

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW JERSEY HIGHWAY AUTHORITY
AND THE
NEW JERSEY PINELANDS COMMISSION**

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I. Purpose

This Memorandum of Agreement (MOA) between the New Jersey Highway Authority (hereinafter "Authority") and the New Jersey Pinelands Commission (hereinafter "Commission") is intended to establish the procedures for the review of the application of chemical herbicides within the right-of-way of the Garden State Parkway in the Pinelands Area designated pursuant to N.J.S.A. 13:18A-11. In accordance with N.J.A.C. 7:50-4.52(c)2, 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 that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and, provided such agency demonstrates and the Commission finds that variation from the standards of this Plan is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through a strict application of the standards" of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-1 et seq.).

II. Mutual Agreements

A. The Authority and the Commission agree that:

1. This agreement shall apply to the entire right-of-way of the Garden State Parkway within the Pinelands Area between milepost 12 and ending at milepost 81.
2. The application of herbicides within the right-of-way of the Garden State Parkway is not consistent with the Pinelands Comprehensive Management Plan. Specifically N.J.A.C. 7:50-6.87(c) prohibits the application of herbicides to any road or public utility right-of-way within the Pinelands unless it is necessary to protect an adjacent agricultural activity.
3. The purpose of the agreement is to enhance the protection of local populations of threatened or endangered wildlife and plants located on that portion of the right-of-way of the Garden State Parkway in the Pinelands Area. This will be accomplished through the use of maintenance procedures set forth in this agreement. These activities are not normally required under the Pinelands Comprehensive Management Plan unless they arise in the context of an application to the Pinelands Commission.

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B. The Commission and the Authority agree that the Authority will implement an Integrated Pest Management (IPM) Program to prevent and to control the growth of unwanted vegetation along the Garden State Parkway. The purpose of the program will be to maintain the integrity of the roadway surface and to improve the visibility of guiderails, bullnoses and curbs in order to prevent hazardous roadway conditions. The program will also be aimed at eliminating unwanted vegetation within the curbed perimeter of the Bass River State Police Barracks buildings, the maintenance yard buildings, the toll plaza buildings and the buildings in the service areas. The IPM program shall be conducted in the following manner:

1. Prevent the growth of unwanted vegetation which contributes to hazardous roadway conditions, to the maximum extent practicable, using one or more of the following methods:
 - a. Remove sediment within paved road area to eliminate the medium which could sustain weed growth.
 - b. Repair or seal cracks in pavement.
 - c. Install pervious material, such as woven Geotextiles, around guiderails located outside of paved areas of right-of-way to act as a barrier for weeds.
 - d. Encourage low growing grasses around guiderails located outside of paved areas which do not contribute to hazardous roadway conditions and which can, by their presence, help prevent weeds which require removal.
 - e. Place mulch around guiderails located outside of paved areas of right-of-way in the spring prior to the germination of annual weed species.
 - f. Utilize native Pinelands vegetation to the maximum extent practicable.
2. Remove weeds using manual or mechanical methods.
3. Apply herbicides only for post-emergent weed growth when the methods indicated in B.1 and 2 have been unsuccessful or when they can not be employed without creating hazardous roadway conditions for passing motorists and Authority personnel. The use of this method must be in conformance with the following provisions:
 - a. Unless it is demonstrated to the Pinelands Commission that another herbicide is less toxic or less persistent and will still achieve the

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desired results, the only substances to be used will be Roundup or Rodeo Aquatic Herbicide or equivalent glyphosate products at rates that do not exceed product labeling specifications approved by the United States Environmental Protection Agency and applied in a manner consistent with those labeling specifications and with the New Jersey Pesticide Control Regulations (N.J.A.C. 7:30-1.1 et seq.).

- b. No herbicides shall be applied to wetlands.
 - c. No herbicides shall be applied within 50 feet of any surface water body. These restrictions shall not pertain to the application of Rodeo or an equivalent glyphosate product using hand held devices to spot treat vegetation within the paved shoulders and traveling lanes of the Garden State Parkway.
 - d. Only Rodeo or an equivalent glyphosate product shall be applied within 300 feet of freshwater wetlands.
 - e. No herbicides shall be applied within 300 feet of any local population of threatened or endangered plant species designated in N.J.A.C. 7:50-6.24 . No herbicides shall be applied within 300 feet of any habitats that are critical to the survival of any local populations of threatened or endangered wildlife species designated pursuant to N.J.A.C. 7:50-6.33. These restrictions shall not apply when the Authority uses hand held devices to spot treat vegetation within the paved shoulders and traveling lanes of the Garden State Parkway.
 - f. All precautions regarding the application of herbicides indicated on the product labeling specifications approved by the United States Environmental Protection Agency shall be taken in order to avoid drift from the area to be sprayed and to avoid runoff of the herbicide from the plant surface. This shall include but not be limited to the directions for use associated with prevailing wind conditions and the possibility of precipitation following the application of the herbicide.
 - g. Prior to any spraying occurring, appropriate markers shall be placed within the right-of-way to designate the areas where no herbicides are to be utilized.
4. Apply pre-emergent or selective post-emergent herbicides within only the curbed perimeter of the Bass River State Police Barracks buildings, the maintenance yard buildings, the toll plaza buildings and the buildings in the service areas in the Garden State Parkway right-of-way when the removal of weeds using manual or mechanical methods has been unsuccessful. The

