

STATE AGRICULTURE DEVELOPMENT COMMITTEE

EXTENSION OF

RESOLUTION #FY2013R1(1)

AMENDED FINAL REVIEW AND CONDITIONAL APPROVAL
OF A PLANNING INCENTIVE GRANT TO

MORRIS COUNTY
for the
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of
Robert W. Smith
Washington Township, Morris County

N.J.A.C 2:76-17 et seq.
SADC ID# 14-0096-PG

January 24, 2013

WHEREAS, pursuant to N.J.A.C. 2:76-17.14, the SADC granted conditional final approval on June 24, 2010 to provide a cost share grant to Morris County for the purchase of a development easement on the Property conditioned on the results of the condemnation action instituted by the Washington Township Municipal Utilities Authority (WTMUA) against the Smith Farm (Schedule A); and

WHEREAS, on July 28, 2011 the SADC amended its June 24, 2010 conditional final approval for the Smith Farm by establishing a one (1) year time limit during which the WTMUA would secure proper well drilling, water supply and other required permits and approvals from all necessary agencies including but not limited to the NJDEP and the NJ Highlands Council (Schedule B); and

WHEREAS, the July 28, 2011 amended final approval included a one (1) year time limit of the conditional final approval that could be extended for any time period determined to be reasonable by the Committee, upon the County's written request detailing sufficient reasons for the extension; and

WHEREAS, on June 28, 2012 the SADC amended its July 28, 2011 final approval to provide a six (6) month extension of its conditional final approval until January 28, 2013, concluding that the County had made significant progress in addressing all outstanding issues (Schedule C); and

WHEREAS, in addition the SADC reserved that upon expiration of the one (1) year time period (July 28, 2012), or any approved extension thereof, the SADC reserves the

right, in the SADC's sole discretion, to rescind its conditional final approval for the Smith Farm due to the existence of still unresolved issues regarding the public water supply well and its impact on the value of the Smith Farm easement and future agricultural use of the property; and

WHEREAS, the WTMUA completed a 72-hour aquifer well test on the new well on the Smith Farm in July 2012 and submitted incomplete reports on the test results to the SADC on December 5, 2012; and

WHEREAS, the NJDEP provided a letter indicating the adequacy of the 50-foot buffer around the new well on the Smith Farm in correspondence dated December 21, 2012; and

WHEREAS, SADC staff needs additional time to obtain and review full copies of the test well report and other such information as may be necessary in order to make a recommendation to the SADC regarding the impacts of the proposed public water supply well on the Smith Farm as set forth in the SADC's prior resolutions on the matter, attached hereto and referred to as Schedules A, B and C; and

WHEREAS, Morris County has submitted a letter requesting a six month extension (Schedule D) based on significant progress in obtaining all necessary permits and approvals as outlined in the December 21, 2012 letter from NJDEP.

NOW THEREFORE BE IT RESOLVED that the SADC finds that the County has made significant progress in addressing all outstanding issues and have provided supporting documentation highlighting sufficient reasons to warrant an extension of six months until July 28, 2013; and

BE IT FURTHER RESOLVED, that upon receipt of information supporting the determinations set forth above, the SADC reserves complete authority to reassess the validity of the appraisals, in both 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; and

BE IT FURTHER RESOLVED, that 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; and

BE IT FURTHER RESOLVED, 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; and

BE IT FURTHER RESOLVED, that 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; and

BE IT FURTHER RESOLVED, that this Extension of Amended Final Review and Conditional Approval is subject to the Governor's review pursuant to N.J.S.A. 4:1C-4f.

1-24-13

Date



Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairperson	ABSENT FOR VOTE
Fawn McGee (rep. DEP Commissioner Martin)	YES
Brian Schilling (rep. Executive Dean Goodman)	YES
James Requa (rep. DCA Commissioner Constable)	YES
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)	YES
James Waltman	YES
Torrey Reade	YES
Peter Johnson	YES
Jane R. Brodhecker	YES
Alan A. Danser	YES
Denis Germano	YES

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION #FY10R6(12)

FINAL REVIEW AND CONDITIONAL APPROVAL OF A PLANNING INCENTIVE
GRANT TO

MORRIS COUNTY
for the
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of
Robert W. Smith
Washington Township, Morris County

N.J.A.C 2:76-17 et seq.
SADC ID# 14-0096-PG

June 24, 2010

WHEREAS. on December 15, 2007, the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") application from Morris County, hereinafter "County" pursuant to N.J.A.C. 2:76-17.6; and

WHEREAS. pursuant to N.J.A.C. 2:76-17.7, the SADC granted final approval of Morris County's 2010 PIG application on May 28, 2009; and

WHEREAS. on June 30, 2009 the SADC received an application for the sale of a development easement from Morris County for the Smith Farm, hereinafter referred to as "Owner", identified as Block 12 Lot 4, Washington Township, Morris County, totaling approximately 100.8 acres hereinafter referred to as "Property" and as identified on the attached map (Schedule A); and

WHEREAS. the Property is a targeted farm located in Morris County's Agriculture Development Area (ADA) West Project Area and is within the Highlands Preservation Area; and

WHEREAS. the Property contains a 6.2+- acre conservation/drainage easement area servicing the neighboring school which the SADC may not provide a cost share towards due to its restriction on development and agricultural use; and

WHEREAS. the Washington Township Municipal Utilities Authority (WTMUA) filed a Notice of Intent dated August 19, 2009 with the SADC and the Morris County Agriculture Development Board (MCADB) regarding the proposed condemnation of a portion of the Smith Farm for purposes of placing a public water supply well on the Property; and

WHEREAS. while the Notice of Intent was filed with the MCADB and SADC as required by N.J.S.A. 4:1C-19a., the WTMUA instituted condemnation proceedings against the Smith Farm on or about January 2010 without first obtaining the review and findings of the MCADB and SADC pursuant to N.J.S.A. 4:1C-19b., and

WHEREAS, pursuant to N.J.S.A. 4:1C-19b., on May 10 2010 and June 10, 2010, the MCADB conducted its review of the Notice of Intent, conducted a public hearing, and issued a resolution concluding that the proposed condemnation will "cause unreasonably adverse effects upon: 1) preservation and enhancement of agriculture in the ADA; and 2) upon overall State agricultural preservation and development policies", and recommended that the eminent domain action against the Smith Farm be withdrawn by the WTMUA; and

WHEREAS, the SADC staff continues to review all information submitted by the WTMUA in order to determine whether the Notice of Intent is complete, with the most recent information having been submitted to the SADC by the WTMUA on June 8, 2010; and

WHEREAS, upon the SADC's determination that it has received a complete Notice of Intent, the SADC will have 30 days to issue findings regarding the effect of the proposed taking upon the preservation and enhancement of agriculture in the ADA, the municipally approved program, and upon overall State agricultural preservation and development policies; and

WHEREAS, since the return date of the order to show cause on the Smith Farm condemnation is scheduled for July 9, 2010, pursuant to NJSA 4:1C-19c., the Secretary of Agriculture has authorized the Office of the Attorney General to intervene in and to seek a postponement of those proceedings in order allow the SADC to issue its findings and conclusions related to this proposed taking of land in an ADA in accordance with N.J.S.A. 4:1C-19b., and

WHEREAS, to some extent, the preservation of the Smith Farm will be dependent upon a final judicial disposition of the proposed condemnation action which may, in turn, effect the final size and configuration of the Smith Farm; and

WHEREAS should the configuration of the Smith Farm change due to a successful taking by the WTMUA, the application would be reviewed, appraisal updates would be evaluated and this final conditional approval would be submitted to the SADC for amendments, as appropriate; and

WHEREAS, the Property includes a one (1) acre nonseverable exception area for a future single family home and zero (0) residences used for agricultural labor; and

WHEREAS, the Property includes a Garage/Barn, approximately 32' x 130' and parking area for the storage and year round sale of antiques which will be noted and fully described as a pre-existing non-agricultural use in the Deed of Easement and final survey; and

WHEREAS, the Property has a rank score of 62.55 which exceeds the County's average quality score of 44, as determined by the SADC on July 24, 2008; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9(b), on September 23, 2009 it was determined that the application for the sale of a development easement was complete and accurate and satisfied the criteria contained in N.J.A.C. 2:76-17.9(a); and

WHEREAS, pursuant to N.J.A.C. 2:76-17.11, on March 25, 2010 the SADC certified a development easement value of \$14,200 per acre based on zoning and environmental regulations in place as of January 1, 2004 and \$2,800 per acre based on zoning and environmental regulations in place as of the date of valuation June 30, 2009; and

WHEREAS, Morris County has requested to encumber an additional 3% buffer for possible final surveyed acreage increases, therefore, 103.824 acres will be utilized to calculate the grant need; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.12, the Owner offered to sell the development easement to the County for \$14,350 per acre which is higher than the highest certified easement value, but not higher than the highest appraised value; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13, the Washington Township Committee approved the Owner's application for the sale of a development easement on August 24, 2009, but is not participating financially in the easement purchase; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13, the Morris County Agriculture Development Board approved the application on April 1, 2010 and secured a commitment of funding for approximately 57% of the easement purchase price from the Morris County Board of Chosen Freeholders for the required local match on April 26, 2010; and

WHEREAS, Morris County has requested the SADC approve and encumber a reduced cost share for the Smith farm in order to preserve competitive grant funds which may be available for future projects; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13(d) and 17.14, on May 3, 2010 the County established a prioritization of farms and submitted a request to the SADC to conduct a final review of the application for the sale of a development easement; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.8 and Resolution # FY08R9(33), adopted on July 26, 2007, the SADC authorized a FY09 funding allocation to provide eligible counties with a base grant of \$2,000,000.00 with the ability to obtain an additional competitive grant not to exceed \$3,000,000.00 to purchase development easements on eligible farms, subject to available funds; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.8, and 17.14 Morris County is eligible to apply for an additional \$3,000,000.00 dollars of competitive grant funding for a maximum FY 2009 grant of \$5,000,000.00, subject to the availability of funds; and

WHEREAS, to date the County has closed the Cobb/Headly Farm and the Estate of Hansel/Greenway Flowers Farm expending \$1,903,206.60 of their \$2,000,000 base grant and requested final approval for the Farrand #5, Farrand #6, Lare and McLaughlin Farms encumbering the remaining base grant and leaving \$2,335,038.94 potentially available in FY09 competitive funding (Schedule C); and

WHEREAS, pursuant to N.J.A.C. 2:76-17.14 (d)-(f) if there are insufficient funds available in a county's base grant the county may request additional funds from the competitive grant fund; and

WHEREAS, competitive grant funds shall be awarded by the SADC based on a priority ranking of the individual farm applications applying for grants from the competitive grant fund (Schedule D); and

WHEREAS, Morris County is requesting to encumber \$646,823.52 from its available competitive funds for the purchase of development easements on the Smith Farm;

NOW THEREFORE BE IT RESOLVED, that the SADC, pursuant to N.J.A.C. 2:76-17.14, grants final conditional approval to provide a cost share grant to Morris County for the purchase of a development easement on the Property comprising approximately 103.824 acres, at a State cost share of \$6,230 per acre (approximately 43% of certified market value) for a total grant of approximately \$646,823.52 which is less than the SADC cost share pursuant to N.J.A.C. 2:76-6.11 at the request of Morris County; and

BE IT FURTHER RESOLVED, the SADC grants final approval based on the conditions contained in Schedule B and further conditioned upon the results of the condemnation action instituted against the Smith Farm by the WTMUA; and (4)

BE IT FURTHER RESOLVED, that the SADC reserves the right to reevaluate the Smith Farm application at the conclusion of the aforesaid condemnation action; and

BE IT FURTHER RESOLVED, that based on the priority ranking of applications competing for competitive grant funds pursuant to N.J.A.C. 2:76-17.14 (e), and as identified in Schedule D, the subject Property qualifies for competitive grant funds; and

BE IT FURTHER RESOLVED, should the County require 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; and

BE IT FURTHER RESOLVED, that any unused funds encumbered from either the base or competitive grant at the time of final approval shall be returned to its respective sources (base or competitive grant fund) after closing on the easement purchase; and

BE IT FURTHER RESOLVED, that the SADC's expenditure of a cost share grant to the County for the purchase of a development easement on the Smith Farm shall be conditioned upon and based on the final surveyed acreage of the premises adjusted for proposed road rights-of-way, other rights-of-way or easements as determined by the SADC, streams or water bodies on the boundaries of the premises as identified in Policy P-3-B Supplement, for residual dwelling site opportunities allocated pursuant to Policy P-19-A, and areas taken as a result of a final, nonappealable judgment or order entered in the aforesaid condemnation action; and

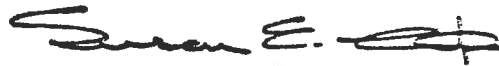
BE IT FURTHER RESOLVED, the SADC shall enter into a Grant Agreement with County pursuant to N.J.A.C. 2:76-6.18. 6.18(a) and 6.18(b); and

BE IT FURTHER RESOLVED, that final authorization to provide a cost share grant to the County for the purchase of a development easement on the Property is subject to the review and approval of the Attorney General's Office for compliance with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, et seq. and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1, et seq.

BE IT FURTHER RESOLVED, that the SADC's final approval is conditioned upon the Governor's review pursuant to N.J.S.A. 4:1C-4f.

4/24/10

Date



Susan E. Craft, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairperson	YES
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)	ABSTAINED
Richard Boornazian (rep. DEP Commissioner Martin)	YES
Donna Rendeiro (rep. DCA Commissioner Grifa)	YES
Brian Schilling (rep. Executive Dean Goodman)	YES
James R. Waltman	YES
Denis C. Germano	ABSENT
Jane Brodhecker	YES
Torrey Reade	YES
Alan A. Danser	YES
Dr. Stephen P. Dey	YES

Wetlands

Application within the Highlands Preservation Area



x:\counties\marco\projects\smith\10\low mxd

FARMLAND PRESERVATION PROGRAM
NJ State Agriculture Development Committee

Robert Smith
 Block 12 Lots P/O 4 (100.8 ac) & P/O 4-EN (non-severable exception - 1.0 ac)
 Gross Total = 101.8 ac
 Washington Twp, Morris County

500 250 0 500 1000 Feet



- Property in Question
- EN - (Non-Severable) Exception
- EB - (Severable) Exception
- Wetlands Boundaries
- 300 ft Buffered Wetlands
- Municipal, County and Non-Profit Preserved Open Spaces
- State Owned Conservation Easement
- State Owned DWS & Recreation Easement
- Federal Land

- Wetlands Legend**
- F Freshwater Wetlands
 - L Linear Wetlands
 - M Wetlands Modified for Agriculture
 - T Tidal Wetlands
 - N Non-Wetlands
 - B 300' Buffer
 - W Water

Sources
 NJDEP Freshwater Wetlands Data
 Green Acres Conservation Easement Data
 NJOT/IGIS 2007/2008 Digital/Aerial Image

DISCLAIMER Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user. The configuration and geo-referenced location of parcel polygons in this data layer are approximate and were developed primarily for planning purposes. The geodetic accuracy and precision of the GIS data contained in this file and map shall not be, nor are intended to be, relied upon in matters requiring delineation and location of true ground horizontal and/or vertical controls as would be obtained by an actual ground survey conducted by a licensed Professional Land Surveyor.

Schedule B | Schedule A

State Agriculture Development Committee
 CADC Final Review: Development Easement Purchase

Willow Pond Farm
 14- 0086-PG
 FY 2009 County BIG Program
 101 Acres

Soils	Acres	Washington Twp.	Marion County	
SOILS:				
		Water	20.1	0 = 0.00
		Grass	21.5	1.0 = 0.20
		Timothy	41.2	1.0 = 0.24
				SOIL SCORE: 11.75
TILLABLE SOILS:				
		Highland	1.0	1.0 = 1.00
		Timothy	1.0	1.0 = 1.00
		Grass	1.0	1.0 = 1.00
		Woodland	1.0	1.0 = 1.00
				TILLABLE SOILS SCORE: 8.35
FARM USE:				
		40 acres	17 acres	

In no instance shall the Committee's percent cost share for the purchase of the development easement exceed 80% of the purchase price of the easement. This final approval is subject to the following:

1. Available funding.
2. The allocation, not to exceed 0 Residential Dwelling Site Opportunities on the Premises subject to confirmation of acreage by survey.
3. Compliance with all applicable statutes, rules and policies.
4. Other:
 - a. Pre-existing Nonagricultural Use:
 - Storage of antiques for sale year-round
 - b. Exceptions:
 - 1.0 acre (1) acres for future dwelling
 - Exception is not to be severed from Premises
 - Right to Farm language is to be included in Deed of Easement
 - Exception is to be restricted to the single family residential unit(s)
 - Can not be further subdivided.
 - c. Additional Restrictions:
 - 1.0 acre to be further subdivided
 - d. Additional Conditions: No Additional Conditions
 - e. Dwelling Units on Premises: No Dwelling Units
 - f. Agricultural Labor Housing Units on Premises: No Labor Housing
5. The CADC's share for the acquisition of the development easement is subject to the terms of the Agriculture Retention and Development Act, R.S.A. 140-11 et seq., 1987, 1988, and H.B.A.C. 2008-119.
6. Review and approval by the CADC Legal Council for compliance with legal requirements.

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION #FY 2012R7(33)

AMENDED FINAL REVIEW AND CONDITIONAL APPROVAL
OF A PLANNING INCENTIVE GRANT TO

MORRIS COUNTY
for the
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of
Robert W. Smith
Washington Township, Morris County

N.J.A.C 2:76-17 et seq.
SADC ID# 14-0096-PG

July 28, 2011

WHEREAS, on December 15, 2007, the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") application from Morris County ("County") pursuant to N.J.A.C. 2:76-17.6; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.7, the SADC granted final approval of the County's 2010 PIG application on May 28, 2009; and

WHEREAS, on June 30, 2009 the SADC received an application for the sale of a development easement from Morris County on lands designated as Block 12, Lot 4, Washington Township, Morris County, totaling approximately 100.8 acres ("Smith Farm"), as identified on the attached map (Schedule A); and

WHEREAS, the Smith Farm is a targeted farm located in Morris County's Agricultural Development Area (ADA) West Project Area and is within the Highlands Preservation Area; and

WHEREAS, the Smith Farm contains a 0.27-acre conservation/drainage easement area, servicing a neighboring elementary school, for which the SADC will not provide a cost share grant due to the easement's restrictions on development and agricultural use; and

WHEREAS, the Washington Township Municipal Utilities Authority (WTMUA) filed a Notice of Intent dated August 19, 2009 with the SADC and the Morris County Agriculture Development Board (MC ADB) as required by N.J.S.A. 4:1C-19a, regarding the proposed condemnation of a portion of the Smith Farm for purposes of placing a public water supply well thereon; and

WHEREAS, while the Notice of Intent was filed with the MCADB and SADC as required by N.J.S.A. 4:1C-19a., the WTMUA instituted condemnation proceedings against the Smith Farm in or about January 2010 without first obtaining the review and findings of the MCADB and SADC pursuant to N.J.S.A. 4:1C-19b., and

WHEREAS, pursuant to N.J.S.A. 4:1C-19b., at meetings held on May 10 and June 10, 2010, the MCADB reviewed the Notice of Intent, conducted a public hearing, and issued a resolution concluding that the proposed condemnation will "cause unreasonably adverse effects upon: 1) preservation and enhancement of agriculture in the ADA; and 2) upon overall State agricultural preservation and development policies", and recommended that the eminent domain action against the Smith Farm be withdrawn by the WTMUA; and

WHEREAS, pursuant to N.J.S.A. 4:1C-19b., the SADC completed its review of the Notice of Intent, conducted a public hearing on August 23, 2010, and approved by motion on September 17, 2010 a Summary of Findings and Recommendations Report concluding that the proposed condemnation will cause unreasonably adverse effects upon Morris County's ADA and State agriculture preservation and development policies, and recommended that:

1. The WTMUA should be required to exhaust all other water supply options prior to consideration of a new well on the Smith farm;
2. The ADA review process should be included in all pertinent NJ Department of Environmental Protection (NJDEP) permit procedures;
3. All parties involved should expedite the process so as to not unduly interfere with the permanent preservation of the Smith Farm; and

WHEREAS, on October 1, 2010, Superior Court Judge B. Theodore Bozonelis ruled that the WTMUA could proceed with its condemnation of a 0.72 acre easement on the Smith Farm to accommodate the new well, well housing and piping and provide for a 50-foot minimum buffer around the well; and

WHEREAS, the SADC recognized that, should the final size and configuration of the Smith Farm change due to a successful eminent domain taking by the WTMUA, the application would be reviewed, appraisal updates would be evaluated and this final conditional approval would be submitted to the SADC for amendments, as appropriate; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.14, the SADC granted conditional final approval on June 24, 2010 to provide a cost share grant to Morris County for the purchase of a development easement on the Property comprising approximately 105.824 acres, at a State cost share of \$6,230 per acre (approximately 43% of certified market value) for a total grant of approximately \$646,823.52 which is less than the SADC cost share pursuant to N.J.A.C. 2:76-

6.11 at the request of Morris County; and

WHEREAS, the SADC's issuance of conditional final approval was based on the conditions contained in Schedule B and upon the results of the condemnation action instituted by the WTMUA against the Smith Farm; and

WHEREAS, the SADC reserved the right to reevaluate the Smith Farm application at the conclusion of the aforesaid condemnation action; and

WHEREAS, the SADC gathered additional information from the NJDEP, the WTMUA and Morris County staff on the potential impact of the proposed community well on the ability of current and future landowners to use the preserved farmland for a full range of agricultural activities and concluded that:

1. The ultimate size of the required buffer around the well is not yet known;
2. The potential limitations on agricultural activity, including the ability of a future farm operator to obtain an agricultural water use permit, are also unclear;
3. Depending on the ultimate impact of the public water supply well on the Smith Farm, the appraised easement value certified by the SADC pursuant to N.J.A.C. 2:76-17.11 on March 25, 2010 could be negatively impacted;
4. Preservation of the Smith Farm at this time could necessitate the WTMUA's condemnation of additional buffer area which in turn would require the SADC and the MCADB to proceed with the time consuming process of releasing an easement pursuant to N.J.S.A 4:1C-25, including an assessment of immediately apparent feasible alternatives and the Governor's declaration that the action is necessary for public health, safety and welfare; and

WHEREAS, the SADC evaluated various options regarding the timing of the closing on the development rights to the Smith Farm in relation to the approval of the community well on the Property at its June 23, 2010 meeting.

NOW THEREFORE BE IT RESOLVED, that the SADC, pursuant to N.J.A.C. 2:76-17.14, amends its June 24, 2010 conditional final approval of a planning incentive grant for the Smith Farm by establishing a one (1) year time limit during which the WTMUA shall apply for and secure proper well drilling, water supply and other required permits and approvals from all necessary agencies including but not limited to the NJDEP and the NJ Highlands Council; and

BE IT FURTHER RESOLVED, as a result of securing all necessary permits and approvals the final extent, configuration and nature of the buffer necessitated by the well will be determined and its impact on the ability of current and future landowners to use the Smith Farm for a full range



of agricultural activities, including the ability to secure agricultural water use permits, will be established to the satisfaction of the Committee; and

BE IT FURTHER RESOLVED, that upon receipt of information supporting the determinations set forth above, the SADC reserves complete authority to reassess the validity of the appraisals, in both 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;

BE IT FURTHER RESOLVED, that should updated appraisals be necessary the SADC will review the new appraisals and certify a new easement value pursuant to N.J.A.C. 2:76-17.10-17.11, and

BE IT FURTHER RESOLVED, that 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; and

BE IT FURTHER RESOLVED, that the WTMUA is encouraged to expedite the permit process and associated well tests in order to minimize the delay to the closing on the development rights to the Smith Farm; and

BE IT FURTHER RESOLVED that the one (1) year time limit of the conditional final approval of the planning incentive grant for the Smith Farm may be further extended for any time period determined to be reasonable by the Committee, upon the County's written request detailing sufficient reasons for the extension; and

BE IT FURTHER RESOLVED, that upon expiration of the one (1) year time period, or any approved extension thereof, the SADC reserves the right, in the SADC's sole discretion, to rescind its conditional final approval for the Smith Farm due to the existence of still unresolved issues regarding the public water supply well and its impact on the value of the Smith Farm easement and future agricultural use of the property; and

BE IT FURTHER RESOLVED, 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; and

BE IT FURTHER RESOLVED, that any unused funds encumbered from either the County's base or competitive grant at the time of final approval shall be returned to its respective sources (base or competitive grant fund) after closing on the easement purchase, and

BE IT FURTHER RESOLVED, that the SADC's expenditure of a cost share grant to the County for the purchase of a development easement on the Smith Farm shall be conditioned upon and based on the final surveyed acreage of the premises adjusted for proposed road rights-of-way, other rights-of-way or easements as determined by the SADC, streams or water bodies on the boundaries of the premises as identified in Policy P-3-B Supplement, for residual dwelling site opportunities allocated pursuant to Policy P-19-A, and areas taken as a result of a final, nonappealable judgment or order entered in the aforesaid condemnation action; and


BE IT FURTHER RESOLVED, the SADC shall enter into a Grant Agreement with the County pursuant to N.J.A.C. 2.76-6.18, 6.18(a) and 6.18(b); and

BE IT FURTHER RESOLVED, that final authorization to provide a cost share grant to the County for the purchase of a development easement on the Smith Farm is subject to the review and approval of the Attorney General's Office for compliance with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, et seq., and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1, et seq.; and

BE IT FURTHER RESOLVED that the provisions of the SADC's June 24, 2010 conditional approval, to the extent not inconsistent herewith, remain in full force and effect as though set forth herein at length; and

BE IT FURTHER RESOLVED, that this Amended Final Review and Conditional Approval is subject to the Governor's review pursuant to N.J.S.A. 4:1C-4f.

