

**STATE AGRICULTURE DEVELOPMENT COMMITTEE**  
**Department of Agriculture**  
**Market and Warren Streets**  
**1<sup>st</sup> Floor Auditorium**  
**Trenton, NJ 08625**

**REGULAR MEETING**

**December 12, 2013**

Acting Chairperson Purcell called the meeting to order at 9:13 a.m. Ms. Payne read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Roll call indicated the following:

**Members Present**

Monique Purcell, Acting Chairperson (Left meeting at 9:59 a.m.)  
Douglas H. Fisher, Chairperson (Arrived at 9:59 a.m.)  
Gina Fischetti (rep. DCA Commissioner Constable) (Arrived at 9:44 a.m.)  
Ralph Siegel (rep. State Treasurer Sidamon-Eristoff) (Arrived at 9:19 a.m.)  
Brian Schilling (rep. Executive Dean Goodman) (Arrived at 9:15 a.m.)  
Alan A. Danser, Vice Chairman  
Denis C. Germano, Esq.  
James Waltman  
Jane R. Brodhecker  
Torrey Reade (via telephone conferencing)

**Members Absent**

Fawn McGee (rep. DEP Commissioner Martin)  
Peter Johnson

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

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**Others present as recorded on the attendance sheet:** Heidi Winzinger, Brian Smith, Timothy Brill, Chuck Roohr, Paul Burns, Ed Ireland, Cindy Roberts, Stefanie Miller, Dan Knox, Judy Andrejko, Hope Gruzlovic, Jeffery Everett, Gary

Pohorely, Dave Kimmel, Gail Harrje, Bryan Lofberg, Jill Gorman, Patricia Riccitello and Sandy Giambrone, SADC staff; Kerstin Sundstrom, Esq., Governor's Authorities Unit; Dan Pace, Mercer County Agriculture Development Board; Christine Bell, Ocean County Agriculture Development Board; Katherine Coyle, Morris County Agriculture Development Board; Donna Traylor, Sussex County Agriculture Development Board; Nicole Goger Kavanaugh, New Jersey Farm Bureau; Brigitte Sherman, Cape May County Agriculture Development Board; Brian Wilson, Burlington County Agriculture Development Board; Laurie Sobel, Middlesex County Agriculture Development Board; and John Valeri, Jr., Esq., Wolff Samson law office.

### **Minutes**

- A. SADC Regular Meeting of November 14, 2013 (Open and Closed Sessions)

It was moved by Mr. Germano and seconded by Mr. Danser to approve the open session minutes and the closed session minutes of the SADC regular meeting of November 14, 2013. The motion was approved. (Mr. Waltman abstained from the vote.)

### **REPORT OF THE CHAIRPERSON**

Ms. Purcell stated that the State Board of Agriculture met yesterday and is gearing up for the New Jersey Agriculture Convention. Two items coming back through our State Board members from the county boards is that there will be two major issues for discussion at the convention. One is the Board's proposal to define local and the other item is the rural microenterprises bill. The Board also decided to write two different letters to the Legislature, both the Senate and the Assembly – one supporting renewed funding for the Farmland Preservation Program and the other supporting extending the dual appraisal process in the Highlands.

### **REPORT OF THE EXECUTIVE DIRECTOR**

Ms. Payne stated she would be deferring one item related to personnel until Secretary Fisher arrives. She wanted to acknowledge Donna Traylor from the Sussex County Agriculture Development Board (CADB). Ms. Traylor is the Administrator for the Sussex CADB and also runs the open space program. She

has been with the program for almost 25 years and will be retiring in February 2014. Ms. Payne thanked Ms. Traylor for all her hard work over the years and the great accomplishments that Sussex County has achieved under her leadership and that of her board. Ms. Traylor stated that it has been a wonderful 25 years. She has been with the program since the second farm was preserved through the 175th farm preserved. She stated that during that time they protected 17,500+ acres in farmland, quite a bit being partnered with open space. They have an agriculture tourism program that has spanned almost 20 years. It has been very exciting and she enjoyed working with all the farmers. She was not sure what the CADB's plans are for her position but she is hopeful that they will re-hire for the position because there is still a great need and interest with many landowners hoping to preserve their farms. She thanked everyone at the County and the State for their partnership efforts and assistance over the years.

Ms. Payne stated that under Tab #2, the first item is a staff spreadsheet indicating administrative review of solar projects. The Committee had delegated the review of routine solar projects on preserved farmland that do not create any new impervious cover and have nothing but positive support from the county or nonprofit that purchased the easement. Staff had its first approval under that new process this week. She stated that the Committee will be seeing this spreadsheet summary on a monthly basis and noted that the SADC does have reporting obligations to the Legislature so this will begin the tracking of our administrative reviews and approvals.

Ms. Payne stated that competing bills are under consideration in the Legislature to fund farmland preservation and open space. Assemblywoman Grace Spencer is sponsoring a bill to place a \$200 million bond issue on next fall's ballot to provide stop-gap funding. Senator Smith is sponsoring a bill that would dedicate up to \$200 million of sales tax revenue, or 2.4 percent, whichever is less, on an annual basis over the next 30 years. She stated that we will see what comes out of the Legislature. Ms. Payne stated that the Keep It Green Coalition, which has been the major lobbying group for continued funding for all the programs, has taken the position of opposing the \$200 million stop-gap bill and is pushing to try to persuade the Legislature to embark on a longer-term solution.

Ms. Payne stated that the Morris County Board of Agriculture sent to the State Board of Agriculture a letter with respect to the dual appraisal provision for Highlands farms, which will sunset on June 30, 2014. The State Board decided to send a letter asking for the extension of that dual appraisal provision and

separately, to urge continued funding of the program. Staff wanted to reiterate with the counties that the dual appraisal requirements that we had in 2009 will be the same that apply now. You would still have to have your applications to the SADC for Green Light approval before June 30, 2014. The appraisals would still have to be submitted within six months and the appraisal date has to be not later than June 30<sup>th</sup>. The same provisions we have on our website from 2009 are going to be the same we apply here. There were questions in that letter about future funding, asking the SADC to answer questions about whether future funding would be able to use the dual appraisal process. She stated the answer is she didn't know. It is a question for the Legislature. It is fair to say that whatever funding is currently allocated to the counties, as long as they hit that June 30<sup>th</sup> date with our office and they submit those appraisals within the timeframes required, you can continue to count on using those funds for dual appraisal consideration. Beyond that it is a legislative issue.

### **COMMUNICATIONS**

Ms. Payne reminded the Committee to take home the various articles provided in the meeting binders. She stated that the Department of Agriculture has created a newsletter that is distributed on a monthly basis. A copy has been provided in the meeting binder for the members. If anyone in the audience wants to be placed on the email list, they should let her know. It is a nicely done newsletter and keeps everyone apprised on what is going on.

### **PUBLIC COMMENT**

Mr. Jansen stated that he is on the agenda today and he wanted to have an opportunity to speak on the issue when the agenda item is presented.

### **NEW BUSINESS**

#### **A. Right to Farm Resolution of Final Approval: On Farm Direct Marketing Agricultural Management Practice**

Ms. Payne stated that all rules before they are adopted have to be approved by the Proposed Rules oversight office within the Governor's Office. She stated that the SADC was not able to submit these rules to the Governor's Office by its absolute deadline to obtain approval before today's meeting. The office's review is ongoing but not complete

so we are not able to adopt the AMP today. It will have to be placed on next month's agenda. She stated that if the Committee had any comments or questions about either the public response document or the very minor, mostly editorial, changes that are being proposed in the final rule they can be entertained today. The Committee had no questions or comments at this time. Ms. Payne thanked staff for all their hard work getting through all the comments and she felt that staff properly reflected the Committee's discussion of those issues last month.

