

**MEMORANDUM OF AGREEMENT
BETWEEN
NEW JERSEY TRANSIT RAIL OPERATIONS, INC.
AND
THE NEW JERSEY PINELANDS COMMISSION**

I. Purpose

This Memorandum of Agreement (MOA) between New Jersey Transit Rail Operations Inc. (hereinafter "NJTRO"), an operating subsidiary of New Jersey Transit Corporation, an instrumentality of the State of New Jersey, 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 Atlantic City Rail Line in the Pinelands Area designated pursuant to N.J.S.A. 13:18A-11. In accordance with the Pinelands Comprehensive Management Plan (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. NJTRO and the Commission agree that:

1. This MOA shall only apply to New Jersey Transit Corporation's 32.5 miles of right-of-way of the Atlantic City Rail Line (ACRL) within the Pinelands Area.
2. The application of herbicides within the right-of-way of the ACRL is not consistent with the Pinelands Comprehensive Management Plan (CMP). Specifically, the CMP (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 MOA is to allow for the use of herbicides within the ballast of the ACRL and at the same time enhance the protection of local

populations of threatened or endangered wildlife and plants located within the right-of-way of the ACRL in the Pinelands Area. The measures outlined in this MOA to ensure the protection and continuation of threatened or endangered wildlife and plants would not be required under the CMP unless the NJTRO submitted an application to the Pinelands Commission for development within the ACRL right-of-way.

- B. The Commission and NJTRO agree that NJTRO will implement a program to prevent and to control the growth of unwanted vegetation along the ACRL. The program is intended to meet Federal Railroad Administration regulations applicable to NJTRO which require that vegetation on or immediately adjacent to the roadbed be controlled so that it does not become a fire hazard, obstruct visibility of railroad signs and signals, interfere with railroad employees performing trackside duties, prevent the proper functioning of signal and communication lines, or prevent railroad employees from visually inspecting moving equipment. The program shall be conducted in the following manner:
1. Prevent the growth of unwanted vegetation which contributes to hazardous railroad conditions, to the maximum extent practicable, using the following methods:
 - a. Remove sediment and blockages from the existing right-of-way drainage ditches where required, to restore normal water flow away from the railroad bed so as to allow the track to stay cleaner and dryer and therefore help prevent weed growth.
 - b. Inspect railroad bed areas on an annual basis and replenish the ballast, as necessary, in order to minimize weed growth in those areas.
 2. Remove weeds using manual or mechanical methods (e.g. steam treatment of weeds).
 3. Apply herbicides for post-emergent weed growth only, when the methods indicated in Section II.B.1 and 2 have been unsuccessful or can not be employed without creating hazardous conditions for NJTRO personnel and equipment. The use of herbicides for post-emergent weed growth must be in conformance with the following provisions:
 - a. The location of any filling and mixing area for the herbicides located within the Pinelands Area shall be provided to the Commission staff at least five days prior to its utilization. Any such filling and mixing area shall be located at least 300 feet from any wetland and any known location of threatened or endangered species.

- b. Herbicides shall only be sprayed on track segments once every calendar year upon the approval of the Commission staff in accordance with Section II.C.
- c. The area to be sprayed with herbicides shall only be within the ballast area and shall not be more than 24 feet wide. Vegetation within the railroad right-of-way but outside the ballast area, where no herbicide spray is permitted by the conditions herein, shall be controlled by manual or mechanical means only. The manual or mechanical control of the vegetation shall be done so as to avoid irreversible impacts to the survival of local populations of threatened or endangered plant species designated pursuant to the CMP (N.J.A.C. 7:50-6.24) and to avoid irreversible impacts on habitats that are critical to the survival of any local population of threatened or endangered wildlife species designated pursuant to the CMP (N.J.A.C. 7:50-6.33).
- d. No herbicides shall be applied to wetlands.
- e. 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 ballast area of the ACRL.
- f. No herbicides shall be sprayed within 300 feet of any local population of threatened or endangered plant species designated pursuant to the CMP (N.J.A.C. 7:50-6.24). No herbicides shall be sprayed 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 the CMP (N.J.A.C. 7:50-6.33). These restrictions shall not apply when the NJTRO uses hand held devices to spot treat vegetation within the ballast area of the ACRL.
- g. Only Rodeo or an equivalent glyphosate product shall be sprayed within 300 feet of freshwater wetlands.
- h. Unless it is demonstrated to the Pinelands Commission that another herbicide is less toxic or persistent and will still achieve the desired results, the only herbicides 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.)

- i. 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. The Commission staff shall be allowed to verify that the markers have been placed. The track markers shall include but not be limited to location of the track markers illustrated on the ROW Track Charts, consisting of four sheets, prepared by Sanford Ecological Services and dated July 27, 1994, attached herein as Appendix A.
 - j. 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.
- C. The Commission and NJTRO agree that the following procedures will be followed before the application of herbicides within the ballast area of the ACRL:
1. NJTRO will perform a survey of the ACRL on an annual basis that identifies those areas where vegetation has emerged that poses a threat to the structure of the railroad or that creates a safety hazard.
 2. Using the results of the survey required in Section II.C.1., NJTRO 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 Sections II.C.1. and II.C.2. shall be part of an annual plan to be submitted to the Commission by June 1 of each year. All plans for the use of herbicides shall be in accordance with Section II.B. If the NJTRO 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 use of the management techniques

referenced in Section II.B.1 and 2 have been unsuccessful or that they can not be employed without creating hazardous conditions for NJTRO personnel or equipment.