7/28/11
Date



Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS

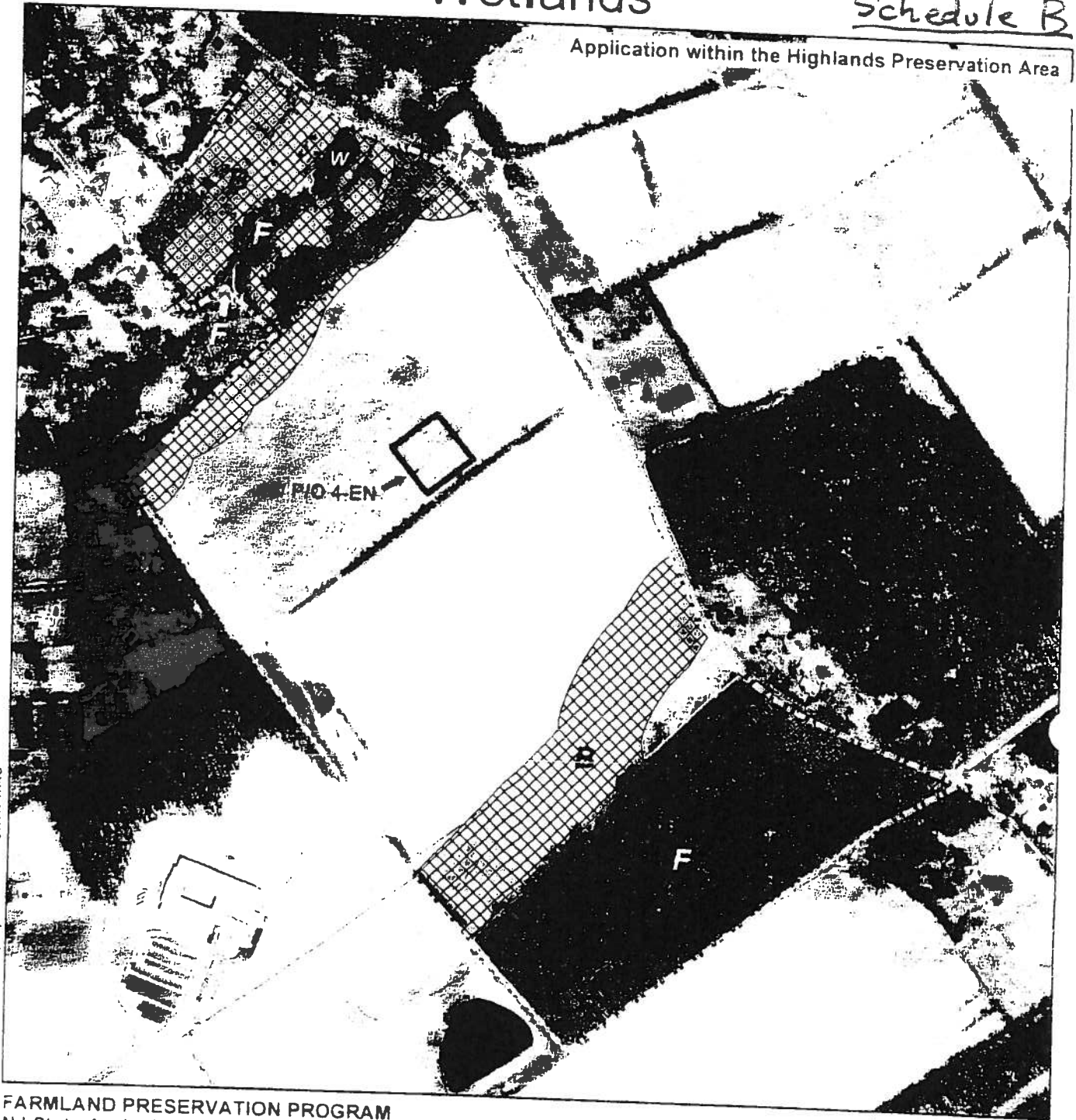
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|--|--------|
| Douglas H. Fisher, Chairperson | YES |
| Richard Roomazian (rep. DEP Commissioner Martin) | ABSENT |
| James Regua (rep. DCA Commissioner Griffo) | YES |
| Rainn Siegel (rep. State Treasurer Sidamon-Eristoff) | YES |
| Brian Schilling (rep. Executive Dean Goodman) | YES |
| Jane H. Brodhecker | YES |
| John J. Dunser | YES |
| James Waltman | ABSENT |
| Dennis L. Germano | ABSENT |
| Torrey Reade | YES |

Resolution Amended Final Approval 0722 - final for SADC meeting only

Wetlands

Schedule A
Schedule B

Application within the Highlands Preservation Area



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FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Robert Smith
Block 12 Lots P/O 4 (100.8 ac) & P/O 4-EN (non-severable exception - 1.0 ac)
Gross Total = 101.8 ac
Washington Twp., Morris County

500 250 0 500 1000 Feet



- Property in Question**
- OB - (Non-Severable) Exception
 - OS - (Severable) Exception
- Wetlands Boundaries**
- 300 ft Buffered Wetlands
- Ownership, County and Non-Profit Preserved Open Space**
- State Owned Conservation Easement
 - State Owned O&B Restoration Easement
 - Private Land
- Wetlands Legend**
- F Freshwater Wetlands
 - L Linear Wetlands
 - M Wetlands Modified for Agriculture
 - T Tidal Wetlands
 - N Non-Wetlands
 - B 300' Buffer
 - W Water

DISCLAIMER Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user. The configuration and geo-referenced location of parcel polygons in this data layer are approximate and were developed primarily for planning purposes. The geodetic accuracy and precision of the GIS data contained in this file and map shall not be, nor are intended to be, relied upon in matters requiring delineation and location of true ground horizontal and/or vertical controls as would be obtained by an actual ground survey conducted by a licensed Professional Land Surveyor.

Sources:
NJDEP Freshwater Wetlands Data
Green Acres Conservation Easement Data
NJGIT/OGIS 2007/2008 DigitalAerial Image

APR 29 2009

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Schedule C

Sch B

Folio	Name	Municipality	Acres	Per Acre	Per Acre	Per Acre	Per Acre	Per Acre	Per Acre	Per Acre	Per Acre	Per Acre	Competitive Grant		Total	Encumbered	Balance	Total	Encumbered	Balance	
													Expend	Encumbered at final							
21,634	Cody, Wilfredo	Kenilworth	21,634	51,500.00	11,225.00	31,275.00	2,555.99	8,670.01	1,380.00	1,380.00	6,290.01	5,910.01	0.00	6,290.01	0.00	6,290.01	0.00	6,290.01	0.00	6,290.01	
26,780	Estelle F. Hays	Washington	26,780	101,300.00	12,500.00	88,800.00	3,700.00	11,800.00	11,800.00	77,000.00	77,000.00	0.00	0.00	0.00	77,000.00	0.00	77,000.00	0.00	77,000.00	0.00	
35,735	Washington	Washington	35,735	11,500.00	1,500.00	10,000.00	500.00	1,000.00	1,000.00	9,000.00	9,000.00	0.00	0.00	0.00	9,000.00	0.00	9,000.00	0.00	9,000.00	0.00	
41,680	Washington	Washington	41,680	18,000.00	13,500.00	5,500.00	3,000.00	2,500.00	3,000.00	2,500.00	3,000.00	0.00	0.00	0.00	3,000.00	0.00	3,000.00	0.00	3,000.00	0.00	
52,915	Washington	Washington	52,915	19,500.00	13,500.00	6,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	0.00	0.00	0.00	3,000.00	0.00	3,000.00	0.00	3,000.00	0.00	
15,730	Washington	Washington	15,730	20,500.00	20,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
17,230	Washington	Washington	17,230	11,000.00	11,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
21,200	Washington	Washington	21,200	21,000.00	21,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
21,200	Washington	Washington	21,200	11,200.00	11,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
15,730	Washington	Washington	15,730	15,730.00	15,730.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5,780	Washington	Washington	5,780	5,780.00	5,780.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
13,730	Washington	Washington	13,730	13,730.00	13,730.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
13,730	Washington	Washington	13,730	13,730.00	13,730.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
44,780	Washington	Washington	44,780	44,780.00	44,780.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
97,680	Washington	Washington	97,680	97,680.00	97,680.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
103,870	Washington	Washington	103,870	103,870.00	103,870.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
111,230	Washington	Washington	111,230	111,230.00	111,230.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
111,230	Washington	Washington	111,230	111,230.00	111,230.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
111,230	Washington	Washington	111,230	111,230.00	111,230.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
111,230	Washington	Washington	111,230	111,230.00	111,230.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
111,230	Washington	Washington	111,230	111,230.00	111,230.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
111,230	Washington	Washington	111,230	111,230.00	111,230.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

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Schedule C

STATE AGRICULTURE DEVELOPMENT COMMITTEE

EXTENSION OF

RESOLUTION #FY2012R6(1)

AMENDED FINAL REVIEW AND CONDITIONAL APPROVAL
OF A PLANNING INCENTIVE GRANT TO

MORRIS COUNTY
for the
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of
Robert W. Smith
Washington Township, Morris County

N.J.A.C 2:76-17 et seq.
SADC ID# 14-0096-PG

June 28, 2012

WHEREAS, pursuant to N.J.A.C. 2:76-17.14, the SADC granted conditional final approval on June 24, 2010 to provide a cost share grant to Morris County for the purchase of a development easement on the Property conditioned on the results of the condemnation action instituted by the Washington Township Municipal Utilities Authority (WTMUA) against the Smith Farm (Schedule A); and

WHEREAS, on July 28, 2011 the SADC amended its June 24, 2010 conditional final approval for the Smith Farm by establishing a one (1) year time limit during which the WTMUA would secure proper well drilling, water supply and other required permits and approvals from all necessary agencies including but not limited to the NJDEP and the NJ Highlands Council (Schedule B); and

WHEREAS, the July 28, 2011 amended final approval included a one (1) year time limit of the conditional final approval that could be extended for any time period determined to be reasonable by the Committee, upon the County's written request detailing sufficient reasons for the extension; and

WHEREAS, in addition the SADC reserved that upon expiration of the one (1) year time period (July 28, 2012), or any approved extension thereof, the SADC reserves the right, in the SADC's sole discretion, to rescind its conditional final approval for the Smith Farm due to the existence of still unresolved issues regarding the public water supply well and its impact on the value of the Smith Farm easement and future agricultural use of the property; and

WHEREAS, Morris County has submitted a letter requesting a six month extension (Schedule C) based on significant progress in obtaining all necessary permits and approvals outlined in a letter from the WTMUA dated May 9, 2012 (Schedule D)

NOW THEREFORE BE IT RESOLVED, the SADC finds that the County has made significant progress in addressing all outstanding issues and have provided supporting documentation highlighting sufficient reasons to warrant an extension of six months until January 28, 2013; and

BE IT FUTURE RESOLVED, that upon receipt of information supporting the determinations set forth above, the SADC reserves complete authority to reassess the validity of the appraisals, in both 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; and

BE IT FURTHER RESOLVED, that 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; and

BE IT FURTHER RESOLVED, 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; and

BE IT FURTHER RESOLVED, that the provisions of the SADC's June 24, 2010 conditional approval and the SADC's July 28, 2011 amended and conditional final approval, to the extent not inconsistent herewith, remain in full force and effect as though set forth herein at length; and

BE IT FURTHER RESOLVED, that this Extension of Amended Final Review and Conditional Approval is subject to the Governor's review pursuant to N.I.S.A. 4:1C-4f.

6/29/13

Date

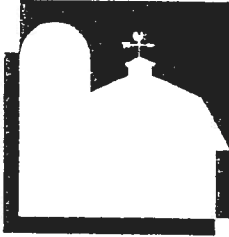


Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas Fisher, Chairperson	YES
Fawn McGee (rep. DEP Commissioner Martin)	YES
James Requa (rep. DCA Acting Commissioner Constable)	YES
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)	YES
Jane Brodhecker	ABSENT
Alan Danser	ABSENT
Denis Germano	YES
Torrey Reade	YES
Brian Schilling (rep. Executive Dean Goodman)	ABSENT
James Waltman	YES

S:\Planning Incentive Grant -2007 rules County\Morris\Smith\2nd amended final conditional approval 6.28.12.docx



Schedule

MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD

P.O. Box 900 Morristown, NJ 07963-0900
(973) 829-8120 • FAX (973) 326-9025 • WEBSITE: www.morrispreservation.com

Office located at: 30 Schuyler Place, Morristown, NJ

January 7, 2013

Ms. Susan Payne, Executive Director
State Agriculture Development Committee
CN-330
Trenton, NJ 08625-0330

Re: **Robert Smith Farm, Washington Township**

Dear Ms. Payne:

The SADC's Resolution #FY2012R7(33), Amended Final Review and Conditional Approval, for the preservation of the Robert W. Smith Farm in Washington Township, Morris County established a time limit during which the WTMUA shall apply for and secure proper well drilling, water supply and other required permits and approvals from all necessary agencies including but not limited to the NJDEP and the NJ Highlands Council. The established time limit will expire on January 28, 2013.

In a December 21, 2012 letter addressed to you, Mr. Steven Pudney, Section Chief, NJDEP Bureau of Water System Engineering, confirmed that a 50 foot buffer is acceptable around the WTMUA well located on the R. Smith farm. In an email dated January 4, 2013, Mr. Tim Brill informed me that the SADC intends to follow up with the NJDEP regarding the WTMUA well's implications for the future use of the Smith Farm.

In light of the impending expiration of the time limit set by the SADC, the Morris CADB hereby requests the SADC to grant a six-month extension.

If you have any questions, please contact me.

Sincerely,

Katherine Coyle, Director

Cc: Robert Smith
Joseph Grather, Esq.
James Gregory, Esq.
Ray Chang, Director, Morris Preservation Trust
W. Randall Bush, Esq.

OFFICERS: Gregory Keller, *Chairman* • Kenneth Wightman, *Vice Chairman* • Aimee Ashley Myers, *Secretary*

MEMBERS: Dale Davis III • Louise Davis • Rick Desiderio • Harvey Ort, Jr.

STAFF: Katherine Coyle, *Director*

To: SADC Members

From: Susan E. Payne, Executive Director

Subject: Discussion of significant proposed changes to 12/13/2012 draft of on-farm direct marketing agricultural management practice and Right to Farm procedures

On farm direct market AMP

N.J.A.C. 2:76-2A.13(b). Definition of “Agriculture-related educational activities”. The deleted portion of the sentence is unnecessary because the requirement that the activities be related to marketing the commercial farm’s agricultural or horticultural output is previously set forth in the second and third lines of the definition.

N.J.A.C. 2:76-2A.13(b). Definition of “Farm based recreational activities”. A concern was raised about the phrase “uniquely suited” because it appears to imply that only activities and events “uniquely suited” to farms would be eligible for protection. In addition, examples of qualifying activities such as hiking, fishing and bird watching were listed as protectable activities, and yet they are not “uniquely suited” to occurring on a farm.

Staff carefully analyzed that interpretation and recommends that the phrase “uniquely suited” remain in the text; however, a distinction should be drawn between those activities and other “common outdoor recreation activities that are compatible with the agricultural use of the farm”. In context, and based on the underlying purposes of the Right to Farm Act, “uniquely suited” cannot be construed to mean that activities and events are or must be *exclusively* in an on-farm setting but, rather, provides a more meaningful way to explain the need for a reasonable nexus between the activity and/or event and the physical elements of a farm venue. Staff also believes that there is a common understanding that the open space provided by a farm is uniquely suited for, e.g., hunting and horseback riding, regardless whether those activities can occur elsewhere.

The phrase “common outdoor recreation activities” is inserted in two places within the definition and is meant to be more descriptive of protected activities provided they are compatible with the farm’s agricultural uses.

“Tractor pulls” was added as an example of an activity uniquely suited to a farm setting based on SADC member comments.

“Hot air ballooning” was deleted from the examples of activities not considered “farm based recreational activities”. The deletion was made not because staff concluded that hot air ballooning is a farm based recreational activity, but because

the list of prohibited activities in the definition is not intended to be exclusive, and debates about the propriety of particular activities can be dealt with in the future on a case-by-case basis.

N.J.A.C. 2:76-2A.13(g)3. Signs. The 15' maximum height from the ground to the top of the primary on-farm business sign applies to the "installed" sign for clarification purposes.

N.J.A.C. 2:76-2A.13(p)1i. This subsection allows a municipality to waive or reduce site plan review requirements. A sentence was added at the end of the section recognizing that nothing in the AMP should be construed to allow a municipality to waive or reduce the requirements required by state or federal law or regulations.

N.J.A.C. 2:76-2A.13(p)1iii. This subsection was added to be consistent with an identical provision in the Right to Farm procedures.

Right to Farm procedures

N.J.A.C. 2:76-2.3(a). The preapplication meeting that may be held between the farm owner/operator and the CADB is now set forth in a subsection 1 rather than in the body of section (a). Staff added "board jurisdiction" as an item that can be discussed at the meeting and changed "appropriate matters" to "any other related matter".

N.J.A.C. 2:76-2.3(c). For consistency with the Right to Farm Act, "listing said products" was deleted from the quantum of proof needed for commercial farm income eligibility.

N.J.A.C. 2:76-2.3(h)2v. The submittal of a farm conservation plan by the commercial farmer is one of the minimum required items of the checklist used to assist in the review of an application for a site specific agricultural management practice determination. Frequently commercial farmers make application to the NRCS for a farm conservation plan but, due to backlogs, approval of the plan cannot be obtained in time for the Right to Farm hearing. The additional clause will ensure that the checklist is satisfied if an application for a farm conservation plan has been made and is being actively pursued.

N.J.A.C. 2:76-2.3(k). A concern was raised that a CADB should not have the authority to preempt a municipal ordinance that exceeds state regulatory standards for control of stormwater, as a DEP regulation specifically allows a municipality to impose more stringent standards than those set forth in the state regulations. Staff has concluded that no change should be made to N.J.A.C. 2:76-2.3(k), as the DEP regulation allowing more stringent standards is a permissive grant of authority to municipalities and not a state standard. If a municipality decides to enact an ordinance exceeding the state minimum standards, then the ordinance is a municipal requirement, not a state requirement, and may be preempted.

N.J.A.C. 2:76-2.7(f). In order to be consistent with the timeframes set forth in the Act, the regulation was revised to require that a CADB resolution that a farm is not a

commercial farm, and/or that the activity which is the subject of a Right to Farm complaint is not included in the list of protected activities in the Act, must be transmitted to the parties listed in the regulation within 60 days of the CADB's receipt of the complaint. The 60 day timeframe has been added to the end of N.J.A.C. 2:76-2.7(f).

N.J.A.C. 2:76-2.7(h)1. In cases where the SADC determines that a commercial farm is engaging in a generally accepted agricultural management practice and remands the dispute to the CADB for disposition, the SADC's decision is not appealable to the Appellate Division of Superior Court. The Act does not allow for such an appeal, so the previous reference to the Appellate Division in N.J.A.C. 2:76-2.7(h)1 has been deleted.

N.J.A.C. 2:76-2.8. The word "Public" in the title of this regulation has been deleted because only site specific agricultural management practice (SSAMP) applications are subject to a public hearing in accordance with the Appellate Division case of Curzi v. Raub. N.J.A.C. 2:76-2.8 establishes hearing procedures for both Right to Farm complaints and SSAMPs, so "Public" is an inappropriate heading for a regulation that also addresses complaint procedures.

S:\RIGHTTOFARM\AMPs\On-farm direct marketing\2013 rule proposal related docs\Discussion of significant proposed changes to OFDM AMP, January 2013 SADC meeting.docx

STATE AGRICULTURE DEVELOPMENT COMMITTEE

State Agriculture Development Committee Rules

Agricultural Management Practice (AMP) for On-Farm Direct Marketing Facilities, Activities, and Events; Right to Farm Management Practices and Procedures

Proposed New Rules: N.J.A.C. 2:76-2A.13 and N.J.A.C. 2:76-2.8

Proposed Amendments: N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.9 and 2.10 and N.J.A.C. 2:76-2B.2

Authorized By: State Agriculture Development Committee, Susan E. Payne, Executive Director

Authority: N.J.S.A. 4:1C-1, et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: _____

Submit comments by _____, 2013 to:

Susan E. Payne, Executive Director

State Agriculture Development Committee

P.O. Box 330

Trenton, NJ 08625-0330

The agency proposal follows:

Summary

The State Agriculture Development Committee (SADC or Committee) proposes new N.J.A.C. 2:76-2A.13, et seq., establishing an agricultural management practice (AMP) for on-farm direct marketing facilities, activities and events that commercial farms must comply with to receive the protections of the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. This AMP is designed to support and protect on-farm direct marketing operations by identifying safe, effective, and economically viable standards for commercial farms seeking the protections of the Act. In the development of this proposed new rule, the SADC consulted with representatives from the New Jersey Department of Agriculture, New Jersey Farm Bureau, State Board of Agriculture, Rutgers Cooperative Extension, County Agriculture Development Boards (CADB or board), towns and farmers specializing in the direct marketing of agricultural products from various sectors of the agriculture industry, including viticulture, nursery, fruits and vegetables.

The proposed new rule addresses on-farm facilities, activities and events on commercial farms that are used to facilitate and provide for direct, farmer-to-consumer sales, such as farm stands, farm stores, community-supported agriculture, pick-your-own farming operations and associated activities and events that fit within the scope of the Act. The intent of this proposed new rule is to establish standards on which farmers, the public, municipalities and CADBs can rely, and to provide standards that are performance-based, rather than prescriptive, in order to

give reliable, statewide guidance to farmers, towns and others throughout New Jersey, while providing flexibility to commercial farm owners and operators in complying with this AMP.

In addition, the SADC proposes various amendments to N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.9 and 2.10, which set forth the procedures for the determination of site-specific agricultural management practices (SSAMPs) on, and the resolution of complaints against, commercial farms. These amendments clarify the roles of CADBs and the SADC in the Right to Farm review process in a manner consistent with the Act. The SADC proposes a new rule, N.J.A.C. 2:76-2.8, establishing hearing requirements for CADBs and the SADC when considering SSAMP requests by and complaints against commercial farms. Due to the addition of N.J.A.C. 2:76-2.8, revised N.J.A.C. 2:76-2.10 is also being renumbered as N.J.A.C. 2:76-2.7. Previously "Reserved" N.J.A.C. 2:76-2.7 through N.J.A.C. 2:76-2.9 is deleted and the new "Reserved" regulations are N.J.A.C. 2:76-2.9 and 2.10.

Proposed N.J.A.C. 2:76-2A.13(b) sets forth the definitions of terms used in this subchapter. "Agricultural output of a commercial farm" is defined as the items specified in N.J.S.A. 4:1C-9a and the value-added or processed products produced from those items, provided that the primary and predominant ingredients used to produce such products are grown or raised by the commercial farm. The term "agriculture-related educational activities" means on-farm educational offerings that have an agricultural focus and are related to marketing the agricultural or horticultural output of the commercial farm, and "ancillary entertainment-based activities" are non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities, which are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products, and they may have a de minimis fee associated with them compared to the income generated from the sale of the agricultural output of the commercial farm. "Board" is defined as a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17. The term "buffer" is defined as a setback distance and/or screening utilized by a commercial farm in conjunction with its on-farm direct marketing facilities, activities, or events.

The "commercial farm" definition is taken from N.J.A.C. 4:1C-3 and means a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually that satisfies the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.)("FAA"), or a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the FAA. "Committee" is defined as the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4. The term "community supported agriculture (CSA) operation" is defined as an on-farm direct marketing method in which the retail sale of the agricultural output of a commercial farm is provided through a paid subscription and "CSA market and distribution area" is an on-farm direct

marketing facility used by a CSA operation to organize and dispense CSA operation members' farm product shares and to market products that contribute to farm income.

The term "farm-based recreational activities" is defined as recreational offerings that are uniquely suited to occurring on a farm and also may include common outdoor recreation activities that are compatible with the agricultural use of the farm, where such offerings and activities are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of the commercial farm by enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm. The "farm management unit" definition is taken from N.J.S.A. 4:1C-3 and means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise. The "farm market" definition is also taken from N.J.S.A. 4:1C-3 and means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the sale of agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least \$2,500. The term "hours of operation" is the time during which an on-farm direct marketing facility, activity, or event is open or offered to the public.

