

AGREEMENT

WHEREAS, the New Jersey Transit Corporation ("NJ Transit") is the owner and operator of a rail yard located in Bay Head, New Jersey, at which various services are provided to NJ Transit equipment used on the North Jersey Coast Line operated by NJ Transit; and

WHEREAS, the manner in which the Bay Head Yard has been operated has been the subject of complaint by residents of the Borough of Bay Head ("Borough") for a number of years; and

WHEREAS, in or about September 2000, NJ Transit proposed to construct a Pedestal Track and Fueling Facility at the Bay Head Rail Yard; and

WHEREAS, in or about October and November 2000, NJ Transit filed applications with the New Jersey Department of Environmental Protection ("NJDEP") for permits or other approvals required for the Pedestal Track and Fueling Facility Project ("Project") pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 ("FWPA") and the Coastal Area Facilities Review Act, N.J.S.A. 13:9A-1 ("CAFRA"); and

WHEREAS, the Borough of Bay Head ("the Borough") filed comments on the FWPA and CAFRA applications; and

WHEREAS, the NJDEP issued Freshwater Wetlands Letter of Interpretation No. 1502-00-001.6 on August 14, 2001 and CAFRA permits No. 1502-00-001.2, .3, .5 and .7 on August 15, 2001; and

WHEREAS, the Borough filed a Notice of Appeal in the Superior Court Appellate Division challenging the issuance of those permits and other approvals, which appeal, now dismissed, was assigned Docket No. A-005388-01T5, in which NJDEP was the respondent but in which NJ Transit was also an interested party; and

WHEREAS, in August 2002, NJ Transit announced that it no longer intended to construct the fueling and lubrication facility portions of the proposed project for which the permits or other approvals were obtained that are the subject of the appeal; and

WHEREAS, the Borough and NJ Transit wish to settle this litigation and otherwise resolve issues unrelated to the appeal but in dispute between the parties as to the operations at the Bay Head Yard, but without admission or adjudication of any issues that are the subject of the appeal;

NOW THEREFORE, for and in consideration of the mutual covenants and promises set forth below, the parties hereby agree as follows:

1. NJ Transit will proceed with the Project as set forth in the Revised Project Description in the CAFRA Permit Minor Modification Application dated January 24, 2003, and the May 5, 2003 Modification to CAFRA Permit No. 1502-00-0001.7 issued by NJDEP, which are incorporated herein by reference.
2. NJ Transit will complete the fueling facility construction project in Hoboken and the testing period for same after construction is complete, so that all fueling operations at the Bay Head Yard can be terminated. NJ Transit anticipates that the Bay Head fueling operations will be terminated by December 31, 2003. In the event of any circumstances which lead NJ Transit to conclude that the operations will not be terminated by that date, NJ Transit will promptly notify the Borough of same and provide information explaining the reason for the delay.
3. As part of the Project, NJ Transit will plant evergreen saplings at three locations along the perimeter of the Yard: 1) the border of the Yard and the homes on Wyndham Drive; 2) the northwestern border of the Yard; and 3) the border of the

Yard in the vicinity of Evergreen Place, provided such plantings do not impact wetlands or interfere in any way with railroad operations. The precise location of the plantings shall be selected jointly by representatives of NJ Transit and the Borough. The trees will be planted in sufficient number to visually screen the Yard from the neighboring properties. The trees planted will be evergreens but will not be scrub pines and will have a minimum caliper of four inches.

4. NJ Transit shall advise its weed spraying contractor to alter its method of herbicide application, so that the same methodology is used at the Yard as at other environmentally sensitive locations, to ensure that herbicide spraying is performed in a manner which minimizes impact to vegetation outside the right-of-way. NJ Transit shall consult with its contractor on an annual basis to ensure compliance with the provisions of this paragraph.
5. Within 180 days of the effective date of this Agreement, NJ Transit shall evaluate an area of trees and plants at the southern border near Western Avenue that may have been killed by improper storage of road salt. If that evaluation reveals that vegetation has been harmed for that reason, NJ Transit will install new plantings sufficient to provide equivalent herbaceous cover as did the vegetation originally present, provided a reasonable time to mature. The new plantings shall be indigenous species, should not be evergreens and should either have a minimum caliper of four inches or have a minimum height of four feet. If NJ Transit determines that no new planting is necessary, NJ Transit will promptly notify the Borough of same and provide any information reasonably necessary to establish the basis for that decision.

