

November 5, 2008

DRAFT
REPORT ON A PROPOSED MEMORANDUM OF AGREEMENT
BETWEEN THE NEW JERSEY PINELANDS COMMISSION AND
THE NEW JERSEY TURNPIKE AUTHORITY

FINDINGS OF FACT

This Memorandum of Agreement is proposed to permit the implementation of a proposed widening of the Garden State Parkway (the Parkway) and other associated development. The New Jersey Turnpike Authority (the Authority), the owner and operator of the 172-mile Parkway, is proposing to widen it from Interchange 30 (Somers Point, Atlantic County) to Interchange 80 (South Toms River, Ocean County) (the Proposed Widening Project) in order to respond to traffic demands imposed upon the Parkway between these Interchanges and to improve public safety within the corridor. The vast majority of the Proposed Widening Project, with the exception of approximately one (1) mile, will occur within the Pinelands Area and, therefore, is subject to the requirements of the Pinelands CMP. This MOA is proposed in accordance with the provision in the Pinelands Comprehensive Management Plan (the CMP)(N.J.A.C. 7:50-4.52(c)2) that authorizes the Pinelands Commission (the Commission) to enter into intergovernmental memoranda of agreement which authorize specified development activities that may not be fully consistent with the standards of the Pinelands CMP, specifically N.J.A.C. 7:50-5 and 6. In order to enter into such memoranda of agreement, it must be demonstrated, and the Commission must find, that any proposed development that is not fully consistent with the standards of the Pinelands CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the Pinelands CMP's standards. This MOA is also being proposed in accordance with N.J.A.C. 7:50-4.52(c)1, which authorizes the Commission to enter into intergovernmental memoranda of agreement which authorize specified development activities without the need to secure individual development approvals from the Commission.

The Proposed Widening Project will take place primarily within the existing right-of-way of the Parkway, mostly within the median, throughout the total project area consisting of approximately 50 miles. The Proposed Widening Project consists of the addition of a third traffic lane and wider shoulders in the northbound and southbound directions, reconstruction of the Parkway's existing stormwater drainage system, widening of mainline bridges, replacement of the Birch Street Bridge overpass, extension of existing culverts, construction of two new parallel bridge spans and rehabilitation of the existing bridges over the Mullica and Bass Rivers and widening of the existing bridge over Patcong Creek. The Proposed Widening Project does not include use of the proposed wider shoulders as travel lanes, as confirmed by the Authority in a letter dated October 16, 2008. Although the Proposed Widening Project was designed to minimize the associated

environmental impacts, it is expected to impact habitat for certain threatened and endangered plant and animal species. Strict application of the Pinelands CMP would not permit a development to be carried out that results in irreversible adverse impacts to habitats that are critical to the survival of any local populations of threatened and endangered species. Although it may be argued that there are no irreversible impacts to critical habitat and that a deviation is not required, the Commission has chosen to take a conservation approach and apply the threatened and endangered plant and animal standards of the Pinelands CMP (N.J.A.C. 7:50-6.27 & 6.33, respectively) to the Proposed Widening Project. As a result, implementation of the Proposed Widening Project will require deviations from standards.

With the exception of the threatened and endangered plant and animal species standards, the Proposed Widening Project will be consistent with all remaining standards of the Pinelands CMP. The Proposed Widening Project constitutes a linear improvement and satisfies the wetlands requirements of N.J.A.C. 7:50-6.13. The current stormwater management plan for the Proposed Widening Project is consistent with the existing standards of N.J.A.C. 7:50-6.84. The Authority has examined transportation alternatives as required by N.J.A.C. 7:50-4.57(a)2 and has demonstrated that these alternatives to meet the needs for the Proposed Widening Project. The land use standards of Subchapter 5, in particular the standards of the Parkway Overlay District rules, N.J.A.C. 7:50-5.35, will be met through the concurrent execution and implementation of a separate agreement that addresses secondary impacts associated with the Proposed Widening Project¹. The historic, archaeological and cultural resource preservation standards (N.J.A.C. 7:50-6.151 et seq.) of the Pinelands CMP are satisfied through the implementation throughout the totality of the Proposed Widening Project located within the Pinelands Area of the stipulations contained within the Programmatic Agreement amongst the United States Army Corps of Engineers, the NJSHPO, and the United States Coast Guard. These stipulations address design considerations, recordation tasks, interpretive tasks and curation of original documents.

This MOA proposes measures that are intended to afford, at a minimum, an equivalent level of protection for the resources of the Pinelands as would be provided through strict application of the land use and environmental standards contained within the Pinelands CMP. Specifically, the Authority proposes to purchase and deed restrict against future development at least 142.76 acres of land (based on a 1:1 ratio for suitable habitat located within the median and a 3:1 ratio for habitat located outside of the median) to offset potential threatened and endangered plant and animal species habitat impacts associated with the Proposed Widening Project. The Authority will provide 44 acres of this offset at a 259-acre site located in Washington Township, Burlington County known as the Turtle Creek Site. The remaining 98.76² acres of threatened and endangered species offset will be addressed through the Authority's acquisition and deed restriction against future development of upland threatened and endangered species habitat that contains a minimum of 80.77 acres of suitable characteristic Northern Pine Snake habitat and a minimum of 4.93 acres of suitable characteristic Red Headed Woodpecker habitat.