**B. Stewardship**

**1. Annual Monitoring Report**

**Ms. Fischetti arrived at the meeting at this point.**

Mr. Everett referred the Committee to a memo dated December 4<sup>th</sup> regarding the annual monitoring report for preserved farms. Staff reviewed the specifics with the Committee. Collectively, the programs average a 75% completion rate for annual monitoring, which is short of the regulatory requirement of 100%. To assist entities that are falling short in their monitoring obligations, staff will be sending out letters and personally visiting underperforming localities to offer technical assistance and to offer training to those not utilizing the SADC's E-form monitoring system. This system should make the monitoring of farms much faster, easier and more reliable. Staff will be undertaking a pilot project in the spring on SADC direct easement purchases to incorporate building footprints measured by Rowan University as part of the ongoing Soil Disturbance Project and link spatial data (Geographic Information Systems) and tabular data (Oracle database) to populate the E-forms repository. If successful, the SADC could assist entities with pre-populating this data for their respective preserved farms. Eventually, all entities will be required to utilize E-forms and endeavor to achieve a 100% monitoring compliance rate.

Mr. Everett stated that staff is trying to monitor every farm in every month and then rotate because there are some seasonal agriculture tourism activities that staff hasn't actually seen because we are coming to the farm to monitor in July and they may not commence their activities until October. Therefore, staff is trying to mix up the timing for monitoring. Mr. Roohr reviewed the E-form with the Committee and how that works for monitoring purposes and how many counties have used it to date. He stated that currently, 11 out of 18 counties are using the E-form. This is not a requirement but rather an option for counties. Of the 7 counties that are not using it, 3 are relatively small counties that have a combined total of 17 preserved farms. He stated that is not to say that for the counties that are not using it there is a problem. In Morris County, they had a great

database system that they use that pre-dates the SADC's and they do all their monitoring every year and are on top of it. Every year they send the SADC their digitized reports.

Mr. Roohr stated that the numbers shown on the spreadsheet represent a three-year compilation of data. He stated that the spreadsheet is not 100% accurate; figures could each be off by a couple of percentage points. For example, if you had 50 farms to monitor and you had 3 divisions of the premises that year, our computer still recognizes it as 50 farms, but really there are 53 farms. The numbers are somewhat fluid. For the counties that are in the 100% to the 80% range, that is really good monitoring. If you are under that percentage, there is a little bit of work to be done and that is what staff is working on. The process of developing the E-form gave people a better option if they had none and it also brought to light the value of monitoring. It solves a lot of problems before they become big ones. Staff is trying to improve the system and we are still working out some of the user-friendly tweaks. One area in the E-form has a section for measuring all structures on a property, and that information has never been asked of a county previously. Staff is on the cusp of figuring out a way to do that automatically and if we can do that, it will substantially increase the remainder of the counties using the form.

Mr. Roohr stated that this past year, the types of issues that staff is finding on farms are minor soil erosion, overgrown fields, minor encroachments and some nonagricultural uses on the premises. Entertainment and recreational uses seem to be popping up a little more frequently than in the past. The old standard is a nonagricultural business that shows up, typically a landscape business parking its trailers or mowers on a farm, or some other sort of equipment storage. More recently, with Hurricane Sandy, we have had a number of counties report piles of wood. The township goes in and chops down and gets trees out of the street and needs somewhere to put that, so you'll see a corner of a preserved farm with a giant firewood pile. Another issue is soil importation – with all the road widening projects going on there is a lot of extra dirt and fill material so we are seeing a little of that as well. Once in a while staff comes across an agricultural labor unit that the SADC has not approved and either the person has to leave and the unit be vacated or we bring it in for some sort of retroactive approval, if it meets the standards. The other occasional issue we find that is a little more complicated is an unauthorized division of the premises. It happens when you have a family transfer of land and there were not lawyers or title companies involved.

Ms. Payne stated that in terms of approach, when the counties or nonprofits have these violations, once we become aware of them we coordinate with them to work with the landowner to bring the property back into compliance. It is only after we get a landowner who is just unwilling to rectify the situation that it will surface and the Committee will

actually see it. Most of the violations we come across get resolved without having to be presented to the Committee. She stated that staff is going to start a more detailed annual monitoring report so we can better document over time the number of violations we are seeing and the categories, because it helps us focus administratively. If there is one area that has a lot of constant violations, maybe we need to be doing a newsletter on that subject to improve education and the like. Also, the SADC is under new reporting obligations with the Department of Treasury with respect to the tax-exempt status of bonds. So to the extent that violations of the easement have some potential relationship to Treasury's concern about the tax-exempt status of bonds, our reporting is going to get more thorough so it can satisfy all these different obligations to report annually. She stated that we will be contacting every county by letter to have a conversation to see how they are doing regarding annual monitoring and how we can help them come into compliance. The SADC will not be able to just allow a county a 20 and 30 percent monitoring rate indefinitely. That is not a possibility. It is an obligation of the grant agreement when we close a farm and the county takes on that obligation to monitor that farm so we are going to have to reinforce that message with all of our program partners.

Mr. Schilling asked if the tax-exempt-concern was primarily for the nonagricultural businesses. Mr. Siegel responded that it is not clear whether a defacto easement violation that may not be connected to a nonagricultural commercial enterprise would also constitute a violation under IRS rules. That being said, both programs, the Farmland Preservation Program and Green Acres as well, are far ahead of the national curve in terms of monitoring our investments to the extent that as long as we maintain the programs we have now we are nowhere close to ever being at any risk of the IRS ever questioning the use of our funds. He stated that when you use tax-exempt funds you must limit the amount of the facility that is used by a private interest that is not in compliance with the tax-exempt purpose. He stated that if we maximize the violations that we are able to track through Green Acres and the SADC, we are in a fraction of a percentage, not even near one percent, of the threshold. The fact that we have active monitoring at all pretty much gives us a pass on the federal side because there are many states that do not have any monitoring whatsoever and they have had to develop monitoring plans. When we developed our tax-compliance plan last year in coordination with the bond issue, we learned that our systems that exist, just to comply with our own statutes and our easements, far exceed anything that the IRS ever envisioned requiring of bond issuers. It is a strong rationale for maintaining the program as it is.

Ms. Payne stated that some of the other areas they were interested in were condemnations. When the Turnpike Authority came through, they basically extinguished our easement and we were paid back. The other factor they look at is issues that occur on

land that cause revenues to come back to the state. That is a big trigger in consideration of whether the use of the bond proceeds constitutes private activity.

Mr. Danser stated he was surprised and concerned about a few of the very low numbers on the spreadsheet. He asked if there was any typical reason for that and is there eventually going to be some sort of incentive or penalty if that continues? Ms. Payne stated that the response staff typically gets from easement holders is that they just don't have the staff resources to do the annual monitoring. However, she felt that the argument only holds so much water. If you have staff resources to continue to accept our money to preserve more farms, then some of those resources have to be dedicated to taking care of the farms that have been preserved. Ultimately, if a county or nonprofit refused to do monitoring, then the Committee would have to question whether they should be eligible for additional funds. We don't want to have this conversation but want to bring everyone into compliance. We realize that the counties are stretched administratively and budgets are tight. Ms. Purcell and she have discussed in the past regarding who else besides county staff should be, or could be, the people to do this. Is this a task that could be done by consultants? Is it a task that properly trained soil conservation districts or NRCS could play a role in? We are trying to look at other people in the same circle to say is there an opportunity for some type of partnership agreements here? Part of the stewardship role has been to not just monitor compliance but how do we help those farmers be the best stewards of that land that they can be? What are the right NRCS programs to deploy here to conserve resources and help prevent soil erosion? In her mind, those resource people are going out to that farm anyway, couldn't we be killing two birds with one stone? Those are some of our thoughts but we will be hearing from the counties on what their thoughts are to see if we cannot help solve that problem – but it needs to be solved.

