State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Land Use Regulation
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PHILIP D. MURPHY
Governor

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Lt. Governor

CATHERINE R. MCCABE
Commissioner

Ms. Edele Hovnanian
c/o Hovsons, Inc.
4000 Route 66
Tinton Falls, New Jersey 07753

CERTIFIED MAIL

OCT 18 2018

RE: Denial of an Application for a CAFRA Individual Permit and Freshwater Wetlands General Permit 11
DLUR File# 1518-03-0002.3 CAF170001 & FWW170001
Applicant: Hovsons, Inc.
Project: Heritage Minerals Residential and Commercial Development
Project Location: Colonial Drive, Route 70 & Route 37
Block: 75.01 Lot: 1
Manchester Township, Ocean County

Dear Ms. Hovnanian:

The Division of Land Use Regulation (DLUR), acting under the provisions of the Coastal Zone Management Rules at N.J.A.C. 7:7-1.1 et seq., and the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-1.1 et seq., has decided **not** to approve CAFRA Individual Permit and Freshwater Wetlands General Permit 11 application file #1518-03-0002.3 CAF170001 & FWW170001 for the reasons set forth as follows:

SITE AND PROJECT DESCRIPTION

The proposed approximately 4,000 acre project site is designated as Block 75.01, Lot 1 in Manchester Township, Ocean County and is located within the CAFRA jurisdictional area and within the boundaries of the Pinelands National Reserve. The project site is located south of the existing Manchester Township High School and the northern portion of Colonial Drive and can be accessed by an existing paved road extending east to the site from New Jersey State Highway (NJSH) Route 70. The portion of the existing paved road, known as the southern portion of Colonial Drive, extending east from NJSH Route 70 to the railroad right-of-way, creating the western boundary of the project site, is located on a property owned by the applicant known as Block 74, Lot 5. This portion of Hovsons' overall approximately 7,000 acre parcel lies beyond the CAFRA jurisdictional area and entirely within the New Jersey state-designated Pinelands Area. Development within the New Jersey state-designated Pinelands Area is regulated by the New Jersey Pinelands Commission. The proposed development area subject to CAFRA consists of a 1,008 acre area to be developed and a 2,916 acre area which is proposed to largely remain undisturbed. The 1,008 acre development area has historically been utilized for extractive mining operations and contains two (2) large, manmade wet borrow pits as well as cleared areas, forested areas, wetlands, and wetlands transition areas. The remaining 2,916 acres of the project site contains forested areas, tributaries to the Toms River, wetlands, and wetlands transition areas.

The applicant, Hovsons, Inc., has applied for a CAFRA Individual Permit and a Freshwater Wetlands General Permit 11 to construct a residential and commercial development with 3,862 residential units consisting of single family dwellings, townhomes, and apartments, as well as 40,000 square feet of commercial space, a

clubhouse facility, recreational amenities, internal roadways, stormwater management facilities, and associated infrastructure. The Freshwater Wetlands General Permit 11 application proposes to disturb 975 square feet (0.022 acres) of wetlands and 5,700 square feet (0.13 acres) of wetlands transition area for the proposed construction of three (3) outfall structures on the project site.

The proposed project is shown on plans in sixty-six (66) sheets entitled "CAFRA Permitting Plans For Heritage Properties, Block 75.01 – Portion of Lot 1, Township of Manchester, Ocean County, New Jersey", all sheets dated 07/31/2017 with the exception of Sheets 7 and 8 dated 09/14/2017, Sheets GR 13, UP 1, UP 2, UP, 3 & UP 4 dated 06/05/2018, and Sheets WDP 01, WDP 02, WDP 03 & WDP 04 dated 10/27/2017, all sheets last revised on 06/05/2018 with the exception of Sheets GR 13, UP 1, UP 2, UP 3 & UP 4 which are unrevised, and prepared by William A. Stevens, P.E., P.P. from Professional Design Services, L.L.C.

ADMINISTRATIVE HISTORY

On October 3, 1994, an application was submitted by Heritage Minerals, Inc., also known as Hovsons, Inc., to DLUR, formerly the Land Use Regulation Program, for a Freshwater Wetlands Letter of Interpretation (DLUR File# 1518-94-0005.1) for the entire approximately 4,000 acre parcel which lies within the CAFRA jurisdictional area known as the "Heritage Minerals Tract". On April 17, 1998, DLUR issued a Letter of Interpretation which verified the location of wetlands and transition areas on the approximately 4,000 acre portion of the property subject to CAFRA.

A CAFRA Notice of Filing (DLUR File# 1518-94-0005.2) was published by DLUR in the Department of Environmental Protection's (DEP) Bulletin on December 28, 1994 for the project described below.

On January 10, 1995, DLUR received a CAFRA Individual Permit, Freshwater Wetlands General Permit 11, and Freshwater Wetlands Transition Area Waiver Averaging Plan (DLUR File# 1518-94-0005.3, .4 & .5) application for the proposed construction of 838 residential units consisting of single family homes, a multifamily townhouse condominium community, and garden apartments along with 12,000 square feet of retail space within a one-story building on a 368 acre portion of Block 75.01, Lot 1 known as "Heritage Minerals Site One" located within the overall Heritage Minerals Tract. The proposal also included an active and passive recreation area, parking, access roadway extending into the site from existing Colonial Drive, internal roadways, and associated infrastructure. The application for the Freshwater Wetlands General Permit 11 and Transition Area Waiver Averaging Plan was submitted for the proposed disturbance of wetlands and transition areas for the construction of six (6) stormwater outfall structures associated with the proposed development described above. The CAFRA Individual Permit application was denied on April 26, 1996 due to the project's non-compliance with the requirements of the Endangered or Threatened Wildlife or Vegetation Species Habitats rule at N.J.A.C. 7:7E-3.38 (currently N.J.A.C. 7:7-9.36), the Critical Wildlife Habitats rule at N.J.A.C. 7:7E-3.39 (currently N.J.A.C. 7:7-9.37), the Special Hazard Areas rule at N.J.A.C. 7:7E-3.41 (currently N.J.A.C. 7:7-9.39), the Pinelands National Reserve and Pinelands Protection Area rule at N.J.A.C. 7:7E-3.44 (currently N.J.A.C. 7:7-9.42), the Requirements For Impervious Cover and Vegetative Cover For General Land Areas and Certain Special Areas in Subchapter 5 of the Coastal Zone Management Rules, N.J.A.C. 7:7E-5 (currently Subchapter 13, N.J.A.C. 7:7-13), the Secondary Impacts rule at N.J.A.C. 7:7E-6.3 (currently N.J.A.C. 7:7-14.3), the Housing Use rule at N.J.A.C. 7:7E-7.2 (currently N.J.A.C. 7:7-15.2), the Commercial Facility Use rule at N.J.A.C. 7:7E-7.10 (currently N.J.A.C. 7:7-15.10), the Water Quality rule at N.J.A.C. 7:7E-8.4 (currently N.J.A.C. 7:7-16.3), the Groundwater Use rule at N.J.A.C. 7:7E-8.6 (currently N.J.A.C. 7:7-16.5), the Stormwater Management rule at N.J.A.C. 7:7E-8.7 (currently N.J.A.C. 7:7-16.6), and the Buffers and Compatibility of Uses rule at N.J.A.C. 7:7E-8.13 (currently N.J.A.C. 7:7-16.11). The application for the Freshwater Wetlands General Permit 11 and Transition Area Waiver Averaging Plan was subsequently denied due to elimination of the project and need to disturb wetlands and transition areas resulting from a denial of the CAFRA Individual Permit application.

The applicant, Heritage Minerals, Inc./Hovsons, Inc. filed an appeal of the Heritage Minerals Site One permit denial with the Office of Administrative Law (OAL). Petitioner Heritage Minerals then filed a motion for summary decision which DEP opposed. On February 5, 1998, the Administrative Law Judge (ALJ) issued an Initial Decision affirming the permit denial based upon the applicant's failure to submit any documentation, as

required by N.J.A.C. 7:7E-3.44 (currently N.J.A.C. 7:7-9.42), that its proposed development would be consistent with the goals and objectives of the federal National Parks and Recreation Act of 1978 which established the Pinelands National Reserve. The ALJ rejected Heritage Minerals' claims that an applicant which seeks CAFRA approval for development in the Pinelands National Reserve need not meet the CAFRA rule which requires consistency. The ALJ explained that consistency means that the Pinelands Comprehensive Management Plan (CMP) is not conclusory but neither can it be ignored. Rather, the CMP is evidentiary which meant that Heritage had no right to disregard the rule as inapplicable. On April 29, 1998, the Commissioner affirmed the ALJ's Initial Decision but gave the applicant sixty days to submit supplemental documentation. On June 29, 1998 Heritage submitted supplemental information which DEP determined was still not consistent with the intent, policies and objectives of the federal legislation. On June 18, 1999, DEP issued a supplemental decision document which explained that the proposed project failed to meet the Pinelands National Reserve rule, citing N.J.A.C. 7:7E-3.44 (currently N.J.A.C. 7:7-9.42). On June 30, 1999, the applicant again requested an administrative adjudicatory hearing. On August 20, 1999 DEP granted the hearing request and on February 3, 2000 the amended permit appeal was filed with OAL.

