

**MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
THE NEW JERSEY PINELANDS COMMISSION**

PURPOSE

This Memorandum of Agreement between the Department of Environmental Protection (hereinafter "Department") and the New Jersey Pinelands Commission (hereinafter "Commission") is intended to delegate the Department's power to the Commission to approve or disapprove certain minor stream encroachment permit applications pursuant to the Flood Hazard Control Act, N.J.S.A. 58:16A-50 et. seq.

This agreement does not create any substantive standards under which stream encroachment activities will be regulated in the Pinelands Area or impose any legal obligations on the public. It is solely intended to describe and allocate pre-existing areas of regulatory responsibility to avoid unnecessary duplication between the Commission and Department.

The Pinelands Commission which was mandated by the National Parks and Recreation Act of 1978 Public Law 95-625 and which was created by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., was required to develop and implement a comprehensive management plan to protect, preserve and enhance the land and water resources of the Pinelands Area.

The Commission is the entity authorized to exercise all powers and duties to effectuate the purposes and provisions of the Pinelands Protection Act of 1979, N.J.S.A. 13:18A-1 et seq., the Commission permitted to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Commission or to carry out any power expressly given in the Pinelands Protection Act.

MUTUAL AGREEMENTS

1. The Commission, on behalf of the Department, shall administer a process within the Pinelands Area whereby, the Commission will review and process applications for certain minor stream encroachment activities. The authority delegated to the Commission is limited only to the approval, approval with conditions, denial and enforcement of the following minor stream encroachment activities:
 - a. Construction of foot bridges
 - b. Construction of utility line crossings
 - c. Minor grading work

This delegation, however, shall not apply when the proposed activity does not require an application to the Commission pursuant to N.J.A.C. 7:50-4.1(a) or when the proposed activity requires an individual fresh water wetlands permit action pursuant to the Fresh Water Wetlands Protection Act.

2. The Commission shall make all decisions relating to Stream Encroachment Permit Applications utilizing the Flood Hazard Regulations (N.J.A.C. 7:13-1.1 et seq.) and standards adopted by the Department for administration of this program including 90 day construction permit rules, N.J.A.C. 7:1C-1.1 et seq. These standards are summarized in the attached Review Criteria and appendices.
3. The Department shall review this delegation on an annual basis and may revoke this delegation for failure to properly administer the delegated powers. This agreement shall otherwise remain in effect until amended or terminated by either party upon sixty (60) days written notice.
4. Any applicant or person claiming to be adversely affected by any action taken by the Commission pursuant to the authority delegated by this agreement may appeal to the Department. Provided that the appeal relates to issues that arise under the Stream Encroachment rules, the Department will handle the appeal as provided for Section 7:13-4.10 of the regulations. In accordance with N.J.S.A. 13:18A-10.c and the Pinelands Comprehensive Management Plan (CMP), no approval shall be granted or other action taken as a result of any such appeal to authorize any regulated activity which would be inconsistent with the CMP, and any challenge to any decision to issue or deny a permit made by the Commission staff which is based on the consistency of the proposed development with the CMP shall be made in accordance with the provisions of the CMP.
5. A review fee of \$300.00 for each element of the delegated activity shall be charged to the applicants. The Commission shall transfer (20) percent of the review fee collected to the Department's account on an annual basis. This is necessary to monitor the overall program and to cover expenses involving appeals.
6. The Commission shall forward a copy of all the permits and the approved plans to the Department, as and when the permits are issued.
7. The Department shall provide the Commission with a copy of the Stream Encroachment manual and any standard forms or checklists used by the Department in the processing of minor Stream Encroachment applications.
8. Persons seeking an emergency permit waiver for situations which threaten the public health, safety and welfare and require emergency work shall obtain approval of the proposed work pursuant to the provisions of the CMP. Upon approval of the project pursuant to the CMP,

the applicant shall be directed to contact the Department to request verbal authorization pursuant to N.J.A.C. 7:13-4.6(c). For any activity that requires application to the Commission, no work may commence unless it has been approved pursuant to the provisions of the CMP.

