

STATE AGRICULTURE DEVELOPMENT COMMITTEE

**Department of Agriculture
Market and Warren Streets
1st Floor Auditorium
Trenton, NJ 08625**

REGULAR MEETING

January 24, 2013

Chairman Fisher called the meeting to order at 9:20 a.m. Ms. Payne read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Roll call indicated the following:

Members Present

Douglas Fisher, Chairperson (Left the meeting at 9:39 a.m., returned to meeting at 11:13 a.m.)

Fawn McGee (rep. DEP Commissioner Martin)

Brian Schilling (rep. Executive Dean Goodman)

James Requa (rep. DCA Commissioner Constable)

Ralph Siegel (rep. State Treasurer Sidamon-Eristoff)

Denis C. Germano, Esq.

James Waltman

Torrey Reade

Peter Johnson

Jane R. Brodhecker

Alan A. Danser, Vice Chairman

Members Absent

None

Susan E. Payne, Executive Director
Jason Stypinski, Deputy Attorney General

Others present as recorded on the attendance sheet: Heidi Winzinger, Brian Smith, Timothy Brill, Steve Bruder, Paul Burns, Ed Ireland, Charles Roohr, John Denlinger, Bryan Lofberg, Jeffrey Everett, Judy Andrejko, David Kimmel, Cindy Roberts, Hope Gruzlovic, Jessica Uttal and Patricia Riccitello, SADC staff; Kerstin Sundstrom, Governor's Authorities Unit; Nicki Goger, New Jersey Farm

Bureau; Dan Pace, Mercer County Agriculture Development Board; Donna Traylor, Sussex County Agriculture Development Board; Laurie Sobel, Middlesex County Agriculture Development Board; Katherine Coyle, Morris County Agriculture Development Board; Ranae Fehr, Atlantic County Agriculture Development Board; Brian Wilson, Burlington County Agriculture Development Board; Harriet Honigfeld and Amanda Brockwell, Monmouth County Agriculture Development Board; Bill Millette, Hunterdon County Agriculture Development Board; and Kurt Alstede, farmer, Chester Township, Morris County.

Minutes

A. SADC Regular Meeting of December 13, 2012 (Open and Closed Session)

It was moved by Mr. Danser and seconded by Ms. Brodhecker to approve the open session minutes and the closed session minutes of the SADC regular meeting of December 13, 2012. The motion was approved. (Mr. Germano abstained from the vote.)

REPORT OF THE CHAIRPERSON

Chairman Fisher stated that he and Executive Director Payne will be leaving the meeting shortly to attend a meeting at the Office of the Governor. Vice Chairman Danser will preside over the meeting in his absence. He stated he would defer his report of the Chairperson at this time.

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Payne discussed the following with the Committee:

- 30th Anniversary of the Farmland Preservation Program

Ms. Payne stated that January 26, 2013 will mark the 30th anniversary of the Right to Farm Act and the Agriculture Retention and Development Act. Staff wants to celebrate that throughout the year and will work with the Committee and the Office of the Secretary to work out the details. If the Counties and the Nonprofit Groups are having any type of event and would like the SADC to be there with them, we would love to attend to raise public awareness of the 30-year anniversary of our program.

- Appropriation Bills

Ms. Payne stated that the appropriation bills are still awaiting signature by the Governor. Staff will continue to keep the Committee apprised.

- On-Farm Direct Marketing Agricultural Management Practice (AMP) Draft Rules

Ms. Payne stated that since she has to leave the meeting shortly and will not be present for the discussion on the draft AMP rules, she wanted to point out a couple of items for the Committee. All rules promulgated by all agencies have to be submitted to a Governor's Office website that reviews proposed rules prior to adoption. We have not yet received the go-ahead for these draft rules at this time. Unfortunately, staff did not get them to the Governor's Office within the full 14-day period that they need to see them in advance. The Governor's Office has asked that the SADC not take final action today. The draft rules will, therefore, have to come back to the Committee at its February meeting for final action. We still would like the Committee to have a conversation today to make sure that the draft is what the Committee wants. She noted we have some guests today from the public who have interest in the draft rules. She stated there was a letter that was received yesterday from attorney Anthony Sposaro (last item in Tab 5 of the meeting books). His letter indicated concerns regarding the issue of jurisdiction that was discussed at the Committee's last meeting. There will be some discussion of that today and also some public comment on that issue. She is assuming at this point, since the Committee will not be taking action today, that the concerns here will be re-addressed and discussed over the next month to see if there is anything else that needs to be changed before the draft rules move forward. She would encourage the Committee and the public present today to provide comments today as we need to get this finalized and into the New Jersey Register so we can move forward on the many other issues that need to be done.

COMMUNICATIONS

Ms. Payne reminded the Committee to take home the various articles provided in the meeting binders.

PUBLIC COMMENT

Kurt Alstede, a farm owner in Chester Township, Morris County, addressed the Committee regarding the On-Farm Direct Marketing Agricultural Management Practice (AMP) draft rule. He stated that Dale Davis, who also is a farmer and sits on the Morris CADB, is present today. He referred the Committee to the letter from Mr. Sposaro regarding the draft AMP. He stated that he appreciates the time staff has spent on this draft rule and he knows it has been a tough, long drawn-out process. Mr. Alstede stated that when Mr. Sposaro spoke to him about

this draft rule, he felt compelled to advance his concerns. He stated that everyone has done a great job in preserving farmland but we consistently say that if we don't have strong right-to-farm protection that maintains economically viable agriculture on this preserved land, we failed in our mission. He noted this is particularly important in counties like Morris that have more urban development and where more right-to-farm issues are encountered. Those urban influences are reflected in the makeup of planning boards, board of adjustments and even some of the councils. Sometimes those serving on those boards do not understand or have a favorable opinion of commercial production agricultural. Things that he would consider very normal and appropriate in agriculture, from a cultural standpoint and a retail sales standpoint, they find very objectionable.

Mr. Alstede commented that this is significant from the standpoint of a right-to-farm case or a site-specific agricultural management practice (SSAM) potentially being directed back to a municipality. He thinks that we have achieved so much in creating a system where agriculture and a responsible agricultural operator can have issues within their community brought before a CADB where there is the expertise and understanding that allows for a fair judgment to be made. We really need that more now than ever before. The red flag that Mr. Sposaro has alerted us to is this opportunity for CADBs to suggest that they don't have the ability to properly hear complex cases, either because they don't have the expertise or the access to funds to hire the appropriate professionals to provide them with the appropriate expertise so they can properly hear the case. In that instance, then there is the opportunity for them to remand the case back to the municipality. He likens it to rescuing a hen from a fox den and then throwing the hen back in after you have let it live for another week – the hen is still going to be eaten. He felt it is critical that we establish a process that allows us to have these hearings, either conducted at the CADB level or advanced to the SADC level, if the CADB feels it doesn't have the ability to properly hear the case. He understands there is an opinion by the Deputy Attorney General that suggests that the CADBs don't have the ability to escrow funds in the way that planning boards do. If he were before the CADB, he wouldn't be opposed at all to paying an escrow fee that would pay for professionals to support the functions of the CADB particular to our case, but there may be some legislative reasons or rule reasons why that isn't possible right now.

Mr. Alstede pointed to Mr. Sposaro's letter that quoted the draft rule: "CADBs may retain jurisdiction over any or all municipal ordinances and/or county resolutions." He said that the word "may" is the problem because that doesn't mean the CADB has to retain jurisdiction and if they don't, what happens to us? We could have a very significant, respectable, well-run operation, legitimately go before a CADB with an issue that all of us could agree the farmer is doing properly but it may be complex. It may require some expertise, but the CADB

can't hire because it doesn't have the funds perhaps. Then we get punted back to the planning board in our town or the board of adjustment and then we are dead. The whole reason we came to the CADB was to get a fair hearing. Of course there is no guarantee that the CADB is going to agree with what a farmer wants all the time, but at least we know that there is the opportunity for a fair hearing. That is all they are seeking. He would like to urge the Committee today to allow some time for us to get a meeting with New Jersey Farm Bureau, Mr. Sposaro, Ms. Payne and other appropriate SADC staff and let's see if there is something we can do. If it is a matter of a rule, if it's a matter of even a small legislative remedy, we accomplished the unimaginable in 1998 and what we need to accomplish here is minuscule to what we did in 1998. We can certainly get the sponsors and he would imagine we could get this through without a lot of difficulty because what we are seeking to do is very consistent with the charge that the Legislature has placed in the Right to Farm Act. He referenced a paragraph from Mr. Sposaro's letter quoting the Supreme Court on the denHollander case. There is nothing in the denHollander case from the Supreme Court that said, well if it's too complex just step back and kick it back to the town. Quite the opposite – the Supreme Court affirms that not only is the CADB the appropriate place for these cases to be heard but that they should be heard there and that they trust the CADBs to come up with good decisions. So if the Supreme Court affirms that action, the Legislature intends the CADB to do that, all we have to do is change the rules that we can escrow funds, pay for professionals if the CADB determines that we need them or charge an application fee. Let's do that. Move the AMP without that language if you need to so that you can get it done and get it out there working, and allow us the time to address this rule and get it passed.