"On-farm direct marketing" is defined as the on-farm facilities, activities, and events that are used to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. An "on-farm direct marketing activity" or "activity" is an agriculture-related happening made available by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products and include but are not limited to: agriculture-related educational activities; farm-based recreational activities; and ancillary entertainment-based activities. The term "on-farm direct marketing event" or "event" is defined as an agriculture-related function offered by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such events are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products; may include on-farm direct marketing activities as components; are either product-based or farm-based; and occur seasonally or periodically. Product-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include but are not limited to: an apple, peach, strawberry, pumpkin, wine, or other agricultural or horticultural product festival held at a commercial farm that produces that particular product. Farm-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include but are not limited to: seasonal harvest festivals held at a

commercial farm that produces such seasonal farm products, farm open house events, CSA membership meetings, and farm-to-table events that showcase the agricultural output of the commercial farm. An “on-farm direct marketing facility” or “facility” is a type of farm market including the permanent, temporary, and/or moveable structures, improvements, equipment, vehicles, and apparatuses necessary to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. Such facilities include various types and sizes of direct marketing operations, including but not limited to: farm stands; farm stores; CSA market and distribution areas; and pick-your-own (PYO) market areas. A facility may include one or more structures or a portion of a structure, and a facility may utilize new or existing structures. A facility’s structures may also be used for the commercial farm’s other farm purposes, for instance: equipment storage, equipment maintenance, and the production, processing, packaging, storage, or wholesale marketing of the agricultural output of the commercial farm.

The term “pick-your-own (PYO) operation” is defined as an on-farm direct marketing method wherein retail or wholesale customers are invited onto a commercial farm in order to harvest and pay for agricultural or horticultural products. The definition recognizes that when a PYO is part of a CSA operation, the collection of money might not occur following harvesting. A “PYO market area” is the on-farm direct marketing facility used by a PYO operation to set up PYO activities and collect money for PYO crops harvested by customers. PYO market areas may be stand-alone facilities or part of other on-farm direct-marketing facilities. The term “products that contribute to farm income” is defined as complementary or supplementary products that are sold to help attract customers to the farm market through a broadening of the range of products available and an enhancement of the experience of purchasing the agricultural output of the commercial farm. “Complementary products” is defined as items commonly used to facilitate the use or consumption of the agricultural output of the commercial farm and promotional items that help market the commercial farm, and “supplementary products” is defined as the agricultural output of other farms, and additional customary food and drink items. The term “sales area” is defined as the indoor, outdoor, covered, and uncovered areas of an on-farm direct marketing facility whose primary and predominant use is the display, marketing, and selling of the agricultural output of a commercial farm and products that contribute to farm income. Sales areas do not include: PYO and other production fields; pastures and other areas occupied by livestock on a regular basis; non-public areas such as areas used for the storage of equipment and other items; and areas dedicated to farm-based recreational activities. Covered sales areas include sales areas inside structures and sales areas underneath tents, awnings, and other canopies. The term “sanitary facilities” is defined as restrooms or portable toilets.

Proposed N.J.A.C. 2:76-2A.13(c) sets forth the hours of operation allowed for on-farm direct marketing facilities, activities and events on commercial farms. On-farm direct marketing facilities and activities may be open or offered on weekdays, weekends, holidays, seasonally, for part of the year, or year-round, while on-farm direct marketing events may be offered on weekdays, weekends, holidays, seasonally, or for part of the year. The proposed new rule provides that hours of operation may be between 6 a.m. and 10 p.m. These hours may

be temporarily extended to 11 p.m. in conjunction with seasonal on-farm direct marketing sales, activities, or events.

Proposed N.J.A.C. 2:76-2A.13(d) sets forth the standards for the lighting of on-farm direct marketing facilities, activities or events on commercial farms. When an on-farm direct marketing facility, activity, or event is open or offered after dark, a commercial farm shall provide, unless specified otherwise in this agricultural management practice, lighting for areas used by customers, such as walkways, parking areas, sales areas, activity areas, and event areas. This lighting shall provide, at a minimum, the amount of light necessary for customer safety. The proposed new rule provides that all lighting, including security lighting, shall be provided with lights focused either downward or with an orientation designed to minimize light spilling off the site and to minimize impacts on adjacent off-farm residential buildings and streets. Lights shall not be focused directly onto public roads, and any temporary lighting shall be removed within 30 days after the activity or event has ended. Further, the proposed new rule provides that, in addition to the aforementioned standards, a commercial farm may use lighting for other farm management purposes, e.g., for security. Security lighting may be used to help protect a farm's products or other physical or natural resources and to discourage trespassing and vandalism. However, aside from security lighting needed for other farm management purposes, lighting shall be turned off within half an hour of the close of business.

Proposed N.J.A.C. 2:76-2A.13(e) sets forth requirements for sanitary facilities at on-farm direct marketing facilities, activities or events on commercial farms. A commercial farm shall provide sanitary facilities if indoor seating space, outdoor picnic tables, or other areas are made available to enable customers to consume food on-site, and if an on-farm direct marketing activity or event promotes customers staying on-site for more than ninety minutes. The proposed new rule also notes that sanitary facilities shall be provided when required pursuant to N.J.A.C. 8:24-1.1 et seq., (Sanitation in Retail Food Establishments and Food and Beverage Vending Machines), or N.J.A.C. 5:23-1.1, et seq. (New Jersey Uniform Construction Code). Further, the number of sanitary facilities provided shall be sufficient to accommodate, without causing long queues, the volume of visitors expected in conjunction with on-farm direct marketing facilities, activities, or events. In addition, the proposed new rule provides that a commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of the sanitary facilities, and sanitary facilities shall be located and managed with an appropriate cleaning schedule so as to prevent adverse impacts, such as odors, on adjacent properties.

Proposed N.J.A.C. 2:76-2A.13(f) sets forth the safety requirements for on-farm direct marketing facilities, activities and events on commercial farms. A commercial farm shall provide visitors with any rules or safety procedures associated with the on-farm direct marketing facilities, activities, and events that are provided, offered, or held. This information may be conveyed by farm staff, through posted signs or written handouts, or through other appropriate means, and may include notice that visitors share in the responsibility for their own safety, such as being aware of inherent risks, using common sense, and wearing farm-appropriate attire. The proposed new rule also provides that hazardous materials shall be

safely stored in a secure location and in compliance with relevant state and federal laws and regulations.

Proposed N.J.A.C. 2:76-2A.13(g) sets forth the standards for the use of signs for on-farm direct marketing facilities, activities and events on commercial farms. The proposed new rule provides that a commercial farm may use permanent and temporary signs to promote its on-farm direct marketing facilities, activities, and events. The types and examples of permitted signs include, but are not limited to, directional signs, advance signs, signs promoting the products available for sale, and facility, activity, and event signs. The following general standards apply to all signs used for on-farm direct marketing facilities: First, signs shall be installed and maintained in a manner that does not pose a direct threat to public health and safety; signs shall not interfere with sight distances at street intersections, ingress and egress points to or from parking areas, and other locations. Second, signs may be attached to farm buildings, fences, or other structures or be freestanding, and signs may have information on both sides. Third, the use and location of signs shall comply with relevant federal and state laws and regulations. Fourth, along the approach to the farm on the road on which the on-farm direct marketing facility, activity, or event is located, a commercial farm may install advance signs up to one half mile away from the farm's entrance. Advance signs are designed to alert drivers of an approaching on-farm direct marketing facility, activity, or event and are generally located in close proximity to one another along the road approaching, and leaving, the site upon which the facility, activity, or event is located. Fifth, directional and other signs may be installed at key intersections or other important locations. Sixth, a commercial farm shall obtain the permission of the appropriate landowner or easement holder when locating signs at off-farm locations. Seventh, temporary signs promoting a seasonal on-farm direct marketing facility, activity, or event may be installed up to one month prior to the facility, activity, or event's seasonal opening and shall be removed within 15 days of seasonal closing. Finally, internally-lit and neon-type signs are not eligible for Right to Farm protection.

As to primary on-site farm business signs, the proposed new rule provides that a commercial farm's primary on-site farm business sign shall comply with the following three standards: (1) the sign is set back at least 10 feet from the paved portion of the street right of way; (2) the maximum size, meaning the physical size of the sign and not the combined square footage of both sides, is 32 square feet; and (3) the maximum height to the top of the installed sign does not exceed 15 feet from the ground. The proposed new rule also provides that a commercial farm with frontage on multiple roads may install one (1) primary on-site farm business sign on each additional road frontage in accordance with the requirements of this section.

As to the extent and size of signs for on-farm direct marketing facilities, activities, and events on commercial farms, the proposed new rule provides that the maximum size of any one sign, meaning the physical size of the sign and not the combined square footage of both sides, is 16 square feet, and the total combined square footage of the signs cannot exceed 160 square feet. This number is calculated by adding the physical sizes of the signs and not the square footage of the signs' front and back sides. Further, if a commercial farm has multiple distinct

and separate on-farm direct marketing locations, such as two on-farm direct marketing facilities located on two different properties within the farm management unit, each on-farm direct marketing location may utilize a total combined square footage of signs of 160 square feet. However, the provisions of N.J.A.C. 2:76-2A.13(g) do not apply to the commercial farm's primary on-site farm business sign(s), commercial billboards, New Jersey Department of Transportation Tourist Oriented Directional Signage (TODS), Farmland Preservation signs, signs whose sole purpose is to facilitate and provide for safe traffic movement directly onto or from the farm site, and signs within the interior of the farm that are not intended to be visible from a public right of way.

Proposed N.J.A.C. 2:76-2A.13(h) sets forth parking areas standards for on-farm direct marketing facilities on commercial farms. In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this proposed new rule shall apply to facilities' parking areas. The proposed new rule provides that a commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events. The proposed new rule also specifies standards that apply to all parking areas for on-farm direct marketing facilities. For instance, safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events. Also, ingress and egress points, driveway areas, and parking areas shall be arranged so as to provide for safe traffic circulation. This is intended to allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. Where applicable, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers. For areas permanently devoted to parking, the proposed new rule provides that the types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.

Further, for areas temporarily devoted to parking for on-farm direct marketing facilities on commercial farms, the proposed new rule provides additional standards. Areas temporarily devoted to parking shall require few or no improvements so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases, and they may include, but are not limited to, hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover such that bare ground is not parked on. Moreover, the proposed new rule provides that the slope of the land shall be considered to address issues related to: drainage; puddles and pockets of standing water; and safety. The proposed new rule states that the commercial farm shall mark, sign, or otherwise

indicate where vehicles should be parked, and also provides standards for temporary parking during different weather conditions. For instance, during dry conditions, areas temporarily devoted to parking shall be mowed so that vegetation does not come in contact with the underside of customer vehicles, while during wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction.

Proposed N.J.A.C. 2:76-2A.13(i) sets forth buffer standards for on-farm direct marketing facilities, activities and events on commercial farms. Generally, a commercial farm may utilize buffers as an effective tool to mitigate the impacts that on-farm direct marketing facilities, activities, or events may pose on adjacent properties, such as noise, dust, and light spillage. Buffers need not involve greater than the minimum setbacks and/or screening necessary to protect public health and safety and to mitigate unreasonably adverse impacts on adjacent properties. Also, when making determinations regarding the necessity or extent of buffers, consideration shall be given to the following: the nature of the existing adjacent property uses; the nature and scale of the commercial farm's on-farm direct marketing facilities, activities, and events; the frequency of the commercial farm's activities and events; the physical features and constraints of the commercial farm property; the presence or absence of existing on- or off-farm buffers; and the economic feasibility of using buffers.

The proposed new rule also addresses setback requirements for on-farm direct marketing facilities, activities and events on commercial farms. In the absence of municipal setback standards for the construction of building and parking areas applicable to on-farm direct marketing facilities, the standards in N.J.A.C. 2:76-2A.13(i)(2) shall apply to new or expanded facilities. For new or expanded facilities' permanent structures, the proposed new rule requires a 50-foot front-yard setback from the paved portion of the road right of way, a 50-foot side-yard setback from the property line, and a 50-foot rear-yard setback from the property line. For new or expanded activities and events, the proposed new rule requires a 25-foot front-yard setback from the paved portion of the road right of way, a 50-foot side-yard setback from the property line, a 50-foot rear-yard setback from the property line, and a 100-foot setback from any existing, occupied residence not located on the farm. For new or expanded areas permanently devoted to parking, the proposed new rule requires a 25-foot front-yard setback from the paved portion of the road right of way, a 50-foot side-yard setback from the property line, and a 50-foot rear-yard setback from the property line.

The proposed new rule also provides that setbacks of a lesser distance than those previously specified may be permissible, provided that additional requirements are met. For instance, screening must be considered, and if appropriate, installed. Also, the combined setback distance and screening arrangement must receive approval as a site-specific AMP pursuant to N.J.A.C. 2:76-2.3 and 2.4. Further, such site-specific AMP determination must take into consideration adjacent property uses and buffers; the scale of the facility and intensity of its use; the nature, scale, and frequency of the activities and events; the physical features and constraints of the commercial farm property; and the economic feasibility of using buffers. For a CADB or the Committee to make such a site-specific AMP determination departing from the required setback provisions discussed in the preceding paragraph, a commercial farm must

provide a legitimate farm-based reason for the departure and address the additional requirements listed in this paragraph.

The proposed new rule also provides that existing on-farm direct marketing facilities, activities, or events, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions discussed in the previous paragraph, and if such facilities, activities, events, or parking areas are situated at lesser distances than the standards specified in the previous paragraph, the use of screening for buffer purposes shall be considered. The proposed new rule specifies that existing on-farm direct marketing activities or events, such as pick-your-own activities, which are offered and located in different fields over time shall not be considered new activities or events under N.J.A.C. 2:76-2A.13(i).

The proposed new rule also addresses screening requirements for on-farm direct marketing facilities, activities and events on commercial farms. When screening is used for buffer purposes, it shall consist of vegetation or structures such as, but not limited to, trees, bushes, fences, or walls. If the screening is comprised of vegetation and if used in conjunction with a facility, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the facility within five years. The proposed new rule requires that, if the screening is comprised of vegetation and if used in conjunction with an activity or event offered in 2 or more consecutive years, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the activity or event within five years. The proposed new rule also requires that, if the screening is comprised of a fence, wall or another existing farm structure, then the fence, wall or other existing farm structure shall be of sufficient height or construction to provide 75 percent screening of the facility, activity, or event. Moreover, the proposed new rule requires that screening shall be installed if the distance between a new or expanded facility and an existing, occupied residence not located on the farm is less than 100 feet.

Proposed N.J.A.C. 2:76-2A.13(j) sets forth standards for outdoor sales areas for on-farm direct marketing facilities, activities and events on commercial farms. The proposed new rule requires that outdoor sales areas be arranged so as to not interfere with safe pedestrian and vehicular traffic circulation.

Proposed N.J.A.C. 2:76-2A.13(k) sets forth standards for the use of structures or improvements in conjunction with on-farm direct marketing activities and events on commercial farms. The proposed new rule provides that existing agricultural structures or improvements may be used in conjunction with the offering of on-farm direct marketing activities and events, provided this use does not adversely affect the continued use of the structures or improvements for agricultural production purposes. The proposed new rule also provides that new structures or improvements may be constructed and used in conjunction with the offering of on-farm direct marketing activities and events, provided this construction and use has a negligible impact on the farm's continued use of the land for agricultural production purposes. If such structures or improvements are temporary and used in conjunction with a temporary or seasonal activity, the structures or improvements shall be

removed within 30 days of cessation of the activity or event. The proposed new rule also requires that the use and construction of structures or improvements comply with relevant federal and state laws and regulations.

Proposed N.J.A.C. 2:76-2A.13(l) sets forth the requirement that the use of land related to on-farm direct marketing activities and events shall have a negligible impact on the farm's continued use of the land for agricultural production purposes.

Proposed N.J.A.C. 2:76-2A.13(m) sets forth standards for the following on-farm direct marketing activities: pick-your-own activities; choose-and-cut Christmas tree activities; corn, sunflower, and other crop mazes; hayrides and wagon rides; livestock and animal activities; and bonfires.

For pick-your-own activities, the proposed new rule requires that visitors be informed of any rules to follow and instructed as to which fields they are permitted to harvest, and that the fields open for pick-your-own activities shall be clearly marked. The proposed new rule provides that parking areas may be adjacent to or near pick-your-own fields, particularly if such fields are far from the farm's pick-your-own market area, and pick-your-own market areas shall comply with applicable standards for on-farm direct marketing facilities.

For choose-and-cut Christmas tree activities, the proposed new rule requires that visitors be informed of any activity and equipment rules and the location(s) where Christmas trees may be selected and cut. The proposed new rule provides that customers may be allowed to cut their own Christmas trees, and they shall not be supplied with power equipment or be permitted to use motorized tree baling equipment. In addition, the proposed new rule states that choose-and-cut Christmas tree market areas shall comply with applicable standards for on-farm direct marketing facilities.

For corn, sunflower, and other crop mazes, the proposed new rule requires that visitors be informed of any rules associated with the maze, including how to exit the maze in the event of an emergency. The proposed new rule also requires that farm staff shall walk through the maze periodically, or periodically observe the maze from an elevated location, to check for lost visitors, and farm staff shall similarly check for lost visitors before closing the maze. The proposed new rule also sets forth that, if a maze is open after dark, adequate lighting shall be provided by the commercial farm and/or used by visitors to illuminate the traveled paths. If lighting is provided, the lighting shall be turned off within half an hour of the close of business. Further, the proposed new rule states that no smoking or any other open flames shall be permitted in or near the maze.

For hayrides and wagon rides, the proposed new rule provides that wagons be in good repair and have sideboards to contain occupants. In addition, the use of a ladder, ramp, footstool, steps or other stable device or component is required to assist with the safe boarding of and disembarking from wagons. The proposed new rule also states that, when using a tractor to tow wagons, the left and right brakes of the tractor shall be locked together, and no

smoking or any other open flames are permitted on hayrides and wagon rides. The proposed new rule also includes specific requirements for wagon operators. For instance, wagon operators must have a valid motor vehicle operator's license, operate tractor and wagon equipment in low gears and at safe speeds, and plan ride routes in advance. Further, the proposed new rule requires that wagon operators be familiar with and have experience in both operating the tractor and wagon equipment, as well as using draft animals, if applicable. The proposed new rule also requires that wagon operators evenly distribute passengers on the wagons and instruct passengers to remain seated during the rides.

For livestock and animal activities, the proposed new rule requires that a farm employee or activity attendant shall regularly monitor activities in which visitors may have incidental contact with agricultural animals. Incidental contact includes, but is not limited to, agricultural animal display, petting, or feeding areas. The proposed new rule also states that a farm employee or activity attendant shall be present at all times to monitor activities in which visitors are permitted to have direct contact with agricultural animals. Direct contact includes, but is not limited to, horseback riding, pony rides, and animal shows, competitions, or demonstrations. Additionally, the proposed new rule provides that all agricultural animals having incidental or direct contact with the public shall be observed daily for health problems by a farm employee or activity attendant, and that sick animals or animals behaving strangely shall be prevented from having contact with the public. The proposed new rule also provides that hand-sanitizing facilities must be provided and readily available if an activity is offered in which visitors may have incidental or direct contact with agricultural animals. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations. In addition, visitors must be advised to sanitize their hands after contact with agricultural animals. The proposed new rule also requires that visitors be advised not to feed agricultural animals unless the feed has been specifically provided by the farm, and that visitors' pets and animals are not allowed in areas with agricultural animal activities, unless in connection with a specific agricultural purpose, including, but not limited to, agricultural animal shows, competitions, or demonstrations. Finally, the proposed new rule notes that the management of animals shall comply with the Animal Welfare Act, 7 U.S.C. 54, and the Humane Treatment of Domestic Livestock regulations, N.J.A.C. 2:8-1.1 et seq., as applicable.

For bonfires, the proposed new rule requires that a commercial farm conducting a bonfire shall comply with Uniform Fire Code requirements, N.J.A.C. 5:70-2.7, and that a farm employee must be present for the duration of the bonfire to monitor and oversee the activity.

Proposed N.J.A.C. 2:76-2A.13(n) sets forth the requirements for event management plans for on-farm direct marketing events on commercial farms. Specifically, if the expected volume of traffic and visitors for an event is significantly greater than the volume regularly accommodated by a commercial farm's on-farm direct marketing facility, such that the increased volume of traffic is likely to interfere with the movement of normal traffic or emergency vehicles on- and off-site, the farm shall create and implement a written event management plan to address public health and safety issues including but not limited to

emergency vehicle access, traffic management, and public health management. The proposed new rule requires that a complete copy of the plan shall be provided to the clerk of the municipality in which the commercial farm is located at least 30 days in advance of the event as an advisory notice and to enable coordination between the commercial farm and municipality that may be necessary regarding emergency vehicle access, traffic, and public health management. This requirement may be satisfied by obtaining a special events permit, or its equivalent, from the municipality in which the commercial farm is located. The proposed new rule further provides that if an event of the type described in this paragraph occurs periodically or more than once per year and occurs under the same basic conditions, a commercial farm may satisfy the provisions of this paragraph for the multiple events by submitting a single event management plan that notes the multiple occurrences of the event.

The proposed new rule specifies that “emergency vehicle access management” includes establishing the location(s) and manner in which emergency vehicles may access the farm if necessary. The proposed new rule provides that “traffic management” includes providing safe ingress and egress, vehicular traffic flow, and pedestrian traffic flow, and utilizing parking attendants, signs, or other parking-related instructions to facilitate vehicular and pedestrian traffic flow onto, off of, and within the farm. It also includes establishing areas temporarily devoted to parking based on the volume of visitors expected, and establishing overflow parking areas in the event the planned-for parking capacity is exceeded. Moreover, the proposed new rule provides that local police officers may be hired to assist with traffic management.

The proposed new rule specifies that “public health management” includes providing sanitary facilities sufficient to accommodate, without causing long queues, the volume of visitors expected, and providing hand-sanitizing facilities for visitors to wash or sanitize their hands after the use of the sanitary facilities. Also included is the requirement that sanitary facilities be located and managed with an appropriate cleaning schedule so as to prevent adverse impacts on adjacent properties, such as odors. In addition, trash and recycling receptacles must be provided to accommodate the volume of visitors expected in order to prevent the accumulation of trash on the ground. Likewise, properly training and equipping commercial farm staff on how to handle an emergency situation during the event including, but not limited to, whether and how police, fire or other entities should be contacted based on an actual emergency, is required.

Proposed N.J.A.C. 2:76-2A.13(o) provides that the AMP for on-farm direct marketing facilities, activities and events does not apply to overnight lodging and that the AMP shall not be construed to extend Right to Farm protection to overnight accommodations of any kind including, but not limited to, lodging and camping.

Proposed N.J.A.C. 2:76-2A.13(p) states that a commercial farm seeking to establish a new, or expand an existing, on-farm direct marketing facility may apply to either the municipality or the CADB for approval of site plan elements. The proposed new rule provides that a commercial farm applying to a municipality for approval of site plan elements may request the municipality consider waiving or reducing review requirements based on a

consideration of relevant site-specific elements such as, but not limited to, the following: the farm's setting and surroundings; the scale of the facility and intensity of its use; the type and use of the public road on which the facility is located; and the minimum level of improvements necessary to protect public health and safety. The proposed new rule requires that a commercial farm applying to a CADB or the Committee for approval of site plan elements shall request a site-specific AMP determination pursuant to N.J.A.C. 2:76-2.3 and 2.4. Also, the proposed new rule requires that, if a commercial farm has previously obtained approval for an on-farm direct marketing facility, then such a facility closing seasonally and reopening the following year with the same total square footage of indoor and/or outdoor covered sales area as previously approved shall not be considered a new facility.

Proposed N.J.A.C. 2:76-2A.13(q) sets forth the relevant federal and state laws and regulations that on-farm direct marketing facilities, activities, and events must comply with. Those laws and regulations include, but are not limited to, the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1, et seq.; the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39, et seq.; the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1.1, et seq.; the New Jersey Uniform Fire Code, N.J.A.C. 5:70-1.1, et seq.; the Stormwater Management rules, N.J.A.C. 7:8-1.1, et seq.; the State Highway Access Management Code, N.J.A.C. 16:47-1.1, et seq.; the Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, N.J.A.C. 8:24-1.1, et seq.; and the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-1.1, et seq.

Proposed N.J.A.C. 2:76-2A.13(r) provides that the AMP does not preclude a commercial farm from requesting a site-specific agricultural management practice determination for on-farm direct marketing facilities, activities, and events pursuant to N.J.A.C. 2:76-2.3 and 2.4. A board or the Committee, pursuant to N.J.A.C. 2:76-2.3 and 2.4, may make site-specific AMP determinations for facilities, activities, and events, provided such site-specific AMP determinations are consistent with the practices set forth in N.J.A.C. 2:76-2A.13. Further, if a commercial farm believes a municipality's building and parking area standards applicable to on-farm direct marketing facilities are unduly restrictive, or believes a municipality is unreasonably withholding local zoning approval related to a facility, the commercial farm may request that the appropriate CADB, or the Committee in counties where no CADB exists, make a determination in the matter by requesting a site-specific AMP pursuant to N.J.A.C. 2:76-2.3 and 2.4.