Mr. Waltman stated that this is an extremely serious issue for nonprofits as it is for agencies at any level of government. He stated that he directs a nonprofit and they have a couple of conservation easements, not in the Farmland Preservation Program. He stated that IRS regulations on nonprofits have been ratcheting up as well. At this point the requirement is only to indicate on the tax form whether or not you have easements and then you indicate on the tax form whether or not you have a monitoring policy and then you describe that policy. He would be very surprised if nonprofits with agricultural easements are not conducting monitoring. He would expect that a lot of these groups would be doing this monitoring and maybe doing a bad job reporting to you. He stated that he would speak to those that he knows have agricultural easements and if they are not reporting to the SADC the way they are supposed to that is a problem. Mr. Roohr stated that there is a new type of certification for nonprofits that they can get and he has had at least a couple of the nonprofits call this year to clarify that our numbers weren't



quite right because they were in the process of getting that certification and they needed 100% compliance. So he is finding that the nonprofits are engaging more, at least the larger ones.

**2. Renewable Energy Generation on Preserved Farm**

a. Harmony Greenhouses, Harmony Township, Warren County

Mr. Roohr referred the Committee to Resolution FY2014R12(1) for a request to build a ground-mounted solar facility on the Harmony Greenhouses property (Jansen Farm), known as Block 34, Lot 4, in Harmony Township, Warren County, comprising 77.12 acres. The facility would provide approximately 72% of the energy demand for Mr. Jansen's greenhouse operation. He has an approximately 5-acre greenhouse operation. There is no concrete involved with the installation of the facility; all of the support beams will be screwed-in posts. The panels themselves take up an area of .8 acres but when we had our first large ground-mount system we decided it would be fair to include a 20-foot buffer around panels as the area that would be used to access or get around the panels, etc. If you add the 20-foot buffer, it comes to a .99 acre occupied area. Impervious cover is less than 100 square feet because it is just the diameter of those posts that are going into the ground so it doesn't add up to very much. Soil disturbance is going to be the 130 foot trench that connects the box to the greenhouse as well as the buffered area around the panels, so that would be .2 acres in size for the disturbance area. In addition to meeting the criteria for solar regulations Mr. Jansen went the extra step and incorporated Right to Farm requirements into his design, including things like setbacks from his neighbor's property line and his neighbor's home, as well as the installation of vegetative screening. Based on the solar regulations themselves, this project is compliant and staff would recommend it. However, in 2007, the year that Mr. Jansen preserved the farm, at that time he was having earth work done in order to build the greenhouse, which was brought to the SADC's attention. The SADC never formally took a position on whether or not that site work was compliant with the deed of easement or not but because legal activities regarding site work on preserved farms in general is still a pending litigation matter with the Quaker Valley Farm court case. Staff recommendation for this solar facility is to approve the solar project with a condition that the approval of the solar should not be construed as the SADC making a determination one way or the other on whether or not the earth work is compliant. That would be a matter for another day. Additionally, staff met with Mr. Jansen and he had asked for clarification. He went to the Township and obtained approval to build this but the Township asked him to find out who has jurisdiction in such a matter. Does the Township have jurisdiction to approve this or does the SADC? He stated that the SADC has to approve the fact that is it on a preserved farm but as far as getting the building permits and complying with Township

zoning and related matters, the Township retains its jurisdiction unless the landowner finds that the Township is being overly burdensome, in which case he would seek Right-to-Farm protections.

**Chairman Fisher arrived at this point and presided over the meeting. Acting Chairperson Purcell left the meeting at this point.**

Mr. Jansen addressed the Committee in support of his application for the solar facility. He stated that in 2005 he approached the Warren CADB and advised them what he wanted to do with the property and that he wanted to build greenhouses and to preserve the land. He knew that his family would be farming it for the rest of his lifetime and he could use the money to build greenhouses. The original application said they wanted to build greenhouses. They were approved in 2007. He went to the Township and asked what he needed to do to build the greenhouses. The Township wanted him to do a site plan and then to go to the Warren County Soil Conservation District for a control plan for the grading. In September, that grading plan was approved. In the process of trying to prepare for the Township, he spoke with the County a great deal about what rights they had as farmers. In October, Mr. Resker helped them by saying they were allowed to start site work because they are a farm and they were allowed to do that. Before they even met with the Township, Mr. Resker recommended, and then Mr. Jansen asked for, a site-specific determination so that they would be deemed a commercial farm and have the assurance that what they were doing was OK with the County. That would help him with his Township approval for the site plan. In mid-October, he met with the County, which said the greenhouses were acceptable, and they were deemed a commercial farm. When they went to the Township in November, they had to put in the water retention protection. They had prepped that with an engineering firm. They obtained approvals in November and by mid-November they closed on preservation and at that point they were already 80% done with the site prep work. In December, they started putting the footings in the ground for the greenhouses. He stated that he knows that his farm and his family have been dragged into something but he wanted to say that they tried to contact everybody that they needed to to ask what they needed to do to be compliant. He stated that he feels he did everything that he was supposed to do and he knows that he is in a hard place because of someone else.

Ms. Payne stated that the resolution as drafted approves the solar facilities as proposed but it specifically indicates that the resolution cannot be construed as the SADC's approval of the disturbance that occurred on the site due to the pending litigation going on in a similar case before the agency. Mr. Siegel asked Deputy Attorney General Stypinski if he was comfortable with the resolution as written. Mr. Stypinski responded

yes.

Mr. Schilling motioned to approve the resolution. It was seconded by Mr. Germano.

Mr. Waltman stated that this may be something that should be discussed in closed session. He feels like he would be more comfortable if the Committee did that to understand how this may or may not interact with other pending issues. Mr. Stypinski stated that if he was seeking legal advice to discuss those impacts to pending litigation then it would be discussed in closed session. Ms. Payne stated that if the Committee wants to engage the Attorney General's Office on advice regarding the impact of this matter on pending litigation, then we would need a motion to go into closed session to discuss that and we could table this resolution for now.

Mr. Siegel moved that the Committee table action until after closed session. It was seconded by Mr. Danser. The motion was unanimously approved.

Ms. Payne advised Mr. Jansen that the Committee would not have a very long meeting this morning. The Committee has tabled the matter for the moment and it will conduct the remaining open session items and then go into closed session so that the Committee can take advice from the Attorney General's office on this question. Then when it comes back out, the Committee will take action on the draft resolution. She apologized for the delay.

### **C. Resolutions for Final Approval – County Planning Incentive Grant Program**

Ms. Roberts referred the Committee to three requests for final approval under the County Planning Incentive Grant Program. She reviewed the specifics with the Committee and stated that the recommendation is to grant final approval as presented and discussed.

It was moved by Mr. Siegel and seconded by Mr. Danser to grant final approval to the following applications under the County Planning Incentive Grant Program for Burlington County, as presented and discussed, subject to any conditions of said Resolutions:

1. Howard H. Umland, Inc., SADC #06-0127-PG (Resolution FY2014R12(2))  
Block 20, Lot 4; Block 21, Lot 4, Stow Creek Township, Cumberland County.  
66.622 Surveyed Acres  
State cost share of \$2,920 per acre for a total grant need of \$194,536.24, pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in Schedule "C." The

Cumberland CADB is requesting use of FY2013 competitive grant funding to cover the SADC cost share.

