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September 9, 2019

**Via Email: [Judeth.Yeany@dep.nj.gov](mailto:Judeth.Yeany@dep.nj.gov) & Regular Mail**

Judeth Yeany, Esquire  
New Jersey Department of Environmental Protection  
Green Acres Program  
Mail Code 501-1  
P.O. Box 420  
Trenton, New Jersey 08625-0420

**RE: Supplemental Documents in Furtherance of May 21, 2019 Request for Release of Conservation Restrictions Established in Deed of Conservation Easement Recorded June 14, 2007**

**Affected Properties: Block 453, part of Lots 2 and 11; Block 455, part of Lots 1, 2 and 11; Block 456, part of Lots 1, 2, 3, 4, 5, 6, 7 8, and 9 and Block 457, Lot 3.04 in Galloway Township, Atlantic County**

**Our File No.: 5486-11V**

Dear Ms. Yeany:

As you are aware, this firm represents Ole Hansen & Sons, Inc. ("Hansen"), the Grantor of a certain Deed of Conservation Easement relating to the above-referenced properties located in Galloway Township, Atlantic County, New Jersey (the "Property"). Under cover letter dated May 21, 2019, Hansen submitted a formal request for release of the Deed of Conservation Easement ("Deed") pursuant to the New Jersey Conservation Restriction and Historic Preservation Act, N.J.S.A. 13:B-1, et seq. (the "Act").

After the Department's substantive review of that submission, a telephonic conference was conducted on August 28, 2019 between representatives of Hansen (including this office) and Melissa Abatamarco and Robert Guzek on behalf of your office. During that call, questions arose regarding the status of prior subdivision approvals for the subject properties. There also was apparent confusion regarding the relationship of the Deed of Conservation Easement and another recorded document entitled "Declaration of Environmental Covenants and Restrictions," and the relief sought with respect to said documents. It was at this time that we discovered the May 21, 2019 submission referenced the Deed of Conservation Easement but instead enclosed a copy of the Declaration of Environmental Covenants and Restrictions. We apologize for the confusion and offer the following to clarify the relief sought by Hansen.

In an effort to assist with understanding Hansen's request and the land development history of the subject properties, enclosed you will find the following:

- (1) Deed of Conservation Easement dated June 14, 2007 and recorded in the office of the Atlantic County Clerk on June 15, 2007 as Instrument #2007057544 (the "Deed");
- (2) Declaration of Environmental Covenants and Restrictions dated June 14, 2007 and recorded in the office of the Atlantic County Clerk on June 14, 2007 as Instrument #2007057543 (the "Declaration");
- (3) A copy of a recorded major subdivision plan dated May 24, 2005, last revised February 14, 2007 and recorded in the office of the Atlantic County Clerk on July 18, 2007 as Major Subdivision Map No. M2007067300; and
- (4) An unrecorded map entitled "Major Subdivision of Proposed Block 455.01, Lots 4 & 5, Blue Heron Pines East Residential, Phase 1A-Construction Phasing," dated June 14, 2007, showing the detail of proposed Phase 1A single family and Phase 1A multi-family development.

I. Deed of Conservation Easement ("Deed")

Hansen seeks authorization to terminate the Deed in its entirety. As set forth therein, the Deed contained one conservation restriction; namely, it established a habitat protection area for the red-headed woodpecker previously found to be living on site, as well as associated perimeter buffers to preserve potential woodpecker habitat. The establishment of said habitat protection areas was required by the Pinelands Commission as a condition of issuing a Certificate of Filing for the Project. Both DEP, as the enforcing agent for the Pinelands Commission, and the Township of Galloway are the beneficiaries of the Deed. Thus, Hansen requires authorization and/or approval from DEP, the Pinelands Commission and the Township of Galloway in order to terminate the Deed and release the restriction contained therein.

With respect to the Pinelands Commission, it has already indicated it has no objection to release and/or termination of this protection, as evidenced in the letters from The Pinelands Commission enclosed with the May 21, 2019 submission. This presumably is because, in the event of any future development of the property, the Pinelands Commission would have jurisdiction to require the creation of a new habitat protection area if deemed to be warranted. Thus, Hansen is not seeking to encroach upon a protected species habitat, it merely seeks to terminate the existing habitat protection area until such time as future development is proposed.

With respect to Galloway Township, enclosed you will find a copy of Hansen's written requests to both the Galloway Township Planning Board and the Mayor and Township Council (without enclosures). In these letters, Hansen expressly indicates it intends to abandon the Project approvals. Thus, Hansen has asked the Planning Board to formally rescind the Project approvals and

has asked the Governing Body to adopt a resolution formally indicating its consent to release of the restriction by NJDEP and its consent or no objection to termination of the Deed. It is anticipated that the Planning Board will take action on the rescission request at its next regular meeting on September 19, 2019. Further, it is anticipated that the Governing Body will consider and act upon Hansen's request at its next meeting on September 24, 2019. We will provide evidence of the action taken by the Planning Board and Galloway Township upon receipt of same subsequent thereto.

## II. Declaration of Environmental Covenants and Restrictions ("Declaration")

Hansen also seeks to terminate certain covenants/restrictions established in the Declaration, which document which was recorded simultaneously with the Deed. As previously indicated, the Declaration was recorded to satisfy conditions of the Galloway Township Planning Board approvals for the Project wherein the Board required the establishment of restrictions to protect wetlands areas and wetlands buffer areas, a perimeter buffer around the entire Project site and open space and active recreation areas. As noted below, pursuant to Paragraph 4.00 of the Declaration, these restrictions were designated to take effect only upon the filing of the subdivision plat for the first phase of the Project. Since no subdivision plat was ever filed for any phase of the Project (see Point III below), arguably the Declaration never took legal effect.

