

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

I. PURPOSE

The Pinelands Comprehensive Management Plan (CMP) encourages the reforestation of Atlantic white cedar in cedar and hardwood swamps in the Pinelands Area. This Memorandum of Agreement (MOA) between the New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Pinelands Commission (Commission) establishes a streamlined permitting procedure for Atlantic white cedar restoration projects (cedar projects) undertaken by NJDEP on publicly owned lands in the Pinelands Area. The CMP (N.J.A.C. 7:50-4.52(c)) provides that the Commission may enter into intergovernmental MOAs with any state agency authorizing the agency to carry out specified development activities without securing individual development approval from the Commission under the CMP.

II. BACKGROUND

Atlantic white cedar swamps are an important cultural and ecological component of the landscape of the New Jersey Pinelands. They contribute substantially to the biological diversity and unique character of the region. They also provide essential habitat for a diversity of plants and animals, including numerous threatened and endangered species.

NJDEP is developing and implementing cedar management plans that address the decline, fragmentation, restoration and sustainability of the Atlantic white cedar resource in the Pinelands Area. NJDEP has prepared a Resource Recovery Management Plan for Atlantic White Cedar in Bass River State Forest (revised to April 1, 1998). NJDEP is also currently preparing Atlantic white cedar inventories in Lebanon and Wharton State Forests as a prelude to developing Resource Recovery Management Plans for those forests.

In the Pinelands Area, the typical cedar project is located in wetlands and comprises approximately 10 acres. Forestry practices typically proposed in cedar projects include clear cutting, site preparation such as drum chopping, electric fence installation, herbiciding and planting.

Cedar projects sometimes raise issues with the threatened and endangered species and cultural resource standards of the CMP. In areas where threatened or endangered species are of concern, this MOA requires that information be submitted to the Commission to demonstrate that the cedar project is consistent with the CMP threatened and endangered species standards. Where significant soil disturbance is proposed in association with a cedar project, a cultural resource survey may be required. Significant soil disturbance means sufficient ground upheaval by a proposed forestry practice, such as road building or drumchopping, to potentially disturb cultural resources.

III. COMMISSION AND NJDEP MUTUAL AGREEMENTS

A When conducted in association with the regeneration of Atlantic white cedar, the following activities shall not require application to the Commission:

- 1 The clearing of less than 1,500 square feet of land.
- 2 Fences, provided no more than 1,500 square feet of land is to be cleared.
- 3 Tree harvesting, provided no more than one cord of wood per five acres is harvested in any one year, and no more than five cords of wood are harvested from the entire parcel in any one year.
- 4 Tree planting, provided that the area to be planted does not exceed five acres in any one year, no soil disturbance occurs other than that caused by the planting activity and no trees other than those native trees authorized by the CMP (N.J.A.C. 7:50-6.25) are planted.
- 5 Forest stand improvement designed to selectively thin trees and brush, provided that no clearing or soil disturbance occurs and that the total land area on the parcel in which the activity occurs does not exceed five acres in any one year.
- 6 Prescribed burning and the clearing and maintaining of fire breaks.

B Any cedar project of greater than 25 acres shall require formal application to the Commission in accordance with IV.B below.

C Except as provided in III A above, any cedar project of 25 acres or less will not require a formal application to the Commission, but will be subject to a modified Commission application process. The modified application process shall require that the NJDEP submit to the Commission the following information:

1. A copy of a U.S.G.S. quadrangle on which the location of the cedar project has been identified.
2. Identification of the municipality and the tax block and lot number(s) of the parcel on which the cedar project will be located.
3. A description and schedule of forestry practices to be taken with respect to the cedar project.

4. A threatened and endangered species survey for plants and animals shall be submitted for each cedar project. The survey shall include information from the Office of Natural Lands Management Natural Heritage database indicating whether any threatened and endangered species have been reported on or in the immediate vicinity of the cedar project. The survey shall demonstrate that the cedar project is consistent with the threatened and endangered plant and animal species protection standards of the CMP (N.J.A.C. 7:50-6.27 and N.J.A.C. 7:50-6.33).

Under certain circumstances the Commission staff may waive the survey requirement. If the NJDEP proposes that this survey requirement be waived, the NJDEP shall provide information from the Office of Natural Lands Management Natural Heritage database indicating whether any threatened and endangered species have been reported on or in the immediate vicinity of the cedar project. The Commission staff will consider whether any threatened or endangered species are identified in that database or Commission records on or in the immediate vicinity of cedar project, the location and habitat of the cedar project and the types of forestry practices proposed in determining whether the threatened and endangered species survey requirement may be waived.