Discussion: The property includes one single-family residence. There is an existing Life Estate to Melody Long-Hasher on Block 21, a portion of Lot 4, encompassing the existing house, covering an area of 175 feet by 135 feet, and recorded in Deed Book 2743, Page 113. The two independent appraisers and the SADC review appraiser considered the presence of the Life Estate in their easement value determinations.

2. Dean A. and Ann Rook, SADC #06-0128-PG (Resolution FY2014R12(3))  
Block 80, Lots 15 and 16, Hopewell Township, Cumberland County,  
112.422 surveyed acres  
State cost share of \$2,440 per acre (71.76% of the certified market value and the purchase price) for a total grant of approximately \$274,309.68, pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in Schedule "C." The Cumberland CADB is requesting use of FY2013 competitive grant funding to cover the SADC cost share. If Federal Farm and Ranch Lands Protection Program (FRPP) and/or Open Space Institute (OSI) funding is secured and approved for use by the SADC, said funding will be used to reduce the County cost share first and then offset SADC grant needs. If a closing is unreasonably delayed for any reason, including securing the use of FRPP and/or OSI funds, the SADC retains the right to rescind its Final Approval of encumbered competitive grant funds equal to the amount of the anticipated FRPP grant for the acquisition of a development easement on the Property. The terms and conditions of the proposed OSI funding contribution, as well as the survey, title and all additional documents required for closing, shall be subject to the advanced review and approval by the SADC and the Office of the Attorney General.

Discussion: The property has one 2-acre severable exception area restricted to one single-family residence. A parcel application was submitted by the New Jersey Conservation Foundation (NJCF) to the USDA, NRCS, FRPP and it has been determined that the property and landowner qualify for federal funds. The landowner has agreed to the additional restrictions required for obtaining a federal grant, including a 6.33% maximum impervious coverage restriction (approximately 7.12 acres) for the construction of agricultural infrastructure on the property outside of the exception area, which is the maximum impervious coverage allowable for this property through the federal program at this time. The Open Space Institute (OSI) indicated that it is prepared to contribute up to \$109,000 toward the total purchase price of the development easement, or one-sixth of the total easement cost, whichever is less with no additional restrictions on the property.

to assist toward its goal of preserving land within the Delaware Bayshore region. Cumberland County is requesting that the OSI and FRPP funding first cover the County's cost share and then reduce the SADC's cost share. The County is not requesting an additional 3% buffer because the survey is completed; therefore, 112.422 acres will be utilized to calculate the grant need. Should OSI and FRPP funding not be available, the County and Township have agreed to fully fund the entire local (non-SADC) cost-share in order to proceed with the preservation of this farm. Should alternate federal funding become available from other funding years or through other qualified entities such as a nonprofit organization, the SADC or the County, the alternate funding may be utilized if such funding benefits the easement acquisition and/or the successful use of federal funding.

3. Neil A. Vander Veer, SADC #06-0131-PG (Resolution FY2014R12(4))  
Block 8, Lot 10.02, Hopewell Township, Cumberland County, 17 Acres  
State cost share of \$3,850 per acre for a total grant need of \$67,413.50 pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in Schedule "C." The County will utilize FY2013 competitive grant funding to cover the SADC cost share.

The motion was unanimously approved. (Copies of Resolution FY2014R12(2) through Resolution FY2014R12(4) are attached to and are a part of these minutes.)

**D. Resolution of Final Approval: Municipal Planning Incentive Grant Program**

1. Kappus Farm (Lot 47), Alexandria Township, Hunterdon County

Ms. Miller stated there was one request for final approval under the Municipal Planning Incentive Grant program. She reviewed the specifics of the request with the Committee and stated staff recommendation is to grant final approval.

It was moved by Mr. Siegel and seconded by Ms. Brodhecker to grant final approval to the following application under the Municipal Planning Incentive Grant Program, as presented and discussed, subject to any conditions of said Resolution:

1. William and Diane Kappus, SADC # 10-0332-PG (Resolution FY2014R12(5))  
Block 18, Lot 47, Alexandria Township, Hunterdon County, 16 Easement Acres  
State cost share of \$4,725 per acre, for an estimated total grant need of \$75,600 pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in Schedule "C." An access easement, approved by SADC Counsel, will be secured prior to closing on the adjacent Kappus farm, Block 18, Lot 9.01, in order to provide alternate access

from Kappus Road for agricultural use.

Discussion: The Hunterdon CADB conditioned its approval on the farm being preserved without any residential opportunities. The SADC certified a development easement value based on January 1, 2004 zoning and environmental regulations, and on current zoning and environmental regulations in place as of March 2013. A condition of certification was securing an agricultural access easement on the adjacent Kappus farm, Block 18, Lot 9.01, in order to provide alternate access from Kappus Road for agricultural use. The Kappus family in ownership of Lot 9.01 is agreeable to the access easement and SADC Counsel is working with municipal partners on a draft easement.

The motion was unanimously approved. (A copy of Resolution FY2014R12(5) is attached to and is a part of these minutes.)

**E. Review of a Non-Agricultural Development Project in an Agricultural Development Area**

1. PSE&G Susquehanna-Roseland Electric Transmission Project – Warren, Sussex, Morris and Essex Counties

**Note: Mr. Waltman recused himself from any discussion/action pertaining to this agenda item to avoid the appearance of a conflict of interest. He recused himself because PSE&G is a contributor to his organization and has an official from PSE&G on the organization's Board of Trustees.**

**Ms. Brodhecker recused herself from any discussion/action pertaining to this agenda item to avoid the appearance of a conflict of interest. Ms. Brodhecker is the Chair of the Sussex County Agriculture Development Board.**

Mr. Brill referred the Committee to Resolution FY2014R12(6) regarding a review of a nonagricultural development project in an agricultural development area involving the Susquehanna-Roseland electrical transmission project in Warren, Sussex, Morris and Essex counties. Public Service Electric and Gas Company (PSE&G) contacted the Sussex CADB and the SADC to present for review a 145-mile electrical transmission upgrade project proposal from PPL Electric Companies' Susquehanna Switching Station in Susquehanna, Pennsylvania to PSE&G's substation in Roseland Borough, New Jersey. The 45-mile New Jersey portion of the proposed new transmission lines will cross the Delaware River in the vicinity of the Delaware Water Gap National Recreation Area and almost exclusively follow an existing 150 foot wide right-of-way (ROW) through 16

municipalities in Warren, Sussex, Morris and Essex counties, including agricultural development areas (ADAs) and preserved farmland in Sussex and Morris counties. This project was identified as needed to maintain the reliability of the electric grid in northern New Jersey, and the New Jersey Board of Public Utilities approved the project as “reasonably necessary for the service, convenience or welfare of the public.”

Mr. Brill reviewed the specifics of the project with the Committee. He stated that this particular project is not subject to federal guidelines and statutes that allow other types of interstate utility providers and transmission agencies to have superseding federal authority. He stated that staff worked very hard with its legal staff to identify that PSE&G does not have the legal authority to condemn properties in which the State has an interest or ownership.

The Berger Group, an environmental consultant for this project, evaluated three alternative power line routes. In an effort to minimize impacts to the natural and human environment and take advantage of existing utility rights-of-way where possible, many factors were considered, including the linear feet of agricultural land crossed and additional acreage of forest land cleared. Alternative Route “B” was selected as the preferred route from an economic, environmental, land use and public perspective, primarily because the project could be constructed almost entirely within an existing transmission line in New Jersey, with significantly fewer feet of agricultural land crossed. The preferred route impacted the Highlands area extensively. In June 2009, PSE&G received a favorable determination from the New Jersey Highlands Council for the portion of the project that crosses the Highlands region, and in January 2010, the New Jersey Department of Environmental Protection approved this determination. The National Park Service released a final Environmental Impact Statement in August 2012 and a Record of Decision in October 2012 supporting the preferred route.