6. Within 60 days after the effective date of this Agreement, the Borough will identify the information available from NJDEP files or other recognized environmental databases which indicate "areas of concern," as that term is defined in applicable environmental remediation regulations, that are not the subject of the site investigation and remediation currently being conducted by NJ Transit pursuant to a Memorandum of Agreement ("MOA") with NJDEP dated February 5, 1993. Within six months of their identification, NJ Transit will undertake the investigation of any such areas of concern in a manner consistent with the Technical Standards for Site Remediation, N.J.A.C. 7:26E-1.1 et seq. and will remediate any contamination found to be present in concentrations in excess of applicable NJDEP non-residential site remediation standards to the levels acceptable to NJDEP pursuant to the MOA.
7. NJ Transit will remove the soil and gravel, including but not limited to all contaminated soil and gravel, deposited along the loop track during a project involving the transport of that gravel from other locations on the North Jersey Coast Line and shall return this segment of the loop track to the grade and elevation that existed prior to these activities.
8. NJ Transit shall maintain and make available for inspection by the Borough information setting forth the origin of any materials deposited at the Yard and agrees that such material will be either from approved virgin sources or have NJDEP approval for such reuse.
9. The Borough and NJ Transit will each appoint no more than three representatives to serve on a committee intended to monitor compliance with this Agreement and

to consider and seek to resolve any other issues arising out of Yard operations.

The committee shall meet on a quarterly basis and each meeting shall include a tour of the Yard. Members of the committee representing NJ Transit shall include, but shall not be limited to, individuals who report to the Yard on a daily basis and who have on-site responsibility for Yard operations. The committee will promptly report to NJ Transit and the Borough regarding the issues discussed at these meetings and the resolution of same or the extent to which they remain in dispute.

10. Within 30 days of the effective date of this Agreement, NJ Transit shall provide the Borough with the name, address and telephone number of those individuals who can be contacted in the event of any concerns or issues arising out of Yard operations. At least one of those individuals should be a person who can be reached and take appropriate action after business hours and on weekends in the event of conditions that require immediate attention.
11. The Borough agrees that it will not file an appeal of any modified permit issued by NJDEP for any project at the Yard that is consistent with the project as set forth in paragraph 1.
12. NJ Transit and the Borough reserve their rights to any other causes of action or remedies available in law or equity, other than the appeals referenced in paragraph 12, including but not limited to the right to seek judicial relief to enforce this Agreement.
13. This Agreement shall be governed by the law of the State of New Jersey. Any legal action arising out of or related to this agreement in any way shall be brought

in the Superior Court of New Jersey.

14. This Agreement constitutes the entire agreement and understanding between NJ Transit and the Borough. Except as explicitly set forth in this agreement, there are no representations, warranties, or inducements, whether oral, written, express or implied, that in any way affect or condition the validity of the Agreement or any of its conditions or terms. All prior negotiations, oral or written, are merged into this Agreement.

15. This Agreement shall become effective on the date of execution by both parties.

Dated: 7/02/03

Witness: Linda L. Kauc

New Jersey Transit Corporation

By: Richard R. Sarles

RICHARD R. SARLES, AED
CAPITAL PLANNING & PROGRAMS

Dated: Sept. 2, 2003

Witness: Patricia M. Appligato

Borough of Bay Head

By: Arthur Petracco

Mayor Arthur Petracco

This Agreement has been approved as to form.

Peter C. Harvey

Acting Attorney General of New Jersey

BY: Kenneth M. Worton

KENNETH M. WORTON
Deputy Attorney General

6/11 3/03

By: _____

William C. Sullivan, Jr., Esq.

On behalf of the Borough of Bay Head