



**STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WATERSHED & LAND MANAGEMENT**  
Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420  
Telephone: (609) 777-0454 or Fax: (609) 777-3656  
www.nj.gov/dep/landuse



## PERMIT

<p>In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants this permit to perform the activities described below. This permit is revocable with due cause and is subject to the terms, conditions, and limitations listed below and on the attached pages. For the purpose of this document, “permit” means “approval, certification, registration, authorization, waiver, etc.” Violation of any term, condition, or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action.</p>		<p><b>Approval Date</b> February 16, 2024</p>
		<p><b>Expiration Date</b> February 15, 2029</p>
<p><b>Permit Number(s):</b> 0000-23-0024.1 LUP230001</p>	<p><b>Type of Approval(s):</b> Transition Area Waiver - Special Activity Linear Development Flood Hazard Area Individual Permit Flood Hazard Area Verification - Delineation of Riparian Zone Only</p>	<p><b>Governing Rule(s):</b> N.J.A.C. 7:13-1.1(b) N.J.A.C. 7:7A-1.1(a)</p>
<p><b>Permittee:</b> New Jersey Department of Transportation c/o Matthew Wilitaryer 1035 Parkway Avenue Ewing, New Jersey 08625</p>	<p><b>Site Location:</b> NJ Route 23 High Crest Drive to Macopin Municipality: West Milford County: Passaic</p>	
<p><b>Description of Authorized Activities:</b></p> <p>This document authorizes the proposed highway improvements in association with NJ Route 23 at the site referenced above. This document will also verify the riparian zone limits of the regulated watercourse impacting the proposed project location.</p> <p><i>The Department has determined that the herein approved activities meet the requirements of the (FHACA) rules. This approval does not obviate the local Floodplain Administrator's responsibility to ensure all development occurring within their community's Special Flood Hazard Area is compliant with the local Flood Damage Prevention Ordinance, and minimum NFIP standards, regardless of any state-issued permits. FEMA requires communities to review and permit all proposed construction or other development within their SFHA in order to participate in the NFIP.</i></p>		
<p><b>Prepared by:</b>  Sheldon Piggot</p>	<p><b>Received and/or Recorded by</b> County Clerk:</p>	
<p>If the permittee undertakes any regulated activity, project, or development authorized under this permit, such action shall constitute the permittee’s acceptance of the permit in its entirety as well as the permittee’s agreement to abide by the requirements of the permit and all conditions therein.</p>		
<p align="center"><b>This permit is not valid unless authorizing signature appears on the last page.</b></p>		

**STATEMENT OF AUTHORIZED IMPACTS:**

The authorized activities allow for the permittee to undertake impacts to regulated areas as described below. Additional impacts to regulated areas without prior Department approval shall constitute a violation of the rules under which this document is issued and may subject the permittee and/or property owner to enforcement action, pursuant to N.J.A.C. 7:13-2.18; N.J.A.C. 7:7A-22.

<b>TAW - Special Activity Linear Development</b>	<b>Permanent Disturbance (Acres)</b>	<b>Temporary Disturbance (Acres)</b>
<b>Freshwater wetlands</b>	0	0
<b>Transition areas</b>	0.513 (22,367 SF)	0.476 (20,875 SF)
<b>State open waters</b>	0	0

<b>Riparian Zone Vegetation</b>	<b>Area of riparian zone (Acres)</b>
<b>Permanent Disturbed</b>	0.201 (8,755 SF)

**PRE-CONSTRUCTION CONDITIONS:**

1. Prior to the commencement of site clearing, grading, or construction onsite, the permittee shall install a sediment barrier at the limits of disturbance authorized herein, which is sufficient to prevent the sedimentation of the remaining freshwater wetlands and transition areas and shall serve as a physical barrier protecting these areas from encroachment by construction vehicles or other soil-disturbing activities. All sediment barriers and soil erosion control measures shall be kept in place and maintained throughout the duration of construction, until such time that the site is stabilized.