Mr. Brill stated that in July 2013, staff received a comprehensive Notice of Intent (NOI) documenting significant impacts to 54 parcels in the agricultural development area, representing about 118 acres, almost exclusively in Sussex County; one preserved farm was in Morris County. Most of the impacts are concentrated within the pre-existing right-of-way. It is important to note that when the SADC preserved farms with pre-existing easements for power lines, the lands under those easement areas are also preserved but they are still subject to the pre-existing easement. It is important to recognize that we are still concerned with the project impacts within those corridors. However, the SADC does acknowledge the right of PSE&G to enjoy the conditions of its pre-existing easements.

PSE&G has represented that project construction will have minimal impact to existing

farmland and that it will seek to mitigate or lessen project impacts with each specific property owner based on language in a sample Temporary Access Road Agreement for Power Line Construction submitted with the NOI. PSE&G has attempted to work with landowners to address parcel-specific impacts to agricultural operations during construction, which will continue periodically until project completion in 2015 with the understanding that temporary access roads will be removed and rights-of-way restored to a condition similar to or better than prior to construction.

Mr. Brill stated that the project does impact five preserved farms, including one farm permanently preserved by Sussex County independent of the SADC program. The County holds the easement on that property and the SADC did not cost share on it. In October 2013 in response to a PSE&G complaint based on a September 2009 Settlement Agreement between PSE&G, the Fredon Board of Education and the Fredon Parents Against the Lines, Superior Court Judge Hansbury ordered that the existing PSE&G right-of-way on the preserved Southway Farms be relocated farther from the school and that the existing right-of-way be extinguished. At the request of SADC staff, PSE&G was able to avoid the need for new or enhanced access roads on the permanently preserved Nature Conservancy/PMI farm in Fredon Township but not entirely on the preserved Pattison Farm in Andover Township. Project impacts to the Oaks Farm in Morris County will be confined to the existing PSE&G right-of-way. Project impacts to the Sella Farm in Fredon Township, Sussex County, are also confined to the existing PSE&G right-of-way.

Mr. Brill stated that it is anticipated that the Sussex and Morris CADBs will also review the project at their public meetings to determine if the proposed action would cause unreasonably adverse effects on preserved farms, the ADAs or State agricultural preservation and development policies.

Mr. Brill stated that staff has been working very hard to try to reach a similar compromise on the Pattison Farm in Andover Township, Sussex County. This is a case where the SADC owns the easement. It is a large farm and the PSE&G easement runs along the southerly boundary of that property. Staff has been working to try to contain those access roads within the existing right-of-way and avoid impacts to other parts of that farm. However, as recently as late yesterday afternoon, staff received information that PSE&G has a possible alternative but they would prefer to use a pre-existing driveway on the premises outside of their right-of-way. The other properties on preserved farms are contained exclusively within the PSE&G right-of-way and seem to adhere to the premise that the company will try to minimize the impacts on those farms. The project involves a series of temporary storage and staging areas in parts of Morris County



that are outside of the ADA. Therefore no condemnation proceedings are associated with this project proposal. Mr. Brill stated that staff recommendation is that the project would not cause unreasonably adverse effects on the preserved farms, the ADA or State agricultural preservation and development policies as outlined in the draft resolution.

Mr. Brill stated that staff last evening added to the draft resolution a “Be It Further Resolved” that will exclude from the staff recommendation at this time the Pattison Farm, Block 130, Lot 1, in Andover Township, Sussex County, in order to allow the SADC to continue to evaluate information received yesterday on the alternative access roads. This would involve that area just outside of the existing right-of-way. Staff’s proposal is to address that by motion today, if at all possible, and then follow that with a resolution at the SADC’s next meeting. He stated that there are representatives from PSE&G present today as well as the administrators from Morris and Sussex counties, should the Committee have any questions.

Ms. Payne stated that the way this is structured is that the draft resolution deals with the entirety of the project except for the Pattison farm. Staff would want to address the Pattison farm now so that the Committee understands what is going on and the Committee can deal with that in terms of making a motion and then we can follow up with the resolution next month. She didn’t want to give the representatives from PSE&G the feeling that we were not dealing with Pattison today; it was just not tied up enough to be included in the resolution.

It was moved by Mr. Danser and seconded by Mr. Germano to approve Resolution FY2014R12(6) finding that the SADC has reviewed the proposed action to determine its effect upon the preservation and enhancement of agriculture in the ADAs, the municipally approved program, and upon overall State agriculture preservation and development policies, and finds that the PSE&G Susquehanna-Roseland Project in Warren, Sussex, Morris and Essex counties would not cause unreasonably adverse effects on preserved farms, the ADAs or State agricultural preservation and development policies, pursuant to N.J.S.A. 4:1C-19, N.J.S.A. 4:1C-25 and N.J.S.A. 40:55D-128 for the reasons listed below:

1. The proposed project is necessary in order to satisfy a need to maintain the reliability of the electric grid in northern New Jersey, pursuant to the N.J. Board of Public Utilities Decision and Order, dated February 11, 2010:
2. The project has been designed to avoid and/or minimize environmental and agricultural impacts to environmental and cultural resources as well as

- the ADAs and preserved farms in this very environmentally sensitive corridor to the greatest extent possible;
3. PSE&G and its consultants have evaluated all options and determined that the proposed route, almost exclusively within existing utility rights-of-way, will have little or no permanent agricultural effects; and

The SADC recommends that PSE&G adhere to soil conservation district requirements and best management practices to prevent soil erosion and sedimentation, protect topsoil, avoid soil compaction, restore soil and replant disturbed areas with an appropriate herbaceous cover crop where appropriate. For all sites in the ADA and especially on preserved farmland, construction activities must be confined to the existing PSE&G right-of-way and approved access roads and work shall be scheduled to allow farmers access to fields in active production during construction and to avoid or minimize impacts to pasture areas, existing buffer areas and surface waters. The SADC finding specifically excludes the Pattison Farm, Block 130, Lot 1, in Andover Township, Sussex County, in order to allow the SADC to thoroughly evaluate information related to alternative access roads within and just outside the existing PSE&G right-of-way as shown in Schedule "I" and in supplemental information received on December 11, 2013. The SADC will work with PSE&G, the Sussex and Morris CADBs and farmers/landowners to resolve site-specific impacts to farms in the ADAs, particularly with respect to soils in agricultural production and surface and subsurface drainage systems, during and after construction.

Mr. Valeri from Wolff Samson addressed the Committee. He stated that he is working with PSE&G and his understanding is that the SADC will be discussing the Pattison farm next and he would like to speak on that issue.

The motion was approved. (Mr. Waltman and Ms. Brodhecker recused themselves from the vote.) (A copy of Resolution FY2014R12(6) is attached to and is a part of these minutes.)

Ms. Payne referred the Committee to Schedule "I" of the draft resolution that was just approved by the Committee regarding the PSE&G project. She stated that staff sought legal advice with all the pipelines and electric lines being upgraded. The question was, what is the legal ability of PSE&G to use preserved farmland that is not located under their existing right-of-way for this project? The answer was, obviously PSE&G has the right to do what they need to do pursuant to the terms of their pre-existing easement within their right-of-way and we would never question that. The question became, did PSE&G have reasonable access to their easement and whether it was absolutely

necessary for PSE&G to cross preserved farmland to get to their right-of-way area. The determination was made that PSE&G, as any easement holder, has the right to enjoy use of its easement. The legal conclusion was that if PSE&G can demonstrate necessity of going across preserved farmland to get to its right-of-way, that was within the SADC's legal authority to permit as long as the access does not unnecessarily increase the burden on the landowner or easement holder and other options are cost-prohibitive or otherwise not feasible. That is the legal premise as we go into considering the Pattison farm.