¹ This Agreement is not available to the public, because it involves the acquisition of land and, as a result, its disclosure could provide an advantage to others with an interest in land acquisition in the area and could adversely affect the public interest.

² This acreage includes a portion of the offset for threatened or endangered bird species habitat impacts that are not completely addressed by the preservation of 44-acres at the Turtle Creek Site.

As discussed above, the Proposed Widening Project is not considered to be fully consistent with the threatened and endangered species standards (N.J.A.C. 7:50-6.27 & 6.33) of the Pinelands CMP. Consequently, execution of any interagency memorandum of agreement, in accordance with N.J.A.C. 7:50-4.52(c)2, is required in order to authorize the implementation of the project within the Pinelands Area. This MOA also establishes alternative application procedures in accordance with N.J.A.C. 7:50-4.52(c)1. Absent a material addition to, deviation from or modification to the Proposed Widening Project, no further action by the Commission, or its staff will be required concerning this project.

PUBLIC HEARING

A public hearing to receive testimony concerning this MOA was duly advertised and noticed. The hearing was held by Executive Director John C. Stokes on October 15, 2008 at 7:00 p.m. at the Berkeley Township Town Hall, 627 Pinewald-Keswick Road, Bayville, New Jersey. Six individuals provided testimony at the hearing as follows:

Jack Kelly, Freeholder from Ocean County, advised that the Ocean County Board of Chosen Freeholders had adopted a resolution during their regular meeting that day in support of the proposed MOA and encouraged the Commission to approve the MOA to allow construction of a necessary public improvement. Freeholder Kelly commended the New Jersey Turnpike Authority for bringing the widening project forward as the best means to address problems of traffic congestion on the Garden State Parkway, particularly where the Parkway decreases from three travel lanes to two. He emphasized that the proposed widening project is required now to address current capacity issues. According to Freeholder Kelly, anyone that uses the Parkway regularly is aware of the bottleneck at Interchange 80 where traffic routinely backs up for miles and is the cause of numerous vehicular accidents. He also commended the Pinelands Commission and its staff for preparing the draft MOA in a comprehensive way. He indicated that the County of Ocean supports the Commission's approval of the MOA as the best means to implement the regulatory requirements of the Pinelands CMP so that this complex public improvement, that is so needed, could go forward. He predicted that there would be testimony at the public hearing that evening stating that the proposed additional lanes will induce unplanned development along its length. He noted that unlike the rest of the State, however, the area served by this improvement has a longstanding regional plan in place to manage development and insure that sensitive environmental features are protected. He stated that the Pinelands Commission has ably implemented the Pinelands CMP for over twenty-five years, and unlike other regional plans in New Jersey, has the authority to insure its implementation. He indicated that the Commission does not rely on inducements and incentives but on the statutory authority provided by the Pinelands Protection Act. Freeholder Kelly made specific note of a provision of the proposed MOA that he felt was significant in its approach to anticipating and managing secondary impacts. He mentioned the Commission's contracting of the Delaware Valley Regional Planning Commission to undertake an analysis of the impact of the proposed widening on the future development of the Pinelands Area and the Commission's recommendation of specific steps to offset any unplanned growth that would be inconsistent with the Pinelands

CMP. He expressed the County's support of this measure. He also expressed the County's position that the MOA adequately addresses the minimum standards for threatened and endangered species habitat protection and historic preservation, and when fully implemented will afford an equivalent level or better level of protection to the resources of the Pinelands. Freeholder Kelly stated that the Garden State Parkway is the major north/south arterial serving Ocean County and improvements to its capacity are necessary to deal with existing congestion problems. He indicated that the proposed widening project will insure the safety of the traveling public by reducing the numerous traffic accidents and traffic delays which routinely occur on the Parkway. He also noted the County's recognition that providing an extra lane on the Parkway as proposed by the Turnpike Authority will greatly aid the State, County and municipal law enforcement agencies and emergency management officials in planning for the evacuation of the nearly 600,000 residents that live in Ocean County, a population that doubles during the tourism season from Memorial Day through Labor Day, in the event of an emergency. He was also sure that the proposed widening would assist other similar agencies in their planning along the entire length of the proposed improvements. Freeholder Kelly closed his comments by thanking the Commission for the opportunity to present the resolution of the Ocean County Board of Chosen Freeholders in support of the proposed widening project and strongly urged the Commission to approve the proposed MOA to make this long awaited improvement a reality.

Ronald Krott, a Bayville resident, expressed his support for the project and indicated that, based on his personal experience as a daily motorist on the Parkway, the proposed widening project was needed. He indicated that the reason for his appearing to testify at the hearing was to express his desire for access either under or over the Parkway to Double Trouble State Park. He also expressed concerns regarding road noise from the Parkway in the vicinity of his home and asked whether sound barriers could be installed as part of the proposed widening project. He emphasized, however, that his main concern was pedestrian or bicycle access across the Parkway to Double Trouble State Park.

