



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-20-_____

TITLE: Resolution Authorizing an Extension of the Time Period by which the South Jersey Transportation Authority is to Acquire a Site for Establishment of a New Grassland Conservation and Management Area as Required by the April 16, 2019 First Amendment to the February 26, 2004 Memorandum of Agreement Between the New Jersey Pinelands Commission and the South Jersey Transportation Authority

Commissioner _____ moves and Commissioner _____ seconds the motion that:

WHEREAS, on April 16, 2019, the Pinelands Commission (the Commission) and the South Jersey Transportation Authority (SJTA) entered into an amendment of the February 26, 2004 Memorandum of Agreement (MOA) between them; and

WHEREAS, in response to SJTA's concerns regarding safe operation of the Atlantic City International Airport due to potential bird strikes from birds utilizing the Grassland Conservation and Management Area (GCMA) established on site in accordance with the requirements of the 2004 MOA, the April 16, 2019 MOA Amendment authorized SJTA to relocate the GCMA off-site and mow the former GCMA location on site year-round; and

WHEREAS, among other things, the April 16, 2019 MOA Amendment obligated SJTA to acquire lands within the Pinelands Area and fund the creation, dedication and long term maintenance of a new GCMA and to preserve the new GCMA in perpetuity through the execution and filing of a deed restriction; and

WHEREAS, the April 16, 2019 MOA Amendment required acquisition of land for the new GCMA within one (1) year of SJTA's execution of the MOA Amendment and the establishment of the new GCMA within three (3) years of the its execution of the Amendment; and

WHEREAS, SJTA entered in a separate Memorandum of Agreement with Atlantic County pursuant to which the County would acquire the site for the new GCMA; and

WHEREAS, the April 16, 2019 MOA Amendment afforded SJTA the opportunity to request a one-time, six month extension of the deadline for acquisition of a site for the new GCMA; and

WHEREAS, by letter dated March 11, 2020, the Authority requested an extension of the deadline to acquire the site for the new GCMA; and

WHEREAS, in accordance with the terms of the April 16, 2019 MOA, the Executive Director could grant an extension of the acquisition deadline for six-months, at her sole discretion and with concurrence of the Commission Chair, provided the SJTA demonstrated that acquisition of the site has commenced and will be completed within the six (6) month extension period; and

WHEREAS, by letter date April 13, 2020, the Executive Director, with the concurrence of the Commission Chair, extended SJTA's acquisition deadline until October 12, 2020; and

WHEREAS, in her letter granting SJTA the additional 6 months to acquire the site, the Executive Director identified the on-going efforts of Atlantic County to acquire a site for the new GCMA, including identification of a potentially viable site and noted that Atlantic County should proceed with acquisition of this potentially viable site expeditiously; and

WHEREAS, by letter dated September 29, 2020, SJTA requested permission to appear before the Commission at its October 9, 2010 meeting in order to request additional time to acquire the site for the new GCMA; and

WHEREAS, in its September 29, 2020 letter, SJTA advised that the basis for its request for additional time was related to delays as a result of the COVID-19 pandemic and Atlantic County's Open Space purchasing procedures pursuant to the New Jersey Open Space Trust Law; and

WHEREAS, SJTA included, as an attachment to its September 29, 2020 request, a letter from Atlantic County identifying the steps remaining to complete acquisition of the new GCMA site and noting that the County fully expected to acquire the site no later than December 31, 2020; and

WHEREAS, although the April 16, 2019 MOA Amendment limits the SJTA's ability to request an extension of the acquisition deadline to one request, there is no such limitation on the Commission's authority to grant an extension on its own; and

WHEREAS, the Commission recognizes Atlantic County's diligent efforts to acquire the new GCMA site and the difficulties of trying to acquire the site during the COVID-19 pandemic; and

WHEREAS, the County must engage in its public process, which includes a 45-day public comment period and public hearing, currently scheduled for October 9, 2020 before the acquisition of the new GCMA site may be brought to the County Commissioners for their consideration of a resolution authorizing such acquisition; and

WHEREAS, the County needs to complete other acquisition pre-requisites including but not limited to procurement of a survey, Phase I/Phase II environmental assessments and other due diligence tasks; and

WHEREAS, the April 16, 2019 MOA Amendment, by its own terms, automatically suspends all development activities, with the exception of development activities that have received Commission approval and are under construction or for which SJTA has entered into a contract for construction, under both the 2004 MOA and the April 16, 2020 MOA Amendment, if the new GCMA site is not acquired by the extended deadline of October 12, 2020; and

WHEREAS, this prohibition includes mowing of the location of the former GCMA site on the Atlantic City International Airport property during the seasonal restriction period set forth in Attachment 3, Environmental Commitments, of the 2004 MOA; and

WHEREAS, the April 16, 2019 MOA Amendment affords SJTA to seek reinstatement of the 2004 MOA and the Amendment, under the current scenario, by submitting a written agreement itemizing the steps SJTA will take to bring the new GCMA back into conformance with the timelines; and

WHEREAS, SJTA's September 29, 2020 letter, including the letter from Atlantic County, establish the steps that the County will take to acquire the site for the new GCMA by December 31, 2020; and

WHEREAS, the April 16, 2019 MOA Amendment also contains a provision which obligates SJTA, if the new GCMA site is not acquired within a year and a half of the date of its execution of the MOA Amendment, i.e. October 12, 2020, to provide an additional payment to the Commission to be added to the Pinelands Conservation Fund and dedicated to land acquisition with a priority given for lands that not only meet the priorities established by the Commission for such fund, but also contain habitat for threatened or endangered bird species; and

WHEREAS, SJTA would now be required to provide the Commission with documentation itemizing the costs its incurred, including labor costs, to create and maintain the GCMA at Atlantic County International Airport and the fair market value to obtain an equivalent property as if the date this obligation was triggered, so that the Commission could determine the precise amount of such payment; and

WHEREAS, the Commission believes, given the diligent efforts undertaken by Atlantic County to date to acquire the new GCMA site and its expectation that it will complete acquisition of the site no later than December 31, 2020, and the impact of the COVID-19 pandemic on the acquisition process, it is preferable to allow Atlantic County to complete its acquisition of the new GCMA site, rather than having SJTA provide documentation and funds to the Commission for land acquisition under the terms of the April 16, 2019 MOA Amendment discussed above; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force and effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall review same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that the Commission grants SJTA an extension of the time period to acquire the new GCMA site until February 28, 2021; and

BE IT FURTHER RESOLVED that through its extension of the acquisition time period, the Commission also stays implementation of the provisions of the April 16, 2019 Amendment pertaining to SJTA's documentation of the costs it incurred in establishing the GCMA on the Atlantic City International Airport as discussed above and its obligation to make an additional payment to the Commission, in lieu of the acquisition of a site for and creation, dedication and long term maintenance of a new GCMA site in the Pinelands Area, until February 28, 2021.

BE IT FURTHER RESOLVED that the Commission authorizes the Executive Director to consider SJTA's September 29, 2020 letter and the letter from Atlantic County attached thereto as the written agreement required to reinstate both the 2004 MOA and the April 16, 2019 MOA Amendment and authorizes the Executive Director to issue a letter reinstating their terms.

Record of Commission Votes

AYE NAY NP A/R*				AYE NAY NP A/R*				AYE NAY NP A/R*			
Avery				Irick				Pikolycky			
Christy				Jannarone				Quinn			
Earlen				Lloyd				Rohan Green			
Howell				Lohbauer				Prickett			

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: _____

Nancy Wittenberg
Executive Director

Richard Prickett
Chairman

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