Nevertheless, in an effort to maintain a clean paper trail and clear chain of title to the properties, Hansen seeks authorization to terminate the portions of the Declaration which created a perimeter buffer as well as open space and active recreation areas. To be clear, Hansen does not seek to terminate the established wetlands areas and wetlands buffer areas. Hansen seeks only a partial release of the other restrictions established in the Declaration.

Since the Declaration was recorded to satisfy conditions of the Planning Board approvals, Hansen requires approval or consent from the Township of Galloway to release the perimeter buffer and open space and recreation area restrictions. As noted above, a request for same has been made to both the Galloway Township Planning Board and the Mayor and Township Council of Galloway Township.

In addition to the Township, the Pinelands Commission also supported the creation of the referenced perimeter buffer area. Thus, although the Pinelands Commission is not expressly named as a beneficiary of the Declaration, Hansen sought consent from the Pinelands Commission to release the perimeter buffer and open space and recreation area restrictions to ensure a clean chain of title for the properties. Again, as noted above, the Pinelands Commission has indicated, to the extent it has any jurisdiction over these restrictions, it has no objection to releasing same. Accordingly, to the extent necessary, Hansen seeks approval/authorization from DEP, in its capacity as the enforcing agent for the Pinelands Commission, to formally release the perimeter buffer and open space and recreation area conservation restrictions on behalf of the Pinelands Commission.

### III. Prior Subdivision Approvals

As noted above, enclosed is a copy of the only filed map that was recorded in regards to the Project. This Map, which was referred to during our conference call as the "10-lot subdivision map", reflects a 10-lot subdivision of the overall Project site. It is of critical importance to understand that this recorded map only created 10 lots which were intended to be the subject of further approval for phased development. The phased development portion of the project was approved subsequent to the creation of these 10 lots. In other words, this subdivision created the individual lots which were later approved for the various phases of the housing project for future conveyance and development. In addition, this map showed that a 9-hole golf course would be maintained from the previously constructed 18-hole golf course.

Importantly, however, the 10-lot subdivision did not require the creation of any restrictions or conservation protections for any of the lands within the project site. Stated another way, the restrictions established in the Deed and Declaration were not established as a condition of the approval of the 10-lot subdivision. Instead, as noted previously, the Deed and Declaration were recorded to satisfy conditions of the subsequent approvals which permitted phased development of 944 residential units in seven phases.

As noted in the original submission to the Department, although Hansen obtained major subdivision approval for the single family portion of Phase 1A and major site plan approval for the multi-family portion of Phase 1A, Hansen never recorded the final major subdivision plan for the single family portion of Phase 1A, and never recorded the final major site plan for multi-family portion of Phase 1A. Thus, as previously indicated, the only map ever filed with the Atlantic County Clerk in furtherance of the project was the 10-lot subdivision map recorded as Map No. M2007067300 and no deed restrictions arose or took effect from the filing of that Map.

This is further evidenced by the plain language of Paragraph 4.00 of the Declaration, which contemplated the filing of separate plats for each phase of the Project, and went on to state:

Anything herein contained to the contrary notwithstanding, the covenants and restrictions contained herein are solely and expressly intended to apply to each phase of the development as and when the major subdivision plat for that phase is filed in the Atlantic County Clerk's office. In no event shall covenants and restrictions with respect to any land contained herein be deemed to be legally effective and enforceable unless and until the subdivision plat for the phase of development in which the land lies shall be recorded in the Atlantic County Clerk's office, except with respect to the covenants and restrictions referenced in Articles 1.00, 2.00 and 4.00, which shall become legally effective and create binding and enforceable covenants running with the land upon the filing of the subdivision plat for the first phase of the Project. [Emphasis added.]

Accordingly, since the Phase 1A plans were never recorded with the Atlantic County Clerk, the restrictions set forth in the Declaration never took legal effect. Notwithstanding same, in order to

maintain a clean chain of title moving forward, Hansen seeks authorization to record a document that terminates the perimeter buffer and open space and recreation area restrictions contained in the Declaration.

We would be happy to schedule a meeting at your office to review the map and answer any further questions or concerns you may have. Please contact me to discuss further or to make arrangements to meet. Thank you for your time and attention to this matter.

Very truly yours,

NEHMAD PERILLO DAVIS & GOLDSTEIN, P.C.

BY: 

CHERYLLYNN WALTERS

CLW:cj

Enclosures

cc: Melissa Abatemarco, Esquire, DEP-Green Acres Program  
(Via Email: [Melissa.abatemarco@dep.nj.gov](mailto:Melissa.abatemarco@dep.nj.gov)) (w/ encl.)  
Robert Guzek, DEP (Via Email: [Robert.Guzek@dep.nj.gov](mailto:Robert.Guzek@dep.nj.gov)) (w/ encl.)  
Charles Horner, P.E., Director – Pinelands Commission (w/encl.)  
Daniel J. Galletta, P.P. (Via Email) (w/encl.)  
David Goddard (Via Email & Regular Mail) (w/encl.)  
Stephen R. Nehmad, Esquire (Via Email) (w/o encl.)