Subsequently, a CAFRA Notice of Filing (DLUR File# 1518-94-0005.6) was submitted by Hovsons, Inc. for the proposed construction of an additional 1,800 single family dwellings with associated infrastructure on the approximately 920 acre tract known as Heritage Minerals Site Two. The notice was scheduled for publication by DLUR in the DEP Bulletin on March 15, 1995. A second CAFRA Notice of Filing (DLUR File# 1518-94-0005.7) was submitted for the project described above. The notice was published in the DEP Bulletin on April 12, 1995.

On April 21, 1995, DLUR received a CAFRA Individual Permit, a Freshwater Wetlands General Permit 10, a Freshwater Wetlands General Permit 11, and a Freshwater Wetlands Transition Area Waiver (DLUR File# 1518-94-0005.8, .9, .10 & .11) application for the proposed construction of 1,616 single family, age-restricted dwelling units along with a 16,400 square foot community center/recreational facility, parking, an access roadway extending into the project site from NJSH Route 37, internal roadways, and associated infrastructure located on a 920 acre parcel of Block 75.01, portion of Lot 1, 2, 4, 6 and 11 and Block 44, Lot 16. The 920 acre parcel is known as "Heritage Minerals Site Two" and is located within the larger 4,000 acre tract within the CAFRA area known as the "Heritage Minerals Tract". The application for a Freshwater Wetlands General Permit 10, a Freshwater Wetlands General Permit 11, and Transition Area Waiver Averaging Plan was submitted for the proposed disturbance of wetlands and transition areas for the construction of a road crossing, stormwater outfall structures, and stormwater ponds associated with the project described above.

On August 28, 1997, DLUR denied the application for a CAFRA Individual Permit for Heritage Minerals Site Two due to the project's non-compliance with the requirements of the Wet Borrow Pits rule at N.J.A.C. 7:7E-3.14 (currently N.J.A.C. 7:7-9.14), the Steep Slopes rule at N.J.A.C. 7:7E-3.34 (currently N.J.A.C. 7:7-9.32), the Endangered or Threatened Wildlife or Vegetation Species Habitats rule at N.J.A.C. 7:7E-3.38 (currently N.J.A.C. 7:7-9.36), the Critical Wildlife Habitats rule at N.J.A.C. 7:7E-3.39 (currently N.J.A.C. 7:7-9.37), the Special Hazard Areas rule at N.J.A.C. 7:7E-3.41 (currently N.J.A.C. 7:7-9.39), the Pinelands National Reserve and Pinelands Protection Area rule at N.J.A.C. 7:7E-3.44 (currently N.J.A.C. 7:7-9.42), the Requirements For Impervious Cover and Vegetative Cover For General Land Areas and Certain Special Areas in Subchapter 5 of the Coastal Zone Management Rules, N.J.A.C. 7:7E-5 (currently Subchapter 13, N.J.A.C. 7:7-13), the Secondary Impacts rule at N.J.A.C. 7:7E-6.3 (currently N.J.A.C. 7:7-14.3), the Housing Use rule at N.J.A.C. 7:7E-7.2 (currently N.J.A.C. 7:7-15.2, the Water Quality rule at N.J.A.C. 7:7E-8.4 (currently N.J.A.C. 7:7-16.3), the Groundwater Use rule at N.J.A.C. 7:7E-8.6 (currently N.J.A.C. 7:7-16.5), the Stormwater Management rule at N.J.A.C. 7:7E-8.7 (currently N.J.A.C. 7:7-16.6), the Vegetation rule at N.J.A.C. 7:7E-8.8 (currently N.J.A.C. 7:7-16.7), and the Buffers and Compatibility of Uses rule at N.J.A.C. 7:7E-8.13 (currently N.J.A.C. 7:7-16.11). The application for the Freshwater Wetlands General Permit 10, the Freshwater Wetlands General Permit 11 and the Transition Area Waiver Averaging Plan was subsequently denied due to elimination of the project and need to disturb wetlands and transition areas resulting from a denial of the CAFRA Individual Permit application.

On September 26, 1997, Hovsons, Inc./Homeland Corporation filed an appeal and adjudicatory hearing of the DLUR's decision. On October 31, 1997, the appeal and request for a hearing was granted by the DEP's Office of Legislative Affairs. Due to the ALJ's ruling for the Heritage Minerals Site One regarding project compliance

with the Pinelands CMP, the applicant submitted supplemental information to the DEP to demonstrate compliance with the Pinelands National Reserve and Pinelands Protection Area rule at N.J.A.C. 7:7E-3.44 (currently N.J.A.C. 7:7-9.42). Upon review of the submitted information, the Department determined that the proposed development was not consistent with the intent, policies, and objectives of the National Parks and Recreation Act of 1978 and the State Pinelands Protection Act. The issued supplemental decision document, dated December 18, 1998, indicated that the proposed project failed to meet the requirements of the Pinelands National Reserve and Pinelands Protection Area rule at N.J.A.C. 7:7E-3.44 (currently N.J.A.C. 7:7-9.42).

In addition, on March 5, 1999, the DEP filed a motion for summary decision due to Heritage Minerals Site Two's location outside of an approved sewer service area resulting in the project's inconsistency with an approved Water Quality Management (208) Plan. On September 8, 1999, the ALJ heard arguments. The ALJ issued an Initial Decision on October 21, 1999 which granted DEP's motion for summary decision. On January 14, 2000, the DEP Commissioner issued a Final Decision which affirmed the Initial Decision. In the Final Decision, the DEP Commissioner agreed that the DEP properly denied the request for a CAFRA Permit. The applicant filed an appeal of this decision with the Appellate Division on February 22, 2000. The Appellate Division affirmed the DEP Commissioner's Final Decision in its June 26, 2001 decision.

In the meantime, in August of 2000, Hovsons filed a complaint in United States District Court alleging that the federal statute violated the Constitution's commerce clause; that classification by the Pinelands Commission of the property as Forest Area violated Due Process and Equal Protection; and, that DEP's denial of the permit application based upon the Pinelands National Reserve and Pinelands Protection Area rule at N.J.A.C. 7:7E-3.44 (currently N.J.A.C. 7:7-9.42) violated the Fourteenth Amendment.

On April 10, 2003, DLUR received an application for a reissuance of the Freshwater Wetlands Letter of Interpretation DLUR File# 1518-94-0005.1 issued on April 17, 1998 for the approximately 4,000 acre CAFRA portion of the property known as the "Heritage Minerals Tract". DLUR issued a reissuance of the Letter of Interpretation (DLUR File# 1518-03-0002.1 FWW030001) on August 28, 2003 which acknowledged the accuracy of the wetlands line and established the width of the transition areas associated with the verified wetlands on the site. The reissuance of the Letter of Interpretation extended the expiration date from April 17, 2003 to April 17, 2008. The applicant was H. Hovnanian Industries.

On May 14, 2004, Heritage Minerals, Inc., Hovsons, Inc., and Homeland Corporation ("Plaintiffs") entered into a Settlement Agreement with DEP, the New Jersey Pinelands Commission, the United States Department of the Interior, and with the New Jersey Pinelands Preservation Alliance and the Environmental Defense Fund as intervenors in the federal action. The Settlement Agreement agreed to a CAFRA Permit application to construct 2,450 residential units and 20,000 square feet of commercial space and associated infrastructure within the previously disturbed area. The Plaintiffs agreed to submit an application for a CAFRA Permit to DLUR for the project described above which complied with all Coastal Zone Management Rules. This CAFRA Permit application for 2,450 residential units and 20,000 square feet of commercial space was not submitted.

On January 19, 2018, DLUR received an application from Hovsons, Inc. for a Freshwater Wetlands General Permit 6 (DLUR File# 1518-03-0002.3 FWW180001) to disturb 0.44 acres of isolated freshwater wetlands for the completion of remedial activities on the site. The Freshwater Wetlands General Permit 6 was issued on June 13, 2018.

On August 3, 2017, DLUR received an application for a CAFRA Individual Permit, a Freshwater Wetlands General Permit 11, and a Freshwater Wetlands Transition Area Wavier Averaging Plan (DLUR File# 1518-03-0002.3 CAF170001, FWW170001 & FWW170002) to construct 4,000 residential dwelling units and 40,000 square feet of commercial space. Changes to the original design of the project were made which avoided the need for a Freshwater Wetlands Transition Area Wavier Averaging Plan. On August 30, 2017, Hovsons withdrew the application for the Averaging Plan. By letter dated August 30, 2017, deficiency and additional information to supplement the application and to address non-compliance issues with the project was requested. A meeting was held at DLUR's office in Trenton on November 3, 2017 to discuss the deficiency and additional information requested in the letter. A subsequent application for a Flood Hazard Area Verification (DLUR File# 1518-03-

0002.3 FHA170001) was submitted to DLUR on September 20, 2017. This application was declared deficient October 16, 2017. The requested deficiency information was submitted to DLUR on September 14, 2018. The 90 day decision deadline on the Flood Hazard Area Verification application is December 12, 2018.