**FLOOD HAZARD AREA SPECIAL CONDITIONS:**

1. The Division has determined that the riparian zone associated with The Pequannock River and its tributaries is 300 feet. Please note that **any unapproved clearing of trees or other vegetation in the riparian zone is prohibited.**
2. The authorized activities shall comply with the applicable conditions set forth under N.J.A.C. 7:7A-5.7, 7.11, 8.1, 8.3 and 20.2. Failure to comply with these conditions shall constitute a violation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et. seq.). Any additional un-permitted disturbance of freshwater wetlands, State open waters, or transition areas besides that shown on the approved plans shall be considered a violation of the Freshwater Wetlands Protection Act Rules unless the activity is exempt or a permit is obtained from the Department prior to the start of the disturbance.

3. The Department has determined that the freshwater wetlands affected by this permit authorization are of exceptional resource value and the standard transition area or buffer required adjacent to these wetlands is 150 feet. This general permit includes a transition area waiver, which allows encroachment only in that portion of the transition area, which has been determined by the Department to be necessary to accomplish the regulated activities. Any additional regulated activities conducted within the standard transition area onsite shall require a separate transition area waiver from the Division. Regulated activities within a transition area are defined at N.J.A.C. 7:7A-2.3. Please refer to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and implementing Rules (N.J.A.C. 7:7A) for additional information.
4. The Department has determined that this project is eligible for the linear development waiver of the Stormwater Management rules at N.J.A.C. 7:8-5.2(e). Any future expansion or alteration of the approved stormwater management system, which would affect water quality, increase the rate or volume of stormwater leaving the site, affect the infiltration capacity on the site, or alter the approved low impact site design, shall be reviewed and approved by the Department prior to construction. This includes any proposed changes to the discharge characteristics of any basin, the construction of new inlets or pipes that tie into the storm sewer network and/or the replacement of existing inlets or pipes with structures of different capacity.
5. The applicant shall make specific arrangements to ensure the continuous maintenance and efficient operation of all proposed stormwater management measures onsite. This includes the inspection (and cleaning where necessary) of any and all constructed swales, basins, inlets at least four times per year and after every major storm totaling 1 inch of rainfall or more, the inspection and cleaning of all manufactured treatment devices per Department certification letters as found on [www.njstormwater.org/treatment.html](http://www.njstormwater.org/treatment.html), and the use of appropriate soil conservation practices onsite, and any other reasonable effort required to maintain the stormwater management system in good working order.
6. **Material Disposal:** All excavated material and dredge material shall be disposed of in a lawful manner. The material shall be placed outside of any flood hazard area, riparian zone, regulated water, freshwater/coastal wetlands and adjacent transition area, and in such a way as to not interfere with the positive drainage of the receiving area.
7. Vegetation within the freshwater wetlands, wetlands transition area, and riparian zones onsite shall only be disturbed in the areas specifically shown on the approved drawings and upon completion of the project, all temporarily disturbed areas shall be replanted with native, non-invasive vegetation appropriate for the hydrologic conditions of the area.

8. In order to protect the trout production resource within Pequannock River and Tributaries from sediment generating activities, special caution shall be taken for any grading, excavation, or construction activities near the banks of the channel between **September 15 and March 15** of each year. In addition, any activity within the flood hazard area or riparian zone of this watercourse which does not minimize the introduction of sediment into said stream or which could cause more than a minimum increase in the natural level of turbidity, is also prohibited anytime but especially during this period. The Department reserves the right to require additional soil conservation measures if it becomes evident that additional measures are required to protect State-regulated resources, or the right to suspend all regulated activities onsite should it be determined that the permittee has not taken proper precautions to ensure continuous compliance with this condition.
9. To avoid impacts to Indiana Bat, Northern Long-eared Bat and Tricolored Bat (proposed federal listing), the Permittee shall adhere to a seasonal restriction on the clearing of all woody vegetation from April 1 through November 15 of each calendar year.
10. To protect habitat for Wood Turtles (State-listed, threatened) within and adjacent to Pequannock River/ Pequannock River Tributaries, the Permittee shall adhere to the following:
  - a. To prevent adverse impacts to hibernating turtles (i.e. in-stream work including stream bank excavation):
    - i. No site preparation, disturbance, grading, clearing or construction activity is permitted within the banks of the referenced watercourse between November 1 and April 1 of each calendar year.
    - ii. If a coffer dam or similar structure is proposed to *completely* enclose the work area, work may occur during this restricted period provided the coffer dam installation is *completed* prior to November 1 and thereafter completely precludes turtles from accessing the work area to rest or hibernate. This must include appropriate bank-side fencing to preclude terrestrial access to the coffer dam work area. Immediately after installation of the work area enclosure, a qualified herpetologist must thoroughly inspect the enclosed area for wood turtles. Please note the qualified herpetologist is required to obtain a scientific collecting permit from NJDEP, Division of Fish and Wildlife, Endangered and Nongame Species Program (ENSP) ([http://www.state.nj.us/dep/fgw/exotic\\_apps.htm](http://www.state.nj.us/dep/fgw/exotic_apps.htm)). Any wood turtles found must be reported to the NJDEP, Division of Fish and Wildlife, Endangered and Nongame Species Program (<https://dep.nj.gov/njfw/conservation/reporting-rare-wildlife-sightings/>), and carefully relocated outside of the proposed work area. Once this inspection is complete, authorized activities may commence within the coffer dammed work area.
  - b. To prevent adverse impacts to resting, breeding or foraging habitats for wood turtles within the regulated areas (Freshwater Wetlands/Transition Areas/Riparian Zone) associated with the referenced watercourses no authorized activities may commence from April 1 through May 30 and September 1 through November 15 of the calendar year *unless* the following measures have been taken:

