

8/13/98

**MEMORANDUM OF AGREEMENT
BETWEEN THE NJ PINELANDS COMMISSION
AND THE BURLINGTON COUNTY BOARD OF CHOSEN FREEHOLDERS**

I. PURPOSE

This Memorandum of Agreement between the Burlington County Board of Chosen Freeholders (hereinafter "Burlington County") and the New Jersey Pinelands Commission (hereinafter "Commission") is intended to facilitate the review of projects undertaken by Burlington County in the Pinelands Area. In accordance with N.J.A.C. 7:50-4.52(c), the Commission "may enter into intergovernmental memoranda of agreement with any agency of the federal, state or local government which authorize such agency to carry out specified development activities without securing individual development approval from the Commission" under the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-1 et. seq).

II. MUTUAL AGREEMENTS

A. The Commission and Burlington County agree that:

- 1) the following activities will not require the filing of a formal application for the approval of the Commission:
 - a) the resurfacing of a right-of-way constructed of an impervious material which will not result in an increase in the width of the existing impervious surface.
 - b) activities normally associated with the maintenance of drainage ditches as defined in the following manner: a linear excavation below the natural ground surface that is designed and maintained to convey stormwater runoff.
- 2) The Burlington County Engineer shall notify the Commission 15 days in advance of the undertaking of those activities defined in (A.1.) by providing the Commission with the following:
 - a) a narrative description of the proposed activity;
 - b) a copy of a U.S.G.S. quadrangle on which the location of the activity has been indicated.
- 3) Within 15 days of the receipt of the notice provided for in (A.2), the Commission will notify the Burlington County Engineer if the proposed activity is consistent with the terms of this Memorandum of Agreement. If the

Commission fails to notify Burlington County of its determination within the prescribed time frame, Burlington County may proceed with the activity as proposed.

- 4) If it has been determined by the Commission that the proposed activity does not meet the criteria established in (A.1.), Burlington County agrees to file an application for the development and it understands that no development may occur until formal approval from the Commission has been obtained.

B. The Commission and Burlington County agree that:

- 1) the following classes of development will not require the filing of a formal application for the approval of the Commission:
 - a) the replacement-in-type of any bridge which involves less than 5,000 square feet of disturbance;
 - b) the replacement of existing culverts meeting the following criteria:
 - i. the area of nonimpervious disturbance associated with the project will not exceed 2,000 square feet;
 - ii. the culvert will be replaced with one of the same diameter or size as the culvert being replaced;
 - iii. any lengthening of the culvert will not cause the area of disturbance to exceed 2000 square feet.
 - c) the construction of drainage structures involving the following:
 - i. the piping of existing drainage ditches that have been designed and maintained as stormwater conveyance structures provided that:
 - aa. The pipe will conform to the existing alignment of the ditch as much as possible; and
 - bb. the pipe will be constructed at a location that will not vary more than two feet measured horizontally from the existing limits of the ditch; and
 - cc. the pipe invert will not extend more than six inches below the existing bottom of the ditch; and

- dd. any pavement widening proposed in conjunction with the pipeline shall not exceed 3000 square feet.
 - ii. the installation of stormwater infiltration inlets and pipes for the infiltration of runoff from existing roadway pavement provided that the results of soil borings are submitted with an estimation of elevation of the seasonal high water table.
 - iii. the extension of existing stormwater drainage systems along existing roadways provided that:
 - aa. no new discharges to wetlands or wetland buffers are proposed; and
 - bb. where feasible, the proposed stormwater drainage systems will provide adequate infiltration volume to accommodate at least 1-1/4 inches of runoff from the paving surfaces draining to the system.
 - d) Roadway improvements, involving 3000 square feet or less of additional paving and involving disturbance of less than 5000 square feet of non-impervious surfaces.
 - e) Other classes of development provided:
 - i. the development project will not require a statewide freshwater wetlands individual or general permit authorization under the Freshwater Wetlands Protection Act or any other permit for development in wetlands required by the N. J. Department of Environmental Protection; and
 - ii. the development project will not require a water allocation permit from the New Jersey Department of Environmental Protection for a well or increase in diversion from an existing well; and
 - iii. the development project will not involve the grading, clearing or disturbance of an area in excess of 5,000 square feet; and
 - iv. the development is served by public sanitary sewer, or