Jeff Tittel, Director, New Jersey Sierra Club, indicated that Sierra Club opposed the MOA and that he believed it should be thrown out. Mr. Tittel stated that at the New Jersey Turnpike Authority Board meeting on Friday the sections of the project from Interchange 63 to 30 had been dropped. Mr. Tittel expressed his opinion that either the Governor or the Authority is playing games, telling the public one thing and trying to do something else. He said that this is the first thing that must be straightened out because the proposed widening project was going to have very big impacts on the environment, the Pinelands and the whole region. If the project is going to end at Interchange 63, why should the MOA cover the roadway to Interchange 30. Mr. Tittel expressed his opinion that the mitigation provided in the MOA did not adequately address the kinds of impacts to the environment that widening the highway will have. According to Mr. Tittel, planting white cedars 10 miles away does not make up for what is being destroyed along the right-of-way. Mr. Tittel expressed his opinion that not only would habitat for endangered and threatened species be destroyed by the proposed widening, but species themselves, because the species are going to wind up in the median when you take their habitat away. Given that, he felt that the proposed widening project violated the requirements of the Pinelands CMP. Mr. Tittel indicated that his biggest issue was that he did not agree that the MOA adequately addressed secondary impacts. He expressed his opinion that the proposed widening project will induce sprawl and overdevelopment in the region. In the CAFRA area along the Parkway in South Toms

River, the existing impervious cover limits would permit development to accommodate another 200,000 people. According to Mr. Tittel, if you build it they will come. He also did not believe that the proposed widening project adequately addressed transportation alternatives. He enumerated a number of alternatives including rail line, light rail, bus rapid transit, jitney service, use of flex lanes or bus rapid transit lanes that he felt would address the need for the proposed widening without spending the kind of money required for the widening. He indicated that the proposed widening project was a very expensive project at a time when the State's economy was hurting and people were concerned about their future. He did not see that this project would help the average person and felt that this area of the Parkway should not be a priority in comparison to others. Mr. Tittel also expressed his concern that the MOA did not address wetlands and stormwater issues especially given the oils and heavy metals that would be generated by the additional traffic. He felt that there didn't need to be quick permitting but normal permitting with a very scrupulous and methodical Environmental Impact Statement. He felt that this needed to be included because even though the applicant was another State agency that did not make them right. Mr. Tittel said that any kind of MOA should have a prohibition that shoulders can never be used for additional travel lanes, because they have seen this practice with the New Jersey Highway Authority before. Mr. Tittel said that the proposed widening project is not going to help emergency services or people evacuating in times of potential storm or disaster, because north/south roads in this area are not part of evacuation plans. People have to evacuate inland, not along the coast. Mr. Tittel reiterated that there is no need for the proposed widening project especially below Interchange 63. Mr. Tittel stated that there is no traffic, except some weekends in the summer. Even above Interchange 63, there are alternative means to the proposed widening project to address traffic. Mr. Tittel stated that there are development pressures both in the coastal plain and along this part of the Pinelands that they have seen this growth in the Pinelands from trying to build a bigger airport to clustering development in the forest preservation areas. He closed by reiterating his concern that the proposed widening project would promote growth in areas that are unique, environmentally sensitive and irreplaceable.

Mr. Kyle Wiswall from the Tri-State Transportation Campaign stated that the Turnpike Authority had not proven its case for the proposed widening project. Specifically, the Authority had not shown that there was a current need for the project or that it wouldn't fill up with more traffic even before the horizon year. There is also the issue of induced development and sprawl all down the corridor. He expressed Tri-State's concern that the project referenced in the MOA has changed. Mr. Wiswall stated that the Turnpike Authority's Board of Commissioners, as part of the toll hike agreement, planned on funding only the portion of the project between Interchange 80 to Interchange 63. The lower half of the project was relegated to Tier II and left unfunded. Mr. Wiswall stated that the project that the MOA contemplates bears little resemblance to the new configuration and that the effect of this new configuration is unknown. He indicated that the MOA would memorialize the Pinelands Commission's acquiescence to a project that no longer exists. According to Mr. Wiswall, although the MOA does contemplate a phased approach to the construction, that is premised on the project EIS schedule where the phases progress in a succession that has each one happening after the other, which makes sense for a big project. Mr. Wiswall stated that that is not what was going to happen now that the project has been split in half with half left behind. According to Mr. Wiswall, the Commission is dealing with a new project with a lot of unknowns. Mr. Wiswall stated that some of the changes since the MOA was drafted include a new bottleneck at some of the most sensitive areas in the

Pinelands at Interchange 63 and just below. Also unknown are the effects on threatened and endangered species as induced demand puts concentrated pressure on the lands surrounding those Interchanges in the shortened corridor. There are also questions concerning new traffic patterns and traffic flow, because the current traffic projections are based on the widening of the Parkway in the entire corridor from Interchanges 30 to 80. Mr. Wiswall also stated that there are key documents involved in the MOA that have not been released which render meaningful comment impossible. Specifically, Mr. Wiswall stated that according to the DVRPC's Secondary Impacts Memorandum, Interchange 69 is an area most likely to see induced impacts. While the Commission assures that these effects will be mitigated, it points to an unreleased document between it and the Turnpike Authority and refuses to outline what the document says. He stated that it is impossible to comment on a plan when he does not know what the plan entails. Lastly, he stated that the transportation alternatives analysis of the Pinelands CMP has not been met. He indicated that the alternatives analysis in the proposed widening project's EIS was cursory at best with very little evidence or analysis. He recommended that the Commission reject the current MOA and ask the Turnpike Authority to create a supplemental EIS that would address the project as it is currently formulated.