5. A cultural resource survey or a copy of a letter from the Commission staff determining that a such a survey is not required shall be submitted for each project. If a determination on the need for a cultural resource survey has not been previously obtained by NJDEP, the Commission staff will determine whether such a survey is required in accordance with V.A below. If a survey is required and was not submitted by NJDEP, the Commission staff will advise NJDEP in accordance with III. D below that in the absence of such a survey that it cannot be determined that the cedar project is consistent with the requirements of the CMP.

D Within thirty (30) days of receipt of the information submitted pursuant to III. C, the Commission staff will provide written comments regarding the consistency of the proposed cedar project with the requirements of the CMP. If the Commission fails to notify NJDEP of its determination in writing within the 30 day time frame, NJDEP may proceed with the cedar project.

E If any cedar project submitted pursuant to III. C above is found to be inconsistent with the requirements of the CMP, the NJDEP agrees that the forestry project will be modified until the Commission staff determines in writing that the cedar project is consistent with the standards of the CMP.

- F If NJDEP disagrees with a written determination of inconsistency by the Commission staff, it may submit a formal application to the Commission pursuant to paragraph IV. B below.
- G Except as otherwise provided for in this MOA, no cedar project shall occur in the Pinelands Area pursuant to this MOA until the Commission staff determines in writing that the cedar project is consistent with the standards of the CMP.
- H Any Commission staff written determination of consistency authorizing a cedar project pursuant to this MOA shall be valid for 10 years.
- I. The Pinelands Forestry Advisory Committee shall have the opportunity to review and comment on all NJDEP Atlantic White Cedar Resource Recovery Management Plans located on public lands in the Pinelands Area. This review shall be completed prior to the NJDEP initiating any cedar project proposed in any Resource Recovery Management Plan for Atlantic White Cedar .
- J. If NJDEP proposes any cedar project on public lands in the Pinelands area for which a Resource Recovery Management Plan for Atlantic White Cedar has not been previously reviewed and commented upon by the Pinelands Forestry Advisory Committee, the 30 day time frame provided for in III.D. shall automatically be extended to a total of 90 days. During this 90 day period the Pinelands Forestry Advisory Committee will review and comment on the cedar project.

IV. THE NJDEP AGREES THAT:

- A All cedar projects will be conducted consistently with the standards contained in Subchapters 5 and 6 of the CMP.
- B Unless a cedar activity does not require application to the Commission in accordance with III. A. above or a project qualifies for a modified Commission application in accordance with III.C, a formal application must be submitted to the Commission in accordance with the provisions of the CMP (N.J.A.C. 7:50-4.52(b)) and the proposed cedar project may not occur until an application has been completed with and approved by the Commission.
- C All cedar projects shall be conducted consistently with the approved description and schedule of forestry practices submitted in accordance with III. C 3. above.
- D. This MOA only pertains to cedar projects undertaken by NJDEP on publicly owned lands in the Pinelands Area.

V. THE PINELANDS COMMISSION AGREES THAT:

A The Commission staff will determine whether a cultural resource survey is required for a proposed cedar project within 30 days of receipt of the following from NJDEP:

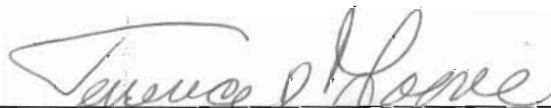
1. A USGS or comparable map upon which the location of a proposed cedar project has been delineated; and
2. A general written description of the proposed project including the extent of ground disturbance anticipated.

VI. EFFECTIVE DATE AND DURATION

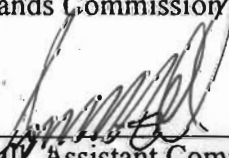
A This MOA shall take effect upon approval by the authorized representative of both parties and subsequent to a 10 day Governor's review period.

B This MOA shall remain in effect until otherwise amended or terminated by either party upon 60 days written notice.

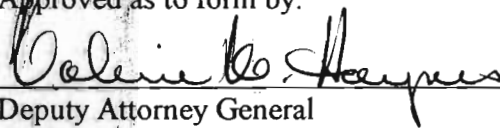
VII. SIGNATURES



Terrence D. Moore, Executive Director
NJ Pinelands Commission
6/16/99
Date



James Hall, Assistant Commissioner
New Jersey Department of Environmental Protection
6/23/99
Date

Approved as to form by:


Deputy Attorney General
State of New Jersey
6/10/99
Date

March 19, 1999