Chairman Fisher thanked Mr. Alstede for his comments. He stated that Mr. Alstede has a premier operation. He asked Mr. Davis if he had any comments. Mr. Davis stated that Mr. Alstede eloquently said everything that he would have said.

Nicole Goger from the New Jersey Farm Bureau stated that last month the Farm Bureau submitted a couple of comments on the AMP and the additional rules that the SADC is proposing along with it. Since then, Farm Bureau has spoken with Mr. Alstede and other constituents and members, reviewed Mr. Sposaro's letter and agrees that giving everything back to the municipalities is a potentially scary scenario for the Farm Bureau and its membership. She is glad to hear this is tabled, and the Farm Bureau would look forward to working with the SADC to come up with a solution to this issue.

Chairman Fisher stated that the issue that has been brought up will either be addressed through the AMP or legislatively perhaps. We are still going to end up

with a review from the Attorney General's Office but we want to hear everything that is concerning the agricultural community so that the outcome will serve the interest of agriculture.

Chairman Fisher and Ms. Payne left the meeting at this point in time. Vice Chairman Danser presided over the meeting.

OLD BUSINESS

A. Resolution of Amended Final Approval – County Planning Incentive Grant Program

1. Robert Smith Farm, Washington Township, Morris County

Mr. Brill referred the Committee to Resolution FY2013R1(1) regarding the Robert Smith Farm in Washington Township, Morris County. The resolution recommends extending the conditional final approval of the Smith Farm County PIG application. We have been processing a series of extensions related to the condemnation of an easement for a public well by the Washington Township Municipal Utilities Authority (WTMUA) on this property and we are gathering additional information regarding the details associated with this new public well and its implications for agricultural use of this property going forward. Mr. Brill provided an overview of the application for the Committee. The well would require about a one-acre easement on a portion of the Smith property, which would put it in the middle of a corn field. The WTMUA has opted to try to put any treatment facilities/pump house equipment on an adjacent property owned by the Township School Board so the issue for the SADC is really confined to a well as well as some additional monitoring wells. Originally the WTMUA worked with the N.J. Department of Environmental Protection (NJDEP) to put two monitoring wells within the area encompassed by the easement to access the well. It wanted a third location on another part of the property but the NJDEP consented to all three monitoring wells, based on the geology and slope of the area and surface conditions, within the right of way. Therefore, there will be no additional impacts outside of the proposed right of way. The WTMUA conducted a 72-hour stress test in July 2012 where it pumped the well at maximum conditions for a 3-day period to see what effects that has on the groundwater in the area, as well as some of the adjacent private wells. SADC staff received information in December that included details on the water analysis, as well as some of the potential contaminants within a certain radius of the well. Staff has details on the well borings themselves and the geology that may make it difficult for surface contaminants to reach the well.

Mr. Brill stated that staff received more information yesterday on the test results for the well. He reviewed the site of the wells on the slides with the Committee. He stated that other wells in the area were monitored during this 72-hour test to see what impacts the maximum withdrawal of water on the Smith Farm well had on the adjacent conditions,

but that information has not been submitted. Staff does have some additional geological information that we'll work with DEP in analyzing. Staff has had a good working relationship with the Bureau of Water Allocation in particular, to help us analyze the implications for the Smith Farm in the future. The WTMUA has assured us that the results are all very positive with respect to water use but we want to hear that from the NJDEP as well. The plan as it stands right now is for the WTMUA to stay within its current water allocation for this service area and retire at least one other well that has some problematic conditions. Ultimately, the NJDEP needs to sign off on the configuration of all the wells and how they are used within the water system. Currently, the NJDEP has one water allocation for the Schooley's Mountain system and the Hager Water system in the Valley. There is no interconnection between the two systems but when the water allocation was set up, NJDEP gave one allocation to both systems. NJDEP is in the process of dividing that between the two systems so there will be one limitation for the mountain system and one for the valley system. Also, there are some decisions that need to be made with respect to the emergency water use limitations that are in place during the summer. There continues to be a problem with unaccounted for water loss, particularly in the mountain system. All of this also needs to be approved by the Highlands Council before the NJDEP will take action.

Mr. Brill stated that the WTMUA provided staff with a little more information on the sphere of influence. This well seems to be impacting a specific area, shown on the slide, and we want to get those details. Ultimately, we need to ensure that the agricultural uses on the Smith Farm going forward will have access to water for agricultural purposes while the public demands are being met. Staff will need to evaluate, based on the result of that information, whether the buffer area is adequate. Right now, a fifty-foot radius is the minimum buffer requirement for minor pollutant sources. There are certain types of agricultural operations that can trigger a shift into a major pollutant source category that would require additional buffers. Right now, the easement that has been approved is only fifty feet from the well in all directions. Staff will also look at the appraisal implications as to whether or not these new conditions on the farm related to the well have an impact on the agricultural value. At this point in time staff has discussed the situation with the County of Morris and they have requested a six-month extension on their conditional final approval. Staff recommendation is to grant an extension of six months until July 28, 2013 along with additional conditions, as outlined in Resolution FY2013R1(1). Mr. Brill stated that the state funding to provide a match for the county funds is still available and staff is recommending that we don't move that into other needs at this time.

It was moved by Mr. Germano and seconded by Mr. Danser to approve Resolution FY2013R1(1) granting an extension of the conditional final approval of the Robert W. Smith farm (SADC #14-0096-PG), Washington Township, Morris County, for a period of six months, until July 28, 2013. Upon receipt of information supporting the determinations set forth in the Resolution, the SADC reserves complete authority to reassess the validity of the appraisals, both in the "before" and "after" valuations, upon

which the SADC relied upon to certify the easement value, and if determined necessary by the SADC, require updated appraisals be submitted to reflect the conditions then known as a result of the permits/approvals obtained. The SADC will continue to encumber the \$646,823.52 in State funding allocated to its share of the cost of the development rights to the Smith Farm and will exclude the Smith Farm encumbrance from any and all calculations regarding future funding eligibility of Morris County pursuant to N.J.A.C. 2:76-17.8 should the well-related issues be resolved and the SADC determines the closing can proceed. If the County requires additional funds for the property due to an increase in the final surveyed acreage, the County may utilize unencumbered and available base grant funds to supplement the shortfall; however, no additional SADC competitive grant funds above the \$646,823.52 are available for this property. The provisions of the SADC's June 24, 2010 conditional approval, the SADC's July 28, 2011 amended and conditional final approval and the June 30, 2012 amended and conditional final approval to the extent not inconsistent herewith, remain in full force and effect as though set forth herein at length. This approval is subject to any other conditions of said Resolution. The motion was approved. (Chairman Fisher was absent for the vote.) (A copy of Resolution FY2013R1(1) is attached to and is a part of these minutes.)

B. Right to Farm – Draft Rules

1. On-Farm Direct Marketing Agricultural Management Practice (AMP) (NJAC 2:76-2A.13)
2. Right to Farm Process Revisions (NJAC 2:76-2.3, 2.4, 2.5 and 2.7)
3. Right to Farm Hearing Procedures (NJAC 2:76-2.8)
4. Pick-Your-Own RTF Eligibility Rule Revisions (NJAC 2:76-2B.2)

Mr. Danser stated that regarding item 1, it seems to him that it is definitely tabled. Regarding the remaining three items, he asked if there is there something in those documents that the Committee didn't talk about, that someone would want to discuss.

Mr. Siegel questioned why staff is proposing right-to-farm regulatory process changes because he thought the purpose/impetus here was to address direct marketing. Mr. Smith stated we are doing the other items because we felt it was the best opportunity to address some anomalies in the right to farm procedures. There are some rules that really don't make sense from a procedural standpoint and they really don't match what the Right to Farm Act says regarding procedures.