Theresa Lettman, Pinelands Preservation Alliance, stated that although she has raised questions during this process over that last year regarding threatened and endangered species that are believed to be impacted by the proposed widening project, she continues to have concerns that ten years down the line the conditions or habitat will shift or change. She said that she has seen so many times where the Commission executes a MOA and then the circumstances change on the actual day that the event occurs. She stated that because of this it was difficult for her to believe that the threatened and endangered species were going to be protected. Ms. Lettman stated, based on a United States Fish and Wildlife Service (USF&W) document submitted to the Army Corp of Engineers regarding other approvals required for the widening project that she believed that there would be impacts to threatened and endangered species as a result of secondary impacts of stormwater affecting some of the plants 300 feet away. Ms. Lettman stated that she did not think that the threatened and endangered species element of the MOA could be addressed today for something that's going to happen 10 years from today, because there will be changes and there will be impacts. Ms. Lettman stated that her second concern pertained to the requirement for 4.93 acres of suitable habitat. She hoped that that didn't mean that somebody was going to go out and purchase that much land, because that wasn't going to do anything to protect critical habitat. She stated that the land must be contiguous to other mitigation lands. She was concerned about what would happen when the Turnpike Authority purchased five acres, submitted it to the Commission and argued that that is what the MOA requires. She recommended that the language in the MOA be changed to say exactly what is meant. She said she wanted to see this because, as with the MOA for the Atlantic City Airport, just a few words could change the whole scope of what was meant five to six years ago when the agreement was signed. Ms. Lettman closed by reading a statement indicating that the proposed widening project did not constitute good transportation planning because the enormous cost of the widening will not bring relief from traffic jams. She stated that it will bring more cars, use more air, result in water pollution and more greenhouse gases. She stated that it is bad land-use planning because it will only add to the pressure to develop every last acre of open land along the shore without bringing any re-development to places like Atlantic City and other areas that are in need of re-development. Ms. Lettman noted that the Pinelands Commission is the top planning agency for

the Pinelands Area and should exercise the authority to promote good transportation and land-use planning. She stated that the decision to enter the MOA is discretionary with the Commission. Nothing obligates the Commission to enter into the Memorandum of Agreement on these terms. She recommended that instead of entering into the Memorandum of Agreement the Commission should work with the other state and regional agencies to develop a truly sustainable long-term transit based transportation plan that supports the environmental goals in the CMP.

John Stokes questioned Ms. Lettman regarding her statements concerning changes in conditions over time that would render provisions within the MOA inappropriate 10 years from now and asked if she could identify these other MOAs where this supposedly has occurred. Ms. Lettman indicated that she was talking about the MOA regarding the Atlantic City Airport and her understanding that that MOA only addressed the new grassland habitat being created at the site, not all of the grassland habitat on the site, which is inconsistent with the Commission staff's position regarding the Airport's change to its mowing plan.

Bruce Connor, Senior Project Manager for the Proposed Widening Project, provided closing comments on behalf of the Turnpike Authority. He provided assurances that the Authority, working with the Commission and the other regulatory entities involved in the proposed widening project, had done due diligence in addressing the safety and capacity needs on the Garden State Parkway.

John Stokes questioned Mr. Connor regarding issues that were raised at the hearing in order to determine if the Authority had a position concerning them. With regard to the whether access to the other side of the Parkway could be factored into the Authority's plans, Mr. Connor responded that they have been working with the County on the issue. With regard to the Authority's plans to address noise impacts, especially in the elevated areas of the Parkway, Mr. Connor stated that noise impacts would be dealt with through the installation of "quiet pavement" and that individuals could contact the Authority in order to determine whether "quiet pavement" was going to be installed in their area. With regard to whether the Turnpike Authority had dropped the portion of the project below Interchange 63, Mr. Connor indicated that he would provide an answer to this question tomorrow. He noted, however, that the project has always consisted of Interchanges 30 to 80 and that the regulatory entities responsible for permitting the project wanted it presented in its totality, not segmented. He indicated that he would check into this and provide additional information to the Commission staff. With regard to whether transportation alternatives were examined, Mr. Connor stated that transportation alternatives were looked at, however, because the Authority was a toll road Authority its ability to implement alternatives was limited. Ryan Scerbo, the Authority's counsel, added to Mr. Connor's response and stated that an expansive list of alternatives was looked at regardless of whether the Authority was in a position to implement them. Mr. Connor added that information regarding transportation alternatives was provided to the Pinelands Commission staff. With regard to the potential use of shoulders as future traffic lanes and the suggestion that the MOA should prohibit the use of shoulders as traffic lanes, Mr. Connor indicated that he was not in a position to comment at this time. With regard to the observation that north south roads are not an appropriate evacuation routes, Mr. Connor indicated that the Parkway is designated as an evacuation route by the State of New Jersey.

There being no further testimony, the hearing concluded at approximately 7:50 p.m.

Written comments were accepted until 12:00 noon on October 16, 2008 and were submitted by the following:

October 16, 2008 letter from County Administrator Alan Avery reiterating the County Board of Chosen Freeholders support of the project and the need for the widening to address existing congestion, particularly where the Parkway narrows from three to two lanes; complementing the Commission staff on its considerations in drafting the MOA, especially regarding secondary impacts; and providing additional information regarding the amount of land in western Ocean County is permanent protection.