- v. if the existing or proposed development is or will be served by an onsite wastewater system, the development will not result in new or increased waste water flows in accordance with the applicable provisions of the Pinelands Comprehensive Management Plan (N.J.A.C.7:50-6.84(a)4viii or (a)5ix).
 - 2) For all proposed projects defined in (B.1), the Burlington County Engineer shall submit the following information to the Commission at least forty-five (45) days prior to the commencement of any of these activities:
 - a) a narrative description of the proposed activity;
 - b) a copy of a U.S.G.S. quadrangle on which the location of the proposed development has been indicated;
 - c) a copy of any plans for the project.
 - 3) Within thirty (30) days of receipt of the information submitted pursuant to (2), the Commission staff will provide comments regarding the consistency of the proposal with the requirements of the Pinelands Comprehensive Management Plan. If the Commission fails to notify Burlington County of its determination within the prescribed time frame, Burlington County may proceed with the activity as proposed.
 - 4) If any portion of a project proposal submitted pursuant to B.2) above is found to be inconsistent with the requirements of the Pinelands Comprehensive Management Plan, the Burlington County Engineer agrees that the project will be modified until the Commission staff determines that the proposed development is consistent with the standards of the Pinelands Comprehensive Management Plan. No development shall occur until the Commission staff determines the development is consistent. If Burlington County disagrees with a determination of inconsistency by the Commission staff, it may submit a formal application pursuant to paragraph (C) below.
- C. Burlington County understands that:
- 1) any activity not identified in (II.A.1 or II.B.1) will require an application to the Commission; and
 - 2) in accordance with N.J.A.C. 7:50-4.52(b), the proposed development may not occur until an application has been completed and the Commission has approved the project.

- D. The Commission and Burlington County agree to hold an annual meeting prior to December 31 of each year to discuss the status of projects contained within their five year road and bridge improvement plans and any other classes of development. By October 1 of each year, Burlington County will provide to the Commission a list and description of all such projects. The list shall specifically indicate those projects scheduled to be initiated within the following 15 to 27 months.
- E. With regard to the cultural resources standards of the Pinelands Comprehensive Management Plan (CMP):
- 1) Within 45 days of Burlington County's October 1 submission of the list of projects provided for in II. D., Commission staff will determine those projects requiring a cultural resource survey to be conducted by the County in accordance with the Commission's Guidelines for Cultural Resource Surveys. The Guidelines for Cultural resource Surveys are contained in the Pinelands Cultural Resource Management Plan.
 - 2) For those projects identified in E.1. above, the Commission staff will review submitted plans and inspect the project alignment with the county's consultants to identify areas requiring or not requiring field testing. Burlington County may undertake a single cultural resource survey for multiple projects that are located in close proximity.
 - 3) If a cultural resource survey is required for a Burlington County road improvement project that proposes 16 feet wide or less of new pavement and no new travel lanes, Burlington County shall complete the cultural resource survey in accordance with the Commission's Guidelines for Cultural Resource Surveys. In particular, archaeological test pits shall be conducted at 50 foot intervals within 300 feet of all wetlands, at locations identified in background research and at locations identified during field inspections by Commission staff.
 - 4) A cultural resource survey will not be required for any project or portion of a project that meets one or more of the following:
 - a) Widening of roads located exclusively over buried utilities and drainage ditches;
 - b) Widening of roads over soils disturbed to a depth of at least two feet;
 - c) Activities in areas previously surveyed and shown to have no

resources; or

- d) Activities in upland areas more than 300 feet from wetlands where the following are all absent:
 - i. known cultural resources of demonstrated or potential significance;
 - ii. small periglacial depressions or other topographic features often associated with cultural resource occurrence; and
 - iii. anomalies, surficial artifacts, or other physical evidence of a potentially significant prior use or occupation of an area.
- 5) Burlington County understands that any activity requiring a cultural resource survey can not occur until the Commission has either issued a Certificate of Appropriateness for the project or it has determined that no Certificate of Appropriateness is necessary based on the results of the cultural resource survey.