- i. Prior to the commencement of site preparation, disturbance, grading, clearing or construction activity within landscape valued as habitat for threatened or endangered herptile species, the Permittee shall install a temporary fence made of synthetic filtration fabric or geo-textile filtration fabric around the footprint of all proposed activities (temporary and permanent) that is sufficient in height to preclude small wildlife species from entering the proposed work area.
    - ii. Upon installation, a qualified herpetologist with a valid Scientific Collecting Permit issued by the NJDEP DFW-ENSP shall survey the work area. Any wood turtles and other State-listed species found must be reported to the NJDEP DFW-ENSP (<https://dep.nj.gov/njfw/conservation/reporting-rare-wildlife-sightings/>), and safely relocated outside of the proposed work area. The qualified herpetologist shall be present during all onsite work (e.g., clearing of vegetation, demolition, excavation, site preparation, etc.) and shall survey the fenced in work area prior to commencement of work each day of activity and throughout each work day to “clear” the project limit of disturbance, temporary workspaces, and staging areas of amphibians and reptiles. Work activity shall cease where any animals are observed until the qualified herpetologist can carefully move the animal to safety beyond the exclusion fence.
    - iii. The exclusion fence must be monitored weekly and maintained in satisfactory working condition until project completion.
  - c. The Department reserves the right to suspend all regulated activities onsite should it be determined that the permittee has not taken proper precautions to ensure continuous compliance with this condition.
11. The landscape associated with the parcel in question is valued and features habitat for wood turtle and bobcat. This finding may have implications for future project design and resource protection pursuant to N.J.A.C. 7:13-12 with respect to culvert replacement/modification activities.
  12. The permittee is responsible for removing **1.079 acres (47,004 square feet)** of existing impervious surfaces from within the riparian zone onsite these areas are to be stabilized and replanted with vegetation in accordance with N.J.A.C. 7:13-11.2(z), as shown on the approved plans
  13. This authorization for a General Permit is valid for a term not to exceed five years from the date of this permit. If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit, the permittee must apply for and obtain a permit extension or a new permit, prior to the permit’s expiration. If the term of the authorization exceeds the expiration date of the general permit issued by rule, and the permit upon which the authorization is based is modified by rule to include more stringent standards or conditions, or is not reissued, the applicant must comply with the requirements of the new regulations by applying for a new GP authorization or an Individual permit.
  14. Construction equipment shall not be stored, staged, or driven within any channel, freshwater wetland, or transition area, unless expressly approved by this permit and/or described on the approved plans.
  15. The regulated activity shall not expose unset or raw cement to flowing water within any channel or regulated water during construction.

## **RIPARIAN ZONE MITIGATION CONDITIONS:**

1. **At least 90 days prior to commencing regulated activities authorized by this permit**, the permittee shall submit a proposal to mitigate for the loss of **0.172 acres of forested riparian zone vegetation**. The proposal shall be designed in accordance with the standards at N.J.A.C. 7:13-13. Activities authorized by this permit shall not begin until the permittee has obtained written approval of a mitigation plan from the Department (N.J.A.C. 7:13-13.2(b)).