On February 8, 2018, DEP held a public hearing on the CAFRA Individual Permit and Freshwater Wetlands General Permit 11 application at the Manchester Township High School in Manchester Township, Ocean County in order to gather public comments on the project. After the public hearing, the Division issued a second deficiency and information request letter, dated February 23, 2018. Additional meetings on March 19, 2018 and August 22, 2018 were held at DLUR's office to discuss the outstanding issues with the application. The applicant's agent submitted supplemental information during various stages in the application process to attempt to address the deficiency requests as well as some of the non-compliance issues raised in the Division's letters described above. This included the reduction in the proposed number of dwelling units from 4,000 to 3,862. The application was declared complete for final review on June 22, 2018. The statutory deadline for a decision on the CAFRA Individual Permit portion of the application was initially September 19, 2018. However, on August 27, 2018, Hovsons, Inc. submitted a request for a 30-day extension to the decision deadline on the CAFRA portion of the application. The request for a 30-day extension was granted and the extended decision deadline on the CAFRA portion of the application is October 18, 2018. There is no statutory decision deadline on the Freshwater Wetlands General Permit 11 portion of the application.

Additional information to supplement the application was submitted to the Division on September 19, 2018. The information was submitted in response to previous discussions with Department staff indicating that the project still did not meet the requirements of the following regulations: the Wet Borrow Pits rule at N.J.A.C. 7:7-9.14, the Endangered or Threatened Wildlife or Plant Species Habitats rule at N.J.A.C. 7:7-9.36, the Stormwater Management rule at N.J.A.C. 7:7-16.6, and the Traffic rule at N.J.A.C. 7:7-16.12. The additional information submitted requires an extensive review and analysis to determine if the revised portions of the project would meet the requirements of the above regulations. The submission of the additional information within 30 days of the extended decision deadline does not provide sufficient time for review and analysis of the submitted information nor sufficient time for the public to review and comment on the revised portions of the project. Therefore, the analysis below is based upon the additional information submitted on June 22, 2018 as well as information submitted electronically on August 13, 2018 to supplement the submitted Traffic Impact Study and the submitted response, dated September 5, 2018, addressing the comments on the proposed project submitted to the Department by the Pinelands Commission.

ANALYSIS

The following analysis addresses only those sections of the Coastal Zone Management Rules (N.J.A.C. 7:7-1.1 et seq.), as amended to September 5, 2018, for which the proposed project does not comply. The italicized print below indicates the regulation, and the narrative under "Findings" explains why the project as currently proposed does not meet the applicable regulation. The complete rule texts may be found at N.J.A.C. 7:7-1.1 et seq.

N.J.A.C. 7:7-1.4 – Standards for evaluating permit applications

(a) All applications for coastal permits shall be approved, conditionally approved, or denied pursuant to this chapter.

(b) The Department shall issue a permit pursuant to CAFRA only upon a finding as required by N.J.S.A. 13:19-10 that the development:

1. *Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;*

2. *Prevents air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments at the site and within the surrounding region;*

4. *Would result in the minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;*

5. *Would cause minimal feasible interference with the natural functioning of plant, animal, fish and human life processes at the site and within the surrounding region;*

6. *Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare; and*

7. *Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas and existing public scenic attributes at the site and within the surrounding region.*

Findings

To issue a CAFRA Individual Permit, project compliance with Section 10 of the Coastal Area Facility Review Act (CAFRA) at N.J.S.A. 13:19-10 must be demonstrated. As indicated in the discussions below, the applicant has not adequately demonstrated compliance with the Stormwater Management rule at N.J.A.C. 7:7-16.6, the Endangered or Threatened Wildlife or Plant Species Habitats rule at N.J.A.C. 7:7-9.36 and the Traffic rule at N.J.A.C. 7:7-16.12. Failure to comply with the requirements of the above stated rules results in the project's non-compliance with the requirements of Section 10 of CAFRA.

The project has not been designed in accordance with the requirements of the Stormwater Management rules at N.J.A.C. 7:8. The applicant has not yet provided sufficient information to demonstrate the project design would meet the requirements for water quality, water quantity, and groundwater recharge, as required per the applicable requirements of the Stormwater Management rules at N.J.A.C. 7:8. Therefore, the applicant has not demonstrated that the project has been designed to conform with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards; that it prevents air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments at the site and within the surrounding region, and that it would only result in the minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies as required per N.J.A.C. 7:7-1.4(b)1,2 & 4.

As discussed below, the project site is mapped on the Department's Landscape Maps Version 3.3 for State threatened barred owl, State endangered least tern, State threatened pine barrens tree frog, State threatened northern pine snake, and State endangered corn snake. Additionally, there has been a recorded documentation of State threatened American kestrel, State threatened grasshopper sparrow, State threatened horned lark, and Federally threatened northern long-eared bat on the project site and within the project vicinity. Protected plant species, specifically, Federally listed threatened Knieskern's beaked rush, State endangered Pickering's morning glory, and Pinelands listed, State rare sickle-leaved golden aster have also been documented in the previously disturbed area slated for development. Based upon the information submitted, Hovsons has not yet demonstrated that the project as proposed would not result in adverse impacts to suitable habitat for northern long-eared bat, northern pine snake, corn snake, and sickle-leaved golden aster. Therefore, the Department cannot yet determine that the construction of the project on the Heritage Minerals/Hovsons property would cause minimal feasible interference with the natural functioning of plant and animal life processes at the site and within the surrounding region as required per N.J.A.C. 7:7-1.4(b)5.

The development area of the project site contains two known areas of contamination as a result of the previous use of the site for mining and milling activities. As discussed below, Hovsons is coordinating with the Department's Site Remediation Program (SRP) to remediate the two known areas of contamination in accordance with SRP regulations. However, the remediation of the areas of contamination remain outstanding. Therefore, the proposal to construct a mixed use residential and commercial development in or surrounding contaminated areas has the potential to endanger human life or property and/or impair the public health, safety and welfare in contradiction of the standards referenced at N.J.A.C. 7:7-1.4(b)6.

Finally, the large scale development of the Heritage Minerals/Hovsons property would result in significant and adverse traffic impacts in the surrounding area as evidenced by the submitted Traffic Impact Study, dated July 31, 2017. In regards to adverse traffic impacts, the submitted Traffic Impact Study indicates that after construction of the project, numerous movements on the roadways in the project vicinity would still operate in excess of capacity Level D in contradiction of CAFRA standards. Although the applicant is proposing to make improvements to some roadways, including traffic signal additions, signal timing changes, and traffic lane additions, which are needed to mitigate the adverse traffic impacts, they have not provided confirmation that the necessary roadway improvements would be permitted or completed or that the required level of traffic service would be met given the number of proposed dwelling units. Further approval to widen certain roads is wholly uncertain at best and could affect threatened and endangered species habitat. Therefore, the construction of the project is anticipated to create significant traffic increases in the surrounding area and to adversely impact several roadway intersections within the project's area of effect. The applicant has not yet sufficiently demonstrated that the project is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare as required per N.J.A.C. 7:7-1.4(b)6.

N.J.A.C. 7:7-9.14 Wet Borrow Pits

(a) Wet borrow pits are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel, and clay pits, and stone quarries. Where a wet borrow pit is also a wetland and/or wetlands buffer, the wetlands rule, N.J.A.C. 7:7-9.27, and/or wetlands buffers rule, N.J.A.C. 7:7-9.28, shall apply.
(h) All proposed uses directly adjacent to wet borrow pits shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope not greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

(i) A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere. Recreational use of the water quality buffer is acceptable provided that the disturbance is limited in extent and wildlife habitat disturbance is minimized. The remainder of the buffer area shall be allowed to succeed naturally to water's edge. Structures and paving, except at limited water access points for recreational use, are prohibited in the water quality buffer.

Findings

The Heritage Minerals/Hovsons property contains two (2) large wet borrow pits which are the result of the previous mining activities on the property. The project proposes to incorporate the wet borrow pits into the project design for recreational uses by occupants of the development.

In accordance with N.J.A.C. 7:7-9.14(h), all uses directly adjacent to the wet borrow pits shall grade banks at the water's edge, except those in acceptable water access areas, to a slope no greater than 33 percent. In addition, the surface shall be stabilized and succession of native vegetation adapted to water's edge conditions must be initiated. Although the submitted compliance statement indicates that the project design will incorporate the requirements specified at N.J.A.C. 7:7-9.14(h), the submitted project plans do not yet indicate any proposed grading adjacent to the wet borrow pits to demonstrate that the required sloping will be implemented. In addition, the submitted landscaping plans do not detail any proposed native vegetation adjacent to the wet borrow pits to stabilize the sloped area. Therefore, the requirements specified at N.J.A.C. 7:7-9.14(h) are not met.