The SADC also proposes to amend the text and reorganize Right to Farm Act procedures set forth in N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.9 and 2.10 to make the regulations clearer and more directly aligned with the statutory language of the Act. Existing N.J.A.C. 2:76-2.10 (disposition of Right to Farm complaints) will be renumbered as N.J.A.C. 2:76-2.7, and hearing procedures will now be found at N.J.A.C. 2:76-2.8, logically following the substantive regulations related to site-specific AMP ("SSAMP") requests and Right to Farm complaints. With the renumbering of N.J.A.C. 2:76-2.10, the regulations at N.J.A.C. 2:76-2.9 and N.J.A.C. 2:76-2.10 will be "reserved" for future use.

The SADC proposes to amend N.J.A.C. 2:76-2.3, which addresses determinations of SSAMP requests where a CADB exists. The proposed amendment to N.J.A.C. 2:76-2.3(a) clarifies that entitlement to Right to Farm protection is not only based on satisfying commercial farm eligibility defined in N.J.S.A. 4:1C-3, but also on the requirements in the introductory paragraph of N.J.S.A. 4:1C-9. Proposed N.J.A.C. 2:76-2.3 also allows for pre-application meetings between a commercial farm and CADB staff to discuss application requirements, procedures, and any other appropriate matters. Consistent with the express terms of the Act, proposed N.J.A.C. 2:76-2.3 recognizes that CADBs will be making SSAMP determinations, not recommendations. In order that there be more logical sequencing of the regulations, existing N.J.A.C. 2:76-2.3(c), providing for notice of an SSAMP application to the SADC and to the municipality in which the commercial farm is located, will be recodified as N.J.A.C. 2:76-2.3(b), and existing N.J.A.C. 2:76-2.3(b) will now be section 2.3(c). No changes have been made to the text of sections 2.3(b) and (c).

Proposed N.J.A.C. 2:76-2.3(d) is aligned with the introductory paragraph in N.J.S.A. 4:1C-9, which provides that agricultural operations satisfying commercial farm eligibility may engage only in the list of permitted activities set forth in subparagraphs a. through j. of that statute. N.J.A.C. 2:76-2.3(d) also provides that CADBs initially will determine whether the commercial farm operation or practice is included in one or more of the permitted activities listed in N.J.S.A. 4:1C-9. If the board determines that the farm operation is not a commercial farm pursuant to N.J.S.A. 4:1C-3 and/or that the operation or practice is not included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board shall pass a resolution dismissing the request in accordance with N.J.A.C. 2:76-2.3(g). The resolution shall contain detailed findings of fact and conclusions of law, and references to any supporting documents in order to create a comprehensible record should an appeal be filed., The resolution must be forwarded to the commercial farm owner and/or operator, the SADC, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

The SADC proposes new N.J.A.C. 2:76-2.3(e) to address that, in the event the commercial farm owner or operator has sought approval of the agricultural operation or practice from the municipality in which the commercial farm is located, the board shall consider, at a minimum, any operation or practice the approval of which has not been granted by the municipality. Further, proposed new N.J.A.C. 2:76-2.3(f) states that, if appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure compliance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

The SADC proposes new N.J.A.C. 2:76-2.3(h) to provide, as guidance for the board and/or board staff, a checklist of information to request from a farm owner or operator so that the board can make its site-specific AMP determinations. The checklist will be used by the

board only after it determines that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that the operation or practice is included in any of the activities permitted by N.J.S.A. 4:1C-9. Proposed N.J.A.C. 2:76-2.3(h) directs that the checklist shall include, at a minimum, the following components: (1) site plan elements to identify site location, extent and orientation, existing and proposed site conditions, location and availability of development infrastructure, detailed parking and traffic improvements and dedications, drainage provision, and the location of signage and lighting; (2) a list of regulatory approvals or permit requirements; (3) a list of studies required to assess the suitability of the site and impacts of the operation or practice that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3; (4) a schedule of municipal planning and zoning requirements, and exemptions from the schedule sought by the commercial farm; and (5) submittal of a farm conservation plan. The SADC anticipates drafting a model checklist that may be used by the CADBs.

Proposed N.J.A.C. 2:76-2.3(h) also provides that the board and/or board staff shall have the discretion, subject to any limitations in relevant federal or state laws and regulations, to waive, reduce and/or determine the nonapplicability of checklist items in its review of an application filed by a commercial farm pursuant to N.J.A.C. 2:76-2.3, and the board may delegate this function to board staff. Further, in making such decisions, the board and/or board staff shall consider relevant site-specific elements such as, but not limited to: (1) the farm's setting and surroundings; (2) the scale and intensity of the proposed operation(s) or practice(s); (3) the type and use of the public road on which the operation or practice is located; and (4) when applicable, the minimum level of improvements necessary to protect public health and safety. Proposed N.J.A.C. 2:76-2.3(h) also states that, subject to the provisions of N.J.A.C. 2:76-2.3(k), the board may retain jurisdiction over any or all municipal ordinances and/or county resolutions related to the commercial farm owner or operator's application for a site-specific AMP determination for which, in the board's judgment, it has sufficient expertise, familiarity and/or resources to decide such matters. In addition, proposed N.J.A.C. 2:76-2.3(h) provides that the commercial farm owner or operator may employ appropriate professional(s), at the commercial farm owner or operator's sole expense, as it determines necessary to prepare the application and checklist items and to testify before the board in support of the application.

N.J.A.C. 2:76-2.3(i) provides that the board will hold a public hearing on the SSAMP application in accordance with the procedures set forth in N.J.S.A. 2:76-2.8 if the board determines that a commercial farm owner or operator's site-specific AMP application and checklist items are complete.

Existing N.J.A.C. 2:76-2.3(d) is recodified as N.J.A.C. 2:76-2.3(j). In response to concerns raised by CADBs regarding expertise in dealing with particular SSAMP issues, the SADC proposes to amend this subsection to allow for the board to consult with county engineering staff and/or any other licensed professional employed by the county when determining whether or not to approve a site-specific AMP.

Existing N.J.A.C. 2:76-2.3(e) is recodified as N.J.A.C. 2:76-2.3(k) and N.J.A.C. 2:76-2.3(l). Proposed N.J.A.C. 2:76-2.3(k) directs that the board shall have no authority to determine the

commercial farm owner or operator's compliance with state laws and regulations delegated to the municipality or county for administration and enforcement including, but not limited to, stormwater control and construction code requirements, unless the municipal ordinance, county resolution or any portion(s) thereof effectuating the delegation exceed(s) state regulatory standards. Proposed N.J.A.C. 2:76-2.3(k) also provides that, if a municipal ordinance, county resolution, or any portion(s) thereof, exceed(s) state regulatory standards, then the board shall have the authority to determine whether the ordinance, resolution or portion thereof is preempted by the board's approval of the commercial farm owner or operator's site-specific AMP. In addition, proposed N.J.A.C. 2:76-2.3(l) requires the board to pass a resolution granting, with or without conditions, or denying the request for a site-specific AMP determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice which is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. Proposed N.J.A.C. 2:76-2.3(l) also provides that the resolution shall be forwarded to the commercial farm owner and operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

Existing N.J.A.C. 2:76-2.3(f) is recodified as N.J.A.C. 2:76-2.3(m). The SADC proposes to amend this subsection to change the term "board's final determination" to "board's decision" for consistency within the subsection.

The SADC proposes to amend N.J.A.C. 2:76-2.4, which addresses determinations of site-specific AMPs where a CADB does not exist. Like proposed N.J.A.C. 2:76-2.3, section 2.4 is being amended by replacing "recommendations" with "determinations" for consistency with the language in N.J.S.A. 4:1C-9. The proposed amendment to N.J.A.C. 2:76-2.4(a) allows a commercial farm owner or operator who meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 to submit an application to the SADC to determine if his or her operation constitutes a generally accepted agricultural operation or practice consistent with any of the permitted activities set forth in N.J.S.A. 4:1C-9. Existing N.J.A.C. 2:76-2.4(b) is replaced with language that makes this rule consistent with proposed N.J.A.C. 2:76-2.3, as it directs that the provisions of N.J.A.C. 2:76-2.3(b) through (j) shall apply to the SADC's consideration of the request. N.J.A.C. 2:76-2.4(c) has also been amended to be consistent with proposed N.J.A.C. 2:76-2.3, as it requires the SADC to pass a resolution granting, with or without conditions, or denying the request for a site-specific AMP determination. As in proposed N.J.A.C. 2:76-2.3, the resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. Proposed N.J.A.C. 2:76-2.4(c) also provides that the resolution shall be forwarded to the commercial farm owner and commercial farm operator, if applicable, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the SADC within 30 days of passage of the resolution. In addition, the decision of the SADC shall be considered a

final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

The SADC proposes to amend N.J.A.C. 2:76-2.5, which focuses on the utilization of AMPs and site-specific AMPs, to also include procedures for such uses. Existing N.J.A.C. 2:76-2.5(a) and (b) remain unchanged. The SADC proposes to add new N.J.A.C. 2:76-2.5(c) to provide that, if a commercial farm owner or operator believes a municipality or county's standards or requirements for agricultural operations or practices are unduly restrictive, or believes a municipality or county is unreasonably withholding approvals related to agricultural operations or practices, then the commercial farm owner or operator may request that the board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively.

The SADC proposes to add new N.J.A.C. 2:76-2.5(d) providing that a commercial farm owner or operator shall not be precluded from requesting a site-specific AMP determination from a board, or from the Committee in counties where no board exists, pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively, for activities set forth in AMPs recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2. This new provision is designed to provide operational flexibility for a commercial farm. However, no site-specific AMP approval shall be granted if it is inconsistent with an AMP recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2. The SADC also proposes to add new N.J.A.C. 2:76-2.5(e) to specify that a commercial farm owner and/or operator who obtains a site-specific AMP determination by resolution from the board, or from the Committee in counties where no board exists, may present the resolution to appropriate municipal officials in support of obtaining appropriate permits, if applicable.

No changes have been made to N.J.A.C. 2:76-2.6, "Negotiations of conflicts between State regulatory practices and SADC recommended agricultural management practices."

The SADC proposes to create new N.J.A.C. 2:76-2.7, which incorporates and revises existing N.J.A.C. 2:76-2.10. Section 2.7 addresses, in a more comprehensive and logical fashion, the filing and handling of Right to Farm complaints in order to make the process more consistent with the statutory language in the Act. The proposed amendments make the process more rational by increasing the involvement of CADBs during the initial stages of the complaint process; CADBs would perform the initial eligibility threshold screening on: (1) whether the farm meets the Right to Farm Act definition of commercial farm; and (2) whether the activity is included in the permitted activities in N.J.S.A. 4:1C-9.

Proposed N.J.A.C. 2:76-2.7(a) is identical to existing N.J.A.C. 2:76-2.10(a), and section 2.7(b) is identical to existing 2.10(b) with respect to the handling of complaints concerning activities addressed by an AMP or a previously-issued SSAMP, except that proposed section

2.7(b) also provides for board inspection of the farm similar to that described in proposed N.J.A.C. 2:76-2.3(f).

Pursuant to proposed N.J.S.A. 2:76-2.3(c), if a CADB determines that the farm is a commercial farm and that the dispute involves agricultural activities addressed by an AMP or a previously-issued SSAMP, then the CADB will hold a public hearing in accordance with N.J.A.C. 2:76-2.3(k) and 2.8. The decision of the board shall be in the form of a resolution providing a summary of the testimony, detailed findings of fact and conclusions of law, references to any supporting documents, and have attached to it any agricultural management practice or SSAMP the board utilized in arriving at its decision and any other information requested by the SADC. N.J.A.C. 2:76-2.3(c)1 provides that the CADB decision shall be forwarded to the SADC, the aggrieved person, the municipality or municipalities in which the commercial farm is located, and the commercial farm owner and/or operator, within 60 days of receipt of the complaint. Proposed N.J.A.C. 2:76-2.3 (c)1.ii.(1) and (2) provide that any person aggrieved by the CADB decision can appeal the decision to the SADC in accordance with N.J.S.A. 4:1C-10.2, but the appeal must be filed within 10 days of receipt of the board's final decision. The SADC's decision is considered final administrative agency action appealable to the Superior Court, Appellate Division, and any board decision not appealed shall be binding.

Proposed N.J.A.C. 2:76-2.7(d) is identical to the provisions of proposed N.J.A.C. 2:76-2.7(c) except that section 2.7(d) relates to situations in which the complaint concerns activities that are not addressed by an AMP or a previously-issued SSAMP.

N.J.A.C. 2:76-2.7(e) provides that, if appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure compliance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

If the board determines that the dispute does not involve a commercial farm and/or does not involve agricultural activities included in the list of protected activities set forth in N.J.S.A. 4:1C-9, then, in accordance with proposed N.J.A.C. 2:76-2.7(f), the CADB shall dismiss the complaint by resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be transmitted to the SADC, the aggrieved person, the municipality or municipalities in which the commercial farm is located, and the commercial farm owner and/or operator within 60 days of receipt of the complaint.

Proposed N.J.A.C. 2:76-2.7(g) deals with the procedures applicable to a Right to Farm complaint involving activities *not* addressed by an AMP or a previously-issued SSAMP. Initially the CADB must determine whether the farm against which the complaint is filed qualifies as a commercial farm and whether the activity in dispute is included in the list of activities set forth in N.J.S.A. 4:1C-9. If those criteria are satisfied, then, consistent with the specific statutory language in N.J.S.A. 4:1C-10.1(c), the CADB will forward the matter to the SADC for the limited purpose of determining whether or not the disputed agricultural operation constitutes a

generally accepted operation or practice. Prior to the SADC making that determination, the SADC, pursuant to N.J.A.C. 2:76-2.7(g)1, will review the board's decision that the farm is a commercial farm and that the dispute involves agricultural activities included in N.J.S.A. 4:1C-9. The SADC will dismiss the complaint if it determines that the farm is not a commercial farm or the activities in dispute are not included in N.J.S.A. 4:1C-9.

If, however, the SADC determines that the farm is a commercial farm and that the disputed agricultural activity is included in the list of permitted activities set forth in N.J.S.A. 4:1C-9, then, pursuant to proposed N.J.A.C. 2:76-2.7(h), the SADC will hold a public hearing in accordance with N.J.A.C. 2:76-2.8 limited to the specific issue of whether the disputed activity constitutes a generally accepted operation or practice. Upon such a finding, and pursuant to N.J.S.A. 4:1C-10.1(c) and proposed N.J.A.C. 2:76-2.7(h)1, the SADC will return the case to the CADB. Proposed N.J.A.C. 2:76-2.7(i) provides that the CADB will hold a public hearing pursuant to N.J.A.C. 2:76-2.3(k) and 2.8 and resolve the particular allegations of the complaint within 60 days of receipt of the SADC's decision; only if the CADB's decision were appealed within 10 days of receipt of the decision would the SADC make a determination on the allegations as provided in N.J.S.A. 4:1C-10(d) and proposed N.J.A.C. 2:76-2.7(j). The statute and proposed regulation provide that the SADC will hold a hearing within 90 days of receipt of the appeal of the board's resolution.

The SADC's determinations that the farm is not a commercial farm, or that the disputed activity is not included in the list set forth in N.J.S.A. 4:1C-9, or that disputed activity constitutes or does not constitute a generally accepted operation or practice, shall be in the form of a detailed resolution described in N.J.A.C. 2:76-2.7(g) 2 and (h)3 and transmitted to the parties set forth in the same proposed regulations. The SADC's decision with respect to any of those determinations is final administrative agency action appealable to the Appellate Division of Superior Court in accordance with N.J.S.A. 4:1C-10.1(e) and proposed N.J.A.C. 2:76-2.7(g) 2i., (h)2 and (j)1.

The SADC also proposes new N.J.A.C. 2:76-2.8 to establish, in response to *Curzi v. Raub*, 415 N.J.Super. 1 (App.Div. 2010), hearing procedures for site-specific AMP requests and Right to Farm complaints. Proposed N.J.A.C. 2:76-2.8(a) provides that the SADC and CADBs shall follow the procedures set forth in N.J.A.C. 2:76-2.8 for cases arising from the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. and the Right to Farm regulations set forth in Subchapters 2, 2A and 2B. Proposed N.J.A.C. 2:76-2.8(b) provides that the procedures set forth in N.J.A.C. 2:76-2.8 shall apply only after the CADB or the Committee, where no CADB exists, determines that it has jurisdiction to hear the Right to Farm case.

Proposed N.J.A.C. 2:76-2.8(c) sets forth the public notice procedures that are applicable to requests by a commercial farm for a site-specific AMP (N.J.A.C. 2:76-2.3 and 2.4) and generally follows the requirements of the Municipal Land Use Law. Written notice of the request shall be given by the commercial farm, at its sole expense, via certified mail, return receipt requested, and/or by personal service, to: (1) the clerk and land use board secretary of the municipality in which the commercial farm is located; if the commercial farm is located

within 200 feet of an adjoining municipality, then written notice of the request shall be given as set forth above to the clerk and land use board secretary of the adjoining municipality; (2) the owners of all real property, on the current tax duplicates, within 200 feet in all directions of the property upon which the commercial farm is located; the commercial farm shall be solely responsible to pay for and obtain a certified list of property owners in accordance with N.J.S.A. 40:55D-12c.; (3) the SADC; (4) the county planning board if the commercial farm is located on property adjacent to a county road or county-owned property; and (5) the Commissioner of the New Jersey Department of Transportation if the commercial farm is located on a State highway. Further, written notice, as set forth in N.J.A.C. 2:76-2.8(c)1, shall state the date, time and place of the hearing; the site-specific AMP(s) that will be considered at the hearing; the identity of the property upon which the commercial farm is located by street address, if any, or by reference to lot and block number(s); the location and times at which documents in support of the commercial farm's request are available at the office of the board; and advise that the board will accept public comments at the hearing, prior to the hearing, and no later than 14 days after conclusion of the hearing. Moreover, the written notice must be served at least ten (10) days in advance of the hearing, and proof of service of the notice shall be provided by the commercial farm to the CADB. In addition, the proposed new rule directs that the CADB shall allow the applicant to respond to any written comments within such reasonable time as the CADB directs, and the hearing shall not begin until satisfactory proof of notice to all appropriate individuals has been provided by the commercial farm. The proposed new rule directs that the board hearing shall be conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

N.J.A.C. 2:76-2.8(c)3i. and ii. incorporate portions of existing Right to Farm regulations by stating that the testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson of or counsel to the board, and testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board. Further, the hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial or unduly repetitive evidence. Finally, the hearing must be recorded utilizing a sound recording device or a stenographer so that an adequate and comprehensible record is established.

Proposed N.J.A.C. 2:76-2.8(d) sets forth the procedures applicable to a complaint by an aggrieved person against a commercial farm (N.J.A.C. 2:76-2.7) and incorporates existing portions of the Right to Farm regulations. The board shall provide notice of the complaint, in writing, to the commercial farm owner, the commercial farm operator, if applicable, the Committee and to the municipality(ies) in which the commercial farm is located, within ten (10) days of receipt of the complaint. The board hearing shall be conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., and the testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson of or counsel to the board. N.J.A.C. 2:76-2.8(d)2i. and ii. incorporate portions of existing right to Farm regulations by stating that the testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party

deemed necessary by the board. In addition, the proposed new rule provides that the hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial or unduly repetitive evidence. Finally, the hearing must be recorded utilizing a sound recording device or a stenographer so that an adequate and comprehensible record is established.

The proposed amendment of N.J.A.C. 2:76-2.9 denotes that the section will now be "reserved" for future use. With the incorporation and revision of current N.J.A.C. 2:76-2.10 into N.J.A.C. 2:76-2.7, section 2.10 is now also "reserved" for future use.

The proposed amendment of N.J.A.C. 2:76-2B.2 revises the existing regulation to align it with the standards for pick-your-own (PYO) operations set forth in the proposed On-Farm Direct Marketing AMP. The amendment makes the regulation consistent with proposed new N.J.A.C. 2:76-2A.13, et seq. regarding the eligibility of (PYO) operations for Right to Farm protections.

As the SADC has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules and amendments will have a positive social impact by encouraging owners of commercial farms to promote on-farm direct marketing facilities and on-farm direct marketing activities and events for the public to experience. The proposed new rules and amendments will directly benefit the public by providing predictable standards for Right to Farm protection, thus encouraging New Jersey communities to promote agriculture-related educational activities and farm-based recreational activities. Further, the proposed new rules and amendments will nurture the community's desire for quality local produce in New Jersey, while also broadening the social awareness of protected farm activities. It is anticipated that this increase in public awareness of farms will foster community support for agriculture and reduce Right to Farm issues between commercial farms and the public.

The SADC expects that the agricultural community and the general public will be supportive of the proposed new rules and amendments, as they establish clear standards for Right to Farm Act protections for on-farm direct marketing facilities and on-farm direct marketing activities and events on commercial farms. The proposed new rules and amendments strike an appropriate balance between the public interest as expressed in municipal and county regulation, the general public interest in accessing quality, locally-grown food, and the encouragement of agriculture as a viable business in New Jersey under the Right to Farm Act.

Economic Impact

The proposed new rules and amendments will provide economic benefits to commercial farms by enabling them to obtain Right to Farm Act protections for on-farm direct marketing facilities and on-farm direct marketing activities and events. The existence of clearer standards will provide commercial farms with the predictability needed to make more informed planning and investment decisions leading to an improved agricultural business climate and contributing positively to New Jersey's overall economic activity. The proposed new rules and amendments will promote expansion of existing on-farm direct marketing operations and encourage the creation of new on-farm direct marketing operations in the State.

Consequently, the SADC expects that the proposed new rules and amendments will help strengthen New Jersey's agricultural industry by ensuring that commercial farms with on-farm direct marketing facilities, activities, and events are able to remain viable. As a result, it is anticipated that the proposed new rules and amendments will impart an increased opportunity for the general public to purchase local quality produce more conveniently, thus reducing traffic on public roads and the time and expense associated with travelling to supermarkets. The SADC anticipates that commercial farms in compliance with the new regulatory standards will attract more customers through direct marketing, thus improving profitability and contributing to a strong agricultural industry.

Moreover, the SADC expects that the proposed new rules and amendments, by promoting investment in, expansion and creation of on-farm direct marketing operations, will stimulate activity for New Jersey businesses that provide construction services, materials and supplies to those operations.

Federal Standards Statement

A Federal standards statement analysis is not required because the proposed new rules and amendments to N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.9 and 2.10 and N.J.A.C. 2:76-2B.2 are governed by N.J.S.A. 4:1C-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The proposed new rules and amendments could generate some new jobs if there is a substantial increase in on-farm direct marketing facilities and on-farm direct marketing activities and events on New Jersey farmland. The State's efforts to ensure that farms with on-farm direct marketing facilities, activities, and events are able to remain viable, while providing clear guidance to farm operators and municipalities regarding protected activities, could encourage the opening of additional on-farm businesses in New Jersey, thus creating additional jobs. The SADC expects that the proposed new rules and amendments, by promoting investment in, expansion and creation of on-farm direct marketing operations, will stimulate

job growth for New Jersey businesses that provide construction services, materials and supplies to those operations.

By helping to maintain the economic viability of preserved farms and keeping New Jersey's agricultural industry strong, the proposed new rules and amendments could also help provide better opportunities for on-farm employment.

Agricultural Industry Impact

The proposed new rules and amendments will have a positive impact on the agricultural industry. On-farm direct marketing is a growing part of the agricultural industry and important to farm viability. The proposed new rules and amendments apply to commercial farms seeking protections of the Right to Farm Act, and they establish consistent statewide standards that address the issue of on-farm direct marketing practices that are currently being treated differently depending on the municipality and county in which the on-farm direct marketing operation is located. By promoting consistency, these new rules will benefit the agricultural industry by clarifying the business opportunities available to eligible commercial farms regardless of their location in New Jersey.

The proposed new rules and amendments will help ensure that farms with on-farm direct marketing facilities, activities, and events are able to remain viable, provide the public with assurance that certain standards need to be met by farms to obtain Right to Farm Act protections, and provide clear guidance to farm operators, counties and municipalities regarding protected activities.

Regulatory Flexibility Analysis

The majority of land potentially subject to the proposed new rules and amendments is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., as they employ fewer than 100 employees full-time. Consistent with N.J.S.A. 52:14B-18b., commercial farms seeking Right to Farm protection for on-farm direct marketing operations must comply with performance measures set forth in the proposed new rules and amendments rather than more prescriptive design standards.

The proposed new rules and amendments do not provide for different compliance requirements based on business size. Rather, these new rules and amendments establish a consistent regulatory framework to ensure that all on-farm direct marketing facilities, activities, and events operate in a manner that protects the public health and safety.

Housing Affordability Impact Analysis

The proposed new rules and amendments will have an insignificant impact on affordable housing in New Jersey. There is no evidence that these new rules and amendments would evoke a change in the average costs associated with housing, generally.

Smart Growth Development Analysis

The proposed new rules and amendments will have an insignificant impact on smart growth development, and there is an extreme unlikelihood that they would evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the regulation of on-farm direct marketing facilities and on-farm direct marketing activities and events is unrelated to, and will not substantially impair, smart growth development within participating municipalities.