Schedule "I" is a map showing the existing paved driveway for the Pattison farm. Mr. Brill stated that the Pattison farm runs on both sides of Goodale Road. The topography in this location is such that there are major rock outcrops and gullies in the area. Originally, PSE&G proposed to access one of the towers using a farm lane and a new segment of access roadway through preserved woodlands. PSE&G came up with this alternative and presented it to staff fairly recently in negotiations but it does use a portion of the preserved land outside its right-of-way adjacent to this rock outcrop, which is significant but not enormous. Ms. Payne stated that the area just to the north of PSE&G's right-of-way is an existing paved driveway that provides access from Goodale Road to the adjacent property owner. PSE&G is asking for permission to utilize that existing driveway to avoid having to construct a new driveway through that rock outcrop. PSE&G representatives are here and can answer any questions the Committee may have. She stated that PSE&G has made an estimate of approximately \$100,000 in capital expenses that would be avoided by using this existing driveway. That is the question on the table – is that a sufficient demonstration of necessity of use? She stated that one of the considerations that was important to her is, if they were to construct a new access lane through their right-of-way, that area still is preserved farmland and it is already subject to their easement, so it would result in disturbance of preserved farmland if they stayed within their right-of-way, whereas if they use this existing paved driveway there would not be disturbance.

Mr. Siegel asked who the property owner was on the bottom side of the easement, of the right-of-way. Ms. Payne responded that was the Rich property, which is adjacent to the Pattison farm. It is not in the ADA and it is not a preserved farm. Mr. Siegel asked if they have agreed to allow access. Ms. Payne responded yes. Her understanding is that the landowner has agreed to that. Mr. Danser asked if the Riches already have an access easement across the preserved farm. Ms. Payne responded that they do. There is an access easement that was recorded back in the 1970s giving Mr. Rich the right of access across a portion of the preserved farmland including the PSE&G right-of-way. It pre-dates the SADC easement. Mr. Rich is required to maintain the driveway but it is on the preserved farm. Mr. Germano stated that is the only land at issue then. Ms. Payne stated

that was correct and Mr. Valeri verified that the area in question ran from Goodale Road to the edge of the right-of-way.

Chairman Fisher asked if something has to be done to that existing paved driveway in order for it to work for the PSE&G project. Mr. Valeri responded no. Chairman Fisher commented that it is something that is already there, already paved and all you want to do is travel over it? Mr. Valeri responded yes. Ms. Payne asked if the Committee had any questions for the representatives. Chairman Fisher asked if it is already there, then why is it an issue? Ms. Payne stated because it is a preserved farm, it is under our deed of easement and utility companies do not have the right to just go across preserved farmland. Only Mr. Rich has the right to go over it but he doesn't have the right to grant it to someone else. Mr. Valeri stated that is the position of the SADC but he disagrees. Ms. Payne stated that the recorded easement giving access to Mr. Rich was specific to him and his heirs and subsequent owners, not to grant additional rights of access to other parties. That is the legal issue and from a precedent standpoint, staff is focused on this because of the precedent for access through preserved farmland statewide. The Committee needs to be careful that we are not perceived as saying you can use preserved farmland when it is the less expensive alternative to access your rights-of-way. Mr. Brill has worked long and hard to really confine this project to their existing rights-of-way whenever possible. Here, because the driveway is immediately adjacent to the right-of-way and it is already paved, and use of it would avoid disturbance of the preserved farm, staff is comfortable that the Committee can find the necessity of doing so, because the alternative actually creates a bigger impact than what they are asking.

It was moved by Mr. Danser that after careful consideration the Committee determined that utilizing this existing paved driveway that is immediately adjacent to the existing PSE&G easement gives the least impact on the preserved farm in question and so the SADC approves that use and directs staff to draft a resolution memorializing this for its January 23<sup>rd</sup> SADC meeting. It was seconded by Mr. Germano. The motion was approved. (Ms. Brodhecker and Mr. Waltman recused themselves from the vote.)

Mr. Valeri asked for clarification purposes, because the outage of the transmission line begins on January 1, 2014, which is when they would begin work, and that is before the Committee's next meeting, his understanding is, given the approval by the Committee today, they could begin using that for access purposes. Ms. Payne responded she believed so. Deputy Attorney General Stypinski stated that the Governor's approval period has to expire before it could be used.

## **Personnel**

Ms. Payne stated that before we take public comment and go into closed session, she wanted to return to her Executive Director's report. She reported, with much sadness, that Mr. Lofberg, who is the SADC's Chief Fiscal Officer, will be retiring at the end of the month. Staff wanted to mark the event and publicly thank him for all his service with the SADC. Mr. Lofberg has been with the SADC since 1995 and with the Department a couple of years prior to that. She stated this is his second career, after having served in the U.S. Air Force. He has decided to spend more time at home and coach lots of soccer games for his grandchildren. She stated that Mr. Lofberg will be missed very much. She stated that he works enormous hours and noted that the State has a 35-hour work week, so in 2 weeks that's 70 hours total. His last timesheet was 93 hours and that only counts for time in the office. He works countless weekend hours. She presented a Resolution of Appreciation to Mr. Lofberg for all his service to the SADC. She stated that during his tenure more than 180,000 acres were preserved under the Farmland Preservation Program.

Mr. Lofberg stated that, as Ms. Payne related, he has been with the SADC for 18 years. He grew up in Minnesota in an area that was all farmland, went to school there, went to college and spent many summers working on farms. He then joined the U.S. Air Force, traveling to Omaha, Nebraska, California, San Antonio, Texas, Panama, Las Vegas and New Jersey, where he has lived for the past 22 years. Twenty of those years were spent working for the State of New Jersey. It has been an honor and a pleasure serving the SADC. He appreciates all the support and help, not only from the SADC staff but also from the counties, and will miss everyone. Ms. Payne also introduced Jill Gorman to the Committee. She will be taking Mr. Lofberg's place. She previously worked for the Department of Treasury and has a great knowledge of the fiscal system already. She welcomed Ms. Gorman to the SADC.

## **PUBLIC COMMENT**

Mr. Schilling stated that in 2007 the American Farmland Trust had a national Farmland Preservation Conference. There has been some interest in having another one. Rutgers Cooperative Extension has a grant from the USDA. Deliverables include having a workshop and they have extended that into what will be a national conference on farmland preservation from May 12<sup>th</sup> through May 13<sup>th</sup> in Hershey, Pa. He provided fliers for anyone interested. The theme basically is the first farm was preserved roughly 40 years ago and now we have 20+ state programs and many nonprofit programs. A lot of

people are looking toward the East Coast for guidance. The conference will look back at what the accomplishments have been and at some of the challenges we face now and in the future -- things like stewardship, permitted uses, transition of the land, financing, etc. He and Deborah Bowers, who publishes a national farmland preservation report, are co-chairs of the steering committee. Ms. Payne, Mr. Everett, and Brian Wilson are part of this steering committee. He encourages everyone to attend the event. Right now they have assurance that USDA Deputy Secretary Mike Skewes is going to be a speaker. Senator Casey from Pennsylvania was invited. Anyone who is interested can get a flier. He also hoped that staff could send out information electronically. Ms. Payne responded yes.

Ms. Payne wished everyone a warm holiday season and a happy new year.

#### **TIME AND PLACE OF NEXT MEETING**

SADC Regular Meeting: Thursday, January 23, 2014, beginning at 9 a.m. Location: Health/Agriculture Building, First Floor Auditorium.