October 16, 2008 letter from Kyle Wiswall, Tri-State Transportation Campaign attaching excerpts of Tri-State's prior testimony concerning the deficiencies of the proposed widening project's design, research and analysis and reiterating his comments at the public hearing concerning the material alteration in the scope of the project, lack of key documents and that the transportation alternative requirements of the Pinelands CMP have not been met.

The Turnpike Authority did not submit comments but did provide additional information in response to the Executive Director's questions by letter dated October 16, 2008.

Copies of these three letters have been attached to this report.

EXECUTIVE DIRECTOR'S ANALYSIS OF THE COMMENTS

As is evident from the oral testimony offered at the hearing and the written comments we have received, people cited a variety of reasons for supporting or for opposing the proposed MOA. A number of points have been raised which bear upon the Commission's decision in this matter. These generally relate to the current scope of the project, the adequacy of the proposed threatened and endangered species offset, the secondary impacts associated with the Proposed Widening Project, the Authority's analysis of transportation alternatives and utilization of the Parkway as an evacuation route. To more fully inform the Commission's decision-making process, the Executive Director has focused the following analysis on those points that raise potential questions regarding the adequacy of the proposed MOA.

A. Current Scope of the Proposed Widening Project

Comments: Two commenters indicated that the scope of the widening project as referenced in the MOA has materially changed as a result of the Turnpike Authority's Board of Commissioners' decisions concerning proposed toll increases. Specifically, the Authority's Board of Commissioners, at a special meeting conducted on October 10, 2008, approved a revised Capital Plan that only funded the portion of the proposed widening project between Interchanges 80 and 63 and the Mullica and Bass River bridge improvements. The remainder of the proposed widening project has been designated as a Tier II project. The commenters questioned why the MOA should include improvements that are not currently funded.

Analysis: The Proposed Widening Project has always been presented to the Commission and other permitting agencies as one project consisting of multiple stand alone segments, with each segment capable of functioning properly and addressing a specific need independently. As reflected in the draft MOA, the Proposed Widening Project was presented in its totality in order to provide the Commission with an opportunity to review a comprehensive proposal and not piecemeal segments. It also provides the Authority with flexibility to schedule construction of the segments in a manner or order that best met its needs, goals and objectives, as funding becomes available. The decision of the Authority's Board of Commissioners designating the portion of the project below Interchange 63 to Tier II is consistent with this approach and the Authority's representations. The Authority has prioritized the segments of the project with severely congested segments and segments requiring safety improvements, such as rehabilitation of aging infrastructure, receiving top funding priority. Additionally, the holistic approach to permitting utilized by the Authority for the Proposed Widening Project was required by the regulatory review agencies and permitted these agencies and the public to fully comprehend and evaluate the cumulative benefits and impacts associated with the entire Widening Project. Moreover, the Authority is providing an environmental offset to the Commission and has provided mitigation to other regulatory review agencies to address all impacts associated with the totality of the proposed widening project, not just the impacts associated with the segment between Interchanges 80 and 63. Such actions are not indicative of abandonment, but rather illustrate the Authority's intent to proceed with the remainder of the project as funding becomes available. Moreover, in its letter dated October 16, 2008 indicating that the Authority has not abandoned the portion of the Proposed Widening Project from Interchange 63 to 30.

B. Threatened and Endangered Species Impacts

Comments: Two commenters expressed concerns regarding the adequacy of the proposed threatened and endangered species offset provided through the MOA. The comments seem to be based on concerns that providing habitat miles away from the project site does not adequately compensate for habitat that is destroyed along the Parkway's right-of-way; that the extent of threatened and endangered species habitat impacts could not be determined today for a project that would be constructed many years in the future because of potential changes that will result in additional impacts; and that there would be indirect impacts to endangered plants that have not been addressed by the MOA.

Analysis: As discussed in the MOA, the Turnpike Authority utilized a conservative landscape based approach combined with field verification of habitat to determine the extent of potential habitat impacts associated with the proposed widening project. As a result of this approach, the actual habitat impacts associated with the project may be overstated. Regardless, review of the threatened and endangered species information submitted by the Authority confirms that no direct impacts to threatened or endangered plants or animal species are expected as a result of the Proposed Widening Project. The USF&W comment letter does not dispute the threatened and endangered species information submitted by the Authority nor does it conclude that there will be indirect impacts to endangered plants located within 500 feet of the Proposed Widening Project. The USF&W did not indicate that there would be indirect impacts to endangered plants. Rather, the letter stated that the USF&W was unable to provide the ACOE with a determination

as to whether the proposed action would adversely affect the two listed species (swamp pink and Knieskern's beaked rush) and requested that it be consulted to ensure that the activities permitted by the ACOE did not adversely affect these species. (A copy of this letter is attached hereto.)