Pursuant to N.J.A.C. 7:7-9.14(i), a water quality buffer of 50 feet or 100 feet, depending on the soils, must be maintained around the perimeter of the wet borrow pits. A total of 42 soil borings were performed by the applicant's agents to determine the required water quality buffer. Soil borings indicating areas with coarse sands and gravel were given a 100 foot water quality buffer per the requirements of the rule. All other areas surrounding the wet borrow pits which lacked coarse sands or gravel were given a 50 foot water quality buffer. The appropriate water quality buffers are depicted on the project plans. The structures proposed within the water quality buffers

include vinyl bulkheading along portions of the water's edge of the wet borrow pits, a kayak/canoe ramp, trailer parking, a boardwalk on pilings, a pavilion on pilings, a lawn seating area for waterfront activities, a boat house, boat ramp, and a paved pedestrian/bicycle path.

N.J.A.C. 7:7-9.14(i) further prohibits structures and paving within the water quality buffer except in areas of limited water access points for recreational uses. Structures and paving proposed for this project within the water quality buffer which are not being utilized for water access consist of the proposed vinyl bulkheading, trailer parking, pavilion on pilings, boat house, and the paved pedestrian/bicycle path. These proposed structures and paving, therefore, do not yet meet the requirements of (i) and must be re-located outside of the water quality buffer. In addition, it is unclear if the proposed lawn seating area will contain any areas of paving or structures and a determination cannot be made if the proposed lawn seating would be acceptable in accordance with N.J.A.C. 7:7-9.14(i).

However, based on correspondence with the applicant's agent after the June 22, 2018 information submission, it does appear that changes to the project could be made to meet the requirements of this rule. As discussed above, the project design proposed in the June 22, 2018 information submission does not meet this rule.

N.J.A.C. 7:7-9.27 Wetlands

(a) Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.
(b) Development in wetlands defined under the Freshwater Wetlands Protection Act is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

N.J.A.C. 7:7-9.28 Wetlands Buffers

(a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem.

(b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

Findings

Part of the proposed project includes the disturbance of 975 square feet (0.022 acre) of freshwater wetlands and 5,700 square feet (0.13 acre) of wetlands transition area for the proposed construction of three (3) outfall structures. Since work is proposed within both wetlands and transition areas, the development must comply with the requirements of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A.

Pursuant to N.J.A.C. 7:7A-7.11(c), the Department shall issue a General Permit 11 authorization only if all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met. N.J.A.C. 7:7A-5.7(b)1 states that activities performed under a general permit-by-certification or general permit shall be associated with a proposed project. Because all applicable Coastal Zone Management Rules have not been met by the project (as referenced herein), and the CAFRA permit is being denied, the project has been eliminated which also eliminates the need to disturb the existing wetlands and transition areas. Therefore, this standard has not been met and the proposed wetland and transition area disturbance does not comply with the requirements of the Freshwater Wetlands General Permit 11. As the requirements of the Freshwater Wetlands General Permit 11 are not met, the project does not yet comply with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A.

Based on the above discussion, the project has failed to meet the requirements of these rules.

N.J.A.C. 7:7-9.36 Endangered or Threatened Wildlife or Plant Species Habitats

(a) Endangered or threatened wildlife or plant species habitats are terrestrial and aquatic (marine, estuarine, or freshwater) 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 as well as areas that serve an essential role as corridors for movement of endangered or threatened wildlife. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat.

1. *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 Maps) are subject to the requirements of this section unless excluded in accordance with (c)2 below. Buffer areas, which are part of the endangered or threatened wildlife species habitat, may extend beyond the mapped areas. The Department's Landscape Maps, with a listing of the endangered and threatened species within a specific area, are available from the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, www.state.nj/us/dep/fgw/ensphome.*

(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. 7:7-11, 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.
(c) Applicants for development of sites that contain or abut areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps shall either:

1. *Demonstrate compliance with this rule by conducting an endangered or threatened wildlife species impact assessment in accordance with N.J.A.C. 7:7-11.2; or*

2. *Demonstrate that the proposed site is not endangered or threatened wildlife species habitat and this rule does not apply by conducting an endangered or threatened wildlife species habitat evaluation in accordance with N.J.A.C. 7:7-11.3.*

(d) If the Department becomes aware of an occurrence of an endangered or threatened wildlife species on a site that is not mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps, and the Department determines that the habitat may be suitable for that species, the Department shall notify the applicant and the applicant shall demonstrate compliance with or inapplicability of this rule in accordance with (c) above.

Findings

A review of the Department's Landscape Maps Version 3.3 indicates that the project site is mapped as potential habitat for State threatened barred owl, State endangered least tern, State threatened pine barrens tree frog, State threatened northern pine snake, and State endangered corn snake. Additionally, there has been a recorded documentation of State threatened American kestrel, State threatened grasshopper sparrow, State threatened horned lark, and Federally threatened northern long-eared bat on the project site and within the project vicinity. Protected plant species, specifically, Federally listed threatened Knieskern's beaked rush, State endangered Pickering's morning glory and Pinelands listed, State rare sickle-leaved golden aster have also been documented on the project site. Based on the above Landscape mapping, the recorded documentation of species on the site, within the property as a whole and within the project vicinity, and the habitat suitability of the site for numerous species referenced above, compliance with the requirements of this rule is required per N.J.A.C. 7:7-9.36(a)1 & (d).

Although suitable habitat may exist on the project site for the species referenced above, subject to conservation of adequate habitat, the construction of the project would not adversely impact suitable habitat for all

of these species as discussed in the written comments, dated October 8, 2018, and prepared by the Division's reviewing biologist. Several documents and survey reports have been submitted to the Division to provide information regarding the extent of suitable habitat on the Heritage Minerals/Hovsons property as well as the management of the habitat proposed to be preserved. A document entitled "Addendum: Habitat Enhancement Plan, Heritage Redevelopment Project, Manchester Township, Ocean County, New Jersey", dated February 10, 2017, last revised on July 31, 2017, and prepared by DuBois Environmental Consultants refers to the remaining 6,100 acres of land on and adjacent to the proposed development area which are all part of the Hovsons' property as a whole. Conservation of this 6,100 acre portion of this property, as proposed by Hovsons' consultant, would offset impacts to suitable habitat within the project's development footprint. In addition, the document also identifies the management of a 65 acre grassland bird habitat area, which is part of the 6,100 acres of land referenced above, on the adjoining land in the Pinelands owned by Hovsons. Based on a review by the Division's reviewing biologists, the proposal to preserve 6,100 acres of suitable habitat as well as manage 65 acres of suitable grassland bird habitat would sufficiently mitigate for the development's impacts on suitable habitat for barred owl, least tern, American kestrel, grasshopper sparrow, horned lark, and pine barrens treefrog. Should the proposal eliminate the preservation of 6,100 acres of suitable habitat for the species noted above, on and adjacent to the project site, a re-evaluation of the overall project's compliance with the requirements of this rule at N.J.A.C. 7:7-9.36, as well as the requirements of the Critical Wildlife Habitat rule at N.J.A.C. 7:7-9.37, would be necessary.

Additionally, initial comments received by the Division on October 25, 2017 from the United States Fish and Wildlife Service (USFWS) in response to the project's proposed impacts to freshwater wetlands under the application for a Freshwater Wetlands General Permit 11 indicated that sighting occurrences of Federally listed threatened Knieskern's beaked rush are documented in the project vicinity. Therefore, the USFWS requested a Knieskern's beaked rush survey be conducted of any suitable wetland habitat on and adjacent to the project site during the August-September months by a qualified botanist with experience in sedge identification. Based on additional information provided by Hovsons' agent to the USFWS, it was determined that the requested Knieskern's beaked rush survey was no longer required as documented in the March 20, 2018 correspondence received from the USFWS. However, site investigations of the Heritage Minerals/Hovsons property in August 2018 by staff from the Department's Natural Heritage Program (NHP) revealed the presence of Knieskern's beaked rush on the site, but outside of the limit of the development footprint of the proposed project. Due to the presence of the species outside of the development footprint and in a portion of the 6,100 acre area proposed by Hovsons to be preserved, the final determination by the USFWS that the construction of the project would not likely affect this federally listed species remains appropriate. However, as discussed above, any proposal to eliminate the preservation of the portion of the 6,100 acre area providing supporting growth of Knieskern's beaked rush may result in a change of the final determination by the USFWS.

As discussed above and in the comments provided by the Division's reviewing biologist in coordination with staff from the New Jersey Division of Fish and Wildlife's Endangered and Nongame Species Program (ENSP), the development footprint of the Heritage Minerals/Hovsons property provides suitable habitat for Federally threatened northern long-eared bat, State threatened northern pine snake, State endangered corn snake, and Pinelands listed, State rare sickle-leaved golden aster. A discussion of the habitat suitability within the development footprint for each of these species is discussed in each paragraph below.

The Heritage Minerals/Hovsons property's proximity to areas identified as suitable habitat as well as the suitable habitat conditions on site prompted an evaluation of the site for Federally threatened northern long-eared bat. The revised compliance statement, dated June 11, 2018, indicates that Dubois Environmental Consultants conducted an acoustic survey in October of 2016 to evaluate the possible presence of northern long-eared bat in woody habitat areas of the development footprint of the Heritage Minerals/Hovsons property. The submitted compliance statement indicates that the results of the acoustic survey did not identify a positive identification or likely presence of northern long-eared bat within the development area of the site. However, the acoustic survey report was not provided to the Department for review and evaluation of the survey results. Additionally, documented occurrences of northern long-eared bat within 5 miles of the development footprint on the Heritage Minerals/Hovsons property in conjunction with the habitat suitability of forested and woody areas within the development footprint support the potential presence of northern long-eared bat. Finally, the protocol provided by the USFWS advises that acoustic surveys be conducted between May 15 and August 15. The acoustic survey of

the development area was conducted in October, outside of the appropriate season recommended in USFWS's acoustic survey protocol. Based on the above factors, the Department cannot yet determine that the proposed development would not adversely affect northern long-eared bat habitat as required per N.J.A.C. 7:7-9.36(b).