Mr. Siegel stated what concerns him is that when you re-write regulations that have formed the basis of case law and practice for decades, Mr. Sposaro is sort of suggesting that the rewriting could invalidate that or at least damage the meaning of the denHollander case. Mr. Smith stated that the SADC understands the attorney's argument in that letter and he is prepared to respond to it but Ms. Payne obviously needs to oversee his response and so does Office of the Attorney General (OAG).

Mr. Danser asked if there were other questions or comments.

Mr. Schilling asked how formal was the Office of Attorney General's office advice that CADBs cannot establish escrow accounts in connection with review of right-to-farm matters. Mr. Stypinski stated that it was informal. He stated that his office looked at the statute that gives the CADBs powers. Those powers don't include the right to include escrows. Mr. Siegel stated then it is not statutorily authorized. Mr. Stypinski responded that was correct, as opposed to when you look at the MLUL there's at least implied authority for the planning boards to do that. Mr. Siegel stated that a large number of our planning boards reside in municipalities that have minimal staff resources so they don't have engineers or if they do, the engineers don't have time to spend on this, so you would need to hire someone. The larger municipalities probably don't do this escrow requirement because they don't need it. They have the staff support.

Mr. Germano stated that even when municipal planning boards and zoning boards do have staff, the Municipal Land Use Law (MLUL) provides that the applicants pay them and the municipality to defray their salaries. He stated the theory is that taxpayers shouldn't pay for landowners to develop their land; that shouldn't be a cost that is passed on to the taxpayer.

Mr. Danser stated it is complicated because the CADBs do not at this point have the expertise that the planning board would have and yet they should be the ones that are doing the review. He stated that he chairs a CADB and when you have one of these come along that requires some expertise, the staff is not there and the members really aren't up to speed and haven't dealt with an application that gets into traffic and drainage and things that a lot of decisions need to consider. Mr. Siegel asked if you couldn't refer these cases to the county Office of Engineering. Mr. Danser stated you can go to the county for help and the county gets lots of help from the county planning board staff but the expertise isn't there.

Ms. Reade asked about partnering with the Soil Conservation Districts if it is an engineering issue because they are dealing with soil disturbance and they have the right to ask for escrowing the fees. Mr. Stypinski stated that we can look at that to see whether or not you can partner with the Soil Conservation Districts to do that. Mr. Germano stated even if you can do that, it would only generate money for issues that the Districts get involved in – there are others. The Committee discussed various types of non-soil disturbance issues that could require the need to escrow, including those requiring traffic expertise.

Mr. Siegel stated the other issue is a landowner wants to develop or do something on a piece of property and he has multiple expenses, one of which is to provide professional

escrow for the planning board as part of his application and he doesn't want to do that. Well then, he doesn't have to have a development project, it was his idea. Mr. Stypinski responded that is correct. The farmer is someone who has a complaint filed against him about something he is doing, he is defending himself and we are suggesting that he would have to pay an escrow? Mr. Germano stated not always; a farmer can go to the CADB to request an SSAMP, so there's no complaint there. Mr. Siegel stated that it sounds like Mr. Alstede might be right and this might just be a statutory initiative, that somebody should extend that authority to the CADBs. Mr. Germano stated he thinks so very strongly.

Mr. Stypinski stated that if the statute permitted it that would be a different story. Mr. Germano stated it probably is an easy legislative fix. Mr. Johnson stated that there doesn't appear to be a clear path, as far as a farmer who either wants to expand a direct marketing opportunity or create a new one, whether they should start with the planning board or they should start with their CADB. It appears right now that you take your choice where you want to go. His hope is that CADBs do not have to become planning boards because they are not set up to be that. Mr. Danser stated his hope would be to go to the planning board. The problem becomes if the planning board is being overzealous, if there is public who comes in, complains about it and puts pressure on the planning board.

Mr. Johnson stated he hopes that is where the CADB or the SADC can step in and at that point, if local planning boards are getting overzealous, the CADBs have the wisdom and expertise to say this is just ridiculous. Development is expensive but sometimes it can be outrageous. That is what we are trying to help here, to take it away from being outrageous and to make it just normally expensive. Mr. Siegel responded that there's a difference between someone filing for an SSAMP and someone responding to a right-to-farm complaint. With an SSAMP, you're expanding something, you're doing something new, you want to get advanced permission from the CADB. That is different from, for example, Medford comes after you for something you are doing on the property. Now all of a sudden you're going to the CADB to try to implement your right to farm rights. If the Legislature gives the CADBs escrow authority, it's risky. You cannot have an escrow and you cannot require an escrow in the case of a person who is responding to a complaint. Mr. Johnson stated you have the AMPs now, you have certain standards that are written in here that farmers need to comply with. It's the protection from the overzealous township or county that direct marketers need. Mr. Siegel stated that you don't want to be in a position where if you give the CADB escrow authority, we know they are all trustworthy, but now all of a sudden they are going to escrow everybody. Mr. Johnson responded that he is not saying that is the answer, he is not agreeing with that as what we need.

Mr. Danser asked if there were any further questions or comments.

Ms. McGee stated that she had consulted with DEP's stormwater management program on this portion of the draft rule and the program did have comments. The program is in support of the municipal review of agricultural development for stormwater management. However, the language at 2:76-2.3(k) should be modified to clarify that all requirements of the Stormwater Management rules at N.J.A.C. 7:8 shall be reviewed by the municipality, regardless of whether or not the municipality has adopted an ordinance that exceeds the minimum requirements of N.J.A.C. 7:8. She thinks that they just want to make sure that regardless of who is doing any kind of review that the storm management rules are what they are and they have to be followed regardless. Mr. Waltman stated he had that same concern when he reviewed this more closely because those regulations are very clear. They authorize municipalities, and it is rarely done, but occasionally a municipality will enact a stormwater ordinance locally that is responding to a specific problem or issue in that town and it may be a little different than the state regulation so the municipality is acting as the officer of the state to protect the residents of that municipality from the negative effects of stormwater. If the CADB cannot or presumably isn't authorized to overrule a municipality if it is exceeding a regulation, but the state regulation authorizes the municipality to exceed a minimum ... he thinks that needs more discussion and would like that fleshed out a bit. Mr. Germano stated that in line with Mr. Waltman's comment, what denHollander says is the CADBs have jurisdiction. Mr. Waltman that he didn't think denHollander says that. When he read that passage, and it was an important passage, he thought it was a very general statement by the Court, but it wasn't addressing the specific issue of stormwater because DEP has that authority, and that responsibility it then delegates to the municipalities. Mr. Danser stated that his concern would be that the specific stormwater problem that the municipality is addressing is the farm market that they don't want to expand. Mr. Waltman stated yes, but their ordinances don't work that way. It's not like they are going to adopt an ordinance that is clearly trying to get around right to farm. Mr. Germano stated that within the last five years, every municipality in the state ended up doing amendments to their master plans; they all adopted the same thing. Mr. Waltman stated some did a little bit different but most did exactly the same thing. Mr. Germano stated that he thinks the authority is the CADB, just like we override zoning ordinances.

Mr. Siegel asked whether when municipalities are adopting the FEMA Hazardous Mitigation Lands, have they in some cases had to amend their stormwater ordinances? Ms. McGee stated she could look at some of them. He asked if Ms. McGee could inquire as to whom he could ask because, speaking from the perspective now of the funding agency, the GSPT not the Treasury, they have encouraged hazardous mitigation site planning for the simple reason that projects qualify for federal money. We are getting 8 percent federal money for 20 percent state money on these so-called Blue Acres acquisitions. In order to do that you first have to have a hazardous site mitigation plan. He thinks the way the draft rules are written is fine because they require compliance with state regulations. The state regulation in this case very specifically authorizes municipalities to add increased requirements in a specific watershed. So he agrees with

Mr. Waltman in this sense that if a municipality has a tighter stormwater regulation in a certain watershed they are acting as agents of the DEP. The DEP contemplated that localities would do that – 1) because they have water problems or 2) they want to qualify for FEMA funding for buy-outs, which we are all in favor of and that is different than an actual municipal ordinance the RTF addresses. Mr. Germano stated he doesn't have the slightest problem with that. His only concern is that the DEP was referring the stormwater review to the municipality and taking it away from the CADB.

Mr. Danser stated that it sounds like we will have another draft in February and not be introducing a rule until later. It's better to get it right. Mr. Germano stated that Mr. Danser's points are well taken. Whether it is stormwater, parking lighting or noise, these are levers that objectors pull to stop things they don't want in their back yard and that's what the regulation format was designed to protect the farmer from, so he is always leery of handing that lever to someone who wants to hurt farms.