- d. The herbicide formulation to be applied to the ballast area of the ACRL.
4. Within thirty days of receipt of the annual plan, the Commission staff shall notify NJTRO if the annual plan is consistent with Section II.B. If the Commission staff fails to notify NJTRO of its determination within the prescribed time frame, NJTRO may proceed with the activities proposed in the annual plan provided they meet the conditions set forth in Section II.B.
5. If any portion of the annual plan is found to be inconsistent with Section II.B., NJTRO agrees that the plan will be modified until the Commission staff determines that the annual plan is consistent with Section II.B.
6. NJTRO will notify the Commission staff at least fifteen days in advance of the proposed use of an herbicide that deviates from the annual plan referenced in Section II.C.3. that the Commission staff has determined to be consistent with this MOA. 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. The herbicide formulation to be applied to the ballast area of the ACRL; and
 - d. A demonstration that use of the management techniques referenced in Section II.B.1 and 2 have been unsuccessful or that they can not be employed without creating hazardous conditions for NJTRO personnel or equipment.
7. Within fifteen days of receipt of the notice provided for in Section II.C.6, the Commission staff shall notify NJTRO if the proposed use of the herbicide is consistent with Section II.B. If the Commission staff determines the herbicide application is not consistent with

Section II.B., NJTRO agrees that the plan for the proposed herbicide application will be modified until the Commission staff determines that the plan is consistent with Section II.B. If the Commission staff fails to notify NJTRO of its determination within the prescribed time frame, NJTRO may proceed with the activity as proposed provided it meets the conditions set forth in Section II.B.

8. NJTRO understands that it may submit a formal application to the Commission if it receives notice that either the annual plan or any specific herbicide application is not consistent with Section II.B.
9. NJTRO shall inform the Pinelands Commission staff at least one week before the herbicides approved by the Commission staff in accordance with Sections II.C.4. or II.C.7. are scheduled to be applied. Members of the Pinelands Commission staff shall be allowed to accompany NJTRO or its agents when the herbicides are applied. The Pinelands Commission staff shall be subject to NJTRO's safety regulations and rules.
10. No later than December 31 of each year in which this MOA is effective, NJTRO shall provide the Commission with the following information regarding the use of herbicides within the ballast area of the ACRL located in the Pinelands Area:
 - a. The dates on which the herbicides were utilized and the corresponding weather conditions for each day;
 - b. The name and total volume of each herbicide utilized within the ballast area of the ACRL in the preceding year;
 - c. The location where the herbicide was applied;
 - d. The rate at which the herbicides were applied;
 - e. The type of vegetation and the stage of growth at which the herbicide was applied;
 - f. An indication of whether the vegetation reemerged after treatment and the length of time before it reemerged; and
 - g. A description and evaluation of the measures undertaken by NJTRO to ensure the protection and continuation of the local populations of threatened/endangered species identified as a

result of the survey conducted in accordance with Section II.E.3., by maintaining favorable habitat conditions through practical and feasible means such as the designation of areas where mowing or brush cutting may or may not be performed, the removal of invasive vegetation not native to the Pinelands or the implementation of vegetation management practices to either encourage or discourage certain habitats.

- D. The Commission and NJTRO agree that NJTRO's 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 ACRL in the Pinelands Area.
- E. The Commission and NJTRO agree that the following measures will be taken in order to enhance the resources of the Pinelands:
 - 1. Within sixty days of the effective date of this MOA, NJTRO will provide the Commission staff with a list of all threatened/endangered species whose presence on or in the vicinity of the railroad 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 thirty days of the receipt of the list referred to in Section II.E.1., the Commission staff shall identify and notify NJTRO of the areas along the railroad right-of-way in which a survey should be performed to determine if any threatened/endangered species of the Pinelands are present on or in the immediate vicinity of the right-of-way.
 - 3. NJTRO will submit to the Commission a report which provides the results of the survey undertaken in conformance with Section II.E.2. prior to the submission of the annual plan described in Section II.C.3 for calendar year 2001. The survey shall indicate the areas that were investigated, the species researched in these locations, the species found in these locations, if any, and the time of year at which these areas were inspected. The report shall include a statement detailing the measures NJTRO proposes to ensure the protection and continuation of the local populations of threatened/endangered species identified as a result of the survey by maintaining favorable habitat conditions for such species.

4. Within 45 days of receipt of the report described in Section II.E.3., the Commission staff shall notify the NJTRO if the measures proposed in the report will ensure the protection and continuation of local populations of threatened/endangered species. NJTRO agrees to revise the report if the Commission staff determines that the proposed measures will not encourage the protection and continuation of these species.
 5. Pending completion and submission of the report required in Section II.E.2 and receipt of the notification provided for in Section II.E.4., NJTRO will not apply any herbicides within those areas identified as potential locations of threatened/endangered species by the New Jersey Department of Environmental Protection Office of Natural Lands Management Natural Heritage database.
- F. The Commission and NJTRO agree to meet annually to discuss the effectiveness of the methodology utilized by NJTRO to control unwanted vegetation along the ACRL in the Pinelands Area and the status of the reduction of the use of herbicides.

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 MOA shall remain in effect until terminated by either party upon sixty days written notice.

IV. Signatures

William F. Harrison 7/24/00
Date
William F. Harrison, Esq., Acting Executive Director
NJ Pinelands Commission

William R. Knapp 8/4/00
Date
William R. Knapp, Vice President/General Manager
New Jersey Transit Rail Operations, Inc.

Approved as to form by:

Valerie W. Hayes 9/11/00
Date
Deputy Attorney General
State of New Jersey

7/5/00

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