In fact, the proposed new rules and amendments support the continued viability of agricultural operations, the overwhelmingly majority of which are located in Planning Areas 3, 4 and 5, which is consistent with the State Development and Redevelopment Plan.

Full text of the proposed new rule and proposed rule amendments follows:

2:76-2A.13 AMP for On-Farm Direct Marketing Facilities, Activities, and Events

(a) This agricultural management practice sets forth the standards for on-farm direct marketing facilities, activities, and events that commercial farms must comply with to receive the protections of the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. These standards are designed to support and protect on-farm direct marketing operations by identifying safe, effective, and economically viable agricultural management practices for commercial farms seeking the protections of the Act.

(b) As used in this section the following words and terms shall have the following meanings:

“Agricultural output of a commercial farm” means the items specified in N.J.S.A. 4:1C-9a. that a commercial farm produces and the value-added or processed products produced from those items, provided that the primary and predominant ingredients used to produce such products are grown or raised by the commercial farm. Examples of unprocessed agricultural output include but are not limited to: fruits, vegetables, nursery stock, bedding plants, cut flowers, Christmas trees, and forest and livestock products. Examples of value-added or processed agricultural output include but are not limited to meat products, dairy products, cider, canned goods, baked goods, prepared foods, cut firewood, and wreaths.

“Agriculture-related educational activities” means on-farm educational offerings that have an agricultural focus and are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm by enhancing the experience of purchasing agricultural products for the purpose of attracting customers to the commercial farm. Examples of agriculture-related educational activities, ~~provided they demonstrate the required relationship to marketing the output of the commercial farm,~~ may include but are not limited to: school trips, hands-on farming activities, educational displays, farm tours, farm task experiences, wine tastings, agriculture-related lectures for clubs, farm open house days, and agriculture-related classes on topics such as but not limited to canning, freezing, cooking with fresh produce, pie making, pruning, beekeeping, animal care, and gardening.

“Ancillary entertainment-based activities” means non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities, that are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products. Examples of ancillary entertainment-based activities include but are not limited to: background live or recorded music, face painting, story-telling, sandbox area, small swing set or playground equipment, pedal carts for children, and picnic tables. Such activities may have a fee associated with them, but such fees shall be de minimis compared to the income generated from the sale of the agricultural output of the commercial farm.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Buffer" means a setback distance and/or screening utilized by a commercial farm in conjunction with its on-farm direct marketing facilities, activities, or events.

"Commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Community supported agriculture (CSA) operation" means an on-farm direct marketing method in which the retail sale of the agricultural output of a commercial farm is provided through a paid subscription.

"CSA market and distribution area" means an on-farm direct marketing facility used by a CSA operation to organize and dispense CSA operation members' farm product shares and to market products that contribute to farm income.

"Farm-based recreational activities" means recreational offerings that are uniquely suited to occurring on a farm and also may include common outdoor recreation activities that are compatible with the agricultural use of the farm, where such offerings and activities are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of the commercial farm by ~~by~~ enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm. Examples of farm-based recreational activities, ~~provided they demonstrate the required relationship to marketing the output of the commercial farm,~~ uniquely suited to occurring on a farm may include but are not limited to: corn, sunflower, and other crop mazes; hayrides and wagon rides; agricultural animal display or petting areas; farm tours; horseback riding; pony rides; and tractor pulls. Examples of farm-based recreational activities considered common outdoor recreation activities that are compatible with the agricultural use of the farm include but are not limited to: hiking; bird watching; sleigh rides; ~~tractor pulls~~; hunting and fishing; and bonfires. Activities and related infrastructure not considered farm-based recreational activities include but are

not limited to: athletic fields; paintball; ~~hot air ballooning~~; go-karting and other similar racetracks; carnival-type amusement rides; and the flying of hobby, private, or commercial aircraft.

"Farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

"Farm market" means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the sale of agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least \$2,500.

"Hours of operation" means the time during which an on-farm direct marketing facility, activity, or event is open or offered to the public.

"On-farm direct marketing" means the on-farm facilities, activities, and events that are used to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income.

"On-farm direct marketing activity" or "activity" means an agriculture-related happening made available by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products and include but are not limited to: agriculture-related educational activities; farm-based recreational activities; and ancillary entertainment-based activities.

"On-farm direct marketing event" or "event" means an agriculture-related function offered by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such events are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products; may include on-farm direct marketing activities as components; are either product-based or farm-based; and occur seasonally or periodically. Product-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include but are not limited to: an apple, peach, strawberry, pumpkin, wine, or other agricultural or horticultural product festival held at a commercial farm that produces that particular product. Farm-based events, provided they demonstrate the required relationship to

marketing the output of the commercial farm, may include but are not limited to: seasonal harvest festivals held at a commercial farm that produces such seasonal farm products, farm open house events, CSA membership meetings, and farm-to-table events that showcase the agricultural output of the commercial farm.

“On-farm direct marketing facility” or “facility” means a type of farm market including the permanent, temporary, and/or moveable structures, improvements, equipment, vehicles, and apparatuses necessary to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. Such facilities include various types and sizes of direct marketing operations, including but not limited to: farm stands; farm stores; community supported agriculture (CSA) market and distribution areas; and pick-your-own (PYO) market areas. A facility may include one or more structures or a portion of a structure, and a facility may utilize new or existing structures. A facility’s structures may also be used for the commercial farm’s other farm purposes, for instance: equipment storage, equipment maintenance, and the production, processing, packaging, storage, or wholesale marketing of the agricultural output of the commercial farm.

“Pick-your-own (PYO) operation” means an on-farm direct marketing method wherein retail or wholesale customers are invited onto a commercial farm in order to harvest and pay for agricultural or horticultural products . Examples of PYO operation crops include but are not limited to fruits, vegetables, flowers, and Christmas trees.

“PYO market area” means an on-farm direct marketing facility used by a PYO operation to set up PYO activities and collect money for PYO crops harvested by customers. PYO market areas may be stand-alone facilities or part of other on-farm direct-marketing facilities. In some cases, such as when a commercial farm has a community supported agriculture (CSA) operation or component, PYO operations may not necessarily involve the collection of money following harvesting, as PYO crops may be one of the benefits of a CSA membership.

“Products that contribute to farm income” means complementary or supplementary products that are sold to help attract customers to the farm market through a broadening of the range of products available and an enhancement of the experience of purchasing the agricultural output of the commercial farm.

“Complementary products” means items commonly used to facilitate the use or consumption of the agricultural output of the commercial farm and promotional items that help market the commercial farm.

“Supplementary products” means the agricultural output of other farms, and additional customary food and drink items.

“Sales area” means the indoor, outdoor, covered, and uncovered areas of an on-farm direct marketing facility whose primary and predominant use is the display, marketing, and selling of the agricultural output of a commercial farm and products that contribute to farm income. Sales areas do not include: PYO and other production fields; pastures and other areas occupied by livestock on a regular basis; non-public areas such as areas used for the storage of equipment and other items; and areas dedicated to farm-based recreational activities. Covered sales areas include sales areas inside structures and sales areas underneath tents, awnings, and other canopies.

“Sanitary facilities” means restrooms or portable toilets.

(c) Hours of operation

1. On-farm direct marketing facilities and activities may be open or offered on weekdays, weekends, holidays, seasonally, for part of the year, or year-round.
2. On-farm direct marketing events may be offered on weekdays, weekends, holidays, seasonally, or for part of the year.
3. Hours of operation may be between 6 a.m. and 10 p.m. These hours may be temporarily extended to 11 p.m. in conjunction with seasonal on-farm direct marketing sales, activities, or events.

(d) Lighting

1. When an on-farm direct marketing facility, activity, or event is open or offered after dark, a commercial farm shall provide, unless specified otherwise in this agricultural management practice, lighting for areas used by customers, such as: walkways, parking areas, sales areas, activity areas, and event areas. This lighting shall provide, at a minimum, the amount of light necessary for customer safety.
2. All lighting shall be provided with lights focused either downward or in with an orientation designed to minimize light spilling off the site and to minimize impacts on adjacent off-farm residential buildings and streets. Lights shall not be focused directly onto public roads.
3. Any temporary lighting shall be removed within 30 days after the activity or event has ended.
4. Lighting for on-farm direct marketing purposes shall be turned off within half an hour of the close of business.

5. In addition to lighting referenced in (d)1 – (d)4 for on-farm direct marketing purposes, a commercial farm may use lighting for other farm management purposes, e.g., for security. Security lighting may be used to help protect a farm’s products or other physical or natural resources and to discourage trespassing and vandalism and is subject to the provisions in (d)2.

(e) Sanitary facilities

1. A commercial farm shall provide sanitary facilities in the following cases:
 - i. If indoor seating space, outdoor picnic tables, or other areas are made available to enable customers to consume food on-site;
 - ii. If an on-farm direct marketing activity or event promotes customers staying on-site for more than ninety minutes;
 - iii. When required pursuant to N.J.A.C. 8:24-1.1 et seq., Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, or N.J.A.C. 5:23-1.1, et seq., New Jersey Uniform Construction Code.
2. The number of sanitary facilities provided shall be sufficient to accommodate, without causing long queues, the volume of visitors expected in conjunction with on-farm direct marketing facilities, activities, or events.
3. A commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of the sanitary facilities;
4. Sanitary facilities shall be located and managed with an appropriate cleaning schedule so as to prevent adverse impacts on adjacent properties, such as odors.

(f) Safety

1. A commercial farm shall provide visitors with any rules or safety procedures associated with the on-farm direct marketing facilities, activities, and events that are provided, offered, ~~and~~ held. This information may be conveyed by farm staff, through posted signs or written handouts, or through other appropriate means, and may include notice that visitors share in the responsibility for their own safety, such as being aware of inherent risks, using common sense, and wearing farm-appropriate attire.
2. Hazardous materials shall be safely stored in a secure location and in compliance with relevant state and federal laws and regulations.

(g) Signs

1. Types and examples

- i. A commercial farm may use permanent and temporary signs to promote its on-farm direct marketing facilities, activities, and events.
- ii. Examples of signs include, but are not limited to, directional signs, advance signs, signs promoting the products available for sale, and facility, activity, and event signs.

2. General standards

- i. Signs shall be installed and maintained in a manner that does not pose a direct threat to public health and safety. Signs shall not interfere with sight distances at street intersections, ingress and egress points to or from parking areas, and other locations;
- ii. Signs may be attached to farm buildings, fences, or other structures or be freestanding;
- iii. Signs may have information on both sides.
- iv. The use and location of signs shall comply with relevant federal and state laws and regulations;
- v. Along the approach to the farm on the road on which the on-farm direct marketing facility, activity, or event is located, a commercial farm may install advance signs up to one-half -mile away from the farm's entrance. Advance signs are designed to alert drivers of an approaching on-farm direct marketing facility, activity, or event and are generally located in close proximity to one another along the road approaching, and leaving, the site upon which the facility, activity, or event is located;
- vi. Directional and other signs may be installed at key intersections or other important locations.
- vii. A commercial farm shall obtain the permission of the appropriate landowner or easement holder when locating signs at off-farm locations;
- viii. Temporary signs promoting a seasonal on-farm direct marketing facility, activity, or event may be installed up to one month prior to the facility, activity, or event's seasonal opening and shall be removed within 15 days of seasonal closing;

- ix. Internally-lit and neon-type signs are not eligible for Right to Farm protection.

3. Primary on-site farm business sign

- i. A commercial farm's primary on-site farm business sign shall comply with the following standards:
 - (1) The sign is set back at least 10 feet from the paved portion of the street right of way;
 - (2) The maximum size, meaning the physical size of the sign and not the combined square footage of both sides, is 32 square feet;
 - (3) The maximum height to the top of the installed sign does not exceed 15 feet from the ground;
- ii. A commercial farm with frontage on multiple roads may install one (1) primary on-site farm business sign on each additional road frontage in accordance with the requirements of this section.

4. Extent and size

- i. A commercial farm's on-farm direct marketing facility, activity, and event signs shall meet the following criteria:
 - (1) The maximum size of any one sign, meaning the physical size of the sign and not the combined square footage of both sides, is 16 square feet.
 - (2) The total combined square footage of the signs does not exceed 160 square feet. This number is calculated by summing the physical sizes of the signs and not the square footage of the signs' front and back sides.
 - (3) If a commercial farm has multiple distinct and separate on-farm direct marketing locations, such as two on-farm direct marketing facilities located on two different properties within the farm management unit, each on-farm direct marketing location may utilize a total combined square footage of signs of 160 square feet, as specified in subparagraph i.(3).
- ii. The provisions of this section do not apply to the commercial farm's primary on-site farm business sign(s), commercial billboards, New Jersey Department

of Transportation Tourist Oriented Directional Signage (TODS), Farmland Preservation signs, signs whose sole purpose is to facilitate and provide for safe traffic movement directly onto or from the farm site, and signs within the interior of the farm that are not intended to be visible from a public right of way.

(h) Parking areas

1. In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this section shall apply to facilities' parking areas.
2. A commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events.
3. The following standards shall apply to all parking areas:
 - i. Safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events;
 - ii. Ingress and egress points, driveway areas, and parking areas shall be arranged so as to provide for safe traffic circulation. This arrangement shall allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. On-farm direct marketing facilities need adequate driveway access to enable customers to reach the facility from the adjacent roadway;
 - iii. Where applicable, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers.
4. The following standards shall apply to areas permanently devoted to parking:
 - i. The types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.

5. The following standards shall apply to areas temporarily devoted to parking:
- i. Areas temporarily devoted to parking shall require few or no improvements so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases;
 - ii. Areas temporarily devoted to parking may include but are not limited to: hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover such that bare ground is not parked on;
 - iii. The slope of the land shall be considered to address issues related to: drainage; puddles and pockets of standing water; and safety;
 - iv. During dry conditions, areas temporarily devoted to parking shall be mowed so that vegetation does not come in contact with the underside of customer vehicles;
 - v. During wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction;
 - vi. A commercial farm shall mark, sign, or otherwise indicate where vehicles should be parked.

(i) Buffers

1. General standards

- i. A commercial farm may utilize buffers as an effective tool to mitigate the impacts that on-farm direct marketing facilities, activities, or events may pose on adjacent properties, such as noise, dust, and light spillage.
- ii. Buffers need not involve greater than the minimum setbacks and/or screening necessary to protect public health and safety and to mitigate unreasonably adverse impacts on adjacent properties.
- iii. When making determinations regarding the necessity or extent of buffers, consideration shall be given to the following: the nature of the existing adjacent property uses; the nature and scale of the commercial farm's on-farm direct marketing facilities, activities, and events; the frequency of the commercial farm's activities and events; the physical features and constraints of the commercial farm property; the presence or absence of existing on- or off-farm buffers; and the economic feasibility of using buffers.

2. Setbacks

- i. In the absence of municipal setback standards for the construction of building and parking areas applicable to on-farm direct marketing facilities, the standards in this section shall apply to facilities.
- ii. The following standards shall apply to new or expanded facilities' permanent structures:
 - (1) 50-foot front-yard setback from the paved portion of the road right of way;
 - (2) 50-foot side-yard setback from the property line;
 - (3) 50-foot rear-yard setback from the property line;
- iii. The following standards shall apply to new or expanded activities and events:
 - (1) 25-foot front-yard setback from the paved portion of the road right of way;
 - (2) 50-foot side-yard setback from the property line;
 - (3) 50-foot rear-yard setback from the property line;
 - (4) 100-foot setback from an existing, occupied residence not located on the farm.
- iv. The following standards shall apply to new or expanded areas permanently devoted to parking:
 - (1) 25-foot front-yard setback from the paved portion of the road right of way;
 - (2) 50-foot side-yard setback from the property line;
 - (3) 50-foot rear-yard setback from the property line.
- v. Setbacks of a lesser distance than those specified in 2.ii-iv. may be permissible provided the following is met:
 - (1) Screening is considered and, if appropriate, installed;

(2) The combined setback distance and screening arrangement receives approval as a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4;

(3) The site-specific agricultural management practice determination takes, at a minimum, the following into consideration:

[a] Adjacent property uses and buffers;

[b] The scale of the facility and intensity of its use;

[c] The nature, scale, and frequency of the activities and events;

[d] The physical features and constraints of the commercial farm property; and

[e] The economic feasibility of using buffers.

(4) For a board or the Committee to make a site-specific agricultural management practice determination departing from the provisions in subparagraph 2.ii.-iv., a commercial farm must provide a legitimate farm-based reason for the departure and address the considerations listed above.

vi. Existing on-farm direct marketing facilities, activities, or events, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions in subparagraph 2.ii.-iv. If such facilities, activities, events, or parking areas are situated at lesser distances than the standards specified in subparagraph 2.ii.-iv., the use of screening for buffer purposes shall be considered.

vii. Existing on-farm direct marketing activities or events, such as pick your own activities, which are offered and located in different fields over time shall not be considered new activities or events under this section.

3. Screening

i. Screening, when used for buffer purposes, shall consist of vegetation or structures such as, but not limited to, trees, bushes, fences, or walls.

ii. If the screening is comprised of vegetation and if used in conjunction with a facility, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the facility within five years;

- iii. If the screening is comprised of vegetation and if used in conjunction with an activity or event offered in 2 or more consecutive years, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the activity or event within five years;
- iv. If the screening is comprised of a fence, wall or another existing farm structure, then the fence, wall or other existing farm structure shall be of sufficient height or construction to provide 75 percent screening of the facility, activity, or event.
- v. If the distance between a new or expanded facility and an existing, occupied residence not located on the farm is less than 100 feet, screening shall be installed.

(j) Outdoor sales areas

1. Outdoor sales areas shall be arranged so as to not interfere with safe pedestrian and vehicular traffic circulation.

(k) Use of structures or improvements in conjunction with on-farm direct marketing activities and events

1. Existing agricultural structures or improvements may be used in conjunction with the offering of on-farm direct marketing activities and events, provided this use does not adversely affect the continued use of the structures or improvements for agricultural production purposes.
2. New structures or improvements may be constructed and used in conjunction with the offering of on-farm direct marketing activities and events, provided this construction and use has a negligible impact on the farm's continued use of the land for agricultural production purposes.
 - i. If such structures or improvements are temporary and used in conjunction with a temporary or seasonal activity, the structures or improvements shall be removed within 30 days of cessation of the activity or event.
3. The use and construction of structures or improvements shall comply with relevant federal and state laws and regulations.

(l) Use of the land related to on-farm direct marketing activities and events

1. On-farm direct marketing activities and events shall have a negligible impact on the farm's continued use of the land for agricultural production purposes.

(m) On-farm direct marketing activities

1. Pick-your-own activities

- i. Visitors shall be informed of any rules to follow and instructed as to which fields they are permitted to harvest;
- ii. Fields open for pick-your-own activities shall be clearly marked;
- iii. Parking areas may be adjacent to or near pick-your-own fields, particularly if such fields are far from the farm's pick-your-own market area;
- iv. Pick-your-own market areas shall comply with applicable standards for on-farm direct marketing facilities.

2. Choose-and-cut Christmas tree activities

- i. Visitors shall be informed of any activity and equipment rules and where Christmas trees may be selected and cut;
- ii. Customers may be allowed to cut their own Christmas trees;
- iii. Customers shall not be supplied with power equipment or be permitted to use motorized tree baling equipment;
- iv. Choose-and-cut Christmas tree market areas shall comply with applicable standards for on-farm direct marketing facilities.

3. Corn, sunflower, and other crop mazes

- i. Visitors shall be informed of any rules associated with the maze, including how to exit the maze in the event of an emergency.
- ii. Farm staff shall walk through the maze periodically, or periodically observe the maze from an elevated location, to check for lost visitors. Farm staff shall similarly check for lost visitors before closing the maze.
- iii. If a maze is open after dark, adequate lighting shall be provided by the commercial farm and/or used by visitors to illuminate the traveled paths. If lighting is provided, the lighting shall be turned off within half an hour of the close of business.

- iv. No smoking or any other open flames shall be permitted in or near the maze.

4. Hayrides and wagon rides

- i. Wagons shall be in good repair and have sideboards to contain occupants.
- ii. A ladder, ramp, footstool, steps or other stable device or component shall be used to assist with safe boarding of and disembarking from wagons.
- iii. When using a tractor to tow wagons, the left and right brakes of the tractor shall be locked together.
- iv. No smoking or any other open flames shall be permitted on hayrides and wagon rides.
- v. Wagon operators shall:
 - (1) Plan routes in advance;
 - (2) Be familiar with and have experience operating the tractor and wagon equipment;
 - (3) Be familiar with and have experience using draft animals, if applicable, and the wagon equipment;
 - (4) Evenly distribute passengers on the wagons and instruct passengers to remain seated during the ride;
 - (5) Operate tractor and wagon equipment in low gears and at safe speeds; and
 - (6) Have a valid motor vehicle operator's license.

5. Livestock and animal activities

- i. A farm employee or activity attendant shall regularly monitor activities in which visitors may have incidental contact with agricultural animals. Incidental contact includes but is not limited to agricultural animal display, petting, or feeding areas.
- ii. A farm employee or activity attendant shall be present at all times to monitor activities in which visitors are permitted to have direct contact with

agricultural animals. Direct contact includes but is not limited to horseback riding, pony rides, and animal shows, competitions, or demonstrations.

- iii. All agricultural animals having incidental or direct contact with the public shall be observed daily for health problems by a farm employee or activity attendant. Sick animals or animals behaving strangely shall be prevented from having contact with the public.
- iv. Hand-sanitizing facilities shall be provided and readily available if an activity is offered in which visitors may have incidental or direct contact with agricultural animals. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations. Visitors shall be advised to sanitize their hands after contact with agricultural animals.
- v. Visitors shall be advised not to feed agricultural animals unless the feed has been specifically provided by the farm.
- vi. Visitors shall be advised that their pets and animals shall not be allowed in areas with agricultural animal activities unless in connection with a specific agricultural purpose, including but not limited to agricultural animal shows, competitions, or demonstrations.
- vii. The management of animals shall comply with the Animal Welfare Act, 7 U.S.C. 54, and the Humane Treatment of Domestic Livestock regulations, N.J.A.C. 2:8-1.1 et seq., as applicable, and any other relevant state and federal laws or regulations.

6. Bonfires

- i. A commercial farm conducting a bonfire shall comply with Uniform Fire Code requirements, N.J.A.C. 5:70-2.7, and any other relevant state and federal laws or regulations.
- ii. A farm employee shall be present for the duration of the bonfire to monitor and oversee the activity.

(n) Event management plan for on-farm direct marketing events

1. If the expected volume of traffic and visitors for an event is significantly greater than the volume regularly accommodated by a commercial farm's on-farm direct marketing facility, such that the increased volume of traffic is likely to interfere with the movement of normal traffic or emergency vehicles on- and off-site, the farm shall create and implement a written event management plan to address public

health and safety issues including but not limited to emergency vehicle access, traffic management, and public health management.

- i. A complete copy of the plan shall be provided to the clerk of the municipality in which the commercial farm is located at least 30 days in advance of the event as an advisory notice and to enable coordination between the commercial farm and municipality that may be necessary regarding emergency vehicle access, traffic, and public health management.
- ii. Emergency vehicle access management includes establishing the location(s) and manner in which emergency vehicles may access the farm if necessary.
- iii. Traffic management includes:
 - (1) Providing safe ingress and egress, vehicular traffic flow, and pedestrian traffic flow;
 - (2) Utilizing parking attendants, signs, or other parking-related instructions to facilitate vehicular and pedestrian traffic flow onto, off of, and within the farm. Local police officers may be hired to assist with traffic management;
 - (3) Establishing areas temporarily devoted to parking based on the volume of visitors expected;
 - (4) Establishing overflow parking areas in the event the planned-for parking capacity is exceeded.
- iv. Public health management includes:
 - (1) Providing sanitary facilities sufficient to accommodate, without causing long queues, the volume of visitors expected;
 - (2) Providing hand-sanitizing facilities for visitors to wash or sanitize their hands after the use of the sanitary facilities;
 - (3) Locating sanitary facilities and managing them with an appropriate cleaning schedule so as to prevent adverse impacts on adjacent properties, such as odors.
 - (4) Providing trash and recycling receptacles to accommodate the volume of visitors expected in order to prevent the accumulation of trash on the ground.

- (5) Properly training and equipping commercial farm staff on how to handle an emergency situation during the event including, but not limited to, whether and how police, fire or other entities should be contacted based on an actual emergency.
2. A commercial farm may satisfy the provisions of subparagraph i. by obtaining a special events permit, or its equivalent, from the municipality in which the commercial farm is located.
 - i. If an event of the type described in subparagraph i. occurs periodically or more than once per year and occurs under the same basic conditions, a commercial farm may satisfy the provisions of subparagraph i. for the multiple events by submitting a single event management plan that notes the multiple occurrences of the event.

(o) Overnight lodging

1. This agricultural management practice shall not be construed to extend Right to Farm protection to overnight accommodations of any kind, including but not limited to lodging and camping.