NEW BUSINESS

A. Review of Draft rules for Wind Energy on Preserved Farms

Ms. Gruzlovic referred the Committee to the draft rules for wind energy on preserved farms. She noted that the draft is a work in progress and is being presented to the Committee today to solicit feedback and direction before staff finalizes the draft. She stated that, under the draft rules, impervious cover is limited to one acre on the premises, which is the same impervious cover limit in the proposed rules for solar energy on preserved farms. The definition of occupied area includes all of the land under the wind energy generation facilities as well as land that is no longer available for agricultural or horticultural production as a result of the presence of the facilities, including, for example, land compacted during construction of the wind facilities that is not decompacted after the facilities have been installed. She noted that the draft rules make a distinction between small wind energy – defined as one or more turbines with a combined installed nameplate capacity up to 100 kW and a system height of up to 170 feet, and large wind energy – defined as one or more turbines with a combined installed nameplate capacity of greater than 100 kW and/or a system height of greater than 170 feet. She stated that she wants to further review the 170-foot maximum height criteria for small wind to ensure that it is not overly restrictive and does not force what otherwise would be considered small wind projects to comply with the draft rules' more prescriptive standards for large wind.

She reviewed the regulations as they apply to exception areas, which mirror the regulations in the SADC's proposed rule for solar energy on preserved farms. Mr. Germano questioned the requirement that a wind energy facility intended to service a severable exception area be located entirely within the exception area. Ms. Gruzlovic explained that the intent is that we don't want to have a wind turbine that services a

severable exception area to remain on the premises in the event the severable exception is sold off. She presented several photos of small wind turbines installed on farmland in New Jersey and reviewed evaluation criteria for applications for small-wind energy on preserved farms. The draft rules reinforce deed of easement restrictions regarding the need to take appropriate measures to address soil and water resource concerns on the premises. She stated that while the draft rules require wind facilities to be located and configured to maximize use of the premises for agricultural/horticultural purposes, staff recognizes that wind energy is much more site-sensitive than solar and landowners may not have multiple viable siting options. However, where they do have such options, this criterion should be considered. For small wind, use of existing roadways should be maximized and new roads should be designed as grassed roadways. Decommissioning standards require that all small wind facilities be removed from the premises, including underground foundations and cables to a depth of 36 inches.

Ms. Gruzlovic noted that large wind has a much greater impact on farmland and, therefore, the draft rules' standards are more prescriptive. She stated that in developing the standards for large wind energy generation, staff found guidelines issued by the New York Department of Agriculture and Markets very helpful. That agency has supervised the installation of several wind turbines on farmland in New York state and has a great deal of experience with the resulting impacts to the land. She presented a portion of a Powerpoint presentation compiled by the New York agency that contained photos of various stages of large wind turbine construction. Issues illustrated by these photos included the importance of stripping topsoil from work areas and keeping stripped topsoil stockpiled separately from subsoil and rocks; factors to consider in locating access roads; the potential for soil compaction and drainage issues; and restoration considerations.

Ms. Gruzlovic stated that the regulatory criteria for large wind address the same basic issues as small wind but contain more specific requirements. For example, there is heavy reliance on completing certain work in accordance with a conservation plan. Site disturbance cannot exceed 2 acres on the premises to account for the greater degree of disturbance large wind projects require. Other criteria address stripping of topsoil from work areas, construction of access roads, and restrictions on construction-related vehicle equipment traffic and parking. Post-construction requirements include removal of all excess construction material, replacement of topsoil, decompaction of soil to 12 inches or that area will be considered part of the occupied area; and review of the restored site for the next two growing seasons to identify drainage, compaction and other potential problems. She stated that the draft rule requires landowners purchasing wind energy facilities over time to assume ownership of the facilities within 20 years. Researching the useful life of wind turbines, we see a range from 20 to 30 years – most commonly around 20 years. She said she wanted to look at these types of purchase agreements to see if there's a clearer standard. The Committee members noted that assuming ownership of facilities at 20 years presents substantial financial issues for landowners who need to maintain and decommission older wind energy facilities, and that they should be aware of

and consider these issues going in. Decommissioning of large wind turbines must be conducted in accordance with a conservation plan and requires the removal of all wind energy facilities to a depth of 36 inches. The draft rules include a provision delegating to the Executive Director approval authority for small wind projects where the CADB or nonprofit raises no concerns regarding impacts and the application conforms with the law/rules. This would expedite the approval of projects that clearly meet statutory/regulatory requirements, while providing any applicant who is denied the opportunity to appeal to the Committee.

Ms. Gruzlovic stated that provisions of the draft rules that staff continues to review are the requirement that landowners assume ownership of wind energy facilities within 20 years; the small wind turbine maximum height of 170 feet and the large-wind impervious cover limit of one acre – to ensure that these limits are workable and do not unreasonably hinder the development of wind energy on preserved farms. She also noted that she had not received a response to a request for comments on the draft rules from large wind energy installers, and intends to again solicit such review. She stated that staff hopes to bring the draft rules back to the Committee for consideration as a formal rule proposal at the March meeting.

B. Soil and Water Conservation Cost-Share Grant Extension Requests

1. Daniel Czarniak, Atlantic County
2. South Land Farms, Inc., Ocean County

Mr. Lofberg referred the Committee to the Soil and Water Conservation Project Cost-Share Grants Extension of Project Approvals Summary, showing two requests for an extension of soil and water conservation cost-share grants. He reviewed the specifics of each request with the Committee and stated that staff recommendation is to grant approval to the requests as presented and discussed.

It was moved by Mr. Siegel and seconded by Ms. Reade to approve Resolution FY2013R1(2) and FY2013R1(3) granting a soil and water conservation cost-share grant extension to the following landowners, as presented and discussed, subject to any conditions in said resolutions:

1. South Land Farms, Inc., SADC #15-0005-DE (Resolution FY2013R1(2))
Plumsted Township, Ocean County
Soil and Water Conservation Cost-Share Extension Amount: \$19,014.23
Extended to: July 22, 2014 (Obligation # 1)
2. Daniel and Margaret Czarniak, SADC #01-0043-8F (Resolution FY2013R1(3))
Town of Hammonton, Atlantic County

Soil and Water Conservation Cost-Share Extension Amount: \$5,265.62
Extended to: November 5, 2013

The motion was approved. (Secretary Fisher was absent for the vote.) (Copies of Resolution FY2013R1(2) and Resolution FY2013R1(3) are attached to and are a part of these minutes.)

C. Eight-Year Farmland Preservation Program – Renewals, Terminations and Withdrawals

Mr. Lofberg referred the Committee to the Eight-Year Program Summary Report, showing no renewals or withdrawals of eight-year programs. There were five terminations of eight-year programs, as outlined on the summary report. He stated that this is informational for the Committee only and that no action is needed.

Secretary Fisher and Susan return to the meeting at this point.

D. Resolution for Certification – Agricultural Development Area Amendments
1. Hunterdon County

Mr. Bruder referred the Committee to Resolution FY2013R1(4) for a request by the Hunterdon County Agriculture Development Board (HCADB) to certify the amendment to its Agricultural Development Area (ADA) map to include Block 94, Lot 11, in the Township of Readington. He stated that this involves a parcel that was omitted from Hunterdon County's ADA at the request of a group of landowners who had an agreement with Toll Brothers for a development project on Route 202. The original intent of the Township and the County was to include this parcel in the ADA but the landowners requested that it not be included and as a result it was left out. In the meantime, the agreement expired with the developers, the Township intervened and acquired the property in fee and we are at the point now of moving ahead with the preservation application that requires the parcel to be in the ADA. In October 2011, the Hunterdon CADB updated its designated ADA map at the request of the Township to include Block 94, Lot 11. The HCADB held a public hearing in December 2012 to consider public comment on the proposed amendment, with no one providing any additional information on the proposed change. The HCADB is requesting the SADC's certification. Staff recommendation is to certify the ADA amendments, as presented and discussed.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolution FY2013R1(4) certifying the amendment to the Hunterdon CADB's ADA map to include Block 94, Lot 11, in Readington Township, as presented and discussed, subject to any conditions of said Resolution. The motion was unanimously approved. (A copy of Resolution FY2013R1(4) is attached to and is a part of these minutes.)