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use of this method must be in conformance with the following provisions:

- a. It has been demonstrated to the Commission that the proposed herbicide is either immobile in soil or has a duration of residual activity such that movement of the herbicide through the soil does not occur.
 - b. The herbicides are applied at rates that do not exceed product labeling specifications approved by the United States Environmental Protection Agency and in a manner consistent with those labeling specifications and with the New Jersey Pesticide Control regulations (N.J.A.C. 7:30-1.1 et seq.).
 - c. The herbicides shall not be applied on or within 300 feet of wetlands.
 - d. The herbicides shall not be applied on or within 300 feet of any local population of threatened or endangered plant species designated in N.J.A.C. 7:50-6.24. No herbicides shall be applied within 300 feet of any habitats that are critical to the survival of any local populations of threatened or endangered wildlife species designated pursuant to N.J.A.C. 7:50-6.33.
 - e. All precautions regarding the application of herbicides indicated on the product labeling specifications approved by the United States Environmental Protection Agency shall be taken in order to avoid drift from the area to be sprayed and to avoid runoff of the herbicide from the treated area. This shall include but not be limited to the directions for use associated with prevailing wind conditions and the possibility of precipitation following the application of the herbicide.
- C. The Commission and the Authority agree that the following procedures will be followed before the application of herbicides within the right-of-way of the Garden State Parkway:
1. The Authority will perform a survey of the Garden State Parkway on an annual basis that identifies those areas where vegetation has emerged that would pose a threat to the structure of the roadway or that would hinder the visibility of guiderails, bullnoses and curbs and that would create an unsafe roadway condition and those areas within the curbed perimeter of the Bass River State Police Barracks buildings, the maintenance yard buildings, the toll plaza buildings and the buildings in the service areas within the Garden State Parkway right-of-way where the removal of unwanted vegetation has not been successful using manual or mechanical methods.

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2. Using the results of the survey required in C.1. above and in conformance with II.B., the Authority will determine the most effective method to be used in the removal of the vegetation which will have the least impact upon the environment.
3. The information referenced in C.1 and C.2 above shall be incorporated into an annual plan to be submitted to the Pinelands Commission by March 1 of each year. If the Authority proposes to use herbicides as part of this annual plan, it shall provide the following information:
 - a. The location of the area to which the herbicide is to be applied defined by the nearest milepost marker;
 - b. The type of vegetation slated for removal and the stage of its development;
 - c. A demonstration that all other forms of integrated pest management identified in Section II.B. have been unsuccessful or that they can not be employed without creating hazardous roadway conditions for passing motorists and Authority personnel due to their location;
 - d. The herbicide to be utilized and the surfactant to be utilized if Rodeo aquatic herbicide or an equivalent glyphosate product is to be applied to the Garden State Parkway right-of-way.
4. Within 30 days of receipt of the annual plan, the Commission shall notify the Authority if the annual plan is consistent with II. B. of this agreement. If the Commission fails to notify the Authority of its determination within the prescribed time frame, the Authority may proceed with the activities proposed in the annual plan provided they meet the conditions set forth in Section II.B.3.a. -g and II.B.4.a.-e. above.
5. If any portion of the annual plan is found to be inconsistent with Section II. B. of this agreement, the Authority agrees that the plan will be modified until the Commission staff determines that the annual plan is consistent with Section II.B. of this agreement.
6. The Authority will notify the Commission at least (15) days in advance of the proposed use of an herbicide that deviates from the annual plan referenced in C.3. that the Commission has determined is consistent with this agreement. The notice shall contain the following information:
 - a. The location of the area to which the herbicide is to be applied defined by the nearest milepost marker;