(p) Approval of site plan elements for new or expanded on-farm direct marketing facilities

1. A commercial farm seeking to establish a new, or expand an existing, on-farm direct marketing facility may apply to the municipality and/or the county agriculture development board for approval of site plan elements.
 - i. A commercial farm applying to a municipality for approval of site plan elements may request the municipality consider waiving or reducing review requirements based on a consideration of relevant site-specific elements such as, but not limited to, the following: the farm's setting and surroundings; the scale of the facility and intensity of its use; the type and use of the public road on which the facility is located; and the minimum level of improvements necessary to protect public health and safety. Nothing herein shall be construed as authorizing a municipality to waive or reduce review requirements required by state or federal law or regulation.
 - ii. A commercial farm applying to a county agriculture development board or the Committee for approval of site plan elements shall request a site-specific agricultural management practice determination pursuant to N.J.A.C. 2:76-2.3 and 2.4.

iii. A commercial farm owner or operator and board staff may hold one or more pre-application meetings to discuss and review application requirements, board jurisdiction and procedures, and any other related matter.

iv. If a commercial farm has previously obtained approval for an on-farm direct marketing facility, then such a facility closing seasonally and reopening the following year with the same total square footage of indoor and/or outdoor covered sales area as previously approved shall not be considered a new facility.

(q) Relevant federal and state laws and regulations

1. On-farm direct marketing facilities, activities, and events shall comply with relevant federal and state laws and regulations, including but not limited to:
 - i. Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1, et seq.
 - ii. Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39, et seq.
 - iii. New Jersey Uniform Construction Code, N.J.A.C. 5:23-1.1, et seq.
 - iv. New Jersey Uniform Fire Code, N.J.A.C. 5:70-1.1, et seq.
 - v. Stormwater Management rules, N.J.A.C. 7:8-1.1, et seq.
 - vi. State Highway Access Management Code, N.J.A.C. 16:47-1.1, et seq.
 - vii. Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, N.J.A.C. 8:24-1.1, et seq.
 - viii. Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-1.1, et seq.

(r) Additional provisions

1. This agricultural management practice does not preclude a commercial farm from requesting a site-specific agricultural management practice determination for on-farm direct marketing facilities, activities, and events pursuant to N.J.A.C. 2:76-2.3 and 2.4. A Board or the Committee, pursuant to N.J.A.C. 2:76-2.3 and 2.4, may make site-specific agricultural management practice determinations for facilities, activities, and events, provided such site-specific agricultural management practice determinations are consistent with the practices set forth in this subchapter.
2. If a commercial farm believes a municipality's building and parking area standards applicable to on-farm direct marketing ~~facilities~~facilities are unduly restrictive, or

believes a municipality is unreasonably withholding local zoning approval related to a facility, the ~~commercial~~commercial farm may request that the appropriate county agriculture development board, or the ~~Committee~~Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4.

2:76-2.3 Determinations of site-specific agricultural management practices where a board exists

(a) In counties where a board exists, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 may submit an application to the board to determine if his or her operation constitutes a generally accepted agricultural operation or practice included in any of the permitted activities set forth in N.J.S.A. 4:1C-9.

1. The commercial ~~farmer~~farm owner and/or operator and board staff may hold a pre-application meeting or meetings to discuss application requirements, board jurisdiction and procedures, and any other appropriate matters~~related matter~~.

(b) The board shall advise the Committee and the municipality(ies) in which the commercial farm is located, in writing, of the nature of the application within 10 days of the filing of the request.

(c) In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9, the board shall request the commercial farm owner or operator to provide the following in certification form:

1. Proof that the commercial farm is no less than five acres, produces agricultural/horticultural products worth \$2,500 or more annually, ~~listing said products~~, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964 or, if the commercial farm is less than five acres, produces agricultural/ horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964; and

2. Proof that the farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm was in operation as of July 2, 1998.

(d) The board shall determine whether the commercial farm operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(e) In the event the commercial farm owner or operator has sought approval of the agricultural operation or practice from the municipality in which the commercial farm is

located, the board shall consider, at a minimum, any operation or practice the approval of which has not been granted by the municipality.

(f) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. ~~If more than one board members conducts~~ conduct the inspection, the board shall ~~insure~~ ensure compliance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., if applicable.

1. The board may, at one or more regular meeting(s), confirm commercial farm eligibility and/or verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(g) If the board determines that the farm operation is not a commercial farm pursuant to N.J.S.A. 4:1C-3 and/or that the operation or practice is not included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board shall pass a resolution dismissing the request. The resolution shall contain detailed findings of fact and conclusions of law, and references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and/or operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

(h) Board checklist. If the board determines that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that the operation or practice is included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board and/or board staff may request that the commercial farm owner or operator ~~may be requested by the board and/or board staff to~~ provide information using a checklist adopted by the board.

1. The checklist shall enumerate the data and materials reasonably necessary for the board to make an informed judgment on an application.

2. The checklist shall include, at a minimum, the following components:

i. site plan elements to identify site location, extent and orientation, existing and proposed site conditions, location and availability of development infrastructure, detailed parking and traffic improvements and dedications, drainage provision, and the location of signage and lighting;

ii. a list of regulatory approvals or permit requirements;

iii. a list of studies required to assess the suitability of the site and impacts of the operation or practice ~~which~~ that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3;

iv. a schedule of municipal planning and zoning requirements, and exemptions from the schedule sought by the commercial farm;

v. submittal of a farm conservation plan or documents showing active efforts to obtain a farm conservation plan in a timely manner.

3. The board and/or board staff shall have the discretion to waive, reduce and/or determine the nonapplicability of checklist items in its review of an application filed by a commercial farmer ~~farmer~~ farm owner and/or operator pursuant to N.J.A.C. 2:76-2.3. The board may delegate this function to board staff. In making such decisions, the board and/or board staff shall consider relevant site-specific elements such as, but not limited to, the following:

- i. the farm's setting and surroundings;
- ii. the scale and intensity of the proposed operation(s) or practice(s);
- iii. the type and use of the public road on which the operation or practice is located;
- iv. when applicable, the minimum level of improvements necessary to protect public health and safety.

4. Subject to the provisions of N.J.A.C. 2:76-2.3(k), the board may retain jurisdiction over any or all municipal ordinances and/or county resolutions related to the commercial farm owner or operator's application for a site-specific agricultural management practice determination ~~over~~ for which, in the board's judgment, it has sufficient expertise, familiarity and/or resources to decide such matters.

5. The commercial farm owner or operator may employ appropriate professional(s), at the commercial farm owner or operator's sole expense, as it determines necessary to prepare the application and checklist items and to testify before the board in support of the application.

(i) If the board determines that the application and checklist items are complete, then the board shall hold a public hearing in accordance with the hearing procedures set forth in N.J.S.A. 2:76-2.8.

(j) In determining whether or not to approve site-specific agricultural management practices, the board may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;
2. The State Agriculture Development Committee;

3. The New Jersey Agricultural Experiment Station, including appropriate county agents;
4. Other County Agriculture Development Boards;
5. The State Soil Conservation Committee;
6. Any other states' Departments of Agriculture, land grant institutions or Agricultural Experiment Stations;
7. The United States Department of Agriculture, or any other Federal governmental entity;
8. County engineering staff and/or any other licensed professional employed by the county; or
9. Any other organization or person which may provide expertise concerning the particular practice.

(k) The board shall have no authority to determine the commercial farm owner or operator's compliance with state laws and regulations delegated to the municipality or county for administration and enforcement including, but not limited to, stormwater control and construction code requirements, unless the municipal ordinance^{77L} county resolution or any portion(s) thereof effectuating the delegation exceed(s) state regulatory standards. If a municipal ordinance, county resolution, or any portion(s) thereof, exceed(s) state regulatory standards, then the board shall have the authority to determine whether the ordinance, resolution or portion thereof is preempted by the board's approval of the commercial farm owner or operator's site-specific agricultural management practice.

(l) The board shall pass a resolution granting, with or without conditions, or denying the request for a site-specific agricultural management practice determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice ~~which~~that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

(m) Any person aggrieved by any decision of a board regarding site-specific agricultural management practices may appeal the decision to the Committee in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 45 days from receipt of the board's decision.

1. The decision of the Committee shall be considered a final administrative agency decision.
2. If the board's decision is not appealed within 45 days, the board's decision is binding.

2:76-2.4 Determinations of site-specific agricultural management practices where a board does not exist

(a) In counties where a board does not exist, a commercial farm owner or operator ~~that~~who meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 may submit an application to the Committee to determine if his or her operation constitutes a generally accepted agricultural operation or practice consistent with any of the permitted activities set forth in N.J.S.A. 4:1C-9.

(b) The provisions of N.J.A.C. 2:76-2.3(b) through (j) shall apply to the Committee's consideration of the request.

(c) The Committee shall pass a resolution granting, with or without conditions, or denying the request for a site-specific agricultural management practice determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice which is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and commercial farm operator, if applicable, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the Committee within 30 days of passage of the resolution.

1. The decision of the Committee shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

2:76-2.5 Utilization of agricultural management practices and procedures and site-specific agricultural management practices and procedures

(a) Owners and operators of commercial farms are afforded benefits and protections pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., P.L. 1983, c.31, as amended.

(b) The failure of a commercial farm owner or operator to comply with an agricultural management practice recommended by the Committee and adopted pursuant to the provisions

of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2, or a site-specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3 or 2.4, shall not be utilized in any judicial proceedings or proceeding before any governmental body or agency except for the process as described in N.J.S.A. 4:1C-10.1 and N.J.A.C. 2:76-2.10.

(c) If a commercial farm owner or operator believes a municipality or county's standards or requirements for agricultural operations or practices are unduly restrictive, or believes a municipality or county is unreasonably withholding approvals related to agricultural operations or practices, then the commercial farm owner or operator may request that the board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively.

(d) A commercial farm owner or operator shall not be precluded from requesting a site-specific agricultural management practice determination from a board, or from the Committee in counties where no board exists, pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively, for activities set forth in agricultural management practices recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2.

1. No site-specific agricultural management practice approval shall be granted if it is inconsistent with an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2.

(e) A commercial ~~farmer~~ farm owner and/or operator who obtains a site-specific agricultural management practice determination by resolution from the board, or from the Committee in counties where no board exists, may present the resolution to appropriate municipal officials in support of obtaining appropriate permits, if applicable.

2:76-2.7 Disposition of conflicts between any person aggrieved by the operation of a commercial farm

(a) Any person aggrieved by the operation of a commercial farm shall first file a complaint, in writing, with the applicable board or with the Committee in counties where no board exists, prior to filing an action in court. The complaint shall include detailed facts concerning the contested operation or practice.

(b) If a board exists, then the board shall contact the commercial farm owner or operator to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.S.A. 4:1C-3. If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and

adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2 or a site-specific agricultural management practice approved by the board pursuant to N.J.A.C. 2:76-2.3. ~~If more than one board members conducts~~ conduct the inspection, the board shall ~~insure~~ ensure compliance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., if applicable.

(c) If the board determines that the farm is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2 or a site-specific agricultural management practice approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

1. The decision of the board, containing its findings and recommendations, shall be forwarded to the Committee, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable, within 60 days of receipt of the complaint.

i. The decision of the board shall be in the form of a resolution providing a summary of the testimony, detailed findings of fact and conclusions of law, references to any supporting documents, a copy of the agricultural management practice or site-specific agricultural operation or practice utilized by the board in its recommendations and any other information requested by the Committee.

ii. Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with N.J.A.C. 2:76-2.107(b) shall appeal the decision to the Committee pursuant to N.J.S.A. 4:1C-10.2-1(d).

(1) The decision of the Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

(2) Any decision of the board that is not appealed shall be binding.

(d) If a board exists and the dispute concerns activities that are not addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2 or a site-specific agricultural management practice approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall contact the farm owner to provide evidence that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.

1. The board shall determine whether the commercial farm operation or practice in dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(e) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility pursuant to N.J.S.A. 4:1C-3 and to verify that the disputed agricultural activity(ies) is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If more than one board ~~members~~member conducts the inspection, the board shall ~~insure~~ensure compliance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., ~~if applicable~~.

(f) If the board determines that the dispute subject to N.J.A.C. 2:76-2.107(c) does not involve a commercial farm as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in one or more of the protected activities set forth in N.J.S.A. 4:1C-9, then the board shall dismiss the complaint. The board's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law, and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, the Committee, and the municipality(ies) in which the farm operation is located within 60 days of receipt of the complaint.

(g) If the board determines that the dispute subject to N.J.A.C. 2:76-2.107(c) involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the board shall forward the complaint to the Committee requesting the Committee's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice.

1. The board shall inform the Committee if it has received a request for a site-specific agricultural management practice determination and, if so, the status of the board's determination.

2. Upon receipt of the complaint, the Committee shall review the board's determinations that the dispute involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. As part of its review, the Committee may contact the farm owner to provide additional information. If the Committee determines that the dispute does not involve a commercial farm as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in one of more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the Committee shall dismiss the complaint. The Committee's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law, and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, and the municipality(ies) in which the farm operation is located.

i. The Committee's decision shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

(h) If the Committee determines that the dispute subject to N.J.A.C. 2:76-2.10(c) involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth N.J.S.A. 4:1C-9, then the Committee shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8. The hearing shall be limited to consideration of whether or not the disputed agricultural activity constitutes a generally accepted operation or practice.

i1. If the Committee determines that the disputed agricultural activity constitutes a generally accepted operation or practice, its determination shall be sent to the board for a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm.

2. If the Committee determines that the disputed agricultural activity does not constitute a generally accepted operation or practice, the complaint shall be dismissed. The Committee's determination shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

~~ii3. If the Committee determines that the disputed agricultural activity does not constitute a generally accepted operation or practice, the complaint shall be dismissed. The Committee's determination shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.~~

iii. The Committee's determination pursuant to (h)i1 or (h)ii2 above shall be in the form of a resolution containing detailed findings of fact and conclusions of law, and references to any supporting documents. The resolution shall be sent to the board, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable.

(i) Upon receipt of the Committee's determination pursuant to (h)i above, the board shall hold a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm. The board shall issue its findings and recommendations within 60 days of the receipt of the Committee's decision. The board's hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

(j) Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with N.J.A.C. 2:76-2.10(c) shall appeal the decision to the Committee within 10 days from receipt of the board's decision. The Committee shall schedule a hearing and make a determination within 90 days of receipt of the petition for review.

1. The decision of the Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

2. Any decision of the board that is not appealed shall be binding.

2:76-2.8 ~~Public hearing~~ Hearing procedures for Right to Farm cases

(a) The Committee and county agriculture development boards shall follow the procedures set forth herein for cases arising from the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. and the Right to Farm regulations set forth in Subchapters 2, 2A and 2B.

(b) The procedures set forth herein shall apply only after the county agriculture development board or the Committee determines that it has jurisdiction to hear the Right to Farm case.

(c) Procedures applicable to requests by a commercial farm for a site-specific agricultural management practice determination (N.J.A.C. 2:76-2.3 and 2.4) shall be as follows:

1. Written notice of the request shall be given by the commercial farm, at its sole expense, via certified mail, ~~returned~~ return receipt requested, and/or by personal service, to:

i. The clerk and land use board secretary of the municipality in which the commercial farm is located; if the commercial farm is located within 200 feet of an adjoining municipality, then written notice of the request shall be given as set forth above to the clerk and land use board secretary of the adjoining municipality;

ii. The owners of all real property, on the current tax duplicates, within 200 feet in all directions of the property upon which the commercial farm is located; the commercial farm shall be solely responsible to pay for and obtain a certified list of property owners in accordance with N.J.S.A. 40:55D-12c.;

iii. The State Agriculture Development Committee;

iv. The county planning board if the commercial farm is located on property adjacent to a county road or county-owned property;

v. The Commissioner of the New Jersey Department of Transportation if the commercial farm is located on a State highway.

2. The written notice set forth in subsection (c)1. shall state the date, time and place of the hearing; the site-specific agricultural management practice(s) that will be considered at the hearing; the identity of the property upon which the commercial farm is located by street address, if any, or by reference to lot and block number(s); the location and times at which documents in support of the commercial farm's request are available at the office of the board; and advise that the board will accept public comments at the hearing, prior to the hearing, and no later than 14 days after conclusion of the hearing.

i. The board shall allow the applicant to respond to any written comments within such reasonable time as the board directs.

ii. The written notice set forth in subsection (c)1. shall be served at least ten (10) days in advance of the hearing, and proof of service of the notice shall be provided by the commercial ~~farmer~~farm to the board.

iii. The hearing shall not begin until satisfactory proof of notice to all appropriate individuals has been provided by the commercial farm.

3. The board hearing shall be conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

i. The testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson or counsel to the board. Testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board.

ii. The hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial or unduly repetitive evidence.

iii. The hearing shall be recorded utilizing a sound recording device or a stenographer.

(d) Procedures applicable to a complaint by an aggrieved person against a commercial farm (N.J.A.C. 2:76-2.7) shall be as follows:

1. The board shall provide notice of the complaint, in writing, to the commercial farm owner, the commercial farm operator, if applicable, the Committee and to the municipality(ies) in which the commercial farm is located, within ten (10) days of receipt of the complaint.

2. The board hearing shall be conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

i. The testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson or counsel to the board. Testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board.

- ii. The hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial or unduly repetitive evidence.
- iii. The hearing shall be recorded utilizing a sound recording device or a stenographer.

| **2:76-2.9 through 2:76-2.10 (Reserved)**.

**2:76-2B.2 Eligibility of pick-your-own operations for
Right to Farm protections**

(a) Pick-your-own operations are addressed in N.J.A.C. 2:76-2A.13.

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ANTHONY J. SPOSARO

Attorney at Law

444 EAST MAIN STREET
P.O. BOX 836
CHESTER, NEW JERSEY 07930
TEL: (908) 879-8400
FAX: (908) 879-8404
E-MAIL: asposaro@njfarmlaw.com

January 23, 2013

Via E-Mail Only

Susan E. Payne, Executive Director
State of New Jersey
State Agriculture Development Committee
PO Box 330
Trenton, NJ 08625-0330

Re: Working Draft of an Agricultural Management Practices (AMP) for On-Farm Direct Marketing Facilities, Activities, and Events

Dear Ms. Payne:

Just yesterday I received draft copies of the following:

1. On-Farm Direct Marketing AMP (N.J.A.C. 2:76-2A.13);
2. Right to Farm process revisions (N.J.A.C. 2:76-2.3, 2.4, 2.5 and 2.7);
3. Right to Farm hearing procedures (N.J.A.C. 2:76-2.8); and
4. Pick-your-own RTF eligibility rule revisions (N.J.A.C. 2:76-2B.2).

These drafts are substantially different from those circulated in October 2012. It is my understanding that these draft rules have been placed on tomorrow's agenda for consideration and if approved, for publication as a rule proposal in the New Jersey Register. For the reasons that follow, I ask that this matter be tabled.

Prior to their most recent amendment, the draft rules were circulated amongst the farming community and to attorneys who devote a substantial portion of their practice to representing farmers. Indeed, in the past not only has SADC staff provided earlier drafts of the rules to me and other attorneys, you have graciously met with us personally, allowed us to share our concerns and in many instances the rule amendments reflected these concerns.

The most recent version of the draft rules have not undergone the same scrutiny. Based upon my initial review I am gravely concerned that the latest revisions all but give back to the municipalities the right to regulate farming activities, contrary to the doctrine of preemption, the heart and soul of the 1998 amendments to the Right to Farm Act, and all of the judicial decisions

thereafter that consistently vest primary jurisdiction in the SADC and CADBs to regulate farming activities.

Since the 1998 RTFA amendments, CADBs have been hampered by the lack of professional guidance, most notably engineers, to review SSAMP applications. The earlier draft rules established a procedure whereby farmers would be required to place money in escrow to enable CADBs to hire an engineer to review plans. I am advised that at the December 2012 SADC meeting that the members were informed that the Office of the Attorney General has opined that CADBs cannot establish escrow accounts in connection with review of right to farm matters. Has the OAG reduced this opinion to writing? If not, I recommend that it be asked to do so so that this critically important opinion can be analyzed. Although I have tremendous respect for the OAG, it is not infallible.

Even if the OAG is right on this issue, it seems incongruous that the Legislature would vest the SADC and CADBs with the power to regulate farming activity, preempt municipal authority to do so, that the New Jersey Supreme Court would unequivocally confirm that such power exists, yet deprive the agency of establishing a straightforward, fair way to finance the costs associated with this process.

Moreover, there are alternatives. Although it may be improper to require a farmer to place funds in escrow, there may be no prohibition to charging farmers an application fee to help defray the administrative costs of having SSAMP applications reviewed by qualified professionals.

CADBs have the benefit of legal counsel for which it either contracts, or in many instances, is provided by the County Counsel. The same can be said for planners who are employed by the County and provide advice to CADBs. Virtually every County has a County Engineering Department. Why is it that it cannot be called upon to review applications? If for some reason this cannot be done, nothing precludes CADBs from hiring an outside engineer to review applications on an as needed basis.

The following language, added to the most recent draft rules, is of paramount concern:

“CADBs” may retain jurisdiction over any or all municipal ordinances and/or county resolutions related to the commercial farm owner or operator’s application for a site specific agricultural management practice determination over which, in the board’s judgment, it has sufficient expertise, familiarity and/or resources to decide such matters.

This is tantamount to an open invitation to CADBs to refer applications to municipal planning boards. It also provides municipalities with ammunition to challenge CADB decisions on the basis of its lack of expertise.

When the den Hollander case was argued before the New Jersey Supreme Court, the

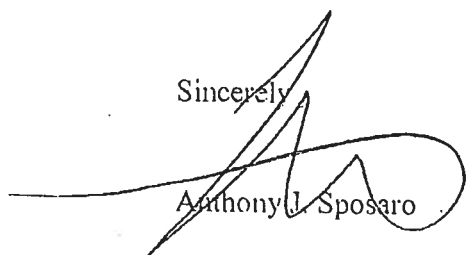
attorney for Franklin Township argued that CADB members lacked sufficient expertise to review and consider technical matters theretofore within the exclusive jurisdiction of municipal planning boards. In response to this argument, the Supreme Court held:

We recognize that the task before the agricultural boards is complex. Agricultural activity is not always pastoral. The potential for conflict between farming interests and public health and safety exists. Nevertheless, we repose trust and discretion in the agricultural boards to decide carefully future disputes on a case-by-case basis and to balance competing interests. We are confident that the boards will conduct those proceedings and reach their determinations in good faith, cognizant that the benchmark for those decisions is the understanding that government has an obligation to deal forthrightly and fairly with property owners and their neighbors.

These regulations have been fifteen years in the making. After all of the time and effort expended, every avenue to providing CADBs with the technical expertise necessary to review complex SSAMP applications must be explored and exhausted before giving back to the municipalities what the farming community fought for so long to secure, namely the right to regulate and govern itself.

Thank you in advance for your consideration.

Sincerely



Anthony J. Sposaro

AJS/jb

cc: Douglas H. Fisher, Secretary Department of Agriculture (via e-mail)
Ryck Suydam, President New Jersey Farm Bureau (via e-mail)

SUBCHAPTER 25

WIND ENERGY GENERATION ON PRESERVED FARMS

2:76-25.1 Applicability:

This subchapter applies to the construction, installation, operation and maintenance of wind energy generation facilities on a preserved farm for purposes of generating wind energy to provide power or heat to the farm, reduce the farm's energy costs or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm as authorized pursuant to N.J.S.A. 4:1C-32.4.

2:76-25.2 Purpose:

The purpose of this subchapter is to establish the process for the Committee to review an application submitted by any person intending to construct, install and operate wind energy generation facilities on a preserved farm for the purpose of generating wind energy to provide power or heat to the farm, reduce the farm's energy costs or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm, as well as to make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose, provided that the wind energy facilities satisfy the provisions of N.J.S.A. 4:1C-32.4 and this subchapter.

2:76-25.3 Definitions:

The following words and terms, as used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

“Agreement” means a legally binding written document between the landowner(s) and the board in the case of a farmland preservation program or between the landowner(s), the board, and the municipal governing body, in the case of a municipally approved farmland preservation program, which must be signed by all parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation program or municipally approved farmland preservation program and recorded with the county clerk’s office.

“Application” means a request to construct wind energy generation facilities, structures and equipment on a preserved farm as detailed in a standard form adopted by the Committee.

“Biomass” means an agricultural crop, crop residue or agricultural byproduct that is cultivated, harvested or produced on the farm and which can be used to generate energy in a sustainable manner.

“Board” means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a sub-regional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

“Committee” means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

“Conservation plan” means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

“Deed of easement” means the instrument restricting the premises for agricultural purposes that is recorded with the county clerk’s office pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40). For land acquired in fee simple title for farmland preservation

purposes, the deed transferring the restricted fee ownership of the land by the Committee or other entity is considered the deed of easement.

“Development easement” means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11.1 et seq. or 13:8C-1 et seq. and any relevant rules or regulations promulgated pursuant thereto.

“Electric distribution company (EDC)” means an electric public utility, as the term is defined in N.J.S.A. 48:2-13, that transmits or distributes electricity to end users within New Jersey. An EDC cannot be an electric power supplier, but may provide basic generation service.

“Electric distribution system” means that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer’s premises.

