

SUMMARY OF TERMS OF SETTLEMENT IN THE MATTER ENTITLED IVELIN L.P
AND IVA SAMOST v. STATE OF NEW JERSEY, PINELANDS COMMISSION ET AL.
THAT THE PINELANDS COMMISSION STAFF IS RECOMMENDING BE PRESENTED
TO THE PINELANDS COMMISSION FOR ITS CONSIDERATION

October 27, 2004

I. Georgia O'Keefe Road

1. Ivelin L.P. agrees, for itself and its successors and assigns, to modify the portion of Georgia O'Keefe Way within Section 7 of the Sanctuary to install single box culverts (dimensions 4 feet tall by 12 feet wide with a 6 inch spacer) adjacent to the existing five round culverts.
2. Sand and pine needles will be distributed across the bottom of the entire length of each box culvert to approximate a surface comparable to the land surface adjacent to the culverts.
3. Culverts may be installed within swales that are below existing grade, but the culverts must be installed so that no standing water forms within the culverts.
4. The existing hardware cloth fencing that extends on either side of Georgia O'Keefe Way from the end of the dam on the southeast side of the lake to the beginning of development (Block 89.05, lot 43) will be replaced with a solid, smooth, durable barrier that does not contain any gaps, such as sheets of vinyl piling. This barrier will be installed one foot or more below the soil surface with four feet of material remaining above ground. In addition, the barrier will be installed so that it is tied into the culverts so that no gaps are present between the culvert openings and the barrier. The purpose of the barrier is to funnel animals into the culverts and away from the road.
5. Sand will be backfilled along the road side of the barrier to the top of the barrier so that wildlife that do happen to access the road can easily get off without being inhibited by the barrier. Any vegetation located adjacent to the barrier shall be trimmed to prevent animals from circumventing the barrier through such mechanisms as overhanging limbs or vines.
6. Detailed engineering drawings of the roadway showing the solid, smooth durable barrier and culvert design shall be submitted to and approved by the Commission's Executive Director prior to commencement of any construction.
7. With the enhancements delineated above, the Pinelands Commission will permit Georgia O'Keefe Way to be finished and opened to traffic as provided in the final

approvals issued by the Evesham Township Planning Board.

8. Ivelin, upon completion of the Sanctuary, agrees to be responsible for or to cause their successors or assigns to be responsible for maintaining the box culverts and solid, smooth, durable barriers installed on Georgia O'Keefe Way, and for insuring that any vegetation bordering the roadway is periodically trimmed to prevent animals from circumventing the barriers by means of overhanging limbs or vines. Ivelin agrees to notify the Pinelands Commission if it transfers the above responsibilities to any successor or assignee so that the Commission may coordinate any necessary maintenance with the responsible party.

II. Block 89.11, Lot 14

1. In the event that Ivelin regains ownership or control of Block 89.11, Lot 14, Ivelin agrees to withdraw any pending request for a building permit for lot 14, and to file a deed restriction and access agreement for lot 14 prohibiting the erection of any structures, any site preparation, clearing, disturbance or development of any kind on this lot and maintaining lot 14 in its natural condition in perpetuity.
2. After filing the deed restriction and access agreement, Ivelin will transfer Block 89.11, lot 14 to the Sanctuary Homeowner's Association for \$1.00. Block 89.11, lot 14 will then become part of the Sanctuary's Open Space.¹
3. In addition, the deed restriction and access agreement will indicate that an access agreement is granted to permit entry for the Pinelands Commission or its agents upon the common open space owned or to be owned by the Sanctuary Homeowner's Association for the purpose of observing, monitoring and/or managing any threatened or endangered plant or animal species found or located within such open space.
4. In addition, prior to the transfer of lot 14, Block 89.11, Ivelin will survey and cause to be installed visible monuments marking the corners of the property lines for lot 14.
5. A draft of this deed restriction and access agreement must be provided to the Executive Director of the Pinelands Commission for approval prior to filing.

III. Block 89.11, Lot 13

1. In the event that Ivelin regains ownership or control of Block 89.11, Lot 13, Ivelin agrees to enter into a deed restriction and access agreement for Block 89.11,

¹The adjacent lot 15 has already been preserved through agreement with Signature Homes.

lot 13, in order to create a 20-foot wide open space area on the side of this property that adjoins lot 14. This deed restriction and access agreement will prohibit the erection of any structures or improvements of any kind in this 20-foot wide area. In addition, the deed restriction and access agreement will indicate that an access agreement is granted to permit entry by the Pinelands Commission and its agents upon this 20-foot wide open space area for the purpose of observing, monitoring and/or managing any threatened or endangered plant or animal species found or located within this open space.

2. A draft of the deed restriction and access agreement must be provided to the Executive Director of the Pinelands Commission for approval prior to filing.
3. Ivelin further agrees not to transfer Block 89.11, lot 13 to a third-party purchaser until after the deed restriction and access agreement are filed with the County of Burlington.
4. Ivelin also agrees that prior to the sale of either lot 13, Block 89.11 to a third-party purchaser, Ivelin will survey and cause to be installed visible monuments to mark the corners of the 20-foot wide easement along the front and rear property lines of lot 13.