9. Except for development activities that do not require an application to the Commission pursuant to N.J.A.C. 7:50-4.1(a), the Commission shall be primarily responsible for the initial investigation of any complaint alleging a violation of the Stream Encroachment requirements at sites located within the Pinelands Area. For violations involving activities that will not be resolved by the Commission's issuance of a minor stream encroachment permit, the Department shall be primarily responsible for the field investigation upon receiving the necessary information from the Commission regarding the potential violation. In all cases, the Department shall be responsible for issuing all Notices of Violation and for the assessment for civil penalties, the filing of an action for civil penalties, and the petitioning of the Attorney General to bring a criminal action pursuant to N.J.S.A. 58:16A-63.
10. The Department and Commission agree to jointly develop a process to record, track, and quantify information about regulated activities authorized by the Commission, violations of the State program, and any other information deemed necessary by either agency. The Commission will provide an annual report for the Department of all permitting and enforcement activities undertaken during the reporting period. The reports will be provided to the Administrator, Land Use Regulatory Program and the Administrator, Coastal and Land Use Enforcement.
11. This Memorandum of Agreement shall become effective upon approval by the authorized representatives of both parties and after the conclusion of the Governor's review period of the Commission's minutes.

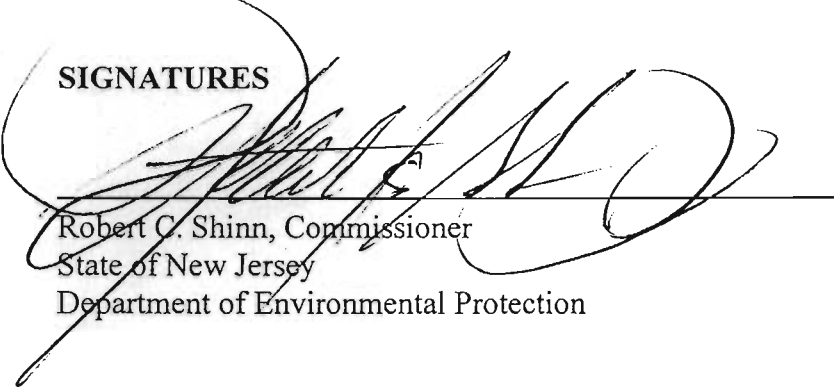
SEVERABILITY

If any section or clause of this agreement, or application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgement shall be confined in its operation to the section, clause or application directly involved in the controversy in which such judgment shall have been rendered, and it shall not affect or impair the remainder of this agreement or the application thereof to other persons.

REVISIONS

Revisions and amendments to this MOA may be made when deemed necessary by the Department or Commission. Any such revisions or amendments to this document shall become effective upon the mutual agreement of the Commissioner of the Department or his designee and the Commission.

SIGNATURES



Robert C. Shinn, Commissioner
 State of New Jersey
 Department of Environmental Protection

6/1/98
 Date

Approved as to form by:

 Deputy Attorney General

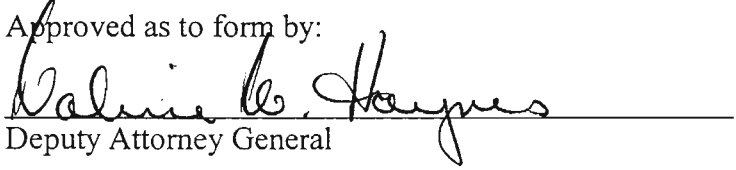


Terrence D. Moore, Executive Director
 Pinelands Commission

 Date

10/2/98
 Date

Approved as to form by:



Deputy Attorney General

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 Date

2/27/98

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REVIEW CRITERIA

The detailed review and approval criteria for each of the three delegated activities are given in Appendix A through Appendix D. The approved engineering plans must depict the relevant items given in the appendix and also indicate the following:

1. All existing structures on the lot and immediately adjacent lots.
2. Distances and dimensions of areas, including freshwater wetland and State open waters and ordinary high water line (if appropriate), lots, upland properties and utility lines.
3. The general site location in relation to development in the region.
4. The scale of the plan and North arrow.
5. The name of the person who prepared the plans and the date of preparation with seal and signature of a New Jersey Professional Engineer.
6. The name of the applicant and municipal lot and block numbers, municipality and county.
7. The vertical datum must be based on N.G.V.D. 1929. Other datum used must include N.G.V.D. conversion factors.
8. Wherever grading is proposed, the proposed and existing contours must be shown.
9. All building elevations must be labeled as "lowest floor". Other descriptions are not acceptable.