A review of Landscape 3.3 mapping in conjunction with an assessment of the development footprint by the Division's reviewing biologists and staff from the Department's ENSP indicates that suitable habitat exists for State threatened northern pine snake as well as State endangered corn snake. The addendum to the habitat management plan referenced above and prepared by Dubois Environmental Consultants acknowledges that the majority of the development footprint provides suitable habitat for northern pine snake. A desktop analysis of the development area suggests that between 835 acres and 847 acres of suitable habitat for these species would be affected by the proposed development. A similar analysis of the proposed preservation of 6,100 acres of the overall Heritage Minerals/Hovsons property would provide for approximately 4,285 acres of suitable snake habitat to be preserved. As discussed previously, any proposal to eliminate the applicant's consultant's proposal to preserve the 6,100 acres of the parcel as a whole, which includes approximately 4,285 acres of suitable snake habitat, would affect compliance with the requirements of this rule.

Supplemental to the preservation of suitable snake habitat as discussed above, the revised compliance statement indicates that additional improvements are proposed to minimize direct and secondary impacts to northern pine snake within the development footprint. Specifically, these actions consist of the construction of six (6) snake culverts under the southern Colonial Drive access road within Pinelands jurisdiction to Route 70 along with associated four (4) foot high vinyl guide fencing, and the construction of three (3) snake culverts under the proposed northern Colonial Drive access road into the site from the existing Colonial Drive south of Manchester Township High School and associated four (4) foot high vinyl guide fencing. In addition, to further demonstrate minimization of impacts to northern pine snake, an emergence survey was conducted along the proposed northern Colonial Drive access road and associated right-of-way following the discovery of potential hibernaculum features. The spring 2018 emergence survey results indicated that no threatened or endangered snake species or their hibernaculum were identified within the roadway footprint.

The above proposed additional improvements and emergence survey results were reviewed by the Division's reviewing biologists in coordination with staff from the Department's ENSP. The proposed number and location of the snake culverts and guide fencing specifications do not appear to sufficiently minimize impact to threatened and endangered snake species based on a review of recent studies of the most successful designs of wildlife passages. In order to sufficiently minimize impacts to northern pine snake and corn snake, the following modifications to the design of the proposed culverts and guide fencing would be necessary:

1. Presently, the three snake culverts proposed for the northern Colonial Drive access road would be 600 ft apart. Recent studies suggest that this distance places animals moving along guide fencing in peril of predation and/or exposure. Culverts should be placed at no more than 200-300 ft apart based on the best management practices specified in the Ontario Ministry of Natural Resources and Forestry's 2016 document entitled "Best Management Practices for Mitigating the Effects of Roads on Amphibians and Reptile Species at Risk in Ontario";

2. The design specifications for the guide fencing along both the northern and southern Colonial Drive access roads call for a four (4) foot high vinyl fence. Recommendations provided by the Department's ENSP staff are that the fencing should be at least six (6) feet high to restrict scaling by northern pine snakes, or should have a 12-inch lip to prevent snakes from climbing over the shorter fence;

3. The maintained right-of-way on either side of both the northern and southern Colonial Drive access roads needs to be managed to create and maintain sufficient native vegetative cover for snakes entering and exiting roadway culverts through the planting of seasonal grasses with limitations on mowing periods; and

4. In order to reduce the frequency of snake/roadway interactions, the Department's ENSP staff determined that a level of continuing habitat management is necessary at appropriate locations on either side of the

roadway. This management should consist of the creation and maintenance of several ¼ to ½ acre forest canopy openings to expose sandy/grass areas for snake use.

Although these modifications to the proposed wildlife passages, guide fencing, and habitat management can be incorporated into the project's design, the project, as proposed, has not yet included these modifications. However, the absence of these modifications would adversely affect threatened and endangered snake species given the proposed construction of the northern and southern Colonial Drive access roads. Therefore, based on existing evidence, the Department does not presently find that the application will not result in adverse impacts to the habitat of the northern pine snake and/or corn snake, as required per N.J.A.C 7:7-9-36(b).

Furthermore, an area of suitable snake habitat for northern pine snake and corn snake consisting of approximately 40 acres of pitch pine forest is present along the southern Colonial Drive access road extending east into the development area from the railroad right-of way. This forested patch is proposed for development during a later phase of construction of the project. Due to the probable use of this access road to the site for construction activities coupled with the anticipated delay in the clearing of this forested patch, unrestricted access across this portion of the southern Colonial Drive access road by northern pine snake and corn snake would adversely affect snakes utilizing the 40 acres of suitable pitch pine forest habitat. In order to alleviate these negative effects on threatened and endangered snake species, the Department's ENSP recommends that roughly 2,000 feet of guide fencing consistent with the design specifications recommended above be constructed prior to the onset of construction along the southern side of the access road between the edge of the railroad right-of-way and the edge of the existing cleared habitat. The guide fence would include several escape gaps to prevent entrapment of snakes within the 40 acres of forested habitat on the north side of the access road which is proposed to be cleared at some point for construction of the proposed project. Absence of the guide fencing and escape gaps would increase snake mortality through continued use of the 40 acres northern habitat patch. The necessary guide fencing with the appropriate escape gaps is not proposed, although incorporation of the fencing into the design would be feasible to alleviate adverse impacts to northern pine snake and corn snake. However, without the incorporation of the fencing with appropriate escape gaps, the Department cannot yet determine that the project, as proposed, would not adversely affect northern pine snake or corn snake as required per N.J.A.C. 7:7-9.36(b).

The comments provided by the Division's reviewing biologist also discuss the potential of the anticipated levels of traffic generated by construction of the project impacting the existing Colonial Drive roadway extending east from the railroad east of Manchester Township High School to Route 37, resulting in the bifurcation of forested snake habitat north and south of the existing Colonial Drive roadway. In order to mitigate the adverse effects of the anticipated traffic levels along this stretch of existing roadway, which is owned and maintained by the Township of Manchester, improvements which would include widening of this roadway are recommended in the submitted Traffic Impact Study as discussed below. The offsite potential adverse impacts to threatened and endangered snake species habitat resulting from an increase in traffic along the existing roadway and potential widening of this roadway will be discussed further under Secondary Impacts at N.J.A.C. 7:7-14.3 below.

Finally, information provided by the Department's NHP indicates that the Heritage Minerals/Hovsons property features suitable habitat for the Pinelands listed, State rare sickle-leaved golden aster. Information provided by Hovsons' agent in the additional information submission of June 22, 2018 confirmed that approximately 116 acres of documented habitat for sickle-leaved golden aster exist within the proposed development area based on a survey conducted of the development area in July of 2017. Mitigation proposed by Hovsons for the proposed impact to sickle-leaved golden aster habitat includes a monetary contribution in addition to transplantation of identified sickle-leaved golden aster plants outside of the development footprint. However, feedback on the mitigation proposal from the Department's NHP discourages transportation of rare plants as an acceptable form of mitigation. Additional site investigations in August of 2018 by staff from the Department's NHP indicate that areas on the Heritage Minerals/Hovsons property outside of the development area do contain suitable habitat for sickle-leaved golden aster which may provide potential for preservation of sickle-leaved golden aster plants to mitigate for the impacts to the plant within the development area. However, the Department cannot yet determine that the construction of the project would not adversely impact sickle-leaved golden aster in accordance with N.J.A.C. 7:7-9.36(b).

Based on the above discussions, the applicant has not demonstrated that the requirements of this rule have been met.

N.J.A.C. 7:7-9.39 Special Hazard Areas

(a) Special hazard areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones, and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11b are used or disposed, including adjacent areas and areas of hazardous material contamination.

(b) Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety.

Findings

Information provided by the Department's Site Remediation Program (SRP) indicates that areas within the development area of the site contain contamination associated with the previous use of the site for mining and milling activities. Due to the areas of contamination or special hazard areas on the project site, the requirements of this rule are applicable to the proposed project.

The first area of contamination within the proposed development area consists of a non-PCB leaking transformer. Based on correspondence between DLUR and the Department's SRP in July of 2018, a remedial investigation report (RIR) was submitted for the discharge from the transformer. After review of the RIR by SRP, the remediation of the discharge is considered in compliance with the requirements of SRP regulations. However, a remedial action work plan (RAWP) has not yet been submitted to the Department for review and approval. It is anticipated that the submittal of the RAWP, approval of the RAWP, and the remediation of the discharge would satisfy compliance with the requirements of this rule. However, since the remediation of the spill remains outstanding, the area remains contaminated, and therefore, remains a special hazard area. DLUR cannot yet determine that the construction of the proposed development in a special hazard area would meet the requirements of this rule at N.J.A.C. 7:7-9.39(b).