#### **CLOSED SESSION**

At 11:20 a.m., Mr. Danser moved the following resolution to go into Closed Session. The motion was seconded by Mr. Germano and unanimously approved.

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

#### **ACTION AS A RESULT OF CLOSED SESSION**

##### **A. Real Estate Matters - Certification of Values**

It was moved by Mr. Siegel and seconded by Mr. Waltman to certify the following development easement values as presented and discussed in closed session:

**County Planning Incentive Grant Program**

1. Alwyn and Joan Liepe, SADC # 01-0005-PG  
Block 1141, Lot 6, Hamilton Township, Atlantic County, 36 Acres
2. Bruce Porter (Breezy Acres Farm, LLC), SADC # 06-0135-PG  
Block 25, Lot 4, Stow Creek Township, Cumberland County, 43 Acres based on SADC's application and GIS.
3. Gilson Farm, SADC # 06-0136-PG  
Block 188, Lots 4, 12, 13, Lawrence Township, Cumberland County, 103 Acres
4. The Harlan Corporation (Harlan Farm), SADC # 08-0161-PG  
Block 14, Lots 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11, 7.12, 7.13, 7.14; Block 14.01, Lot 2
5. Estate of Hazelton/Charles R. Erhardt, Jr. (Hazelton Estate), SADC #08-0167-PG  
Block 33.01, Lot 3, Harrison Township, Gloucester County, 43 Acres
6. Prestige World Wide Investment, LLC, SADC #17-0121-PG  
Block 44, Lot 9, Alloway Township, Salem County, 53 Acres
7. Dante Greco, SADC # 17-0123-PG  
Block 31, Lot 2, Elmer Boro  
Block 82, Lot 7, Upper Pittsgrove Township  
Block 83, Lots 1, 8, 9, Pittsgrove Township  
Block 1201, Lot 3, Pittsgrove Township  
Block 1202, Lots 1, 3, 9, 11, 13, 14  
Block 1203, Lots 3, 10, Pittsgrove Township  
Salem County, 316 Total Acres
8. Kenneth Dunham, Sr., SADC # 17-0122-PG  
Block 20, Lot 21.01, Mannington Township, Salem County, 37 Acres
9. Charles and Jeanne Mahoney, SADC # 17-0125-PG  
Block 40, Lot 6.02, Mannington Township, Salem County, 28 Acres

**Direct Easement Purchase Program**

**Mr. Johnson recused himself from any discussion/action pertaining to the Mill Creek, Muckenfuss, L&S farm to avoid the appearance of a conflict of interest. Mr. Johnson is a member of the Burlington County Agriculture Development Board.**

1. Mill Creek Farm/Muckenfuss, L&S, SADC # 03-0027-DE  
Block 304.01, Lot 99, Medford Township  
Block 46, Lot 13, Lumberton Township  
Burlington County, 99 Total Acres
2. Mary Beth Hamorski and Jeffrey Salatiello, SADC #10-0215-DE  
Block 18, Lot 28, Lebanon Township, Hunterdon County, 65 Acres

Ms. Payne noted on the Harlan Farm Certification of Value that staff will request and suggest to the property owners that the lots be consolidated prior to closing so as to not create an unnecessary incentive for subdivision down the road.

The motion was approved. (Mr. Johnson recused himself from the vote.) (Copies of the Certification of Value Reports are attached to and are a part of the Closed Session minutes.)

**B. Renewable Energy Generation on Preserved Farm**

**1. Harmony Greenhouses, Harmony Township, Warren County**

Ms. Payne stated that regarding the Harmony Greenhouses resolution, the Committee had the opportunity to discuss the matter with the Attorney General's office representative and based on that discussion, there is a minor editorial change proposed to the resolution. On Page 6 in the first "Be It Further Resolved," the fifth line down will read "which results in any degree of site restoration or **modification to the building**," and the rest of the text remains as drafted.

It was moved by Mr. Germano and seconded by Mr. Danser to approve Resolution FY2014R12(1) finding that the owners have complied with all of the provisions of N.J.S.A. 4:1C-32.4 and N.J.A.C. 2:76-24 concerning the installation of a photovoltaic solar energy generation facility. structures and equipment on the Premises. The SADC approves the construction, installation, operation and maintenance of the photovoltaic energy generation facilities, structures and equipment consisting of approximately 0.99 acres of space located along the edge of the field adjacent to an existing farm lane having



# Administrative Review of Solar Projects

\*\*Pursuant to N.J.A.C. 2:76-24.9(b) the Committee may delegate review and approval authority to the Executive Director for applications for solar energy facilities where no negative comments related to impacts of the facility are received, where no new impervious cover is generated and where the application is otherwise in conformance with the renewable energy generation statute and regulations. SADC resolution #FY2014R9(5) gave such authority to the Executive Director with a requirement that notification of all such approval be provided to the Committee at its monthly meetings.

Administrative Approval(s) - December 2013																
Landowner Name	County	Township	Block	Lot	Acres	Ag Operation	System Type	System Installer	Mounting Type	Use of Existing Structure	Size	Production - % of Prior Years Demand	Land Area - % of Total Property	Demand Use	Located within Exception	FRPP Funded
Atkinson	Burlington	Chesterfield	700, 701	20, 4	168	Grain	Solar	Cape-Atlan	Roofmount	Existing Garage	3900 kWh	106%	N/A	Garage/Apartment	No	Yes

a rated capacity of 291,044 KWh's of energy as identified in Schedule "A." and as described further herein. The total electrical energy demand of the farm as currently operated, including the greenhouse area subject to disturbance, is 401,440 kWh's annually. This approval for the construction of solar facilities on the farm cannot and shall not be construed in any manner whatsoever as a determination by the Committee that the soil disturbance that occurred on the Premises is in compliance with the FPP Deed of Easement. This approval is conditioned upon all of the farm activities on the Premises being in compliance with the Deed of Easement and, should it be determined that the soil disturbance that has occurred on the Premises constitutes a violation of the Deed of Easement which results in any degree of site restoration or modification to the building affecting the electrical demand of the Premises, this approval and the scope of the approved solar facilities shall be subsequently modified to reflect and be consistent with the energy demands resulting from such site restoration and/or modification to the building in accordance with N.J.A.C. 2:76-24. This approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey. The motion was unanimously approved. (A copy of Resolution FY2014R12(1) is attached to and is a part of these minutes.)

#### **PUBLIC COMMENT**

None

#### **ADJOURNMENT**

There being no further business, it was moved by Mr. Danser and seconded by Mr. Germano and unanimously approved to adjourn the meeting at 12:05 p.m.

Respectfully Submitted,



Susan E. Payne, Executive Director  
State Agriculture Development Committee

#### **Attachments**

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**STATE AGRICULTURE DEVELOPMENT COMMITTEE**

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

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

**Adopted 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**

Proposed: June 17, 2013 at **45 N.J.R. 1449**

Adopted: \_\_\_\_\_

Filed: \_\_\_\_\_, 2013, as R.2013 , d.\_\_\_\_, **with substantial and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective date: \_\_\_\_\_

Expiration date: \_\_\_\_\_

**Summary of Public Comments and Agency Responses:**

The State Agriculture Development Committee (SADC) received comments from the following organizations and individuals during the public comment period, which took place June 17 to August 16, 2013:

1. New Jersey Farm Bureau (NJFB)
2. Warren County Agriculture Development Board
3. Deborah A. Post
4. Township of Hampton
5. Cape May County Board of Chosen Freeholders
6. Middle Township
7. Borough of West Cape May
8. Robert L. Myers
9. Curtis Bashaw

**N.J.A.C. 2:76-2A.13**

Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities, and Events

**N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.8, 2.9 and 2.10**

Right to Farm Management Practices and Procedures

**General comments**

**COMMENT:** NJFB commented that it appreciates the effort the SADC has put into developing the AMP, including involving the agricultural community during the process and maintaining the integrity of the Right to Farm Act (RTFA), and feels the rules will have a positive impact on the agriculture industry in New Jersey.