F. With regard to the threatened and endangered species standards of the Pinelands CMP and only those road improvement projects proposing 16 feet wide or less of pavement which do not involve the creation of any additional travel lanes, and those bridges, culverts and intersection improvements listed in B.1, the Commission and Burlington County agree that:

- 1) By October 1 of each year, Burlington County shall provide the Commission with a list of all threatened or endangered species whose presence has been documented by the New Jersey Department of Environmental Protection, Office of Natural Lands Management Natural Heritage database on or in the vicinity of the proposed projects. This list shall be at least for those projects Burlington County plans to initiate within the following 15 to 27 months.
- 2) For those projects scheduled to be initiated within the following 15 to 27 months, the Commission staff will notify Burlington County by November 15 of each year of the following:
 - a. those projects that will require a threatened or endangered species review;
 - b. of those projects requiring a threatened and endangered review,

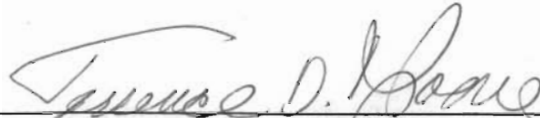
which will be done by the Commission staff; and

- c. those projects for which the Commission will be unable to perform a threatened or endangered species review due to inadequate staffing.
- 3) For those projects identified in 2b above, the Commission staff will perform a review of those areas identified as potential locations of threatened or endangered species on or in the immediate vicinity of the projects to be initiated by Burlington County within the following 15 to 27 months. Burlington County will provide assistance in performing the field work if requested by the Commission staff.
 - 4) At the annual meeting or upon completion of any threatened and endangered survey undertaken in accordance with 2b above, the Commission staff will notify Burlington County if any threatened or endangered species of the Pinelands will be impacted by those projects. In addition, the Commission staff will advise Burlington County of any changes in the project plans that are necessary to ensure the protection of the threatened or endangered species in accordance with the standards of the CMP.
 - 5) Pending completion of the threatened and endangered species review for each road widening project identified in 2a above, Burlington County will:
 - a. install no mowing signs in any areas identified as potential locations of threatened/endangered species that may be impacted by mowing and not mow between April 1 and October 31 ; and
 - b. not undertake any development in those areas identified as potential locations of threatened/endangered species.


III. EFFECTIVE DATE AND DURATION

- A. This Memorandum of Agreement shall take effect upon approval by the authorized representative of both parties and subsequent to the Governor's review for a period of ten (10) days.
- B. This agreement shall remain in effect until otherwise amended or terminated by either party upon sixty (60) days written notice.

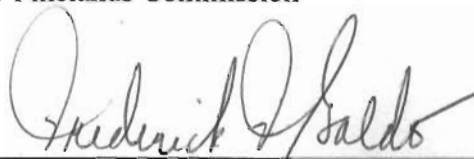
IV. SIGNATURES



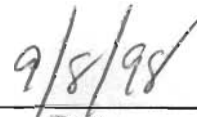
Terrence D. Moore, Executive Director
NJ Pinelands Commission



Date

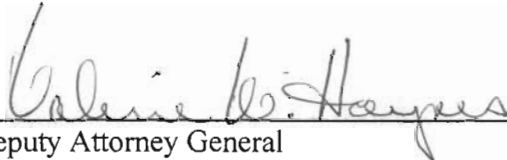


Burlington County Board of Chosen Freeholders

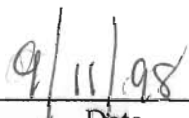


Date

Approved as to form by:



Deputy Attorney General
State of New Jersey



Date