The threatened and endangered plant standards of the Pinelands CMP provide that no development may be carried out unless it is designed to avoid irreversible adverse impacts on the survival of local populations of plants designated as endangered or included on the threatened or endangered plants of the Pinelands list. Likewise, the protection of threatened or endangered wildlife standards prohibit development that will result in irreversible adverse impacts on habitats that are critical to the survival of any local populations of threatened or endangered animal species. The Authority's approach identified habitat impacts associated with the Proposed Widening Project for potential threatened and endangered species habitat, not critical habitat. Moreover, the majority of the habitat to be impacted is located within the median (2.4:1) versus outside of the median. Although, it could be argued that there are no irreversible impacts to the survival of local populations of designated plants or habitat critical to the survival of local populations of threatened or endangered animal species and that a deviation from the above standards is not required, the Authority is providing an offset for all potential threatened or endangered species habitat impacts associated with the Proposed Widening Project.

The Pinelands CMP does not require that the offset provide compensation in the exact area of impact. Rather, N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into an intergovernmental memorandum of agreement that authorizes a deviation from the land use or environmental standards of the Plan, when measures are included that will afford, at a minimum, an equivalent level of protection of the resources of the Pinelands overall. The Proposed Widening Project is expected to impact 89.78 acres of potential threatened or endangered plant or animal species habitat. In order to ensure an equivalent level of protection of the threatened or endangered species habitat resources of the Pinelands, the Authority must purchase and deed restrict against future development a total of 142.76 acres (more than 1.5 times the acreage that will be impacted). 44 acres of this offset will be addressed through preservation of a portion of the Turtle Creek site in Washington Township and the remaining 98.76 acres will be addressed through the future acquisition and deed restriction of against development of upland threatened or endangered species habitat within the vicinity of the project area.

Additionally, the MOA expressly addresses future change in the Proposed Widening Project that could result in additional impacts and requires submission of a formal development application to the Commission for any material addition to, deviation from or modification to the Proposed Widening Project. Thus, the Commission would have the ability to address material changes in the Proposed Widening Project in the future when such changes may be implemented.

C. Secondary Impacts

Comments: A number of commenters expressed concern that the proposed widening project would contribute to sprawl and overdevelopment within the region and that the MOA did not adequately address these secondary impacts. Comments were also submitted regarding the Commission's failure to disclose the terms of its secondary impacts agreement with the Authority.

Analysis: As discussed in the MOA, the Commission engaged the Delaware Valley Regional Planning Commission (“DVRPC”) to undertake a study of the Proposed Widening Project’s potential to generate secondary growth related impacts. The DVRPC’s analysis was not limited to lands located within the Pinelands Area. Rather, the DVRPC looked at the potential of the Proposed Widening Project to generate secondary impacts both to the east and west of the Parkway. The DVRPC issued its report entitled *Technical Memorandum – Assessment of Secondary Impacts Associated with the Garden State Parkway Widening Project, Mile Post 30 to 80* in December 2007. Based on its analysis, the DVRPC concluded that the Proposed Widening Project’s potential to induce secondary impacts was relatively minor and limited. To the extent secondary impacts were likely to be induced as a result of the Proposed Widening Project, DVRPC found that these impacts would occur at Interchange 30 (outside of the Pinelands Area and the Pinelands National Reserve), Interchanges 36 & 37 (Regional Growth Area and Federal/military Installation), Interchange 58 (Preservation Area) and Interchange 69 (Forest Area). With regard to these areas of induced impacts within the Pinelands Areas, only impacts at Interchanges 58 & 69 were found to be inconsistent with the Pinelands CMP’s land use policies. Interchanges 36 & 37 were found to be consistent with the requirements of the Pinelands CMP.

Secondary impacts associated with the PNR in the CAFRA area were addressed through conditions of the New Jersey Department of Environmental Protection’s permits for the Proposed Widening. With regard to potential inconsistent secondary impacts within the Pinelands Area (Interchanges 69 and 58), the principles of the staff’s recommendation to address such impacts were discussed with the Public & Governmental Programs Committee on numerous occasions, the most recent being at its September 29, 2008 meeting. Staff recommended that the Authority take steps to memorialize zoning on conforming lots located on major feeder roads within a 1 ½ mile radius from the Interchange. Additionally, staff recommended that non-conforming lots within this same area be addressed through a contribution to the Pinelands Conservation Fund to permit acquisition of such lots over time. Although the express terms of the Secondary Impacts Agreement have not been disclosed, because such could provide an advantage to others with an interest in land acquisition in the area and adversely affect the public interest, the Agreement adheres to the principles discussed with the Public & Governmental Programs Committee. These principles were clearly available to the public in order to permit comment during the comment period.

Moreover, implementation by the Authority of steps required to address secondary impacts, as articulated in the above principles, will satisfy the requirements of the Parkway Overlay District rules, N.J.A.C. 7:50-5.35.

D. Transportation Alternatives

Comments: Commenters expressed concerns that the Authority did not adequately address transportation alternatives as required by N.J.A.C. 7:50-4.57(a)2.

Analysis: N.J.A.C. 7:50-4.57(a)2 requires that if the proposed development includes any public roads, the applicant demonstrate that alternative locations or transportation modes including mass transit and non-motorized methods cannot be employed to satisfy the transportation needs.