E. Stewardship

1. House Replacement Request

Pedrick Farm, South Harrison Township, Gloucester County

Mr. Roohr referred the Committee to Resolution FY2013R1(5) for a request by Jesse DeGarmo, contract purchaser of Block 31, Lot 5, and Block 32, Lot 2, in South Harrison Township, Gloucester County, comprising 32.99 acres, to replace an existing single-family residence on the property. Mr. DeGarmo's contract is contingent upon the ability to replace the house. The Estate of Howard Pedrick is the record owner of the property. Mr. DeGarmo proposes to replace the existing residence with a new residence for himself and his family. The proposed new residence will be built in a partially wooded area on Lot 5, approximately 110 feet behind the existing house, and will utilize a driveway through a partially wooded area not in production. Mr. DeGarmo proposes to build a two-story house with approximately 3,800 square feet of heated living space to replace the original farmhouse, which is approximately 2,400 square feet. The design of the new home includes a basement consisting of approximately 2,000 square feet of additional space. The existing home is in need of significant repairs. Mr. DeGarmo intends to remove the existing residence, fill, grade, and reseed the area. Staff has verified that the previously existing house is not included on the New Jersey Register of Historic Places. Staff recommendation is to grant the request, as presented and discussed.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolution FY2013R1(5) granting a request by Jesse DeGarmo, Contract Purchaser of Block 31, Lot 5, and Block 32, Lot 2, South Harrison Township, Gloucester County, 32.99 acres, to construct a single-family residence, consisting of approximately 3,800 square feet of heated living space and approximately 2,000 square feet of basement space, in the location shown in Schedule "A" of said Resolution, to replace the single-family residence, which currently exists on the property. The existing residence shall be removed and the area restored prior to or within thirty days of receipt of the Certificate of Occupancy on the new residence. This approval is valid for a period of three years from the date of this Resolution. This approval is non-transferable. The motion was unanimously approved. (A copy of Resolution FY2013R1(5) is attached to and is a part of these minutes.)

2. Division of the Premises Request

DuBois Farm, Pilesgrove/Oldmans Twps., Salem County

Mr. Roohr referred the Committee to Resolution FY2013R1(6) for a request by Harry and Jean DuBois and the Estate of Maurice DuBois, owners of Block 22, Lots 3 and 7 in Pilesgrove Township and Block 21, Lots 1 and 2 and Block 22, Lot 10 in Oldmans Township, Salem County, comprising approximately 276.80 acres for a division of the premises. The farm has already been sold and it was an error by the buyers and sellers to not come in for necessary approvals before selling the property. The property was sold

along existing lot lines and had title insurance but somehow this did not come to light. The Deed of Easement references six existing residences, one agricultural labor residence, no residual dwelling site opportunities and no exception areas. The owners conveyed Block 22, Lot 7 in Pilesgrove Township and Block 21, Lots 1 and 2 and Block 22, Lot 10 in Oldmans Township to Edward and Barbara Byrnes, who are long-time farmers in the area, currently farming approximately 1,100 acres in various fresh-market vegetables. The Byrneses have a home farm adjacent to the premises and have rented the premises from the DuBoises for 20 years.

The Byrneses purchased the property to increase their land holdings to allow for expansion of their operation. During review of comparable sales in the summer of 2012, SADC staff determined that Block 22, Lot 7 in Pilesgrove Township and Block 21, Lots 1 and 2 and Block 22, Lot 10 in Oldmans Township had been conveyed to the Byrneses without SADC or CADB approval and advised the CADB accordingly. The Salem CADB advised the owners and purchasers that the property was not in compliance with the Deed of Easement and that a request for a division of the premises, approved by the CADB and SADC, was necessary.

The owners propose to divide the property as follows: The DuBoises have retained ownership of Block 22, Lot 3, in Pilesgrove Township (Parcel "A") and sold Block 22, Lot 7, in Pilesgrove Township and Block 21, Lots 1 and 2 and Block 22, Lot 10 in Oldmans Township (Parcel "B") to Edward and Barbara Byrnes. The CADB approved the request to divide the premises into two parcels along existing lot lines. Parcel "A" would consist of 147+/- acres and includes four existing single-family residences and several farm outbuildings. Parcel "A" is improved with an irrigation pond, an irrigation well and underground mains over the entire parcel. Parcel "B" consists of 129+/- acres and includes two existing single-family residences, an agricultural labor dormitory and several farm outbuildings. Parcel "B" is improved with an irrigation pond and underground mains through the entire parcel.

Staff recommendation is to approve the request for a division of the premises as presented and discussed.

It was moved by Mr. Germano and seconded by Ms. Reade to approve Resolution FY2013R1(6) granting a request to divide the premises of the Harry and Jean DuBois and the Estate of Maurice DuBois, known as Block 22, Lots 3 and 7 in Pilesgrove Township, Salem County, and Block 21, Lots 1 and 2, and Block 22, Lot 10, Oldmans Township, Salem County, 276.80 acres, as follows, subject to the recording of the SADC's approval Resolution and any other conditions of said Resolution:

Parcel A – Block 22, Lot 3, Pilesgrove Township, Salem County

147+/- acres and includes four existing single-family residences and several farm outbuildings. Parcel "A" is improved with an irrigation pond, an irrigation well and underground mains over the entire parcel.

Parcel B – Block 22, Lot 7, Pilesgrove Township, and Block 21, Lots 1 and 2 and Block 22, Lot 10, Oldmans Township, Salem County
129+/- acres and includes two existing single-family residences, an agricultural labor dormitory and several farm outbuildings. Parcel "B" is improved with an irrigation pond and underground mains through the entire parcel.

Mr. Siegel asked if there was any concern about a precedent here, that this is just a paperwork error, and to just go ahead and sell and then go to the SADC and they will approve it. Mr. Roohr stated it is a major paperwork mistake and the Committee doesn't have to approve it, in which case it creates a major issue. The buyer is aware that the Committee doesn't have to approve it. He stated that he is not concerned that this would be a precedent in this case. The SADC has had other individuals who have been right on the dotted line of wanting to sign a contract for smaller pieces and the SADC has said no. If this were that type of situation, staff would not have recommended to approve it and the landowners would have to undo this. Mr. Germano stated that you wouldn't want to set a precedent that even if your division meets the standards we're not going to approve it because you took the wrong step first. He stated that this meets the standards.

Mr. Waltman stated that he dislikes the process and he has consistently voted against these and he is going to vote against it today out of the principle that they should come and get permission before they act. This one probably would easily meet the test but he is totally uncomfortable with it after the fact.

Ms. Payne stated that the SADC doesn't like it either and it is highly dangerous. We have gone to court and litigated illegal subdivisions previously because they were not going to meet the tests. Someone who does this, hopefully it is unknowingly and it is an enormous risk to the landowner and their title company because if the Committee doesn't approve it, we would seek for them to undo the transaction. Ms. Reade stated that she thought Mr. Byrnes preserved a large portion of one of his farms previously so shouldn't he have known this? Mr. Roohr stated that was the question the Salem CADB administrator asked Mr. Byrnes. Mr. Roohr stated that Mr. Byrnes' comment to him was that he grew up on this farm and he has known Mrs. DuBois since he was a small child and he is in his 60s now and he knew the farm was preserved. He asked Mrs. DuBois if it was divided and was he able to buy a portion and Mrs. DuBois stated yes. Mr. Byrnes got a title company from Salem County so he thought everything was done correctly so it was not a deliberate action. Could he have done more research? Absolutely. Ms. Reade asked if someone would be having a conversation with Salem County that this was wrong and they should put the word out. Ms. Roberts stated she has been at the meetings where the CADB has discussed this. They know it was wrong and what she thinks they are

relying on is that if they had come in beforehand it would have met the test and been approved. They are just trying to undo what went wrong. Ms. Reade stated that the concern is if the community thinks that this is a good way to do it. Mr. Byrnes owns a lot of preserved land and there are other high-profile large landowners in that area, so if this starts to be the way of doing business, that is the concern.

Ms. Payne stated that sometimes you'll see a title report and it will say "exceptions to title mortgage" and then it says "any other easement of record." Sometimes there is this throw-away language and if you accept a title report that has this kind of disclaimer in it then you'll be on your own. She doesn't know exactly how far into anything they got but someone dropped the ball, either the attorney who reviewed it or the title company never found it or no one looked closely enough.

Chairman Fisher stated that there is a precedent here and folks come here all the time with this. Ms. Payne stated we have done a few of these. Mr. Germano stated that we do these on a case-by-case basis. We never like it but there are times where we have said no and times where we have said yes.

The motion was approved. (Mr. Waltman opposed). (A copy of Resolution FY2013R1(6) is attached to and is a part of these minutes.)

Chairman Fisher stated that going forward possibly we need to do a better job making people and title companies understand that there could be consequences in doing this without approvals.