“Electric transmission system” means facilities within the PJM Region that have been approved by or meet the definition of transmission facilities established by FERC; or have been demonstrated to the satisfaction of PJM’s Office of Interconnection to be integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region.

“Energy costs” means the farm’s expenses to provide power or heat to fixed structures on the farm during the previous calendar year. Fixed structures include buildings and permanent equipment but shall not include vehicles or vehicular equipment.

“Energy demand” means the total amount of power or heat consumed by fixed structures on the farm, expressed in kilowatt hours or kilowatt-hour equivalent, in a given period of time.

“Exception” means a portion of the applicant’s landholdings that is excluded from the premises and, although identified in the deed of easement, is unencumbered by the farmland preservation restrictions mandated by N.J.A.C. 2:76-6.15(a) and set forth in the deed of easement.

“Farm” means lands from which a development easement was acquired and a deed of easement recorded with the county clerk’s office or lands that are enrolled in an eight-year farmland preservation program or municipally approved farmland preservation program pursuant to N.J.S.A. 4:1C-11 et. seq. and an agreement is recorded with the county clerk’s office. Also included is any portion of the farm excluded from the premises that cannot be severed, known as a nonseverable exception, or any portion of the farm excluded from the premises that can be severed but has not been subdivided from the farm, known as a severable exception area.

“Farmland preservation program” means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c.276, which has as its principal purpose the long- term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land.

“Geotextile fabrics” means permeable, woven and non-woven fabrics that allow for water infiltration into the underlying soil.

“Impervious cover” means any structure or surface that prevents the infiltration of precipitation into the land. This includes but is not limited to facility equipment, utility poles, concrete, asphalt, machine-compacted soil, compacted stone areas, plastic or other impermeable ground cover, and foundations. Impervious cover shall not include conservation practices listed in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the

State of New Jersey, and prescribes practices and standards for the conservation and management of soil, water and related natural resources, which is available at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg>, when implemented according to the practice standard.

“Large wind energy generation facility” means a wind energy generation facility consisting of one or more turbines with a combined installed nameplate capacity greater than 100 kW and/or a system height of greater than 170 feet.

“Meteorological tower” means a temporary structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers, wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

“Municipally approved farmland preservation program,” hereinafter referred to as “municipally approved program,” means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c.276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C-21.

“Net metering” means a system of metering electricity in which the EDC or electric power supplier:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period; and

2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

"Occupied area" means the total contiguous or noncontiguous area(s) supporting the wind energy facilities and related infrastructure. The total area calculation shall include all areas of land that are devoted to or support the wind energy facilities, including the area of the tower foundation or tower base; the area within the outside perimeter of any guy wires used to support the tower structure or transmission poles as measured at the anchor point; the rotor overhang area; the square footage of wind energy facilities mounted on buildings or other structures; newly constructed nonfarm roadways including access roads; any areas of the farm used for underground piping or wiring to transmit energy where the wiring is less than three feet from the surface; stormwater management structures to support the facilities; areas consisting of other related facilities structures and equipment, including any other buildings or site amenities deemed necessary for the production of wind energy on the farm; and any areas of land no longer available for agricultural or horticultural production due to the presence of the wind energy generation facilities, including areas compacted during construction of the wind energy facilities that are not decompacted following construction. It shall also include the total contiguous or noncontiguous area(s) supporting any other wind, solar or biomass energy facilities and related infrastructure on the farm.

"Operator" means the person or entity that installs, owns or controls the wind energy facilities, structures and equipment.

"Owner" means the owner of record of the farm.

“Person” means natural persons, public or private corporations, companies, associations, societies, firms, partnerships and joint stock companies.

“Power curve” means a manufacturer’s graph showing the amount of power in kilowatts a turbine will produce at any given wind speed.

“Premises” means the property subject to the deed of easement, as defined by the legal metes and bounds description contained in the deed of easement.

“Prime farmlands” means lands so defined by the USDA Natural Resources Conservation Service, as found in the National Soil Survey Handbook at NSSH Part 622.04, which is incorporated herein by reference, as amended and supplemented, which is available at <http://soils.usda.gov/technical/handbook/contents/part622.html>.

“Qualifying tax-exempt nonprofit organization” shall have the same meaning as set forth in section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

“Site plan” means a plot plan that includes the following:

1. Property lines and physical dimensions of the farm, including block(s) and lot(s) designations as set forth in the property survey created at the time of preservation of the farm or an updated version thereof;
2. Location, configuration and size of the occupied area measured in square feet and acres;
3. Facility specifications, including but not limited to manufacturer and model, industry technical bulletin describing the wind energy equipment; rotor diameter, tower type (freestanding or guyed), method of mounting, system height; hub height, average annual wind speed, rated capacity, power curve and expected annual energy generation in alternating current in kilowatt hours; for facilities that will not be net metered, the expected annual energy generation calculation shall require the facilities developer to conduct a site-specific analysis of the turbine location and relevant factors such as hub height, and provide a description of how the expected annual energy generation was determined;

4. Location of above- and below-ground pipes, wires and any other improvements or infrastructure to accommodate the wind energy generation facilities, with depths indicated for below-ground improvements and infrastructure;

5. For facilities that will be net metered, the location of electric meters and sources of energy demand that will be serviced by the facilities;

6. Proposed new roadways and existing roadways used to install, maintain or otherwise access the wind energy generation facilities;

7. Computed distances for setbacks from property lines and roads;

8. Location and computed areas where concrete, asphalt, gravel, geotextile fabrics, or other such land treatments are proposed, and the nature and extent of any site disturbances within the occupied area, and for large wind energy facilities, the location of topsoil stockpile areas;

9. Location, rated capacity, installation date and annual generation/production of any existing wind, solar or biomass energy equipment or structures on the farm in alternating current kilowatt hours if power is generated or kilowatt-hour equivalent if heat is produced;

10. Location of all existing structures and improvements on the farm;

11. For large or small wind energy generation facilities with an occupied area of greater than one acre on the premises, a copy of the conservation plan that was approved by the soil conservation district, which is set forth at N.J.A.C. 2:76-24.6(a)1i(4); and

12. A copy of the farmland assessment form for the most recent tax year approved by the local tax assessor for the farm.

“Small wind energy generation facility” means a wind energy generation facility consisting of one or more turbines with a combined installed nameplate capacity not exceeding 100 kW and a system height of no greater than 170 feet.

“Solar energy” means electricity or heat that is generated through a system that employs solar radiation.

“System height” means the highest point of any component of the wind energy generation facilities, structures and equipment at any point in time, as measured from the ground beneath that point.

“Topsoil” means the upper part of the soil, generally the plow layer within the “A” horizon(s), ordinarily rich in organic matter, which is the most favorable material for plant growth.

“Tower” means a monopole, freestanding or guyed structure that supports a wind generator.

“Wind energy” means electrical or mechanical power that is generated through a system that employs the kinetic energy in the wind.

“Wind energy generation facilities” means distinct wind energy generation systems that require their own dedicated turbine, tower and all other associated components, including but not limited to rotors, blade, base, foundation, nacelle, transformer, vane, inverter, batteries, supports, mounting and stabilization devices, electrical distribution and transmission wires, utility poles and other on-farm equipment, structures and infrastructure necessary to operate and maintain the system for the generation of power or heat.

“Wind turbine” means equipment that converts energy from the wind into electricity. This term includes the rotor, blades and associated mechanical and electrical conversion components necessary to generate, store and/or transfer energy.

2:76-25.4 Eligibility to install, operate and maintain a small or large wind energy generation facility on a farm

(a) Any person who owns a farm may submit an application to the Committee for the construction, installation, operation and maintenance of wind energy generation facilities on the farm provided that:

1. The facilities will not interfere significantly, as set forth in N.J.A.C. 2:76-24.6, with the use of the land for agricultural or horticultural production;

2. The facilities are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the wind energy generation facilities, structures or equipment by which the landowner uses the income or credits realized from the wind energy generation to purchase the facilities, structures or equipment;

3. The facilities will be used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm;

4. Wind energy facilities on the farm are limited in annual energy generation to:

i. The farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated from facilities, structures or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010; or

ii. Alternatively at the option of the landowner, to an occupied area consisting of no more than one percent of the area of the farm;

5. If solar or biomass energy systems are located on the farm, the limits in (a)4i and ii above shall apply to the cumulative total energy generated or area occupied by all the wind, solar and biomass energy facilities.

6. The owner(s) of the farm and the wind energy generation facilities will sell energy only through net metering, or as otherwise permitted under an agreement pursuant to (a) 2 above, and/or directly to the electric distribution or transmission system provided that the wind energy facilities occupy no greater than one percent of the farm;

7. The land occupied by the wind energy generation facilities is eligible for valuation, assessment and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and will continue to be eligible for such valuation after construction of the wind energy generation facilities;

8. The wind energy generation facilities do not exceed one acre of impervious cover on the premises;

9. A wind energy generation facility located in the pinelands area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

2:76-25.5 Application for the construction, installation, operation and maintenance of a small or large wind energy generation facility

(a) Any person who owns a farm may apply for approval to construct, install, operate and maintain a wind energy generation facility by submitting an application to the Committee. The application shall include the following information and documents:

1. A copy of the recorded deed showing the current record owner of the restricted premises;

2. A site plan;

3. Digital photographs showing the proposed installation site taken from various angles and distances to show the installation site and immediate surroundings;

4. A proposed or fully executed purchase or lease agreement for the wind energy generation facilities, structures and equipment that clearly identifies that the owner of the qualified farm owns or will own the facilities, structures and equipment by the end of the term of a lease agreement and the end date for that agreement.

5. Documentation from the electric distribution company that the wind energy generation facilities are designed in accordance with net metering requirements pursuant to N.J.A.C. 14:8-4; documentation showing that the wind energy generation facilities provide power directly to the farm outside of a meter; or documentation from PJM Interconnection LLC or the EDC showing that the wind energy facilities will provide power directly to the electric distribution or transmission system;

6. A copy of the farm's electric utility bills, and/or copies of other bills, receipts or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand for the previous calendar year; and

7. If the farm is located in the Pinelands Area, evidence that written confirmation has been requested from the Pinelands Commission that the wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

(b) Any person who owns a farm and intends to expand the physical size or generation capacity of a previously installed wind energy generation facility shall submit a new application to the SADC.

2:76-25.6 Evaluation criteria for a small wind energy generation facility

(a) When reviewing an application, the Committee shall determine whether the application meets the following criteria:

1. Factors for determining if small wind energy generation facilities, structures and equipment interfere significantly with the use of the land for agricultural or horticultural production are as follows:

i. The facilities do not conflict with the deed of easement, including but not limited to, the following:

(1) There is no detrimental impact to drainage, flood control, water conservation, erosion control or soil conservation on the premises;

(2) During construction, installation, operation and maintenance of the wind energy generation facilities, appropriate measures are taken to address soil and water conservation resource concerns on the premises;

(3) Small wind energy facilities on a farm with an occupied area of more than one acre on the premises shall be constructed, installed, operated and maintained in accordance with an approved conservation plan that addresses soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water, and related natural resources, which is available at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg>. The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet;

(4) The types of agricultural use or production that can occur on the premises shall not be restricted;

(A) The presence of the wind energy generation facilities shall not negatively impact the ability to utilize any portion of the premises outside the occupied area for a variety of agricultural or horticultural purposes or uses;

(5) Small wind energy generation facilities shall not interfere with the ability to access the premises for agricultural or horticultural purposes or uses, and to ensure compliance with the deed of easement and the provisions of this chapter;

(6) Small wind energy generation facilities shall not supply power or heat to an off-farm source of energy demand;

(A) Wind energy generation facilities shall not be interconnected to any off-farm energy consumer or off-farm source of energy demand;

(B) Wind energy generation facilities shall not be interconnected in a series to other energy generation facilities located off the farm;

(C) Wind energy generation facilities may be directly connected to the electric distribution or transmission system for the primary purpose of producing wholesale power, provided the facilities do not occupy more than one percent of the farm and are otherwise consistent with N.J.S.A. 4:1C-32.4 and the provisions of this subchapter;

(7) Easements shall not be provided through the premises for the purpose of transmitting power generated by an off-farm source, or to provide for roadways to service wind energy generation facilities not located on the farm;

(A) Easements may be permitted through the premises for the purpose of providing access to operate and maintain the wind energy generation facilities pursuant to an agreement in (a)2i.

(8) Small wind energy generation facilities servicing a use in a severable exception area shall be located entirely within the exception area;

(9) Small wind energy generation facilities primarily servicing nonagricultural and/or nonresidential uses in a nonseverable exception area shall be located entirely in the nonseverable exception area to the maximum extent practicable and financially feasible;

(A) Where it is not possible to locate such facilities entirely in the nonseverable exception area, the portion of the occupied area outside the nonseverable exception area shall not exceed one acre or one percent of the farm, whichever is less; and the SADC may require from the facilities installer an itemization of all energy consuming devices connected to the electric revenue meter(s) to be serviced by the facilities, by energy demand and type of use, to determine whether the facilities will primarily service nonagricultural and/or nonresidential uses in the nonseverable exception area.

(B) Small wind energy generation facilities located outside nonseverable exception areas to service energy demand within the nonseverable exception areas, may not be

permitted or may be subject to more stringent Federal limitations than described in this sub-paragraph, if the farm was preserved with funding from the U.S. Department of Agriculture Natural Resources Conservation Service's Farm and Ranch Lands Protection Program.

(10) Small wind energy generation facilities shall be located and configured in a manner that maximizes the use of the premises for agricultural or horticultural purposes;

(A) Facilities shall not be constructed or installed on prime farmland to the maximum extent practicable and financially feasible;

(B) Facilities shall be located along field edges and in nonproduction areas to the maximum extent practicable and financially feasible; and

(C) Facilities shall be sited and configured to avoid dividing larger fields into smaller fields and isolating areas of the premises such that they are no longer viable or efficient for agricultural production, including but not limited to, creating negative impacts on support infrastructure such as irrigation systems;

ii. The treatment of the premises for purposes of constructing, installing, operating or maintaining small wind energy generation facilities within the occupied area shall be in accordance with the following standards to ensure the land can readily be returned to active agricultural or horticultural production after removal of the wind energy generation facilities;

(1) Site disturbance associated with small wind energy generation facilities, including, but not limited to, land clearing, grading, topsoil and subsoil removal, excavation and soil compaction, shall not exceed one acre on the premises;

(A) If any wind, solar or biomass energy generation facilities are located on the premises, the one-acre limit in (a)1ii(1) above shall apply to the cumulative total site disturbance resulting from all of the wind, solar or biomass energy systems on the premises;

(B) Land smoothing in accordance with Practice Standards (Code 466) of the Natural Resources Conservation Service NJ-Field Office Technical Guide (NRCS NJFOTG) shall not be considered site disturbance.

(2) Excess topsoil shall not be removed from the premises but shall be distributed or stockpiled elsewhere on the premises;

(A) For facilities with an occupied area of greater than one acre on the premises, topsoil shall be distributed or stockpiled on the premises in accordance with the approved conservation plan;

(3) The use of geotextile fabrics on the premises is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section;

(4) The use of concrete or asphalt on the premises is prohibited within the occupied area except for mounting of the wind turbines, inverters, transformers, power conditioning units, control boxes and other such system components;

(5) The placement of gravel or stone on the premises is prohibited unless recommended as part of the approved conservation plan;

(6) Use of existing roadways to provide access to the wind energy generation facilities shall be maximized to avoid the construction of new onsite roadways to the maximum extent practicable;

(7) New roadways on the premises shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff and soil compaction on the premises;

(8) The use of geotextile fabrics and gravel for the construction of temporary roadways during the construction of the wind energy generation facilities is permitted provided that the geotextile fabrics and gravel are removed once the wind energy generation facilities are in operation;

(9) Where it is not practicable to utilize the occupied area on the premises for agricultural or horticultural production in accordance with N.J.A.A. 54:4-23.1 et seq.:

(A) The occupied area shall be maintained in vegetative cover to prevent soil erosion, mowed on a regular basis and managed to prevent weeds or other invasive species from growing up or spreading to other areas of the premises; or

(B) The occupied area beneath facilities mounted on buildings or other structures permitted pursuant to the deed of easement, shall be maintained in a manner consistent with the use of the buildings or structures;

iii. Small wind energy generation facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are longer being utilized to produce wind energy for a period of 18 consecutive months.

(1) The decommissioning of the facilities, structures and equipment shall ensure that the agricultural productivity of the soil is restored to the greatest extent practicable, including but not limited to the following:

(A) All small wind energy generation facilities shall be removed from the premises, including underground foundations and cables to a depth of 36 inches, and the land shall be restored in order to achieve as much agricultural productivity of the soil as practicable and financially feasible;

(B) The decommissioning of small wind energy generation facilities with an occupied area of greater than one acre on the premises shall be performed in accordance with an approved conservation plan prepared pursuant to NJ-FOTG that addresses soil and water resource concerns, as set forth at (a)1i(3).

2. Factors for determining if the small wind energy generation facilities, structures and equipment are owned by the landowner or will be owned by the landowner upon the conclusion of the

term of an agreement with the installer or operator of the wind generation facilities, structures or equipment by which the landowner uses the income or credits realized from the wind energy generation to purchase the facilities, structures or equipment, are as follows:

i. A copy of a fully executed agreement, such as a purchase or lease agreement for the facilities, structures and equipment, shall be provided to the Committee that clearly identifies that the owner(s) of the farm will be the sole owner(s) of the facilities, structures and equipment on installation, or will be the sole owner(s) by the end of the term of the agreement.

(1) The term of an agreement whereby a farm owner will purchase the facilities at the end of the agreement shall not exceed 20 years;

(2) The agreement shall include an unconditional assignment to any subsequent owner taking title to the farm prior to the conclusion of an agreement;

ii. No portion of the land on the premises may be leased for the purpose of wind energy generation;

(1) A farm owner shall not lease, rent or otherwise obligate wind energy generation facilities to another individual or party other than the original party or their successors in title pursuant to a purchase agreement in (a)2i above;

3. Factors for determining if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm, are as follows:

i. For small wind energy generation facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering; or

ii. For small wind energy generation facilities that will not be net metered, the landowner shall provide to the Committee:

(1) Documentation that the energy will be used to provide power or heat directly to the farm outside of the meter; or

(2) Where the facilities will provide energy directly to the electric distribution or transmission system, copies of electric utility bills and/or other bills, receipts, or documentation demonstrating the cost to provide power or heat to meet the farm's energy demand, and a copy of either:

(A) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at www.pjm.com, completed and signed by the EDC; or

(B) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC ;

4. Factors for determining that the annual energy generation of small wind energy generation facilities on the farm is limited to the farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated or collected from facilities, structures or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010, are as follows:

i. The annual energy generation is based on the monthly sum of the farm's previous calendar year's energy demand and does not exceed that amount plus 10 percent.

ii. The landowner shall provide copies of the farm's electric utility bills and/or other bills, receipts or other documentation demonstrating the farm's energy costs

iii. The farm owner shall provide documentation of installation date(s) for energy generation facilities, structures or equipment already existing on roofs of buildings or other structures on the farm.

iv. If solar or biomass energy generation facilities are located on the farm, the limit in (a)4i. above applies to the cumulative energy generated by wind, solar and biomass facilities on the farm.

5. Factors for determining that the small wind energy generation facilities on the farm are limited to an occupied area consisting of no more than one percent of the area of the farm are as follows:

i. A copy of the site plan depicting the occupied area shall be provided to the Committee.

ii. Small wind energy generation facilities installed on the farm prior to the enactment of P.L. 2009, c. 213 on January 16, 2010, shall not be considered part of the occupied area in applications for new wind energy generation facilities unless the applications involve an expansion in the physical size or generation capacity of pre-existing facilities; and

iii. If wind, solar or biomass energy generation facilities are located on the farm, the limit in (this paragraph shall apply to the total cumulative area occupied by all the wind, solar and biomass energy generation facilities on the farm.

6. Factors for determining that the person who owns the farm and the small wind energy generation facilities may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to subsection (a)2 above, and/or directly to the electric distribution or transmission system provided that the occupied area of the wind energy generation facilities does not exceed one acre.

i. For facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2

(Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering;

ii. For facilities that will be connected directly to the electric distribution or transmission system, the following shall be provided:

(1) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at

<http://www.pjm.com/documents/~media/documents/agreements/tariff.ashx>, completed and signed by the EDC; or

(2) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC;

iii. A copy of a fully executed agreement, such as a purchase or lease agreement for the wind energy generation facilities, that clearly identifies that the owner(s) of the farm owns or will purchase and own the wind energy generation facilities, structures and equipment at the end of the term of the agreement, including the date the owner(s) of the farm shall assume ownership of the facilities;

iv. For small wind energy generation facilities that will connect directly to the electric distribution or transmission system, the Committee shall determine from a review of the site plan that the occupied area of the proposed facilities does not exceed one percent of the farm;

(1) If solar or biomass energy facilities are located on the farm, the limit in (a)6iv above shall apply to the total cumulative area occupied by all of the solar, wind and biomass energy facilities on the farm.

7. Factors for determining that the land occupied by the small wind energy generation facilities is eligible for valuation, assessment and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and continues to be eligible for such valuation pursuant to N.J.S.A. 54:4-23 are as follows:

i. A copy of the farmland assessment form approved by the local tax assessor shall be provided for the most recent tax year.

ii. The SADC shall confirm, in consultation with the New Jersey Department of the Treasury, Division of Taxation, that the small wind energy generation facilities as proposed will not disqualify any portion of the premises from farmland assessment eligibility.

8. Impervious cover associated with the small wind energy generation facilities shall not exceed one acre on the premises;

i. If solar or biomass energy facilities are located on the premises, the one-acre limit in (a)8 above shall apply to the cumulative total of impervious cover resulting from all of the wind, solar and biomass energy facilities on the premises.

9. Factors for determining that a small wind energy generation facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 are as follows:

i. A copy of written correspondence from the Pinelands Commission shall be provided confirming that the small wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111;

10. The construction of small wind energy generation facilities on farms preserved with any funding provided by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) through the Farm and Ranch Lands protection Program (FRPP) or any successor NRCS grant program protecting land for agricultural uses, shall require the advanced written approval of the U.S. Department of Agriculture Natural Resources Conservation Service;

11. Compliance with the criteria in this section shall be in addition to any other applicable State or Federal laws or regulations, including but not limited to:

1. N.J.S.A. 13:19-1 et seq., Coastal Area Facilities Review Act
2. N.J.A.C. 7:38, Highlands Water Protection and Planning Act Rules; and
3. N.J.A.C. 7:8, Stormwater Management.

2:76-25.7 Evaluation criteria for a large wind energy generation facility

(a) When reviewing an application, the Committee shall determine whether the application meets the following criteria:

1. Factors for determining if large wind energy generation facilities, structures and equipment interfere significantly with the use of the land for agricultural or horticultural production are as follows:

i. The facilities do not conflict with the deed of easement, including but not limited to, the following:

(1) There is no detrimental impact to drainage, flood control, water conservation, erosion control or soil conservation on the premises;

(2) Construction, installation, operation and maintenance of large wind energy generation facilities shall be conducted in accordance with an approved conservation plan that addresses soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water and related natural resources, which is available at

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg>. The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet,

incorporated by reference, as amended and supplemented, which is available at http://www.nj.nrcs.usda.gov/technical/environmental_compliance/index.html;

(3) During construction and installation of large wind energy generation facilities, appropriate measures are taken within the occupied area to control soil erosion from wind and water on the premises, including, but not limited, to the following:

(A) During construction, all topsoil shall be stripped from work areas, including but not limited to tower sites; staging areas used for tower laydown and other industrial/heavy equipment; areas used for construction vehicle and equipment traffic and parking, including access road pulloff areas; and areas used for electric cable trenches and access roads; no topsoil stripping is required for installation of buried electric lines if direct burial methods such as cable plow and rock saw are used, and the width of disturbance is 30 feet or less;

(B) Stripped topsoil shall be segregated from subsoil and stockpiled in accordance with the approved conservation plan;

(C) Rocks shall be separated from topsoil, and all topsoil shall be stockpiled separately from other excavated material in accordance with the approved conservation plan;

(D) Culverts and diversions shall be installed to maintain natural drainage patterns in accordance with the approved conservation plan;

(E) The large wind energy generation facilities shall not interfere with existing soil and water conservation practices such that the facilities impair functionality of the practices for their intended purposes;

(4) During operation and maintenance of the large wind energy generation facilities, appropriate measures are taken to address soil and water conservation resource concerns on the premises;

(5) The types of agricultural use or production that can occur on the premises shall not be restricted;

(A) The presence of large wind energy generation facilities shall not negatively impact the ability to utilize any portion of the premises outside the occupied area for a variety of agricultural or horticultural purposes;

(6) The facilities shall not interfere with the ability to access the premises for agricultural or horticultural purposes, and to ensure compliance with the deed of easement and the provisions of this chapter;

(7) Facilities shall not supply power or heat to an off-farm source of energy demand;

(A) Large wind energy generation facilities shall not be interconnected to any off-farm energy consumer or off-farm source of energy demand;

(B) Facilities shall not be interconnected in a series to other energy generation facilities located off the farm;

(C) Facilities may be directly connected to the electric distribution or transmission system for the primary purpose of producing wholesale power provided the facilities do not occupy more than one percent of the farm and are otherwise consistent with N.J.S.A. 4:1C-32.4 and the provisions of this chapter.

