PINELANDS PRESERVATION ALLIANCE

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Comments of the Pinelands Preservation Alliance and New Jersey Conservation Foundation on Proposed Memorandum of Agreement Between the Pinelands Commission and the Department of Environmental Protection

The proposed Memorandum of Agreement (MOA) raises important concerns because it represents an extraordinary delegation by the Pinelands Commission of the power to determine compliance of public developments with the Comprehensive Management Plan and Pinelands Protection Act to another agency and in a manner not expressly authorized by the CMP.

The proposed MOA would bring improvements to the current situation in two important areas: providing better public review of some of the covered activities, and ensuring that the Department of Environmental Protection integrates the expertise of the Endangered and Nongame Species Program and the Office of Natural Lands Management into the review of most of the covered activities.

However, we have several concerns with the MOA as proposed.

Our first concern is that the intergovernmental agreements provisions of the CMP do not appear to authorize this MOA, because those CMP provisions do not authorize the delegation of the Commission's judgment to other agencies. The MOA's Purpose provision generally cites the CMP's intergovernmental memoranda of agreement section, but leaves it unclear whether the Commission staff believes the MOA is authorized by Section 7:50-4.52(c)1 or (c)2. Section (c)1 only authorizes MOAs to waive Commission approval of activities consistent with the CMP, but the proposed MOA goes much further in delegating the determination of compliance and authorizing classes of activities that may or may not comply with the CMP depending on the facts of each case. Section (c)2 seems irrelevant because this MOA does not purport to authorize activities that are not fully consistent with the CMP. At a minimum, Section 1 of the MOA should be clarified to cite the specific authority for this MOA.

Beyond this general concern, there are a number of points on which the MOA is deficient and should be amended before adoption:

1. **Data Sharing:** For the DEP certifications of compliance with the CMP, it is essential that the Office of Natural Lands Management have access to records of threatened and endangered plant occurrences in the Pinelands Commission's records. It is our understanding

that, as of now, the Commission and DEP have not worked out an agreement to share rare plant data. The MOA should not go into effect until this issue has been resolved, so DEP has access to Commission knowledge that may not be in the Heritage database when it provides the analysis underlying the required certifications of compliance with CMP standards.

2. **Reports on Implementation:** The MOA should require, not simply permit, periodic Pinelands Commission inspection of and a public report on the projects DEP carries out under the MOA. It is a fundamental weakness of the Pinelands protection program that the Commission generally does nothing to insure that development projects are actually carried out in accordance with the terms of its approvals. Monitoring and reporting is especially important where the Commission is delegating the implementation of the CMP to another agency. In this case, it would not be unduly burdensome for the Commission to carry out periodic (perhaps annual or bi-annual) inspections to ensure the MOA is working as intended, and to provide a summary report of its findings.

3. **Commission Intervention:** The MOA also does not provide the Pinelands Commission with any means to intervene if, in the future, the MOA's expedited processes are misused or abused, short of dissolving the entire MOA. The MOA should provide the Commission with a safety valve to disapprove proposed projects if it is clear the project would violate a CMP standard, or if the Department has relevant outstanding violations of the CMP.

4. **Fire Management Issues:** The fire management provisions (section IV) are far too broad. Our concerns include:

a. **Firelines:** Permitting "firelines" up to 8 feet wide with no Commission review at all. Such wide firelines can create substantial ecological disruption and damage, both directly in their creation and in their inevitable tendency to bring large ORVs deep into the forest. Eight-foot plowed and disks paths are large enough to accommodate large quads, even Jeeps. Paragraph IV.1.b. should be eliminated, or the 8-foot limit should be greatly reduced.

b. **Fire breaks:** Permitting essentially unlimited, very large fire and fuel break projects with a new approval process that provides no public notice or comment. Experience has shown that past DEP proposals sometimes have been planned without adequate knowledge of the area in question and the impacts of massive linear clearings, especially on threatened and endangered plants and animals. Public notice and comment is absolutely critical. By moving these projects out of the current public development procedure set forth in the CMP, the MOA would actually eliminate what public access and comment rights exist today.

5. **Field Clearing:** This provision at V.1.a. should be deleted because it embodies fundamental problems, is internally inconsistent, and serves no legitimate purpose.

a. **Soil Amendments:** We are surprised and dismayed to see language in the MOA at section V.1.a. authorizing DEP to conduct "field clearing" that include the use of "soil amendments." This section appears designed to authorize the creation of

large, unnatural feed lots, for which there is no legitimate purpose. In fact, we think this section is truly incoherent. On the one hand, it requires only the use of native vegetation in any re-vegetation; but on the other hand allows the use of "soil amendments"; then again it says such amendments must be such as not to degrade Pinelands surface or ground water quality; but it does not say how or to what degree the alteration of water would amount to a forbidden degradation. The term "soil amendments" is not defined, but the term is commonly used to mean fertilizer and lime. But native vegetation does not require soil amendments, and soil amendments by their very nature promote growth of non-native plant species, some of which are invasive species, and degrade surface and ground waters into which they leach. At a minimum, paragraph V.1.a.iii. should be deleted.

b. **Soil Disruption:** One of the basic problems with "field clearing" activities that we have seen is the tendency to remove or disrupt not just the trees, but also the topsoil. The desire to work in this fashion may explain why someone wanted to be sure the MOA authorized "soil amendments" as a means to "fix" the damage done in the clearing. If this provision is to remain at all, it should include an express requirement that any clearing activities must preserve the soil structure and health, including particularly the existing A horizon soils. This requirement would protect native plant and animal communities while eliminating any basis for "soil amendments" after clearing a site of trees and shrubs.

c. Goal To Replace Native Forests with Non-native Feed Lots: The goal of the field clearings at issue here seems to be to create feed lots for game animals, but there is no evidence that such game lots represent a native habitat type found in the Pinelands, and, while the draft provisions do require the use of "native vegetation" in any re-vegetation, they do not require that the result represent any form of native habitat to the Pinelands. We submit the activities contemplated by this provision are inconsistent with the goals of the CMP and, specifically, the forestry provisions of the CMP which bar the use of forestry to replace native forests types.

6. **Arbitrary 5000 Ft^2 Threshold:** The public development activities authorized in sections V.1.b. & c. and VI.5, 6 & 7 allow too much development and disturbance without meaningful Commission review under CMP standards. There is no basis for the Commission's continued use of 5,000 square feet as a measure of insignificance in its MOA-drafting. We have asked in the past for the scientific basis of the 5,000 square foot measure and never received a response, much less an answer. It is patently absurd for the Commission to assume that disturbance of 5,000 or less deserves a lower level of scrutiny with respect to issues like the destruction of rare plant populations. The threshold for section b. should be eliminated or made far smaller, a requirement to avoid soil structure disturbance should be added, and section c. for parking lots should be eliminated.

7. **Certification Form:** The DEP certification in section V.4. does not reference or incorporate the forms of certification used in all other sections. We assume this is an oversight

and ask that this paragraph be amended to be consistent with the certification requirements of the other sections.

8. **Trails:** The MOA should not waive Commission review of all trail construction, because there are cases in which DEP has created trails in a manner that violates the CMP. An example is the graveled trails in Brendan Byrne State Forest, where the use of non-Pinelands materials has changed the soil chemistry along the trail and brought in non-native plants. Trail construction authorized by this MOA should be limited to those that do not involve the use of any construction materials, such as rock or pavement, that could have unintended ecological impacts.

Respectfully submitted,

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Pinelands Preservation Alliance