The second area of contamination is an approximately 40 acre area located within the proposed development area documented with contamination from petroleum and mining tailings, involving radiation contamination from previous mining on the site. Based on correspondence between DLUR and the Department's SRP in July of 2018, the RAWP for the remediation of this area has been approved by the Department. However, concerns over the lack of implementation of the RAWP have been expressed by SRP. The latest information regarding the status of the remediation of this 40 acre area provided to DLUR by SRP indicates that Hovsons has now requested changes to the approved surveying and sampling technique within the RAWP. Although the project does not propose any construction activities within the 40 acre special hazard area, the area remains contaminated, and therefore, remains a special hazard area due to the outstanding implementation of the remediation of this area. In addition, SRP has not approved Hovson's proposal to now change the approved surveying and sampling technique. It is anticipated that once the area is remediated, compliance with the requirements of this rule could be satisfied. However, DLUR cannot yet determine that the construction of the proposed development within the vicinity of this special hazard area would meet the requirements of this rule.

Based on the discussion above, the applicant has not yet demonstrated compliance with the requirements of this rule.

N.J.A.C. 7:7-9.42 Pinelands National Reserve and Pinelands Protection Area

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Appendix, Figure 10, incorporated herein by reference). The "Pinelands Area" is a slightly smaller area within the Pinelands National

Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in November, 1980. Within the Pinelands Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a Pinelands environment...." (Section 8c).

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County

Brigantine City	*Hamilton Township*
Corbin City	*Mullica Township*
Egg Harbor City	*Port Republic*
Egg Harbor Township	*Somers Point City*
Estell Manor Township	*Weymouth Township*
Galloway Township	

Burlington County

Bass River Township	*Washington Township*

Cape May County

Dennis Township	*Upper Township*
Middle Township	*Woodbine Borough*

Cumberland County

Maurice River Township

Ocean County

Barnegat Township	*Lakehurst Borough*
Beachwood Borough	*Little Egg Harbor Township*
Berkeley Township	*Manchester Township*
Dover Township	*Ocean Township*
Eagleswood Township	*South Toms River Borough*
Lacey Township	*Stafford Township*
	Tuckerton Borough

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

1. *Within the Pinelands National Reserve, the Pinelands Commission will serve as a reviewing agency for coastal construction permit applications.*

2. *The Department's Division of Land Use Regulation and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988, Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Department's Division of Land Use Regulation at the address and telephone number set forth at N.J.A.C. 7:7-1.6.*

Findings

The residential and commercial development proposed under this application is located within a 3,924 acre parcel of land in Manchester Township, Ocean County located within the Pinelands National Reserve and outside of the state-designated Pinelands Area. The 1,008 acre proposed development area of the project site is located within the Pinelands Regional Growth Area while the remaining 2,916 acres lies within the Pinelands Forest Management Area. Due to the location of the project site within the Pinelands National Reserve, the project is

subject to compliance with this rule.

As discussed at N.J.A.C. 7:7-9.42(b)1&2, the New Jersey Pinelands Commission serves as the reviewing agency for development located within the Pinelands National Reserve. Coordination between DLUR and the New Jersey Pinelands Commission is undertaken during the review process in accordance with the February 8, 1998 Memorandum of Agreement and subsequent amendments to that agreement. This agreement requires, at a minimum, that DLUR refer to the appropriate Pinelands Capability Maps, consider relevant standards within the Pinelands Comprehensive Management Plan ("CMP"), and consider comments provided by the New Jersey Pinelands Commission. In accordance with this agreement, DLUR requested comments on the project from the New Jersey Pinelands Commission on August 11, 2017.

Comments on the project were received from the New Jersey Pinelands Commission in a memo dated August 20, 2018. The Commission indicated that the project as proposed exceeds the recommended density of 3.5 residential units per acre of developable land within Manchester's Pinelands Regional Growth Area. Based on the acreages provided in the application, the developable area of land on the site is approximately 687 acres once the areas of wetlands, wetland transition areas, wet borrow pits, and contaminated area are eliminated from the 1,008 acre development area. The proposal for 3,862 residential units on approximately 687 acres of land would result in 5.6 residential units per acre of developable land and is not consistent with the residential density standard of the CMP. The comments also indicated that the project, as proposed, is inconsistent with the wetlands protection standards, stormwater management standards, and the threatened and/or endangered species protection standards of the CMP.

The applicant submitted a response to the comments from the New Jersey Pinelands Commission via letter, dated September 5, 2018. The submitted response states the project is not subject to compliance with the requirements of the CMP due to the location of the project outside of the state-designated Pinelands Area. However, N.J.A.C. 7:7-9.42(b) does not require compliance with, but does require coastal development to be consistent with, the intent, policies, and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, which created the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). The DEP previously determined in its Heritage Minerals Site One Final Decision issued by the Commissioner and a preceding administrative decision that consistency, not compliance, is the requirement. Thus, the applicant has not yet demonstrated consistency with the rule.

Finally, with regard to consistency with the objectives of the Pinelands statutes, (N.J.A.C. 7:7-9.42), Hovsons, DEP, the Pinelands Commission, the Pinelands Preservation Alliance and the Environmental Defense Fund previously agreed in 2004 to resolve the then pending litigation based upon 2,450 dwelling units along with some commercial space within the previously disturbed land area, an indicia of consistency with the statutes and compliance with the CAFRA rule.

<u>N.J.A.C. 7:7-13.16 Boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores, and CAFRA Nodes; Non-Mainland Coastal Centers</u>

(i) A site in the CAFRA area may include land in more than one coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node. Where this occurs, the impervious cover limits and vegetative cover percentages appropriate to the respective coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node portions of the site apply.

<u>N.J.A.C. 7:7-13.17 Impervious Cover Limits for a Site in the CAFRA Area</u>

(a) The impervious cover limit for a site in the CAFRA area shall be determined as follows:

3. *If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in the Coastal Metropolitan Planning Area or in a coastal center, the cover limit is determined under (e) below; and 4. If a site is located on a military installation, the impervious cover limit is determined under (e) below;*

(e) If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, is not located in the Coastal Metropolitan Planning Area, and is not located in a coastal center, the impervious cover limit is the limit at (e)1, 2, or 3 below, whichever is higher:

1. *The acreage of the net land area on the site as determined under N.J.A.C. 7:7-13.3(e), multiplied by the impervious cover percentage in Table H below for the Coastal Planning Area in which the site is located; or*

2. *The acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department, excluding any buildings, asphalt and/or concrete paving placed on a site in accordance with (e)3 below; or*

3. *For a marina support facility at a legally existing and operating commercial marina including a marina operated by a public agency, commission or authority, the limit at (e)1 or 2 above or the amount of legal existing impervious cover located on the site, as determined under (g) below, provided the marina support facility is placed on existing legal impervious cover, whichever is higher. For the purposes of this subsection, marina support facilities are boat rack systems, facilities for sewage treatment and marina support buildings. Marina support buildings, include, but are not limited to, showrooms, sheds, restrooms, and buildings for marine supplies, bait and tackle, boat sales, dock masters office(s), and boat repair, maintenance, and manufacturing.*

Findings

The 4,000 acre project site within CAFRA jurisdiction lies within a PA2-Suburban Planning Area within a sewer service area and within a PA5-Environmentally Sensitive Planning Area. The majority of the area proposed for development is located in the Suburban Planning Area within a sewer service area. The remaining area of the site, which would largely remain undisturbed, is located in an Environmentally Sensitive Planning Area. Since the project site is not located within a CAFRA center, CAFRA core, CAFRA node, the Metropolitan Planning Area, or a coastal center, the impervious cover limit would be determined in accordance within N.J.A.C. 7:7-13.17(e). The portion of the site where the proposed residential and commercial development is proposed is largely undeveloped and the project site is not a marina, so the impervious cover limit for the site is determined by N.J.A.C. 7:7-13.17(e)1. In accordance with N.J.A.C. 7:7-13.16(i), the impervious cover limits and vegetative cover requirements apply to each planning area of the site.

In accordance with Table H at N.J.A.C. 7:7-13.17, the impervious cover limit for the portion of the site located within a Suburban Planning Area within a sewer service area is 30% of the net land area of that portion of the site. The most recent impervious cover calculations provided in the revised compliance statement, last revised on June 11, 2018, indicate that the construction of the project within the Suburban Planning Area portion of the site would result in 31.7% impervious cover. This exceeds the permissible 30% impervious cover limit established under Table H at N.J.A.C. 7:7-13.17 for a site or portion of a site within a Suburban Planning Area within a sewer service area.

Based on the above discussion, the proposed project within the Suburban Planning Area of the site exceeds the permissible impervious cover limit and fails to meet these rules. However, based on a review of the impervious cover calculations provided, a reduction in the proposed acreage of impervious coverage by approximately 16.52 acres within the Suburban Planning Area portion of the site would meet this rule.