Ms. Payne stated that one of the issues staff wants to accomplish in the next year is a proactive outreach on post-closing issues. She wants to have meetings in every county, inviting preserved property owners. She would like to create a newsletter that is sent to all owners of preserved farmland. Staff will do as much as they can but it is not going to avoid every situation. The question becomes whether the Committee wants to entertain rule changes to deal with this. Do we need to introduce penalties, or raise the stakes on this kind of thing? Staff is open to the Committee's thoughts or suggestions. We don't want to come across as heavy-handed to the agricultural community but on the other hand we are not here to clean up everyone's mess. Mr. Danser suggested mentioning it in the monitoring letter so that it reminds people. Chairman Fisher stated that everyone should know and be advised going forward that somewhere down the line when something like this happens, there is always the chance that the Committee is going to say no. Therefore, however you can communicate to the boards and the public, it would be good to relay that information. Mr. Schilling stated that from a procedural standpoint the landowner in this case didn't miss any steps; he went through title search, and there was a delinquency there. Ms. Payne stated that as staff conveys this approval we can state this in the letter to both the buyer and the seller to put them on record that they cannot do this going forward.

Mr. Germano stated that this will probably happen again in the future and that some language in the resolution talking about the fact that what prompts us to say yes or no to any particular one of these requests is whether or not it meets the standard. We recite in the resolution that we have acted in the past to affirm or deny these issues and it is always based on whether or not they meet the standard.

3. Renewal Energy Generation Request

Lahaway Creek Farm, LLC, Upper Freehold Township, Monmouth County

Mr. Roohr referred the Committee to Resolution FY2013R1(7) for a request by Lahaway Creek Farm, LLC, owner of Block 55, Lot 17, Upper Freehold Township, Monmouth County, 69.87 acres, to construct a photovoltaic solar energy generation facility on portions of two rooftops of existing barns on the property, which will provide electricity to these two barns as well as the farm office located on a non-preserved area next to one of the barns. The buildings that will support these facilities are two equine surgery barns on the property, with rooftops totaling approximately 9,700 square feet in size. The farm's energy demand for the previous calendar year was 17.42 kilowatts (kW). There are no other renewable energy generation facilities existing on this property. The rated capacity of the proposed solar energy generation facility is 14.72 kW. The Owner provided evidence that the annual solar energy generation does not exceed the previous calendar year's energy demand. The farm office sits on an approximately one-acre area that was excluded from the easement purchase application but the one-acre parcel has never been severed from the preserved farm and contains land and an office that serve as integral parts of the production operation of the overall farm. Staff recommendation is to grant the request, as presented and discussed.

It was moved by Mr. Requa and seconded by Mr. Germano to approve Resolution FY2013R1(7) granting a request by Lahaway Creek Farm, LLC, owners of Block 55, Lot 77, Upper Freehold Township, Monmouth County, 69.87 acres, for the construction, installation, operation and maintenance of a photovoltaic energy generation facility, structures and equipment consisting of approximately 1,400 square feet and having a rated capacity of 14.72kW of energy located on the rooftops of two barns in the locations identified on Schedule "A" of said Resolution. A condition of this approval is that the farm office on the exception area, which is currently part of the overall farm operation, may not be sold separate and apart from the Premises, or used for a nonagricultural purpose, unless all the solar energy generating system components linking it to the solar panels on the Premises have been removed. The motion was unanimously approved. (A copy of Resolution FY2013R1(7) is attached to and is a part of these minutes.)

F. Resolution of Final Approval – Nonprofit Grant Program

Ms. Winzinger referred the Committee to two requests for final approval under the Nonprofit Grant Program. She reviewed the specifics for each request and stated that staff recommendation is to grant final approval, as presented and discussed.

It was moved by Mr. Requa and seconded by Mr. Waltman to approve Resolution FY2013R1(8) and FY2013R1(9) granting final approval to the following applications, as presented and discussed, subject to any conditions of said Resolutions:

1. Hunterdon Land Trust/Horoschak Farm, SADC # 10-0061-NP (Resolution FY2013R1(8)
Block 49, Lots 16 and 18, Franklin Township, Hunterdon County, 133 Acres
Cost-share grant not to exceed \$3,325.00 per acre (total of approximately \$399,000.00 based on 120 acres) to the Hunterdon Land Trust for the development easement acquisition on this property, subject to the availability of funds. The SADC approves the use of the Hunterdon Land Trust's Federal Farm and Ranch Land Protection Program funds for the preservation of this farm, which will include an impervious coverage limitation of five percent (approximately 6.0 acres available for impervious coverage including agricultural related structures) on the lands being preserved outside of the exception area, and other restrictions required under the federal program.

Discussion: The property contains one five-acre nonseverable exception area limited to one single-family residence. The Hunterdon Land Trust (HLT) has stated that this property is included on its U.S. Department of Agriculture, Natural Resources Conservation Service FRPP FY2012 grant application as a targeted farm and has received funding approval for a grant not to exceed fifty percent of the federal appraised current value, subject to final surveyed acreage. The landowner has agreed to the additional restrictions associated with using federal funding.

2. D&R Greenway Land Trust, Inc./Battiato Farm, SADC #17-0038-NP (Resolution FY2013R1(9)
Block 39, Lot 13, Mannington Township, Salem County, 58 Net Easement Acres
Cost-share grant not to exceed \$3,487.50 per acre (total of approximately \$177,862.50 based on 51 acres) to D&R Greenway Land Trust, Inc. for the development easement acquisition on this property, subject to the availability of funds. The SADC approves a two-acre nonseverable exception around the existing home that shall be limited to one single-family residence. The SADC approves the use of D&R Greenway Federal Farm and Ranch Land Protection Program funds for the preservation of this property, which will include an impervious coverage limitation of seven percent (approximately 3.6 acres available for impervious coverage including agricultural related structures), on the lands being preserved outside of the exception area, and other restrictions required under the federal program. This final approval is subject to and conditioned upon

the expiration of the Governor's veto period for the minutes of both the December 13, 2012 and the January 24, 2013 SADC meetings.

Discussion: The property contains a two-acre nonseverable exception area around one existing single-family residence. The appraisers based the per-acre analysis on the nonriparian and non-open water area only on this property. Although the easement will cover riparian and border water acreage, the SADC will not provide a cost-share on this area. D&R Greenway Land Trust, Inc. has stated that the farm is included on its U.S. Department of Agriculture, Natural Resources Conservation Service FRPP grant application as a targeted farm and that it intends to utilize these federal funds for their matching grant. This farm is eligible for a federal grant of up to fifty percent of the FRPP approved easement value. The landowner has agreed to the additional restrictions associated with the federal program. The Committee certified the easement value of the property at its December 13th meeting, and that certification is still subject to the Governor's review period.

The motion was unanimously approved. (A copy of Resolution FY2013R1(8) and FY2013R1(9) is attached to and is a part of these minutes.)

G. Resolutions for Final Approval – County Planning Incentive Grant Program

SADC staff stated that there were six requests for final approval under the County Planning Incentive Grant Program. Staff reviewed the specifics of each application with the Committee and stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Mr. Siegel and seconded Mr. Requa by to approve Resolution FY2013R1(10) granting final approval to the following application, as presented and discussed with the amendment to the fifth "Whereas" on page one of said Resolution to remove the word "heated" from living space, subject to any other conditions of said Resolution:

1. Allan and Jean Moore, SADC # 11-01 71-PG (Resolution FY2013R1(10) Block 2739, Lot 2, Hamilton Township, Mercer County, 49 Net Acres State cost-share grant of \$6,840.00 per acre (60% of the certified market value) for a total grant need of approximately \$345,214.80. A three percent buffer for possible final surveyed acreage increases has been applied; therefore, 50.47 acres will be utilized to calculate the SADC grant need. Base grant funds will be utilized for this property.

Discussion: The property has a 3 acre nonseverable exception containing an existing single-family residence that cannot exceed 4,000 square feet of heated living space in the

future. There are no preexisting nonagricultural uses and no residences for agricultural labor on the area to be preserved outside of the exception area.

Mr. Pace from the Mercer County Agriculture Development Board stated that he had a suggested change to the resolution. He stated that the SADC uses the language "heated" living space in its resolutions but Mercer County's policy is just "living space," not "heated." He asked if that could be removed.

The motion was unanimously approved. (A copy of Resolution FY2013R1(10) is attached to and is a part of these minutes.)

Mr. Danser recused himself from any discussion/action pertaining to the Voight farm to avoid the appearance of a conflict of interest. Mr. Danser is the Chairman of the Middlesex County Agriculture Development Board.