The Proposed Widening Project is intended to address the following: 1) relieve existing traffic congestion in the corridor (Parkway and Route 9); 2) improve public safety in the corridor, including increasing the capacity of the north-south evacuation route in this area; 3) provide adequate access to Atlantic City and Central Jersey Shore region; and 4) allow for the rehabilitation of the existing, and the construction of new parallel, Bass River and Mullica River bridges carrying the combined Parkway and Route 9 traffic, the sole north-south route in this area of the State. At various points throughout the regulatory review process, including the Environmental Impact Statement, a 2002 letter in response to a Commission staff request for information and a letter dated August 2007, the Turnpike Authority discussed the transportation alternatives it considered to address the need for the Proposed Widening Project. These alternatives included High Occupancy Vehicle (HOV)/High Occupancy Toll (HOT) Lanes, Ferry Terminal Service, Light and Heavy Rail, Buses/Park and Rides, Car and Van Pools, an additional elevated highway, the Widening of U.S. Route 9 and EZ Pass. These alternatives were analyzed in terms of the purpose and need for the project, associated environmental impacts, safety considerations and construction costs. In all instances, the proposed alternative failed to address the project need. A summary of the Authority's analysis follows.

HOV/HOT lanes: These lanes require the allocation of specific travel lanes or toll lanes to reduce travel times and serve as an incentive for lane use. Implementing this alternative on the existing two lane roadway would potentially exacerbate the existing congestion problems within the project corridor, because the existing roadway does not have adequate capacity to handle the existing traffic demand. Additionally, HOT lanes require special tolling and access and egress that the current configuration of the Parkway would not allow without significant modification. Moreover, absent such modification, a HOT lane would be essentially useless because the existing configuration of the Parkway would permit motorists to freely enter and exit a HOT lane, thereby eliminating the reduction in travel time that is the incentive such lane's use.

Ferry Terminal Service: This alternative would require the development of ferry terminals on the waterfront, which is costly and would have its own associated environmental impacts. Additionally, this alternative would only relieve a small percentage of the traffic that currently utilizes the Parkway and would result in an increase in traffic on the local roadway network that could result in failure of the existing infrastructure, as well as creating the need for significant improvement expenditures. Additionally, the lack of mass transit at the destination limits the benefit of this mode of transportation. Mass transit does not exist within every municipality and people will have limited means to reach their ultimate destinations once they exit from the ferry.

Light and Heavy Rail: Implementation of a light or heavy rail system would require significant disturbance within the median of the Parkway and would have its own associated environmental impacts, including wetland impacts, and would conflict with the existing overpasses and interchanges of the Parkway. Additionally, these alternatives would require the construction of Park and Ride facilities to support the rail service, with associated environmental impacts. Moreover, light rail service requires a population of 15,000 – 25,000 individuals per mile to be effective. Heavy rail requires dense destination points and reasonably dense origin points. The NJ Transit Atlantic City Line, Philadelphia/Camden to Atlantic City only has about 1,500 riders per day despite major terminus points. In addition, as was the case with Ferry Terminal Service, rail transportation requires a mass transit system at the terminus points to permit riders to reach

their ultimate destinations. The lack of mass transit limits the usefulness of this mode of transportation.

Buses/Park and Rides: Increasing bus service would not appear to address the existing congestion issue on the Parkway. The Parkway is currently heavily utilized by buses. The current demand for public bus service on this corridor warrants a bus every two hours. To avoid the need to add a travel lane in one direction, the number of buses would need to increase from 10 a day to 300 a day. Adding more buses to this heavily traveled roadway, without a sufficient concomitant shift by the public utilizing the Parkway from individual automobiles to bussing, would not relieve congestion on the Parkway and would likely worsen it. Such a shift would not occur unless there were benefits to utilizing bus service that would attract people from the convenience of their automobiles. Additionally, like rail service, a bus system needs a high demand destination to draw sufficient riders. The Turnpike Authority has pursued the development and encouragement of Park and Ride and Bus Facilities. It has also implemented a toll rate that allows a less expensive toll for buses. This, however, has not increased ridership. The Authority has advised that the majority of the Park and Ride Facilities that exist in the corridor are underutilized on a daily basis. Again, because of the lack of local mass transit, once riders reach the terminus of the bus service, it is difficult for them to reach their destination. Public transportation, HOV/HOT and park and ride facilities, would not appear to provide a reduction in congestion on the Parkway unless a sufficient number of motorists can be enticed to utilize these options in lieu of driving their individual vehicles. Such inducements do not appear to exist to render these options capable of addressing the needs for the Proposed Widening Project.

Car and Van Pools: This alternative, similar to park and ride lots, requires commuter buy in. Moreover, this alternative is designed to address AM and PM peak hour traffic flows. The Parkway, however, has a mix of traffic types including leisure and/or resort-oriented trips and local trips within counties. Due to this traffic mix, it is unlikely that implementation and promotion of car and van pools will result in enough of a decrease in overall traffic to address the project need.

Widening U.S. Route 9: The Parkway runs parallel with U.S. Route 9 and between Interchanges 48 and 50 the two roads share the same right-of-way alignment. The New Jersey Department of Transportation has no plans to widen Route 9. A significant obstacle to the widening of Route 9 is the lack of available right-of-way, as the majority of the region is either developed with commercial/residential uses on both sides of the roadway or environmentally constrained.

EZ-Pass: EZ-Pass reduces congestion at toll plazas not on the Parkway as a whole. When traffic volume on a road, whether tolled or not, exceeds capacity, as currently occurs on the Parkway, congestion occurs. Thus, although EZ-Pass might address any congestion attributable to toll plazas, it would not alleviate road congestion as a result of stop and go conditions.

