



## NJ PINELANDS COMMISSION

### THREATENED AND ENDANGERED SPECIES DEED RESTRICTION

#### SAMPLE LANGUAGE

##### **Instructions for Applicant:**

Fill in the requested information prior to submitting the deed restriction for recordation by the County Clerk's office. Be sure to include Schedules A and B, including the metes and bounds description of the overall parcel and the metes and bounds description of the portion of the parcel to be restricted for the protection of threatened and endangered species. We recommend that you submit the draft deed to the Pinelands Commission for approval prior to having it recorded.

The Commission will accept as evidence of recordation a copy of the deed restriction that is stamped as received by the County Clerk's office and accompanied by the receipt from the County Clerk's office.

The sample language is applicable in most situations. However, prior to recording the deed restriction, please confirm with your municipality that the sample language provided here will satisfy their requirements as well.

PREPARED BY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

DEED RESTRICTION  
FOR THREATENED AND ENDANGERED SPECIES

THIS INDENTURE dated \_\_\_\_\_, 20\_\_\_\_\_

Made by:

\_\_\_\_\_ (Name of landowner(s))

\_\_\_\_\_ (Landowner address(es))

\_\_\_\_\_

\_\_\_\_\_

(hereinafter referred to as GRANTOR);

In favor of The State of New Jersey, Department of Environmental Protection, a principle Department in the Executive Branch of the State of New Jersey, having an address at 401 East State Street, Trenton, New Jersey 08625 and the Township of \_\_\_\_\_, an incorporated municipality located within the County of \_\_\_\_\_, State of New Jersey, having an address of \_\_\_\_\_ (address of municipal office) (hereinafter referred to as GRANTEES).

This transfer is made for no monetary consideration.

WITNESSETH:

WHEREAS, GRANTOR is the owner of certain real property known and designated as Block \_\_\_\_\_, Lot \_\_\_\_\_ on the tax map of the Township of \_\_\_\_\_

\_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey (hereinafter the “Parcel”), which property is described in the Schedule A annexed hereto; and

WHEREAS, the GRANTEES consist of a principal Department of the Executive Branch of State Government charged with the responsibility to formulate comprehensive policies for the conservation of the natural resources of the State, including protection of threatened and endangered species and their associated habitat, the promotion of environmental protection and the prevention of pollution of the environment of the State (N.J.S.A. 13:1D-9) and a municipal body whose intent is to preserve and protect certain lands within the municipality that constitute apparent critical habitat for threatened and endangered species, respectively; and

WHEREAS, the GRANTOR on \_\_\_\_\_, 20\_\_\_\_\_ submitted a development application to the Pinelands Commission, Application No. \_\_\_\_\_; and

WHEREAS, in the course of reviewing this development application, the New Jersey Pinelands Commission has determined that it appears that critical habitat for certain designated threatened or endangered species is located on the Parcel; and

WHEREAS, in order to demonstrate that the proposed development complies with the requirements of the Pinelands Comprehensive Management Plan and the Township of \_\_\_\_\_’s certified land use ordinances regarding threatened and endangered species and their habitat, the GRANTOR proposes to deed restrict from development as defined in the Pinelands Comprehensive Management Plan a portion of the Parcel. The area to be restricted consists of:

(*narrative description*), which is described in Schedule B annexed hereto; and

WHEREAS, through deed restricting the portion of the Parcel identified in Schedule B, the apparent critical habitat located on the Parcel should be protected;

NOW, THEREFORE, in consideration for the foregoing, the covenants and agreements contained herein and other good and valuable consideration, the GRANTOR, for itself, its successors and assigns, hereby grants, bargains, conveys, transfers and assigns to the GRANTEES, their successors and assigns, in perpetuity, the following conservation restrictions on the portion of the Parcel described in Schedule B:

1. Structure or structures shall not be constructed, built, installed, placed, erected, assembled, manufactured, fabricated, altered, enlarged, maintained, repaired, renovated or replaced on, above, or beneath the surface of the portion of the Parcel described in Schedule B. The term “structure” means a combination of materials to form a construction, fabrication, or any thing of human manufacture, for temporary or permanent occupancy, use or ornamentation having a fixed location on, above, or below the surface of the land.
2. The surface topography and natural features of the portion of the Parcel described in Schedule B shall not be disturbed or altered.
3. Trees, shrubs, native plants, vegetation or other plant material shall not be cut, destroyed or removed from the portion of the Parcel described in Schedule B, except that dead, fallen, diseased or infected tree limbs or other vegetation that pose a health or safety hazard may be trimmed or removed.
4. Invasive or non-native species shall not be planted on the portion of the Parcel described in Schedule B.
5. No alteration to the landscape, including vegetation removal, except as authorized in N.J.A.C. 7:50-6.124 regarding fire protection, or planting of additional vegetation shall occur on the portion of the Parcel described in Schedule B.
6. No other activity shall be conducted on, or use made of, the portion of the Parcel described in Schedule B that is likely to have an adverse impact on the apparent critical habitat for threatened or endangered species located on the Parcel.
7. Nothing contained herein shall be construed to convey to the public any right of access to or use of the Parcel, and the GRANTOR shall, subject to Paragraph 8 hereof, retain the exclusive right of access to and use of the Parcel.
8. To accomplish the purposes of this Deed Restriction, the GRANTOR grants the following rights to the GRANTEES, their employees, agents, representatives, successors and assigns and to the New Jersey Pinelands Commission, which is a special beneficiary of the Deed Restriction, its employees, agents, representatives, successors and assigns:

- (a) To have access and enter upon at all reasonable times to inspect the portion of the Parcel described in the attached Schedule B and to enforce the terms of this Deed Restriction, provided, however, that except in cases in which immediate entry is required to prevent, terminate or mitigate any violation of this Deed Restriction, such entry shall be made upon 24 hour prior notice to the GRANTOR, and to the daylight hours on regular business days of the week;
  - (b) In addition to the exercise of any statutory or common law right, to enforce this Deed Restriction by means of any remedy provided for herein or available at law or equity, including but not limited to enjoining any activity on, or use of, the portion of the Parcel described in the attached Schedule B that is inconsistent with the purpose of this Deed Restriction;
  - (c) To require GRANTOR or third persons to restore any portion of the Parcel described in the attached Schedule B, or any portion thereof, as may be damaged by an inconsistent use or activity; and
  - (d) To protect and preserve the portion of any parcel described in the attached Schedule B, and in connection therewith, to determine the consistency of any activity or use for which no express provision is made herein with the purposes of this Deed Restriction.
9. GRANTOR intends that enforcement of the terms, covenants, conditions, and restrictions of this Deed Restriction shall be at the discretion of the GRANTEES and the New Jersey Pinelands Commission, which is a special beneficiary of this Deed Restriction, their successors or assigns, and that any forbearance on behalf of the GRANTEES or the New Jersey Pinelands Commission, their successors or assigns, to exercise their rights hereunder in the event of any breach by the GRANTOR or third persons shall not be deemed or construed to be a waiver of the GRANTEES' or the New Jersey Pinelands Commission's rights granted hereunder in the event of any subsequent breach, regardless of the number of breaches or the length of time this Deed Restriction remains unenforced.
10. The terms, covenants, conditions, and restrictions of this Deed Restriction shall run with the land and shall be binding, in perpetuity, upon the GRANTOR, its successors or assigns, and all entities having or acquiring any right, title or interest in the portion of the Parcel described in the attached Schedule B, or any portion thereof.

11. This instrument shall be recorded in the Office of the Clerk of \_\_\_\_\_ County and a reference to this instrument shall be contained in a separate paragraph of any future deed, lease, or document of transfer or conveyance affecting the Parcel described in Schedule A, of which the restricted portion is a part. GRANTOR shall give written notice to the GRANTEES of any such transfer or conveyance of interest in the Parcel described in Schedule A prior to or within ten (10) days following such transfer or conveyance. Such notice shall include the name and address of the recipient/owner of such interest. GRANTOR shall provide a copy of this instrument to all subsequent recipients/owners of an interest in any part or the entire Parcel. The failure of the GRANTOR to perform any act required by this Paragraph shall not impair the validity of this instrument or limit its enforceability in any way.
  
12. The GRANTOR reserves the right to submit threatened and endangered species survey work for the species of concern in an attempt to demonstrate the no portion of the parcel described in Schedule A is critical habitat for that species of concern. The Commission staff shall review the survey work that is submitted and determine whether it concurs that the survey work submitted demonstrates that no portion of the parcel described in Schedule A that is necessary for the survival of any local populations of threatened or endangered species of plants of the Pinelands or habitat critical to the survival of any local populations of threatened or endangered animal species. If it is determined that no portion of the Parcel constitutes necessary or critical habitat for threatened or endangered plants or animal species, respectively, the Commission staff shall issue a letter specifically stating so. Upon receipt of such a letter, the GRANTOR may take any necessary actions to remove this Deed Restriction and the Commission staff will not object to such actions.
  
13. If any provision of this Deed Restriction is held invalid as a result of its conflict with any federal, state, or local law, regulation, or other requirements, statutory or administrative, the remainder of this Deed Restriction shall not be affected thereby.
  
14. The following schedules and exhibits are annexed hereto and shall form a part of this Deed Restriction:  
  
Schedule A: Metes and Bounds Description of the Parcel  
Schedule B: Metes and Bounds Description of the Portion of the Parcel Subject to the Development Restrictions

IN WITNESS WHEREOF, and intending to be legally bound, the GRANTOR has executed this indenture.

By: \_\_\_\_\_  
Witness

By: \_\_\_\_\_  
GRANTOR

By: \_\_\_\_\_  
GRANTOR

STATE OF NEW JERSEY, COUNTY OF \_\_\_\_\_ SS:

I CERTIFY that on \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_ personally came before me and acknowledged under oath, to my satisfaction that this person (or if more than one, each person):

- (a) Is named in and personally signed this document; and
- (b) Signed, sealed and delivered this document at his or her act and deed; and
- (c) This transfer is made for no monetary consideration.

Signed and Sworn to before me on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of attesting witness

\_\_\_\_\_  
Print name of attesting witness