2. **All mitigation shall be conducted prior to or concurrent with the regulated activity that causes the disturbance.** (N.J.A.C. 7:13-13.3(a)1). Concurrent means that at any given time, the mitigation must track at the same or greater percentage of completion as the project as a whole.

3. If the permittee is considering conducting a creation, restoration or enhancement project, the following conditions shall apply:

**Prior to the initiation of regulated activities authorized by this permit**, the permittee shall sign a Department approved conservation restriction to protect the mitigation area from future development that would remove the vegetation planted. (N.J.A.C. 7:13-13.2(g)). The conservation restriction shall conform to the format and content of the rules at N.J.A.C. 7:13-14 and the Riparian Zone Mitigation Area model located at <https://dep.nj.gov/wlm/forms/>. The restriction shall be included on the deed and recorded in the office of the County Clerk (the Registrar of Deeds and Mortgages in some counties) in the county wherein the lands of the mitigation project are located. A metes and bounds description shown on a map must be included within the recorded conservation restriction. Within 10 days of filing the conservation restriction, the permittee must send a copy of the conservation restriction to the attention of the Mitigation Unit Supervisor, NJDEP, Division of Watershed Protection and Restoration at Mail Code 501-02A, P.O. Box 420, Trenton, NJ 08625-0420.

4. For creation and restoration projects, the permittee shall obtain a secured bond or other financial surety acceptable to the Division from a firm licensed to provide such services in New Jersey. (N.J.A.C. 7:13-13.15)

5. The permittee shall monitor the riparian project for at least 5 years beginning the year after the riparian zone mitigation project has been completed (N.J.A.C. 7:13-13.12(c)). **The permittee shall submit monitoring reports to the Division of Watershed Protection and Restoration, no later than December 31<sup>st</sup> of each full monitoring year.**

i. All monitoring reports except the final one should include the requirements and goals of the mitigation proposal and a detailed explanation of the ways in which the mitigation has or has not achieved progress toward those goals. If mitigation has not achieved progress, the report shall also include a list of corrective actions to be implemented and a timeline for completion.

ii. The final monitoring report must include documentation and data demonstrating that:

a. The goals of the riparian zone mitigation as stated in the approved riparian zone mitigation proposal and the permit conditions have been satisfied.

b. At least 85 percent of the mitigation plantings have survived and that at least 85 percent of the mitigation area is established with native species similar to ones identified on the mitigation planting plan. All plant species in the mitigation area must be healthy and thriving. All trees must be at least 5 feet in height; and

- c. The site is less than 10 percent occupied by invasive or noxious species; and
  - d. The conservation restriction for the mitigation site has been executed and recorded.
6. If the riparian mitigation project does not meet the success criteria established above the project shall be considered a failure and the permittee shall submit a revised riparian mitigation plan. The revised plan shall be submitted within 60 days of receipt of notification from the Division indicating the riparian mitigation project was a failure.
  7. If the Division determines that the riparian zone mitigation project is not constructed in conformance with the approved plan, the permittee will be notified in writing by the Department and will have 60 days to submit a proposal to indicate how the project will be corrected.
  8. For preservation projects, the application shall provide documentation showing that the proposed preservation area will fully compensate in accordance with N.J.A.C. 7:13-13.13 for the loss of functions and values caused by the disturbance.

**STANDARD CONDITIONS:**

1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or project conducted as authorized under a permit.
2. The issuance of a permit does not convey any property rights or any exclusive privilege.
3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a permit.
4. A permittee conducting an activity involving soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District or designee having jurisdiction over the site.
5. The permittee shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit.
6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit.
7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (WARN DEP hotline) of any noncompliance that may endanger public health, safety, and welfare, or the environment. The permittee shall inform the Watershed & Land Management by telephone at (609) 777-0454 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:

- i. A description of the noncompliance and its cause;
  - ii. The period of noncompliance, including exact dates and times;
  - iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and
  - iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action, as well as, in the appropriate case, suspension and/or termination of the permit.
9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of the permit.
10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29.
11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties.
12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores.
13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:
  - i. Enter upon the permittee's premises where a regulated activity, project, or development is located or conducted, or where records must be kept under the conditions of the permit;
  - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
  - iii. Inspect, at reasonable times, any facilities, equipment, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action; and
  - iv. Sample or monitor at reasonable times, for the purposes of assuring compliance or as otherwise authorized by the Federal Act, by the Freshwater Wetlands Protection Act, or by any rule or order issued pursuant thereto, any substances or parameters at any location.
14. The permittee shall not cause or allow any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures within or adjacent to the channel while the regulated activity, project, or development is being undertaken. Upon completion of the regulated activity, project, or development, the permittee shall remove and dispose of in a lawful manner all excess materials, debris, equipment, and silt fences and other temporary soil erosion and sediment control devices from all regulated areas.
15. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit.

16. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect, so long as the regulated activity, project, or development, or any portion thereof, is in existence, unless the permit is modified pursuant to the rules governing the herein approved permits.
17. The permittee shall perform any mitigation required under the permit in accordance with the rules governing the herein approved permits.
18. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment.
19. Any permit condition that does not establish a specific timeframe within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit.
20. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request.
21. The permittee shall provide monitoring results to the Department at the intervals specified in the permit.
22. A permit shall be transferred to another person only in accordance with the rules governing the herein approved permits.
23. A permit can be modified, suspended, or terminated by the Department for cause.
24. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit.
25. Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information.
26. The permittee shall submit email notification to the Bureau of Coastal & Land Use Compliance & Enforcement at [CLU\\_tomsriver@dep.nj.gov](mailto:CLU_tomsriver@dep.nj.gov) at least 3 days prior to commencement of site preparation and/or regulated activities, whichever comes first. The notification shall include proof of completion of all pre-construction conditions, including proof of recording of permits, approved plans and/or conservation easements, if required. The permittee shall allow an authorized Bureau representative on the site to inspect to ensure compliance with this permit.
27. The permittee shall record the permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes activities within two or more counties, in which case the permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded permit shall be forwarded to Watershed & Land Management through the DEP Online service. The uploaded documents will go directly into the Department's database, and staff will be notified that information has been received. The service can be found at: <https://www.nj.gov/dep/landuse/epermit.html>.

**APPROVED PLAN(S):**

The drawing(s) hereby approved consist of sixty-five (65) sheet(s), WSP USA Solutions, dated February 2024 and entitled:

“NEW JERSEY DEPARTMENT OF TRANSPORTATION ROUTE 23 HIGH CREST DRIVE TO MACOPIN RIVER CONTRACT NO 017153000”

“PLAN SHEET INDEX”-PS1-1 to PS-2,  
“FRESHWATER WETLAND TRANSITION AREA WAIVER PLANS”, FWW-1 to FWW-27,  
“RIPARIAN ZONE IMPACTS SUMMARY OF IMPACTS”- SI-1 to SI-2,  
“PLAN SHEET INDEX”-PS1-1 to PS-2,  
“RIPARIAN ZONE IMPACTS FLOOD HAZARD AREA PERMIT”, FHA-1 to FHA-27,  
“CONSTRUCTION DETAILS”- CD-1 to CD-3.  
“NB U-TURN 2 RETAINING WALL GENERAL PLAN & ELEVATION 1”  
“NB U-TURN 2 RETAINING WALL GENERAL PLAN & ELEVATION 2”

**APPEAL OF DECISION:**

Any person who is aggrieved by this decision may submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin (available at [www.nj.gov/dep/bulletin](http://www.nj.gov/dep/bulletin)). If a person submits the hearing request after this time, the Department shall deny the request. The hearing request must include a completed copy of the Administrative Hearing Request Checklist (available at [www.nj.gov/dep/landuse/forms.html](http://www.nj.gov/dep/landuse/forms.html)). A person requesting an adjudicatory hearing shall submit the original hearing request to: NJDEP Office of Administrative Hearings and Dispute Resolution, Attention: Adjudicatory Hearing Requests, Mail Code 401-07A, P.O. Box 420, 401 East State Street, 7th Floor, Trenton, NJ 08625-0420. Additionally, a copy of the hearing request shall be submitted to the Director of Watershed & Land Management at the address listed on page one of this permit. In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see [www.nj.gov/dep/odr](http://www.nj.gov/dep/odr) for more information on this process.

If you need clarification on any section of this permit or conditions, please contact Watershed & Land Management’s Technical Support Call Center at (609) 777-0454.

Approved By:

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Damian T. Friebe, P.E., Supervisor  
Bureau of Flood Hazard and Stormwater Engineering  
Watershed & Land Management

c: Municipal Clerk, Township of West Milford