It was moved by Mr. Siegel and seconded by Mr. Germano to approve Resolution FY2013R1(11) granting final approval to the following application, as presented and discussed, subject to any other conditions of said Resolution:

2. Jessie K. Voight, SADC #12-0017-PG (Resolution FY2013R1(11))
Block 22, Lot 17.0111, South Brunswick Township, Middlesex County, 36 Net Acres
State cost-share grant of \$20,610.00 per acre (60% of the certified market value and purchase price) for a total grant need of approximately \$764,218.80. The Equine Map (Schedule "B") and specialized "Equine Schedule "B" (draft shown in Schedule "C") will be recorded with the Deed of Easement. A three percent buffer for possible final surveyed acreage increases has been applied; therefore, 37.08 acres will be utilized to calculate the SADC grant need. Base grant funds will be utilized for this property.

Discussion: The property has one existing single-family residence, zero residences used for agricultural labor and no preexisting nonagricultural uses. The property has one two-acre severable exception for, and restricted to, one single-family residence.

The motion was approved. (Mr. Danser recused himself from the vote). (A copy of Resolution FY2013R1(11) is attached to and is a part of these minutes.)

It was moved by Ms. Reade and seconded Mr. Requa by to approve Resolution FY2013R1(12) granting final approval to the following application, as presented and discussed, subject to any other conditions of said Resolution:

3. Andrew and Leonor Thomas, SADC #17-0103-PG (Resolution FY2013R1(12))
Block 47, Lot 8.02, Upper Pittsgrove Township, Salem County, 12 Acres

State cost-share grant of \$3,425.00 per acre (67.82% of the certified market value and purchase price) for a total grant need of approximately \$42,333.00. A three percent buffer for possible final surveyed acreage increases has been applied; therefore, 12.36 acres will be utilized to calculate the SADC grant need. Base grant funds will be utilized for this property.

Discussion: There is one single-family residence on the property and no exception areas.

The motion was unanimously approved. (A copy of Resolution FY2013R1(12) is attached to and is a part of these minutes.)

Ms. Reade recused herself from any discussion/action pertaining to the Rera farm to avoid the appearance of a conflict of interest.

It was moved by Mr. Regua and seconded by Ms. Brodhecker to approve Resolution FY2013R1(13) granting final approval to the following application, as presented and discussed, subject to any other conditions of said Resolution:

4. Lenny and Beth Rera, SADC #17-0102-PG (Resolution FY2013R1(13)
Block 1405, Lot 7.01, Pittsgrove Township, Salem County, 33 Acres
State cost-share grant of \$7,000.00 per acre (62.86% of the certified market value and purchase price) for a total grant need of approximately \$149,556.00. A three percent buffer for possible final surveyed acreage increases has been applied; therefore, 33.99 acres will be utilized to calculate the SADC grant need. Base grant funds will be utilized for this property.

Discussion: There is one single-family residence on the property and no exception areas. The County will utilize an installment purchase agreement (IPA) to cover the easement purchase transaction.

The motion was approved. (Ms. Reade recused herself from the vote.) (A copy of Resolution FY2013R1(13) is attached to and is a part of these minutes.)

It was moved by Ms. Reade and seconded by Mr. Germano to approve Resolution FY2013R1(14) granting final approval to the following application, as presented and discussed, subject to any other conditions of said Resolution:

5. Clementine Elwell, SADC # 17-0105-PG (Resolution FY2013R1(14)
Block 40, Lot 4, Alloway Township, Salem County, 73 Net Acres
State cost-share grant of 44,200.00 per acre (63.64% of the certified market value and purchase price) for a total grant need of approximately \$315,798.00. A three percent buffer for possible final surveyed acreage increases has been applied;

therefore, 75.19 acres will be utilized to calculate the SADC grant need. Base grant funds will be utilized for this property.

Discussion: There is one single-family residence and no exception areas on this property. The county will be utilizing an installment purchase agreement (IPA) to complete the easement purchase transaction.

The motion was unanimously approved. (A copy of Resolution FY2013R1(14) is attached to and is a part of these minutes.)

Ms. Brodhecker recused herself from any discussion/action pertaining to the Klein property to avoid the appearance of a conflict of interest. Ms. Brodhecker is the Chairperson of the Sussex County Agriculture Board.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolution FY2013R1(15) granting final approval to the following application, as presented and discussed, subject to any other conditions of said Resolution:

6. Max and Ingrid Klein, SADC # 19-0030-PG (Resolution FY2013R1(15) Block 1801, Lot 12.03, Fredon Township, Sussex County, 15 Acres State cost-share grant of \$57,937.50 (65.79% of the certified market value and purchase price). A three percent buffer for possible final surveyed acreages increases has been applied; therefore, 15.45 acres will be utilized to calculate the grant need. Base grant funds will be utilized for this property. The SADC will utilize any remaining federal grant funds (estimated \$13,905.00) to offset SADC grant needs on the property.

Discussion: The property includes one one-acre nonseverable exception for one future single-family residence. The SADC submitted a parcel application to the FY2012 U.S. Department of Agriculture, Natural Resources Conservation Service Federal Farm and Ranch Lands Protection Program (FRPP). The NRCS has determined that the property and the landowner qualify for federal grant funds and approved a grant of approximately \$45,000.00, subject to and not to exceed fifty percent of the federal appraised current value based on surveyed acreage. For the purposes of this resolution the federal grant will be based on the lowest easement value considered by the SADC at the time of the easement value certification, which is \$5,700.00 per acre equating to a federal grant of \$2,850.00 per acre (50% of \$5,700.00) or approximately \$44,032.50 in total federal funds. Should federal funding become available from other funding years or through other qualified entities such as the SADC, a nonprofit organization or County, it may be utilized if such funding benefits the easement acquisition and/or the successful use of federal funding. The landowner has agreed to the additional restrictions associated with the use of federal funding, including a one-acre impervious cover limit for the construction of agricultural infrastructure on the property outside of the exception area.

Due to funding limitations, Sussex County has requested that the federal grant funds be “passed through” to cover the entire local cost-share.

The motion was approved. (Ms. Brodhecker recused herself from the vote). (A copy of Resolution FY2013R1(15) is attached to and is a part of these minutes.)

H. Preliminary Approval – State Acquisition Program

Ms. Brodhecker recused herself from any discussion/action pertaining to the Anderson property to avoid the appearance of a conflict of interest. Ms. Brodhecker is the Chairperson of the Sussex County Agriculture Board.

Ms. Winzinger referred the Committee to Resolution FY2013R1(16) for a request for preliminary approval for the Tor Andersen farm, known as Block 19, Lot 109, and Block 19.06, Lots 62 and 64, in Sparta Township, Sussex County, comprising 13 acres. The property is classified as an “Other” farm under the State Acquisition Program. Most of the property’s lots, except for Block 19, Lot 17, are within the County Agriculture Development Area and the County Planning Incentive Grant Eastern Highlands 2 project area. The property is located within the State Plan-designated Environmentally Sensitive Area (PA5) and within the Highlands Agriculture Priority and Resource Areas as well as the Highlands Preservation Area’s “Protection Zone.” The applicant has two existing single-family residences and is requesting a 0.5-acre nonseverable exception area for future flexibility of use for the existing farm market, which sells goods produced on the farm and from additional land owned by the Andersen family. Staff recommendation is to grant preliminary approval.

It was moved by Mr. Siegel and seconded by Mr. Germano to approve Resolution FY2013R1(16) granting preliminary approval to the Tor Andersen Farm, known as Block 19, Lot 109; Block 19.06, Lots 62 and 64, Sparta Township, Sussex County, approximately 13 net easement acres, as presented and discussed, subject to any conditions of said resolution. The motion was approved. (Ms. Brodhecker recused herself from the vote.) (A copy of Resolution FY2013R1(16) is attached to and is a part of these minutes.)

I. Resolution for Final Approval – State Acquisition Program

1. Olbrich Farm, Pittsgrove Twp., Salem County

Ms. Roberts referred the Committee to one request for final approval under the State Acquisition Program. The property has a three-acre nonseverable exception area for one future single-family residence on Block 1102, Lot 12, and a twelve acre severable exception area restricted to one single-family residence on Block 1002, Lot 19. Ms. Roberts stated that in the resolution on page two, the second “Whereas” lists the three-acre exception as for one future single-family residence. That needs to be amended to

say “existing” residence, not future residence. Staff will correct the resolution to reflect that. Staff recommendation is to grant final approval to the application as presented and discussed with the above-noted correction.

