmentally Sensitive Area is described on the Department's webpage: "Determining if Activity is in an Environmentally Sensitive Area" at http://www.state.nj.us/dep/opppc/pea_esa.htm.*

One of the exemptions listed in **7:7E-5B.6 (e)** specifies areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species and as such shall not be considered part of a mainland coastal center.

The above CAFRA application block and lots appear in the landscape maps as habitat for threatened species and therefore are not part of the center for Toms River Township. The site, then, remains in a Suburban Planning Area, which allows development at 30% impervious coverage, not the 73.11% coverage proposed by the applicant.

Even if the proposed project was in a coastal center, it would still have to meet the 30% impervious cover limit:

N.J.A.C. 7:7E-5B.6 (g) For purposes of any CAFRA permit application that was received by the Department after February 6, 2005 and proposes a development in a mainland coastal center established in accordance with (b) that has not expired pursuant to (c) above:

1. The impervious cover limits and vegetative cover percentages for those portions of the site located within the mainland coastal center shall be determined in accordance with N.J.A.C. 7:7E-5B.4 (d) and N.J.A.C. 7:7E-5B.5, respectively, provided no portion of the proposed development, as defined at N.J.A.C. 7:7E-1.8, is located outside the boundaries of the

mainland coastal center, or in one of the areas identified at (e)1 through 6 above.

2. *If any portion of the proposed development, as defined at N.J.A.C. 7:7E-1.8, is located outside of the mainland coastal center boundaries, or in one of the areas identified at (e)1 through 6 above, then the impervious cover limits and vegetative cover percentages for the entire development shall be determined in accordance with N.J.A.C. 7:7E-5B.4(e) and 7:7E-5B.5, respectively, for the appropriate Coastal Planning Area. (emphasis added)*

7:7E-3.38E Endangered or threatened wildlife or plant species habitats

CAFRA's T&E Rule provides specific standards that an applicant must adhere to when conducting and reporting the results of either an Impact Assessment or a Habitat Evaluation. The required information in the Impact Assessment "shall demonstrate" that the proposed development will not negatively affect the population or habitat of endangered or threatened wildlife or plant species that resulted in identification of the site, or an area abutting the site, as endangered or threatened species habitat.

The measures the applicant is proposing are not sufficient to ensure that the proposed development will not directly, or through secondary impacts, adversely impact the population of Northern Pine Snakes located on the site or in the surrounding area.

We are able to give two examples in the Pinelands where substantially larger corridors were required for the protection of Northern Pine Snake populations. The two applications were in Barnegat Township, Ocean County. One, on the border of Barnegat and Stafford, received a 350-foot buffer around a den and a 600 foot wide corridor to access open space areas to the west. The second was a 700 foot wide corridor on the Cloverdale property along West Bay Avenue. These cases suggest that experts find that 600 to 700 feet is required to avoid adverse effects on a Northern Pine Snake population and meet the applicable legal standards. These buffers are much wider than the 164 foot buffer to the den and an approximate 480 foot-wide corridor which the applicant proposes for the WalMart development.

In addition, the off-site habitat of Block 77, Lots 2, 4, 5 & 6, proposed as mitigation by the applicant, does not mitigate the impacts on the local population of pine snakes. The June 1, 2006, CAFRA denial permit for the WalMart site, page 3, states "Mr. Golden noted based on ENSP models, the site has the highest possible rank for being suitable pine snake habitat." If this site is the "highest possible rank," then any

mitigation land must also be the "highest possible rank." However, the proposed off-site acres identified by the applicant are not, as far as we could determine, known habitat for the Northern Pine Snake. In fact, this site was where a large amount of sludge was land applied in 1983, rendering this site wholly inappropriate as environmental mitigation in this case.

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

The tree preservation percentage for a Coastal Suburban Planning Area is 35 percent. The applicant appears to be using the Northern Pine Snake corridor land as part of its forest preservation calculation. The tree preservation percentage should be in addition to the land set aside for the wildlife corridor.

7:50-6.33 Protection of threatened or endangered wildlife required

The Pinelands Comprehensive Management Plan provides:

"no development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of those threatened and endangered animal species designated by the Department of Environmental Protection pursuant to N.J.A. 23:2A-1 et seq.

The proposed project fails to meet this requirement because it will have an irreversible adverse impact on the denning and/or forging habitat of a local Northern Pine Snake population.

Sincerely,



Theresa Lettman
Director for Monitoring Programs
Pinelands Preservation Alliance



Helen Henderson
Atlantic Coast Project Manager
American Littoral Society