In sum, the Authority examined a number of transportation alternatives as a means of addressing the need for the Proposed Widening Project. Although one might argue about the level of analysis, it appears evident that these alternatives would not alleviate the existing congestion and over utilization of the Parkway within the project corridor. Moreover, these alternatives would

not address the public safety needs of the project including increasing the capacity of the north-south evacuation route in this area and rehabilitating aging infrastructure.

E. Miscellaneous

Evacuation Route: One commenter stated the proposed widening project is not going to help emergency services or people evacuating in times of potential storm or disaster, because north/south roads in this area are not part of evacuation plans. In fact, the Parkway is a major evacuation route listed in the county hurricane evacuation plans. The Parkway is also listed as an evacuation route in the Community Emergency Planning Information for the Oyster Creek Generating Station prepared by the State of New Jersey Office of Emergency Management. A bill was also introduced in the Senate, S2032, in June 2008, to require the New Jersey State Police to work in conjunction with county emergency management coordinators to implement a lane reversal strategy on the Parkway and other roadways in preparation for an evacuation during an emergency.

Wetlands and Stormwater: One commenter expressed a concern that the MOA did not address stormwater or wetlands impacts. The draft MOA is intended to provide a deviation from Pinelands CMP standards with which the Proposed Widening Project is not fully consistent, i.e. the threatened or endangered plant and animal species of the Pinelands CMP (N.J.A.C. 7:50-6.27 and 6.33, respectively.) The project was reviewed and found to be in compliance with all other standards of the Pinelands CMP. Indeed, the Authority significantly revised its initial stormwater plans in response to the Commission's standards. With regard to the commenter's concerns, the Proposed Widening Project is consistent with the water quality standards of N.J.A.C. 7:50-6.84, particularly N.J.A.C. 7:50-6.83(a)6.iv and N.J.A.C. 7:50-6.13, the wetlands standards pertaining to linear improvements.

Permitting Process: One commenter opined that there didn't need to be quick permitting with regard to the Proposed Widening Project, but normal permitting with a very scrupulous and methodical Environmental Impact Statement. The regulatory review process for the Proposed Widening Project commenced in 1997 and was renewed in January 2006. The most recent regulatory process has been on-going for more than 2 ½ years. Moreover, as part of this process, Commission staff has required the submission of additional information and field testing in order to determine the Proposed Widening Project's conformance with the requirements of the Pinelands CMP. The Proposed Widening Project has received a through review.

Shoulders: A concern was expressed that the Authority intended to utilize the shoulders along the Parkway in the future as a travel lane. As discussed in the Authority's letter of October 16, 2008, the Authority has no intention of utilizing the shoulders constructed as part of the Proposed Widening Project as travel lanes. Shoulders provide an important safety feature on the Parkway and it is for this reason that shoulders were included within the scope of the Proposed Widening Project.

Access to Double Trouble and Sound Barriers: The Authority has indicated that it has no plans to incorporate any pedestrian crossing facilities within the limits of the Proposed Widening Project. However, the Authority noted that the replacement of the Parkway mainline bridges over

Pinewald Keswick Road is included in that project. These improvements will provide the owner of the roadway, Ocean County, with the future opportunity for widening it and possibly providing pedestrian access. Additionally, the new overpass structure at Birch Street will include sidewalks that will facilitate pedestrian crossings over the Parkway in that location. With regard to sound barriers, the Authority indicated that it does not intend to construct sound barriers as part of the Proposed Widening Project. However, it does intend to incorporate open course pavement, commonly referred to as “quiet pavement” in locations where it is warranted and feasible. Quiet pavement contains voids that can help absorb and deafen roadway noise generated by traffic.

CONCLUSION AND RECOMMENDATION

This MOA would permit the implementation of the Proposed Widening Project. Under a strict application of the Pinelands CMP, development that would result in irreversible adverse impacts to habitats that are critical to the survival of any local populations of threatened and endangered species is not permitted. The Proposed Widening Project is expected to impact habitat for certain threatened and endangered plant and animal species. Although it may be argued that there are no irreversible impacts to critical habitat and that a deviation is not required, the Commission has chosen to take a conservative approach and apply the threatened and endangered plant and animal standards of the Pinelands CMP (N.J.A.C. 7:50-6.27 & 6.33, respectively) to the Proposed Widening Project. As a result, implementation of the Proposed Widening Project will require deviations from standards. As discussed above, as part of this MOA, the Authority must purchase and deed restrict against future development at least 142.76 acres of land containing threatened and endangered species habitat to offset the potential threatened and endangered plant and animal species habitat impacts associated with the Proposed Widening Project. Additionally, the Proposed Widening Project has been designed to minimize its associated environmental impacts. Moreover, the MOA itself contains environmental measures designed to further minimize the impacts of the Proposed Widening Project on threatened and endangered species habitat. Based on these measures, it has been demonstrated that the deviations from standards of the Pinelands CMP that would be permitted under this MOA are accompanied by measures that will, at a minimum, afford an equivalent level of protection for the resources of the Pinelands than would be provided through strict application of the standards of the Pinelands CMP. As a result, the Executive Director recommends that the Commission approve the accompanying intergovernmental memorandum of agreement, dated September 30, 2008.