N.J.A.C. 7:7-13.18 Vegetative Cover Percentages for a Site in the CAFRA Area

(a) The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. *To determine the area (in acres) of tree preservation and/or tree planting on the site:*

i. Determine the location of the site for purposes of determining applicable vegetative cover percentages using the method described at N.J.A.C. 7:7-13.18(b);

ii. Identify the forested or unforested portions of the site, as determined under N.J.A.C. 7:7- 13.5; and

iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the forested site or forested portion as determined under N.J.A.C. 7:7-13.3(e), by the tree preservation percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7-13.3(e), by the tree planting percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

2. To determine the area (in acres) of herb/shrub vegetation preservation or planting on the site, subtract both the acreage of the impervious cover allowed under N.J.A.C. 7:7-13.17 and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site.

Findings

As discussed above, the 4,000 acre project site within CAFRA jurisdiction contains areas located within a PA2-Suburban Planning Area within a sewer service area and within a PA5-Environmentally Sensitive Planning Area. As per N.J.A.C. 7:7-13.16(i), the vegetative cover requirements must be met for each portion of the site. In accordance with Table I at N.J.A.C. 7:7-13.18, forested areas of a site in a Suburban Planning Area within a sewer service area require 35 percent tree preservation. The unforested areas require 5 percent tree preservation or tree planting. A review of submitted vegetative cover calculations in the submitted compliance statement, last revised on June 11, 2018, indicates the application proposes to provide the required 35% tree preservation and 5% tree plantings or preservation on a portion of the site within the Environmentally Sensitive Planning Area, not in the portion of the site within the Suburban Planning Area. Therefore, the applicant is not providing the required 35% tree preservation and 5% tree planting or preservation within the Suburban Planning Area. Thus, the applicant has failed, to date, to meet the vegetative cover percentages specified in Table I at N.J.A.C. 7:7-13.18 for a site located in a Suburban Planning Area within a sewer service area.

Based on the provided vegetative cover calculations, the applicant has not demonstrated that the project meets the vegetative cover requirements and compliance with the rule is not met. However, based on a review of the vegetative cover calculations provided, a reduction in the proposed impervious cover by approximately 16.52 acres as discussed above in conjunction with a proposal to preserve 126.8 acres of forested areas and the preservation of additional forested areas or tree plantings totaling 30.76 acres within the Suburban Planning Area portion of the site would meet the rule requirements.

N.J.A.C. 7:7-14.3 Secondary Impacts

(a) Secondary impacts are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which affect the site and surrounding region.

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy this chapter. The Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas as defined at N.J.A.C. 7:7-9 and to protect and preserve coastal resources.

Findings

Secondary impacts associated with the proposed development as described at N.J.A.C. 7:7-14.3(a) are anticipated by both Hovsons' consultants and the Department due to the significant amount of traffic predicted to be generated along the existing, offsite Colonial Drive roadway extending from the railroad east of Manchester Township High School to the intersection of this roadway at Route 37. Therefore, compliance with the requirements of this rule must be demonstrated.

The submitted Traffic Impact Study indicates that the construction of the proposed project would result in upwards of 14,000 trips per day along this stretch of roadway. Various studies referenced in the October 8, 2018 comments provided by the Division's reviewing biologist advise that more than 2,500 car trips per day on a roadway would likely cause significant mortality to wildlife crossing the roadway while 10,000 car trips per day on a roadway would likely result in the roadway becoming a barrier to wildlife. The anticipated traffic volumes of 14,000 trips per day on the existing, offsite Colonial Drive roadway will result in this roadway becoming a barrier to wildlife passage preventing protected snake species north of the roadway from accessing suitable habitat located on the southern side of the roadway. This isolation and fragmentation of suitable habitat for protected snake species on the north and south side of the existing, offsite Colonial Drive is an adverse secondary impact of the proposed development on suitable threatened and endangered snake species habitat.

In order to alleviate the anticipated isolation and fragmentation of habitat along the existing, offsite Colonial Drive, the Division's reviewing biologist advises that a wildlife passage be constructed under the immediately adjoining Colonial Drive to provide safe passage for protected species between habitats on either side of the roadway. Hovsons has not yet proposed, recommended, or offered under this application to make any improvements to the existing, offsite Colonial Drive, including the construction of a suitable wildlife passage. Without a proposal to provide a safe passage across Colonial Drive for protected species, the Department cannot determine that the secondary impacts resulting from the anticipated traffic increase of the development along the existing, offsite Colonial Drive roadway would meet the requirements of N.J.A.C. 7:7-9.36 and subsequently, the requirements of this rule at N.J.A.C. 7:7-14.3(b).

Additionally, and as discussed below, the project would result in significant adverse impacts to traffic and cause the operation of roadways in the surrounding region in excess of capacity Level D. The applicant has not provided sufficient documentation to demonstrate that the mitigation measures required for the roadways to operate at existing levels of service or above capacity Level D would be implemented and, therefore, the traffic impacts which will occur as a result of construction of the project does not meet the requirements specified at N.J.A.C. 7:7-14.3(b).

Based on the above discussion, the applicant has failed to submit adequate information to demonstrate that the project as proposed complies with the requirements of this rule.

N.J.A.C. 7:7-16.6 Stormwater Management

(a) If a project or activity meets the definition of "major development" at N.J.A.C. 7:8-1.2, then the project or activity shall comply with the Stormwater Management rules at N.J.A.C. 7:8.

Findings

The proposed mixed-use development consisting of a residential and commercial development will involve the disturbance of at least one acre of land and the addition of at least one quarter acre of new impervious surface within the regulated CAFRA area. Therefore, the proposed development would constitute a "major development" as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2. As such, compliance with this rule and the applicable Stormwater Management rules is required. Based on a review of the submitted stormwater management report and project plans by the Division's reviewing engineer, the proposed project does not meet the applicable requirements of the Department's Stormwater Management rules at N.J.A.C. 7:8.

The Stormwater Management rules at N.J.A.C. 7:8-5.6(a)1i requires the use of the USDA's Natural Resource Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless

Unit Hydrograph, for the calculation of stormwater runoff. This methodology, as indicated in the rule, is also described in Technical Release 55 – Urban Hydrology for Small Watersheds (TR-55). A review of the submitted hydrologic calculations reveals that the calculations were performed without considering sheet flow of stormwater which is contrary to the methodology referenced above. In addition, the time of concentration values utilized in the submitted hydrologic calculations are not consistent with the requirements specified in the methodology. Therefore, the calculated stormwater runoff for the proposed development has not been calculated in accordance with the requirements of the Stormwater Management rules.

Additionally, N.J.A.C. 7:8-5.7(a)1 requires that structural stormwater management measures are designed to take into account existing site conditions which can include, but are not limited to, environmentally critical areas, wetlands, flood-prone areas, slopes, depth to seasonal high water table, soil type, permeability and texture, drainage area and drainage patterns, and the presence of solution-prone carbonate rocks such as limestone. Although the depth to the seasonal high water table was accounted for in the design of the structural stormwater management measures, the accuracy of the calculated seasonal high water table could not be determined due to the borings being taken outside of the wet time of the year. Therefore, it cannot yet be determined if the proposed structural stormwater management measures have been designed to accurately account for the depth to the seasonal high water table.

Finally, the maintenance requirements for all proposed stormwater management measures can be found in the Stormwater Management rules at N.J.A.C. 7:8-5.8(a). The applicant has not submitted a detailed maintenance manual demonstrating that the maintenance requirements of N.J.A.C. 7:8-5.8(a) will be implemented. In addition, further clarification has not been provided, as requested, regarding why Manchester Township, instead of the applicant, has been identified as responsible for the maintenance of the stormwater management measures within the proposed development. Therefore, sufficient information has not been submitted to demonstrate that the maintenance requirements at N.J.A.C. 7:8-5.8(a) will be met.

Discussions between the Division's reviewing engineer and the applicant's engineer have been conducted subsequent to the June 22, 2018 additional information submission. Based on those discussions, it appears that changes to the project design could be made to meet the requirements of this rule. If those changes are made, it is likely that a positive finding of compliance with the Stormwater Management rules at N.J.A.C. 7:8 could be made. However, at this time, the project has not been designed to realize the required water quantity, ground water recharge and water quality design and performance standards established by the Stormwater Management rules.

N.J.A.C. 7:7-16.12 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, to the satisfaction of the New Jersey Department of Transportation and/or any regional agencies, as applicable.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

Findings

The development of the project site with 3,862 mixed unit type residential units and 40,000 square feet of commercial space would significantly and adversely impact traffic in the surrounding region. A Traffic Impact

and Air Quality Study, dated July 31, 2017, was submitted with the application for review by DLUR to assess the traffic impact resulting from the proposed project. The below evaluation of capacity levels for movements along identified roadways and intersections for the "Build" scenario (traffic generated by proposed development with no roadway or intersection improvements) and "Build Improved" scenario (traffic generated by proposed development with roadway or intersection improvements) is based upon the information submitted by Hovsons' traffic consultants.