- b. The type of vegetation slated for removal and the stage of its development;
 - c. Demonstration that all other forms of integrated pest management identified in Section II.B. have been unsuccessful or that they can not be employed without creating hazardous roadway conditions for passing motorists and Authority personnel due to their location;
 - d. The herbicide to be utilized and the surfactant to be utilized if Rodeo aquatic herbicide or an equivalent glyphosate product is to be applied to the Garden State Parkway right-of-way.
7. Within (15) days of receipt of the notice provided for in Section II.C.6., the Commission shall notify the Authority if the use of the herbicide is consistent with Section II.B. of this agreement. If the Commission fails to notify the Authority of its determination within the prescribed time frame, the Authority may proceed with the activity as proposed provided it meets the conditions set forth in Section II.B. 3.a. -g. and II.B.4.a.-e. above. If the Commission determines that the herbicide application is not consistent with Section II.B., the Authority agrees that the plans for the proposed herbicide application will be modified until the Commission staff determines that the plans are consistent with Section II.B. of this agreement. The proposed herbicide application shall not occur until the Commission staff determines that it is consistent with Section II.B. of this agreement.
8. The Authority understands that it may apply to the Commission if it receives notice that either the annual plan or any specific herbicide application is not consistent with Section II.B. of this agreement.
9. No later than December 31 of each year in which this agreement is effective, the Authority shall provide the Commission with the following information regarding the use of herbicides along the Garden State Parkway located in the Pinelands Area:
- a. The dates on which the herbicide was utilized and the corresponding weather conditions for each day;
 - b. The location where the herbicide was applied;
 - c. The rate at which the herbicides were applied;
 - d. The type of vegetation and the stage of growth at which the herbicide was applied;
 - e. An indication of whether the vegetation reemerged after treatment and the length of time before it reemerged;
 - f. The total volume of herbicides utilized along the Garden State Parkway in the preceding year.

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- D. The Commission and the Authority agree that the Authority's Integrated Pest Management Program will be evaluated on an annual basis to determine if additional measures can be employed to reduce the amount of herbicides utilized along the Garden State Parkway in the Pinelands Area.
- E. The Commission and the Authority agree that the following measures will be taken in order to enhance the resources of the Pinelands:
1. Within three months of the effective date of this agreement, the Authority will provide the Commission with a list of all threatened/endangered species whose presence on or in the vicinity of the Garden State Parkway right-of-way in the Pinelands Area has been documented by the New Jersey Department of Environmental Protection as indicated by the Department's Office of Natural Lands Management Natural Heritage database.
 2. Within 30 days of the receipt of the list referred to in Section II.E.1., the Commission shall identify and notify the Authority of the areas along the Garden State Parkway in which a survey should be performed to determine if any threatened/endangered species of the Pinelands is present on or in the immediate vicinity of the Garden State Parkway right-of-way.
 3. The Authority will submit the results of the survey undertaken in conformance with Section II.E.2. no later than December 31, 1998. The survey shall indicate the areas that were investigated, the species for which they were searching in these locations, the species found in these locations, if any, and the time of year at which these areas were inspected. The survey shall also contain the measures proposed by the Authority to ensure the continued viability of the local populations of threatened/endangered species identified as a result of the survey and the measures proposed by the Authority to encourage their proliferation.
 4. Pending completion and submission of the survey required in Section II.E.2., the Authority will not mow any areas within the Garden State Parkway right-of-way between April 1 and September 30 which are identified as potential locations of threatened/endangered species by the New Jersey Department of Environmental Protection Office of Natural Lands Management Natural Heritage database.
 5. Within six months of the completion of the survey required in conformance with Section II.E.2., this agreement shall be modified if additional measures are identified by the Commission based on the survey conducted pursuant to II.E.2., which must be undertaken by the Authority to encourage the continuation and proliferation of the local populations of

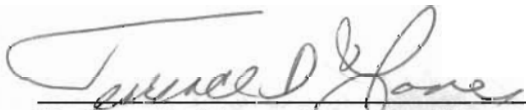
threatened/endangered species identified along the right-of-way of the Garden State Parkway.

- F. The Commission and the Authority agree to meet annually to discuss the effectiveness of the methodology utilized by the Authority to control unwanted vegetation along the Garden State Parkway in the Pinelands Area, the status of the reduction of the use of pesticides and the effectiveness of the methods enlisted to encourage the proliferation of threatened/endangered species identified as a result of the survey required in Section II.E.

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.

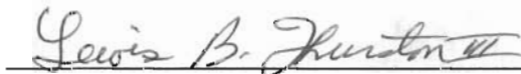
V. Signatures



Terrence D. Moore, Executive Director
NJ Pinelands Commission

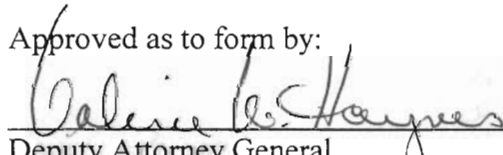


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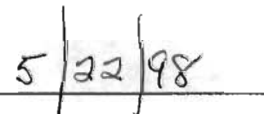




New Jersey Highway Authority

Approved as to form by:


Deputy Attorney General
State of New Jersey



4/6/98