It was moved by Mr. Germano and seconded by Mr. Danser to approve Resolution FY2013R1(17) granting final approval to the following application, with the amendment to the second “Whereas” on Page 2 to reflect that the three-acre nonseverable exception is for an “existing” single-family residence on Block 1102, Lot 12, and subject to any conditions of said resolution:

1. Olbrich Farm (SADC # 17-0238-DE)
Block 1002, Lot 19; Block 1101, Lot 48; Block 1102, Lot 12 and 13
Pittsgrove Township, Salem County, 1.25 Net Acres
Acquisition of the development easement at a value of \$5,000.00 per acre (1.25 easement acres) for a total of approximately \$625,000.00, subject to conditions contained in Schedule “B.”

The motion was unanimously approved. (A copy of Resolution FY2013R1(17) is attached to and is a part of these minutes.)

J. Resolutions for Final Approval – Municipal Planning Incentive Grant Program

Ms. Roberts referred the Committee to two requests for final approval under the Municipal Planning Incentive Grant Program. She reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval.

It was moved by Mr. Reade and seconded by Mr. Requa to approve Resolution FY2013R1(18) granting final approval to the following application, as presented and discussed, and subject to any conditions of said Resolution:

1. James R. Yanus, SADC # 17-0016-PG
Block 13, Lots 14, 14.02 and 16.01, Alloway Township, Salem County, 81 Net Acres
State cost-share of \$3,750.00 per acre for an estimated total of \$303,750.00 (65.79% of the certified market value and purchase price).

Discussion: The property has been allocated one one-acre severable exception area around an existing single-family residence. There are no residences on the property to be preserved. The County will utilize an installment purchase agreement (IPA) to cover its share of the funding for this easement purchase transaction.

The motion was unanimously approved. (A copy of Resolution FY2013R1(18) is attached to and is a part of these minutes.)

It was moved by Mr. Germano and seconded by Ms. Brodhecker to approve Resolution FY2013R1(19) granting final approval to the following application, as presented and discussed, and subject to any conditions of said Resolution:

Ellen Waters, SADC #17-0107-PG
Block 2101, Lots 16, 17, Pittsgrove Township, Salem County, 19 Acres
State cost share of \$3,340.00 per acre for an estimated total of
\$63,460.00 (68.16% of the certified market value and purchase price).

Discussion: The property includes one single-family residence.

The motion was unanimously approved. (A copy of Resolution FY2013R1(19) is attached to and is a part of these minutes.)

PUBLIC COMMENT

Harriet Honigfeld from the Monmouth County Agriculture Development Board stated that regarding the division of the premises issue discussed today, she has had a fair amount of experience in this area over the years, probably having one case a year and that Monmouth County has been in Court to put easements back together. The most recent occasion was last year. She stated that the County takes this issue very seriously but what she has found in her experience is title companies just not understanding what they are seeing. She stated she mentioned to Mr. Smith in the past that she thinks part of the key lies with education of the legal community who deal with real estate and the agricultural easements, understanding not just divisions of premises but also some of our other closings-type of issues. She stated that whatever types of forums there may be, educational or otherwise, that is where we need to start. She stated that regarding title companies, officers will have to interpret what searchers find. A searcher often finds the document but then the person who is reading it has to understand what it is. Ms. Honigfeld stated that where this issue frequently comes up is in estate planning issues, foreclosure issues and those types of areas that may trigger a division without people realizing it when they record separate deeds.

Nicole Goger from Farm Bureau stated that she wanted to confirm that they would be able to meet to follow up on some of the concerns discussed earlier during the comment period. Farm Bureau applauds the SADC for all its work done to circulate the AMP for on-farm direct marketing to the agricultural community, attorneys who handle right to farm and the CADBs, but this issue stems from the rule determination for SSAMP, which wasn't widely circulated. It shows how helpful it would be to have that done ahead of time and more broadly circulated so these issues don't come up at the last minute.

Hopefully, we can meet and resolve these concerns so that we can move forward next month. She stated that the SSAMP is possibly more important than the on-farm AMP. We don't want to hold the whole process up but we don't want to see the rule adopted with language in there that could give everything back to the municipalities. Ms. Payne stated that the SADC will be reaching out to the necessary people to have a discussion.

Ms. Payne stated that regarding minutes, one of today's resolutions had language in it regarding the approval of minutes. The history of the program has been that we have a meeting, the next month the minutes are approved by the Committee and then the minutes go to the Governor's Office for the 15-day review period. Technically, we cannot close or take formal action on anything until that veto period expires, which is a lot of time; it's 45 days from the date the Committee takes action. What most authorities do, or at least what they are allowed to do, is after the meeting the Director can prepare the minutes and send them to the Governor's Office to begin the veto review period. She stated that staff would then come back to the Committee at its next meeting and those minutes would already be reviewed by the Governor's Office. She would like to begin doing this as a matter of course going forward. She stated that on the rare occasion the Committee has made amendments to the minutes, such as grammar and spelling and sometimes a member will clarify his or her statements, that would require slight adjustments to the language. If the Committee is comfortable, that is what we will start doing to expedite everything. We cannot close farms and take other actions until those actions are final. The Governor's Office doesn't want to see portions of minutes and review them two or three times. If we want to accelerate our process we need to send the minutes over as soon as possible. If someone wants an amendment, that can still be done and then we would send the correction over to the Governor's Office for its information. There has never been an amendment to the minutes that the Committee wanted that has had the effect of undoing an action that was taken; it's usually just a clarification.

It was the consensus of the Committee to allow SADC staff to complete and send over the minutes to the Governor's Office for review prior to SADC approval of the minutes at the subsequent meeting of the Committee, as presented and discussed above.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Thursday, February 28, 2013, beginning at 9:00 a.m. Location: Health/Agriculture Building, First Floor Auditorium.

CLOSED SESSION

At 12:20 p.m., Mr. Siegel moved the following resolution to go into Closed Session. The motion was seconded by Mr. Germano and unanimously approved.

“Be it resolved, in order to protect the public interest in matters involving minutes, real estate, and attorney-client matters, pursuant to N.J.S.A. 10:4-12, the N.J. State Agriculture Development Committee declares the next one-half hour to be private to discuss these matters. The minutes will be available one year from the date of this meeting.”

ACTION AS A RESULT OF CLOSED SESSION

A. Real Estate Matters - Certification of Values

County Planning Incentive Grant Program

Mr. Johnson recused himself from any discussion/action pertaining to the Thompson-Vincetown Farm to avoid the appearance of a conflict of interest. Mr. Johnson sits on the Burlington County Agriculture Development Board.

Mr. Waltman recused himself from any discussion/action pertaining to the Hamill farm to avoid the appearance of a conflict of interest. Mr. Hamill is a financial contributor to his nonprofit group, the Stonybrook Millstone Watershed Association.

It was moved by Ms. Reade and seconded by Mr. Danser to certify the development easement values on the following applications, as presented and discussed in closed session:

1. Thompson-Vincetown Farm, SADC # 03-0378-PG
Block 903, Lot 11, Southampton Township, Burlington County, 26 Acres
2. Samuel M. Hamill, Jr., SADC # 11-01 73-PG
Block 6501, Lot 121.01.2, Lawrence Township, Mercer County, 34 Acres

The motion was approved. (Mr. Johnson and Mr. Waltman recused themselves from the vote.) (Copies of the Certification of Values Reports are attached to and are a part of the closed session minutes.)

It was moved by Mr. Germano and seconded by Ms. Brodhecker to certify the development easement values for the following application, as presented and discussed in closed session:

3. Edward and Patricia McConnell, SADC #21-0516-PG
Block 25, Lots 01 and 11, Oxford Township, Warren County 56 Acres

The motion was unanimously approved. (A copy of the Certification of Value Report is attached to and is a part of these minutes.)

Municipal Planning Incentive Grant Program

It was moved by Mr. Germano and seconded by Ms. Brodhecker to certify the development easement values for the following applications, as presented and discussed in closed session:

1. Marjorie Y. Lovenberg Revocable Trust/Joel Higgins, SADC #10-0344-PG
Block 27, Lot 20, Delaware Township, Hunterdon County
2. Richard and Marjorie Yard, SADC # 10-0333-PG
Block 44, Lot 15, Delaware Township, Hunterdon County, 33 Acres

The motion was unanimously approved. (Copies of the Certification of Value Reports are attached to and are a part of these minutes.)

PUBLIC COMMENT

None

ADJOURNMENT

There being no further business, it was moved by Mr. Danser and seconded by Mr. Siegel and unanimously approved to adjourn the meeting at 1:33 p.m.

Respectfully Submitted,



Susan E. Payne, Executive Director
State Agriculture Development Committee

Attachments