Level of Service In Excess of Capacity Level D with No Improvements (Build Scenario)

In accordance with N.J.A.C. 7:7-16.12(d), development which causes a location on a roadway to operate in excess of capacity Level D is "discouraged." The review of the submitted traffic study and supplemental information indicates that, without intersection improvements, the proposed development would cause some locations on the roadways to operate in excess of capacity Level D or in excess of the current level of service. This analysis is based upon a comparison with the data presented as the "No Build" Levels of Service, except as specifically noted below. These intersections, which are at the boundary of the proposed development or in nearby proximity to the proposed development and identified by Hovsons' own consultant as affected and meriting review include the following:

- Route 70 and Manchester Boulevard. At two of the peak hour times, the Level of Service for the intersection declines from E to F and from D to F, respectively. No mitigation is proposed for these reductions. No additional detail for this intersection was provided in the Build-Improved scenario, as it is stated in the Traffic Study that there are no proposed improvements that would have changed the information provided under this scenario.
- Route 70 and Site Driveway. No Existing or No Build levels of service were provided as this intersection is not currently utilized, nor would it be if the proposed development is not built. While the overall Level of Service at this new intersection is noted as B/B/B, this is predicated upon the widening of Route 70 to include two (2) through lanes in each direction (requiring NJDOT approval) and widening the site driveway by providing one (1) left-turn lane and one (1) shared left/right-turn lane (requiring Pinelands Commission approval) and not currently proposed as part of the submitted application. No additional detail for this intersection was provided in the Build-Improved scenario as it is stated in the Traffic Study that there are no proposed improvements that would have changed the information provided under this scenario.
- Route 37 and Colonial Drive. Multiple movements operate in excess of Level D service, including the overall intersection, which changes from E/D/C to F/F/F. Mitigation is proposed as discussed below in the Build-Improved scenario.
- Colonial Drive and Route 37 eastbound off-ramp. The left-turn movement onto Colonial Drive would deteriorate from B/A/A to D/E/F. No direct mitigation is proposed for these impacts; however, as referenced below in the Build-Improved scenario, it appears that the overall improvements to the Route 37 and Colonial Drive intersection have been considered in arriving at the Build-Improved Level of Service of C/C/D for this off-ramp.
- Colonial Drive and Route 37 westbound off-ramp. The left-turn movement onto Colonial Drive would deteriorate from B/B/B to E/F/F. The proposed mitigation includes the realignment of the off-ramp and the creation of a new signalized intersection to raise the Level of Service to C and D overall, and individual movements to D or better. However, it is not indicated in the submitted Traffic Study, if NJDOT approval is needed, or if these improvements would fall within the jurisdiction of Manchester Township.
- Route 37 and Bone Hill Road/Buckingham Drive. The southbound approach of Buckingham Drive deteriorates from D to E during one of the peak hour periods. Mitigation is proposed as discussed below in the Build-Improved scenario.
- Route 37 and Commonwealth Boulevard. Several movements are operating in excess of Level D service. In addition, the overall Level of Service for the intersection declines from B/D/C to C/F/C. Mitigation is proposed as discussed below in the Build-Improved scenario. However, the Division notes that two (2) movements at this intersection are shown within the submitted Traffic Study as improving from D to C without any mitigation, with no information provided to justify the improvement in the service level.

- Colonial Drive and the Manchester High School Driveway. No Existing or No Build levels of service were provided. In the Build scenario, the intersection will operate at E/F/F for both the left turn and right turn movements. Mitigation is proposed as discussed below in the Build-Improved scenario.

Thus, the intersections above are projected to operate in excess of Level D as a result of construction of the proposed mixed-use residential and commercial development.

Level of Service In Excess of Level D even with Improvements (Build-Improved Scenario)

With the completion of the traffic mitigation improvements presented in the submitted study prepared by Hovson's own traffic consultants, again as compared with the data presented as the "No Build" Levels of Service except as specifically noted below, the following locations on the roadways would still operate in excess of Level D in violation of the CAFRA standard or, if the movements already are in excess of Level D, the existing level of service would be reduced:

- Route 37 and Colonial Drive. The proposed mitigation includes adding two (2) lanes to the Route 37 approaches (1 eastbound and 1 westbound), widening northbound Colonial Drive to four (4) lanes, and widening southbound Colonial Drive to five (5) lanes. However, two (2) movements within this intersection will continue to operate at F even with the proposed mitigation. Further, the proposed mitigation requires the approval of NJDOT.
- Route 37 and Bone Hill Road/Buckingham Drive. The proposed mitigation includes signal timing modifications which require NJDOT approval. However, even with those modifications, one of the southbound approach movements will remain at E and one of the northbound approach movements will change from D to E.
- Route 37 and Commonwealth Boulevard. The proposed mitigation includes signal timing modifications which require NJDOT approval, and improvements to the southbound approach which were not detailed in the submission. However, even with those modifications, one of the northbound approach movements will remain at E, while another will change from D to E.
- Colonial Drive and the Manchester High School Driveway. The proposed mitigation includes a new stop-controlled intersection and "updated access"; however, no details were provided on the "updated access". Even with those modifications, all intersection movements will remain at E/F/F.

Based on the information provided in the traffic study by Hovson's own consultants, the proposed construction of 3,862 mixed unit type residential units and 40,000 square feet of commercial space would result in a decrease in the existing level of service or result in service in excess of Level D for various roadway movements even with the completion of the proposed traffic mitigation improvements and would not comply with the requirement specified at N.J.A.C. 7:7-16.12(d).

Traffic Analysis

DLUR has contracted with traffic engineers affiliated with Rowan University who have reviewed the submitted Traffic Impact and Air Quality Study. On August 1, 2018, DLUR asked Hovsons to submit additional information needed for the review of the Traffic Impact and Air Quality Study. The requested information was submitted to DLUR on August 13, 2018 for review. Upon reviewing the submitted traffic study and additional information, the Division's contracted traffic engineers identified several inaccuracies as well as information missing from the submitted traffic study prepared by Hovson's own traffic consultants making an accurate analysis of traffic generation from the proposed project infeasible. In order for an accurate analysis of traffic generation resulting from the proposed construction of the 3,862 mixed unit type residential development as proposed and 40,000 square feet of commercial space, a new traffic and air quality study accounting for the discrepancies identified below would need to be submitted to DLUR for review.

The Division's contracted traffic engineers acknowledge that the Synchro files for all traffic scenarios were provided. However, neither the traffic study nor the additional information provided included information on

existing traffic signal timing utilized in the traffic analysis completed by Hovsons' traffic consultants. This information is significant as a change in the traffic signal timing may impact performance of an intersection. The traffic impact study should be revised to utilize the modified trip rates in order to accurately analyze traffic generation resulting from construction and occupation of the proposed residential development. Please note that should the traffic analysis be revised, the New Jersey Department of Transportation (NJDOT) has modified the Highway Access Permit System (HAPS) trip rates for the year 2018 in comparison to those specified in 2017.

Additionally, the traffic volumes which were input into the Synchro roadway network do not appear to be accurate. This would result in either an under- or overestimation of the performance of intersections and would affect other intersections' performance estimation. Also, the figures, specifically those concerned with roadway network, provided in the submitted traffic impact study prepared by Hovsons' traffic consultants do not match the relevant and submitted Synchro files.

Finally, the Division's contracted traffic engineers were unable to reverse engineer the traffic distribution and assignment processes due to discrepancies identified in the provided trip calculations as well as the lack of associated explanations and justifications for these discrepancies. The majority of the trip calculations performed by the Division's contracted traffic engineers were higher than those presented in the traffic study by Hovson's own traffic consultants. Therefore, an accurate analysis of the traffic generation resulting from the project as proposed cannot yet be made. As indicated above, a revised traffic impact and air quality study with detailed information on trip distribution and trip assignment processes coupled with appropriate demonstrative figures, justifications, and citations is necessary.

Based on the above analysis of the submitted traffic study prepared by Hovsons' own traffic consultants, the proposed construction of a residential and commercial development on the project site does not meet the requirements of this rule.

RECOMMENDATIONS AND CONCLUSION

Based on the above analysis, the applicant has failed, to date, to demonstrate that the construction of the proposed project would meet regulations in the Coastal Zone Management Rules at N.J.A.C. 7:7-1.1 et seq., last amended September 5, 2018, and Section 10 of CAFRA (N.J.S.A. 13:19-10), or meet regulations in the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-1.1 et seq., last amended April 16, 2018. Accordingly, the CAFRA Individual Permit and Freshwater Wetlands General Permit 11 application is hereby denied.

If you or anyone is aggrieved by this permit decision, an administrative appeal may be filed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7-28 and Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-21.

Any interested person who considers himself or herself aggrieved by this permit decision may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, 401 East State Street, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist. The Checklist is available through the Division's website at http://www.nj.gov/dep/landuse/forms.html. The DEP Bulletin is available through the Department's website at http://www.nj.gov/dep/.

I am sharing a copy of the denial with the appropriate local and federal agencies to promote inter-governmental cooperation in managing natural resources.

If you have any questions on this decision, please contact Lindsey J. Davis of my staff in writing at the above address, by telephone at (609) 633-2289, or via email at Lindsey.Davis@dep.nj.gov.

Sincerely,

Diane Dow, Director
Division of Land Use Regulation
New Jersey Department of Environmental Protection

cc: Bureau of Coastal and Land Use Enforcement, Toms River
Manchester Township Municipal Clerk and Planning Board
Applicant (original sent to Agent)