APPENDIX A

FOOTBRIDGES

1. The low chord of the footbridge is at or above the flood hazard design elevation or at least one foot above the 100 year flood elevation. If the footbridge extends below the flood elevation, it must be designed to minimize obstruction to flow and must meet the following criteria;
 - A. Open hand rails are proposed instead of a solid parapet.
 - B. No fill is placed in the floodplain for the construction of the approaches to the footbridge.
 - C. If the stream does not have a flood study, it has been designed to comply with (A) above, and no fill or new obstruction to flow must be caused by the approaches.
 - D. Footings and or abutments are proposed outside the stream channel.
2. Footbridge is a maximum of six feet wide.
3. Footings for the footbridge extend a minimum of three feet below the invert of the stream channel, or three feet below grade if they are located farther than 10 feet beyond top banks.
4. Topography in the immediate vicinity of the proposed footbridge must be shown on plan and must be in N.G.V.D.
5. Regardless of whether topography is submitted, a surveyed cross section of the stream channel must be provided at the proposed footbridge. The cross section must show:
 - A. Elevations of the low chord, deck, top of handrail, the stream channel and immediate overbanks.
 - B. The entire footbridge including footings, ramps, etc. is shown on cross-section. More details of the footings, handrails, etc. may be shown elsewhere on the drawing.
6. Timing restrictions must be imposed in accordance with Appendix D.

APPENDIX B

MINOR GRADING

1. The site is located in a flood plain of either a delineated stream or an area covered by a detailed flood insurance study.

A copy of the plan and profile of the appropriate study with the Point in Question clearly marked on each is submitted with application. (If an adopted State study exists for the stream, it must be used in lieu of a flood insurance study.)

2. Complete existing and proposed topography, in N.G.V.D., is shown on the submitted site plan. A limit of disturbance line is also shown on said plan.
3. Any proposed fill is located outside the floodway. If the floodway is located on the project site, a stream encroachment line has been established with metes and bounds and tied into the upstream and downstream property lines.
4. Only excavation is proposed inside the floodway.
5. Proposed grading does not impede positive drainage.
6. No fill is imported into the flood plain for proposed grading unless it is obvious by inspection that the proposed fill and existing fill is less than the allowable 20% net fill limit.
7. No vegetation is disturbed within 25 feet of stream bank except where necessary for the conduct of the project.
8. The grading is limited to 5,000 square feet.
9. Timing restrictions must be imposed in accordance with Appendix D.

APPENDIX C

UTILITY LINES AND CROSSINGS

1. Underground utility crossings satisfy all requirements of the Flood Hazard Area Regulations (N.J.A.C. 7:13-2.10).
2. Above ground utility crossings satisfy all requirements of the Flood Hazard Area Regulations (N.J.A.C. 7:13-2.11).
3. A cross-section through the crossing has been provided which clearly notes vertical clearance, encasement, horizontal clearance, slopes, location of manholes, etc. The top of banks are clearly noted as top of bank on cross-sections. These top of banks reflect the top of bank of stream channel under flooding conditions.
4. A separate detail of the proposed encasement for sanitary sewer, petroleum or gas lines has been provided.
5. If a crossing is proposed to be attached to an existing bridge, it is attached to the downstream face of the structure and does not cause an obstruction to flow. If it is attached to the upstream face of the bridge, it has been protected with a protective structure.
6. All manholes located in the flood plain are clearly noted as having watertight manhole covers. Manholes located in the floodway are flush with existing grade.
7. Outside of existing paved roadways, the limit of disturbance area is not more than 20 feet wide and a note has been included on the drawings that no disturbance is proposed outside the limit of disturbance lines shown.
8. No more than one acre of land is disturbed outside of existing paved roadways. All areas within the limit of disturbance lines have been assumed to be disturbed when calculating the one acre disturbance.
9. Timing restrictions must be imposed in accordance with Appendix D.

APPENDIX D

TIMING RESTRICTIONS

Construction activities which involve disturbance of banks or activities which introduce sediment into the channel and cause an increase in the natural level of turbidity are subject to timing restrictions as given below. No construction shall be permitted during the restricted period.

Timing Restrictions (N.J.A.C. 7:13-3.5, -3.6) - The following are the most up-to-date restrictions and supersede previous dates:

<u>Trout Production</u>	<u>Dates</u>
general	September 15 - March 15
brook trout	September 15 - March 15
brown trout	September 15 - March 15
rainbow trout	February 1 - April 30
 <u>Trout Maintenance</u>	 March 15 - June 15
 <u>Trout Stocked</u>	 March 15 - June 15
 <u>Anadramous</u>	 April 1 - June 30
Delaware River projects	September 1 - November 30
 <u>Warm Water</u>	
general game fish	May 1 - June 30
pickerel	Ice out - April 30
walleye	March 1 - May 30

Note: 182 days is the maximum amount of time restrictions that can be imposed pursuant to the Stream Encroachment Rules (7:13-3.5, -3.6). The Pinelands Commission may impose additional timing restrictions if necessary to meet the requirements of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-1.1 et seq.)