(8) Easements shall not be provided through the premises for the purpose of transmitting power generated by an off-farm source, or to provide for roadways to service wind energy generation facilities not located on the farm;

(A) Easements may be permitted through the premises for the purpose of providing access to maintain and operate the wind energy generation facilities pursuant to an

agreement in (a)2i.

(9) Large wind energy generation facilities servicing a use in a severable exception area shall be located entirely within the severable exception area;

(10) Facilities primarily servicing nonagricultural and/or nonresidential uses in a nonseverable exception area shall be located entirely in the nonseverable exception area to the maximum extent practicable or financially feasible.

(A) Where it is not possible to locate such facilities entirely in the nonseverable exception area, the portion of the occupied area outside the nonseverable exception area shall not exceed one acre or one percent of the farm, whichever is less; and the SADC may require from the facilities installer an itemization of all energy consuming devices connected to the electric revenue meter(s) to be serviced by the facilities, by energy demand and type of use, to determine whether the facilities will primarily service nonagricultural and/or nonresidential uses in the nonseverable exception area;

(B) Large wind energy generation facilities located outside nonseverable exception areas to service energy demand within the nonseverable exception areas, may not be permitted or may be subject to more stringent Federal limitations than described in this sub-subparagraph, if the farm was preserved with funding from the U.S. Department of Agriculture Natural Resources Conservation Service's Farm and Ranch Lands Protection Program.

(11) Large wind energy generation facilities shall be located and configured in a manner that maximizes the use of the premises for agricultural or horticultural purposes.

(A) Facilities shall not be constructed or installed on prime farmland to the maximum extent practicable and financially feasible;

(B) Facilities and new access roads shall be located along field edges and in nonproduction areas, and configured to avoid dividing larger fields into smaller fields, to the maximum extent physically and financially feasible;

(C) The siting of large wind energy generation facilities shall avoid negatively impacting existing irrigation, drainage and erosion control structures, including but not limited to, diversions, ditches and tile lines; any existing irrigation, drainage and erosion control structures negatively impacted during construction shall be repaired to fully restore their function unless the structures are to be eliminated based on a new design, and such restoration or implementation of new design shall be completed prior to the facilities becoming operational.

(D) Electric interconnect cables and transmission lines shall be installed below ground to the maximum extent practicable; cables shall be buried to a minimum depth of 36 inches in agricultural or horticultural production areas; in areas where depth of soil over bedrock ranges from 0 to 36 inches, electric cables shall be buried entirely below the top of the bedrock or in accordance with UCC standards. At no time shall the depth of cover be less than 24 inches below the surface except at the connection point.

(E) Where above-ground interconnect cables and/or transmission lines are necessary, they shall be located outside agricultural field boundaries to the maximum extent practicable; where supporting structures must be located in agricultural fields, the structures shall be designed and configured to minimize impacts to the agricultural land;

ii. The treatment of the premises for purposes of constructing, installing, operating or maintaining large wind energy generation facilities within the occupied area shall be in accordance with the following standards to ensure the land can readily be returned to active agricultural or horticultural production after removal of the large wind energy facilities:

(1) Site disturbance associated with the large wind energy facilities, including but not limited to land clearing, grading, topsoil and subsoil removal, excavation and soil compaction, the placement of fill material, and the construction of new access roads, shall not exceed two acres on the premises.

(A) If wind, solar or biomass energy facilities are located on the premises, the two-acre limit in (a)1ii(1) above shall apply to the cumulative total site disturbance resulting from all of the wind, solar or biomass energy systems on the premises;

(B) Land smoothing in accordance with Practice Standards (Code 466) of the Natural Resources Conservation Service NJ-Field Office Technical Guide (NRCS NJFOTG) shall not be considered site disturbance;

(2) Excess topsoil shall not be removed from the premises but shall be distributed or stockpiled elsewhere on the premises in accordance with the approved conservation plan;

(3) The use of geotextile fabrics on the premises is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section;

(4) The use of concrete or asphalt on the premises is prohibited within the occupied area, except as follows:

(A) The mounting of the wind turbine, inverters, transformers, power conditioning units, control boxes and other such system components;

(5) The placement of gravel or stone on the premises is prohibited except for the following:

(A) To cover geotextile fabric for access roads necessary to construct and maintain the facilities; and

(B) For the construction of a crane pad;

(C) If recommended as part of an approved NRCS soil and water conservation practice;

(6) The importation of fill material onto the premises is limited to the occupied area;

(7) Access roads on the premises shall be constructed using geotextile fabric covered with gravel;

(A) All roads shall be the minimum width necessary to accommodate construction traffic;

(B) The width of permanent access roads in agricultural fields shall be no greater than 16 feet.

(C) New roadways that cross agricultural fields shall be located along ridge tops, and following hedgerows and field boundaries to the maximum extent practicable.

(D) Access roads shall be constructed so they are level with the adjacent fields to facilitate crossing by farm equipment to the maximum extent practicable;

(E) Roads across agricultural fields shall not be constructed during wet conditions to protect agricultural soils from damage;

(11) During construction of the facilities, all construction-related vehicle and equipment traffic and parking shall be restricted to the access road and/or designated work areas unless prior approval has been obtained from the Committee;

(12) Crane set-up and break-down activities are restricted to designated work areas on the premises;

(13) All pieces of wire, bolts and other unused metal objects shall be disposed of as soon as possible after unloading of turbine components to ensure these objects will not be mixed with any topsoil;

(14) Concrete trucks shall be washed outside of active agricultural areas, and such areas shall be considered part of the site disturbance calculation;

iii. Following construction of the wind energy generation facilities, the premises shall be restored for agricultural and horticultural purposes in accordance with the approved conservation plan ;

(1) All excess subsoil and all gravel, concrete and other construction debris and materials shall be removed from the premises, including but not limited to along access roads, the crane paths, around towers and in temporary parking and staging areas;

(2) Any excess topsoil that was excavated from the premises for purposes of constructing the large wind generation facilities shall be retained on the premises for future use in accordance with the approved conservation plan;

(3) Topsoil stripped from work areas shall be replaced;

(4) All rocks 4 inches or larger that were displaced during construction of the wind energy generation facilities shall be removed from the surface prior to placement of topsoil;

(5) Excess concrete shall not be buried or left on the premises;

(6) Soils on the premises that were compacted during construction of the wind energy generation facilities shall be decompacted to a depth of at least 12 inches in accordance with the approved conservation plan in order to ensure the land can be used for a variety of agricultural and horticultural purposes, or the compacted areas shall be considered part of the occupied area.

(6) Decompaction, topsoil replacement and other soil restoration practices shall not be conducted at any time when soils are in a wet or plastic state, including from October through May unless soils are dry and workable;

(7) All restored agricultural areas shall be seeded with a seed mix consistent with agronomic practice and the surrounding area after any required decompaction of soils;

(8) Access roads shall be regraded to allow for farm equipment crossing and to restore original surface drainage patterns or provide for new drainage patterns in accordance with the approved conservation plan;

(9) The restored site shall be reviewed each of the following two growing seasons to identify drainage, compaction or other issues that may not have been apparent immediately following restoration, and appropriate steps shall be taken to correct those issues consistent with the recommendations of the approved conservation plan. Such issues include but are not limited to, insufficient topsoil thickness; excessive amounts of rock and large stones; trench settling; decreased crop productivity; and drainage problems.

iv. Large wind energy generation facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are longer being utilized to produce wind energy for a period of 18 consecutive months.

(1) The decommissioning of the facilities, structures and equipment on the premises shall ensure that the agricultural productivity of the soil is restored to the greatest extent practicable, including but not limited to, the following:

(A) Decommissioning shall be done in accordance with an approved conservation plan, prepared pursuant to the NJFOTG, that addresses soil and water resource concerns, as set forth at N.J.A.C. 2:76-25.6(a)1i(3).

(B) All facilities, structures and equipment shall be removed from the premises, including underground foundations and cables to a depth of 36 inches;

(C) Excavated areas shall be backfilled with clean sub-grade material covered by a layer of topsoil, with the depth of restored topsoil consistent with the depth of topsoil of the surrounding land;

2. Factors for determining if large wind energy generation facilities, structures and equipment are owned by the landowner or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the large wind energy generation facilities, structures or equipment by which the landowner uses the income or credits realized from the wind energy generation to purchase the facilities, structures or equipment, are as follows:

i. A copy of a fully executed agreement such as a purchase or lease agreement for the facilities, structures and equipment, shall be provided to the Committee that clearly identifies that the owner(s) of the farm will be the sole owner(s) of the facilities, structures and equipment upon installation, or will be the sole owner(s) by the end of the term of the agreement.

(1) The term of an agreement whereby a farm owner will purchase the facilities at the end of the agreement shall not exceed 20 years;

(2) The agreement shall include an unconditional assignment to any subsequent owner taking title to the farm prior to the conclusion of an agreement;

ii. No portion of the land on the premises may be leased for the purpose of wind energy generation;

(1) Large wind energy generation facilities may be leased only pursuant to an agreement in (a)2i above;

(2) A farm owner shall not lease, rent or otherwise obligate wind energy facilities to another individual or party other than the original party or their successors in title pursuant to a purchase agreement in (a)2i above;

3. Factors for determining if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm, are as follows:

i. For large wind energy generation facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4,

5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering; or

ii. For large wind energy generation facilities that will not be net metered, the landowner shall provide to the Committee:

(1) Documentation that the energy will be used to provide power or heat directly to the farm outside of the meter; or

(2) Where the facilities will provide energy directly to the electric distribution or transmission system, copies of electric utility bills and/or other bills, receipts or documentation demonstrating the cost to provide power or heat to meet the farm's energy demand, and a copy of either:

(A) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at www.pjm.com, completed and signed by the EDC; or

(B) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC ;

4. Factors for determining that the annual energy generation of large wind energy generation facilities on the farm is limited to the farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated or collected from facilities, structures or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010, are as follows:

i. The annual energy generation is based on the monthly sum of the farm's previous calendar year's energy demand and does not exceed that amount plus 10 percent;

ii. The landowner shall provide copies of the farm's electric utility bills and/or other bills, receipts or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand; and

iii. The farm owner shall provide documentation of installation date(s) for energy generation facilities, structures or equipment already existing on roofs of buildings or other structures on the farm;

iv. If solar or biomass energy generation facilities are located on the farm, the limit in (a)4i above applies to the cumulative energy generated by wind, solar and biomass facilities on the farm;

5. Factors for determining that large wind energy generation facilities are limited to an occupied area consisting of no more than one percent of the area of the farm are as follows:

i. A copy of the site plan depicting the occupied area shall be provided to the Committee.

ii. Large wind energy generation facilities installed on the farm prior to the enactment of P.L. 2009, c. 213 on January 16, 2010, shall not be considered part of the occupied area in applications for new wind energy facilities unless the applications involve an expansion in the physical size or generation capacity of pre-existing facilities;

iii. If wind, solar or biomass energy generation facilities are located on the farm, the limit in this paragraph shall apply to the total cumulative area occupied by all the wind, solar and biomass energy generation facilities on the farm.

6. Factors for determining that the person who owns the farm and the large wind energy generation facilities may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to (a)2 above, and/or directly to the electric distribution or transmission

system provided that the occupied area of the large wind energy generation facilities does not exceed one acre.

i. For large wind energy generation facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering;

ii. For large wind energy generation facilities that will be connected directly to the electric distribution or transmission system, the following shall be provided:

(1) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at www.pjm.com, completed and signed by the EDC; or

(2) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC;

iii. A copy of a fully executed agreement, such as a purchase or lease agreement for the large wind energy generation facilities, that clearly identifies that the owner of the farm owns or will purchase and own the wind energy facilities, structures and equipment at the end of the term of the agreement, including the date the owner(s) of the farm shall assume ownership of the facilities, shall be provided to the Committee;

iv. For large wind energy generation facilities that will connect directly to the electric distribution or transmission system, the Committee shall determine from a review of the site plan that the occupied area of the proposed facilities does not exceed one percent of the farm;

(1) If solar or biomass energy generation facilities are located on the farm, the limit in (a)6iv above shall apply to the total cumulative area occupied by all of the wind, solar and biomass energy facilities on the farm;

7. Factors for determining that the land occupied by the large wind energy generation facilities is eligible for valuation, assessment and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and continues to be eligible for such valuation pursuant to N.J.S.A.54:4-23, are as follows:

i. A copy of the farmland assessment form approved by the local tax assessor shall be provided for the most recent tax year;

ii. The SADC shall confirm, in consultation with the New Jersey Department of the Treasury, Division of Taxation, that the large wind energy generation facilities as proposed will not disqualify any portion of the premises from farmland assessment eligibility;

8. The impervious cover associated with large wind energy generation facilities shall not exceed one acre on the premises.

i. If wind, solar or biomass energy generation facilities are located on the premises, the one-acre limit in (a)8 above shall apply to the cumulative total of impervious cover resulting from all of the wind, solar and biomass energy facilities on the premises;

9. Factors for determining that a large wind energy generation facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 are as follows:

i. A copy of written correspondence from the Pinelands Commission shall be provided confirming that the large wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111;

10. The construction of large wind energy generation facilities on farms preserved with any funding provided by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) through the Farm and Ranch Lands Protection Program (FRPP) or any successor NRCS grant program

protecting land for agricultural uses, shall require the advanced, written approval of the U.S.

Department of Agriculture Natural Resources Conservation Service;

11. Compliance with the criteria in this section shall be in addition to any other applicable State or Federal laws or regulations, including but not limited to:

- i. N.J.S.A. 13:19-1 et seq., Coastal Area Facilities Review Act
- ii. N.J.A.C. 7:38, Highlands Water Protection and Planning Act Rules; and
- iii. N.J.A.C. 7:8, Stormwater Management;

2:76-25.8 Committee Review of an application for a small or large wind energy generation facility

(a) The Committee shall review an application and determine whether it is complete pursuant to N.J.A.C.

2:76-25.5;

1. Once the Committee determines the application is complete;

i. If the development easement is owned by a board or qualifying tax-exempt nonprofit organization, the Committee shall forward the application to the board or qualifying tax exempt nonprofit organization; or

ii. If the farm was preserved with any USDA-NRCS Farm and Ranch Land Protection Program funding, the Committee shall forward the application to the USDA-NRCS;

2. If the Committee determines the application is incomplete, the Committee shall notify the applicant in writing and identify all information required for completion.

2:76-25.9 Board or nonprofit review of an application for a small or large wind energy generation facility

The board or qualifying tax exempt nonprofit organization shall provide any comments on the application to the SADC within 30 days from the date of the Committee's notice;

2:76-25.10 Final Committee Review

(a) Within 90 days from determination of a complete application, the SADC shall approve, approve with conditions or deny the application;

1. The Committee's decision shall consider the factors in N.J.A.C. 2:76-25.6-7 and any substantive, objective issues raised in comments by the board or nonprofit organization that have not otherwise been considered;

2. The Committee's approval or denial of an application is subject to the Governor's review period following submission of the Committee's meeting minutes.

3. For a farm in the Pinelands Area, receipt of written confirmation from the Pinelands Commission that the wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 shall be required.

(b) The Committee may delegate review and approval authority to the Executive Director pursuant to N.J.S.A. 4:1C-5(e) and (f) for applications for small wind energy generation facilities where the board or nonprofit organization has not submitted comments concerning negative impacts from the application, and the application is in conformance with all provisions of N.J.S.A. 4:1C-32.4 and this subchapter. This shall not preclude the Executive Director from bringing any application before the Committee for review and approval, if deemed appropriate.

2:76-25.10 Final Committee review of an application for a small or large wind energy generation facility

The Committee may suspend or revoke an approval for wind energy generation facilities for a violation of N.J.S.A. 4:1C-32.4, this subchapter, or any term or condition of the approval.

2:76-25.11 Request for hearing

(a) Any farm owner who is aggrieved by an action of the Committee regarding an application or suspension or revocation of an approval may submit a written request to the Committee for a hearing.

1. A request for a hearing shall be sent to the Committee within 20 days of receipt of notice of the Committee's action;

2. Requests shall be sent to the Executive Director, State Agriculture Development Committee, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330;

3. Farm owners shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1;

4. The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.

**Soil And Water Conservation Project Cost Share Grants
EXTENSION OF PROJECT APPROVALS SUMMARY**

SADC ID #	LANDOWNER/AGENT	MUNICIPALITY	COUNTY	FUND	#	OBLIGATION			EXTENSION REQUEST			8 YR EXPIRE DATE
						ORIGINAL AMOUNT	LESS PAYMENTS	BALANCE	AMOUNT	TIME	EXPIRATION DATE	
15-0005-DE	South Land Farms Inc.	Plumsted	Ocean	95 BF	1	26,554.23	7,540.00	19,014.23	19,014.23	12 months	07/22/14	03/27/17
<p>Original project description: Cleaning out 1,300 and 2,600 feet of permanent open drainage, 13.5 acres soil spreading at a depth no greater than 2 inches, 3.6 acres of obstruction removal, and 2.7 acres of filter strip</p> <p>Received payemnt of \$7,540.00 for cleaning out 1,350 feet of open drainage, 1.1 acres of obstruction removal, 6.2 acres of soil spreading and .6 acres of filter strip</p> <p>Extension request is to complete the remainder of the project; 2,600 feet of open drainage cleaning, 7.3 acres of soil spreading, 2.5 acres of ostruction removal and 2.1 acres of filter strip</p> <p>Reason for Extension: NRCS was delayed in the design of cleaning out the two open drainage and weather has slowed the completion</p> <p>Landowner formally initiated request for extension on November 23, 2012</p> <p>NRCS reviewed and concurred with reasons for extension on November 29, 2012</p> <p>Soil Conservation District approved request for extension on November 29, 2012</p> <p>SSCC approved the Request for Extension on January 14, 2013 and recommends SADC approval of extension request</p> <p>Funds are encumbered in 1995 Bond Fund</p>												
01-0043-8F	Daniel & Margaret Czarniak	Hammonton	Atlanta	95 BF	1	12,240.00	6,974.38	5,265.62	5,265.62	12 months	11/05/13	09/19/16
<p>Original project description: Installation of 7.0 acres of drip irrigation in container nursery</p> <p>A State Cost Share Program Project Revision Form was approved by NRCS, Warren County Soil Conservation District and the State Soil Conservation Committee which changed the project to 1 acre of drip irrigation and one injector pump for \$6,974.38 and left \$5,265.62 for 1.0 acre of future drip irrigation</p> <p>Payment of \$6,974.38 for 1 acre of drip irrigation and one injector pump</p> <p>Extension request is for \$5,265.62 to complete 1.0 acres of drip irrigation</p> <p>Reason for Extension: Project was not completed with the first phase due to extreme weather conditions as a result of Hurricane Sandy. Landowner requests extension to utilize balance of \$5,265.62 for 1 acre of drip irrigation.</p> <p>Landowner formally initiated request for extension on December 5, 2012</p> <p>NRCS reviewed and concurred with reasons for extension on December 5, 2012</p> <p>Soil Conservation District approved request for extension on December 5, 2012</p> <p>SSCC approved the Request for Extension on January 14, 2013 and recommends SADC approval of extension request</p> <p>Funds are encumbered in 1995 Bond Fund</p>												

**STATE OF NEW JERSEY
AGRICULTURE RETENTION AND DEVELOPMENT PROGRAM**

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION # FY2013R1(2)

REQUEST FOR EXTENSION OF PROJECT APPROVAL

OCEAN COUNTY

SOUTH LAND FARMS, INC.

JANUARY 24, 2013

WHEREAS, the State Agriculture Development Committee (SADC) has received the request for extension of project approval application from the State Soil Conservation Committee (SSCC) for the **South Land Farms, Inc., SADC ID#15-0005-DE**, concerning the parcel of land located in the Township of Plumsted, County of Ocean; and

WHEREAS, the SSCC has reviewed specific reasons for extension related to seasonal constraints and the Natural Resource Conservation Service was delayed in the design of cleaning out the two open drainage and weather has slowed the completion, as stated by the landowners, and on January 14, 2013, the SSCC approved the request for extension of 12 months for installation of previously approved projects pursuant to N.J.A.C. 2:76-5.4(d)2; and

WHEREAS, the SADC has reviewed said request for extension of project approval application from the above landowners pursuant to 2:76-5.4(d)2; and

WHEREAS, on July 22, 2010, the SADC approved a soil and water state cost-share grant in the amount of \$26,554.23, for approved projects submitted by the above landowners (at 50% cost share); and

WHEREAS, the landowners have expended the amount of \$7,540.00 to date and have requested the balance in the amount of \$19,014.23 to be extended until July 22, 2014; and

NOW THEREFORE BE IT RESOLVED, that the SADC, under the authority of N.J.A.C. 2:76-5.4(d)2, approves the extension of the term of obligation for a cost share grant in the amount of \$19,014.23 until July 22, 2014, with no further extension for **South Lands Farms, Inc., SADC ID#15-0005-DE**, Township of Plumsted, County of Ocean, subject to available funds; and

BE IT FURTHER RESOLVED, that the project must be completed by July 22, 2014.

BE IT FURTHER RESOLVED, that this action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

1/24/13



DATE

Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS

Douglas H. Fisher, Chairperson	ABSENT FOR THE VOTE
Fawn McGee (rep. DEP Commissioner Martin)	YES
James Requa (rep. DCA Commissioner Constable)	YES
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)	YES
Brian Schilling (rep. Executive Dean Goodman)	YES
Jane R. Brodhecker	YES
Alan A. Danser, Vice Chair	YES
James Waltman	YES
Peter Johnson	YES
Denis C. Germano	YES
Torrey Reade	YES

**State Soil Conservation Committee
State Cost Share Program
Request for Extension of Project Approvals**

(Note: Separate Request Required for Each Extension, ^{NJDA-DIVISION OF} ~~Previously Approved Application~~ _{AG & NATURAL RESOURCES})

2012 DEC -7 AM 9:31

County: OCEAN
Applicant Name: SOUTH LAND FARMS INC.
State ID Number: 15-0005-DE
Original Approval Date 7/22/2010

Application # 1

Total of Cost Share Funds Approved \$26,554.23
Amount Expended to Date \$ ~~7,540.00~~ 19,014.23 Amount Remaining ~~\$26,554.23~~ 19,014.23

PROJECTS FOR WHICH EXTENSION IS REQUESTED. (List information below exactly as shown on original application or as revised via approved revision form. Enclose photo copies of approved applications and

A	B	C	D	E	F	G
Project Description	CPO Item #	Field #	Extent Originally Approved	Amount Originally Approved	Amount to be Extended	Amount Approved (State Office use only)
2:90-2.17 Permanent open drain.					425	
Surface Drainage main or lat.	1	7	1300 ft.	\$2,925.00	\$2,925.00	425.00
Surface Drainage main or lat.	2	9	2600 ft.	\$5,850.00	\$5,850.00	5,850.00
Obstruction Removal	3	4-5	3.6 ac.	\$7,290.00	5,390 \$7,290.00	5,390.00
Spoil Spreading	4	4-5	13.5 ac.	\$10,125.00	7,066 \$10,125.00	7,066.00
Filter Strip	5	4-5	2.7 ac.	\$364.23	283.23 \$364.23	283.23
					19,014.23	
Total				\$26,554.23	\$26,554.23	\$19,014.23

DESCRIBE SPECIFIC REASONS FOR EXTENSION. Reasons must be detailed and related to seasonal constraints or other unavoidable delays beyond the applicants control.

NCRS was delayed in the design in ditch one. The weather also slowed the completion of the ditch. The additional ditch work may also be affected by weather and the completion of the design.

Applicant Certification

I hereby request that approval for the above listed projects be extended for 12 months (not to exceed 12 months). I certify that I have been unable to complete these projects within the original three year period for the reasons stated above and anticipate completing them within the period of extension requested.

Signature Nelson June

Date 11/23/12

Technical Agency Recommendation

I have reviewed this request for extension and concur with the reasons stated. Technical assistance for completion of the project will be provided.

Signature Susie K. Wagner
District Conservationist

Date 11/29/12

Soil Conservation District Approval

The Ocean Soil Conservation District has reviewed and approved this request at an official meeting held on 11/29/12 (Date) and recommends extension for 12 months.

Signature Will [Signature]
District Chairman

Date 11/29/12

State Soil Conservation Committee Approval

The SSCC has reviewed and approved this request for extension of 12 months for installation of previously approved projects as described above.

Signature [Signature]
Title FRANK MINICH
ADM. ANALYST

Date 1/14/13

State Agricultural Development Committee Approval

The SADC hereby extends funding authorization for the above listed projects. This approval will expire July 22, 2014

Signature [Signature]
Title EXECUTIVE DIRECTOR, SADC

Date 1/24/13

NOTE: All requests for payment for projects completed by the extended date must be submitted no later than 30 days after that date. Projects completed after that date will not be eligible for payment. All requests for extension must be received by the State Soil Conservation Committee at least 30 days prior to the original expiration date to facilitate timely processing.