IV. Removal of Stockpiled Soils and Any Woody Debris Piles on Block 89.11, Lots 13 and 14 and Construction Timing Restrictions for Block 89.11, Lot 13

1. Any soil stockpiled on Block 89.11, lots 13 or 14 shall be removed between December 1, 2004 and March 1, 2005.
2. Any woody debris piles located on Block 89.11, lots 13 or 14 at or near the toe of slope shall not be disturbed between the period of October 1 through July 15 to protect potential pine snake denning and nesting activities which may be occurring in the vicinity of these lots.
3. The removal of debris from Block 89.11, Lot 14 may only occur upon submission of a plan for such removal and approval of that plan by the Executive Director of the Pinelands Commission.
4. Prior to commencing the removal of stockpiled soil or the woody debris piles, an area with a radius of 50 feet from the nest site shall be flagged. No heavy equipment may be used, located or stored within this area. In addition heavy equipment may not be used on the southwesterly side of the sand pile between the sand pile and the location of the pine snake nest.
5. Site clearing, excavation, earth disturbance and grading of Block 89.11, lot 13

shall not occur between the period of October 1 through July 15 to protect potential pine snake denning and nesting activities which may be occurring in the vicinity of lot 13. This restriction shall only be applicable until lot 13, together with the residential structures constructed thereon, is transferred to the homeowners of the improved property.

V. Threatened or Endangered Species Discovered During Development

1. Ivelin agrees that if any threatened or endangered species are discovered during the course of grading, land preparation or construction activities at the Sanctuary, such activity will cease for a period of at least 72 hours, while it contacts, via telephone and fax, the NJDEP, Endangered and Nongame Species Program, or its designee, so that the NJDEP or its designee can take further action to prevent harm to that threatened or endangered species.

VI. Contribution for Natural Resource Monitoring and Planning Activities

1. Ivelin agrees to make a one-time contribution of \$75,000 to the Pinelands Commission. The Commission may use these funds for natural resource monitoring and planning activities within the Pinelands.
2. The Pinelands Commission will agree, however, not to use these funds or any portion thereof, to conduct additional threatened and endangered species surveys at the Sanctuary.

VII. Existing Snake Fence

1. Ivelin agrees to be responsible for the removal of or to cause its successors and/or assigns (including as applicable DiLullo and/or the Sanctuary Homeowner's Association but without limitation to those entities) to remove all snake fencing installed within the Sanctuary pursuant to the Previous Rattlesnake Settlement, whether such fence was installed by Ivelin, the developer of the Sanctuary or by the Pinelands Commission.
2. In the alternative, should Ivelin or any successor desire to retain the fencing, that entity shall be solely responsible for maintenance and upkeep of the fencing, and shall not allow it to fall into disrepair.

VIII. John James Audubon Way

1. In the event the Commission determines to recommend to Evesham Township that traffic calming measures should be implemented on John James Audubon Way from the southwesterly side of Block 89.11, lot 13 to the northeasterly side of

Block 89.11, lot 18, Ivelin and its successors will not oppose such measures.

IX. Resolution of the Call-Up Process as to Ivelin

1. The Pinelands Commission agrees to issue a letter of no further review for the amended final subdivision approvals and other approvals for Sections 6 and 8 of the Sanctuary upon receipt of the following: 1) recorded copies of the required access agreements; 2) a recorded copy of the stormwater management easement for each Section; and 3) approval from the Evesham Township Planning Board's engineer of the relocation of the outfall structure for basin #6.
2. The Pinelands Commission agrees to issue a letter of no further review for the amended final subdivision approval and other approvals for Section 7 of the Sanctuary upon receipt of the following: 1) a stormwater management easement for Section 7; and 2) Evesham Township's and if necessary Burlington County's approval of revised plans for Section 7 showing the modifications of Georgia O'Keefe Way described above.
3. In the event that Ivelin obtains title to lots 13, 14, 18 or 19 within Block 89.11 from Steliga Homes of Evesham L.L.C., the Pinelands Commission agrees to issue a letter of no further review for lots 13, 18 and 19 upon receipt of filed copies of the required deed restrictions.

X. Freshwater Wetlands General Permit Applications

1. In accordance with the February 1993 Memorandum of Agreement between the Pinelands Commission and the NJDEP the Pinelands Commission, as the agent of the NJDEP, exercises the NJDEP's authority under the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. regarding certain Freshwater Wetlands General Permit applications for proposed disturbances within the Pinelands Area. In accordance with the terms of the Memorandum of Agreement, the Pinelands Commission will review the General Permit application(s) submitted to it by Main Line Realty Group, L.L.C., concerning the Sanctuary and render permitting decisions in accordance with the requirements of the New Jersey Freshwater Wetlands Protection Act and its implementing regulations, N.J.A.C. 7:7A. Any disputes that may arise regarding necessary Freshwater Wetlands Permits for the Sanctuary will be resolved through the usual administrative hearing process.