**RESPONSE:** The SADC agrees that the rules will have a positive impact and that it is important to maintain the integrity of the RTFA.

**COMMENT:** The Cape May County Freeholders praised the SADC's goal of protecting farmers, recognizing the daunting task of finding the best words and formulae to accomplish that end. The Freeholders were appreciative of the efforts made by SADC staff to help residents of Cape May County understand the AMP.

**RESPONSE:** The SADC appreciates the comment.

**COMMENT:** Deborah Post commented that the rules limit farmers' use of their land, which is private property. She also commented that the RTFA and the powers given to the SADC were not meant to be an invitation for a confiscation of private property rights. Ms. Post said that unless farmland is deed restricted, the SADC does not have authority to establish standards and limits on private property.

**RESPONSE:** The SADC disagrees with the comments, as the SADC does have the authority pursuant to the RTFA to set forth accepted agricultural management practices for RTFA protection purposes. The RTFA confers the extra benefit of certain protections to commercial farms, provided they meet the Act's eligibility requirements and AMP standards. AMP standards are not restrictions but rather standards with which commercial farm owners or operators may choose to comply if they wish to be eligible for RTFA protection.

**COMMENT:** The Borough of West Cape May commented that the AMP contains no enforcement provisions.

**RESPONSE:** The RTFA confers the extra benefit of certain protections to commercial farms, provided they meet the Act's eligibility requirements and AMP standards. AMP standards are not something that a County Agriculture Development Board (CADB) or

the SADC enforces. Rather, the consequence of not complying is ineligibility for RTFA protection.

**COMMENT:** The Cape May County Freeholders commented that the AMP should expressly clarify that its protections apply equally to all commercial farms, whether or not they have been preserved via municipal, county and/or State preservation programs, as this would add integrity and important functionality to the AMP and RTF as guiding documents.

**RESPONSE:** The SADC seeks to align RTFA protection with agricultural activities permitted on preserved farms. However, given the important statutory and regulatory restrictions associated with the deeds of easement on preserved farmland, complete alignment between the RTFA and farmland preservation programs is not always possible or advisable. Therefore, preserved farms may be subject to additional requirements associated with conformance with the deed of easement.

**COMMENT:** Robert L. Myers commented that, as a neighbor of a commercial farm, he believes that the proposed AMP is too lenient and inadequately considers other municipal, county and State land use planning objectives. Mr. Myers was particularly concerned about traffic, signage and noise, and he stated that there was no recognition in the proposed rule of proportionality between a farm and its neighbors.

**RESPONSE:** The SADC developed the AMP over several years based on outreach with and input from the agricultural community and public. The AMP strives, based on guidance from the RTFA, to provide a proper balance among the varied and sometimes conflicting interests of agricultural and other uses. The CADBs are required to balance those interests as well in their decision-making, and their decisions are appealable to the SADC. The SADC further notes that to be eligible for RTFA protection, a farm's activities cannot pose a direct threat to public health and safety.

### **General comments about the amount of detail in the AMP and flexibility of AMP standards**

**COMMENT:** There were a number of general comments about the format and scope of the AMP, including comments about the AMP's performance-based standards. NJFB expressed its support of the AMP's performance-based standards, stating that the standards are not overly prescriptive and allow for flexibility, keys for maintaining a viable agricultural industry in New Jersey. Deborah Post felt that the rules were not flexible enough and were too restrictive. Hampton Township felt the rules were too broad and should have more mandatory requirements. Middle Township felt the AMP should encourage RTFA protection of various activities at wineries.

**RESPONSE:** The SADC developed the AMP over several years based on outreach with and input from the agricultural community and public. The agricultural industry is always evolving, and the intent of the rules is to establish standards on which farmers, the public,

municipalities, and CADBs can rely and that are performance-based rather than prescriptive. The AMP provides reliable, statewide guidance to farmers, municipalities, and others while providing flexibility to commercial farms complying with the AMP.

Regarding language use, the modifiers “may” and “shall” are used appropriately and judiciously throughout the rules. The rules also provide for flexibility using a performance-based approach, and the rules are business-friendly by setting forth reliable, flexible standards. Previously, farmers may have been treated differently by different municipalities around the state, creating uncertainty in the agricultural community. Whether specific events fall within the scope of the RTFA and AMP is discussed below under the topic section about specific activities and events.

### **Comments regarding standards related to noise**

**COMMENT:** West Cape May, Robert L. Myers, and Curtis Bashaw stated that noise from on-farm direct marketing facilities, activities, and events should be addressed in more detail in the AMP and that greater municipal regulation of noise was needed. Robert Myers said the AMP’s buffer standards do not adequately address noise from on-farm direct marketing facilities, activities, and events, and that the AMP should differentiate between amplified and non-amplified music, and that music volume, specifically at events, should be enforced and regulated by the local police department. West Cape May commented that except in connection with an event management plan, the AMP makes no reference to noise or traffic regulation, adding that commercial farms should be subject to municipal noise regulations. West Cape May also commented that the definition of “ancillary entertainment-based activity” should be refined to clearly define acceptable background/incidental music, including allowable sound or decibel levels. Curtis Bashaw commented that the AMP’s reference to music in the definition of “ancillary entertainment-based activities” was vague and that it was insufficient to protect neighbors from excessive noise. Mr. Bashaw said that the AMP should clarify what makes music “background” and what constitutes acceptable background music (e.g., whether or to what degree it includes live or amplified music). He also suggested music be limited to occurring inside an on-farm direct marketing facility, that it should be called “incidental music that may accompany marketing activities,” and that background music should be subject to ordinances and not be protected in the same way as noise that is generated from direct farm production activities (e.g., tractors and animals).

**RESPONSE:** The SADC recognizes the commenters’ concerns regarding noise but declines to make the suggested changes. Rather than adding a broad new limit on noise that may have unintended consequences, the SADC believes that the issue of noise is best dealt with by the CADBs in the context of each individual RTFA case, given the case’s land use context and surroundings. The SADC also notes that because agricultural activities are exempt from the state Noise Control regulations, N.J.A.C. 7:29-1.1 et seq., municipalities do not have unfettered authority to regulate noise associated with agricultural activities and events such as those occurring with on-farm direct marketing operations.

The SADC also notes consideration of noise in the AMP's provisions for buffers. The introduction to the section notes that buffers may be utilized as an effective tool to mitigate impacts such as noise, dust, and light spillage. The rest of the section then discusses setbacks and screening in a performance-based manner, and those types of impacts are addressed implicitly.

**Comments regarding whether and how specific activities and events are eligible for RTFA protection**

**COMMENT:** One question raised by several commenters was whether certain activities and events, often in the context of wineries, were eligible for RTFA protection and whether they should be included in the AMP. Some commenters expressed support for the protection of specific activities and events (Middle Township, Cape May Board of Chosen Freeholders), while other commenters felt that certain activities should not be protected (Hampton Township, Borough of West Cape May, Curtis Bashaw). In general, commenters felt that the activities, and whether they were protected or not, should be clearly noted in the AMP. Some commenters said that the rules, as written, were not clear regarding what was protected.

The Cape May Board of Chosen Freeholders supported the idea of developing a performance-based approach with broader general marketing criteria that CADBs could balance in determining whether certain activities were eligible for RTFA protection. The freeholders also commented that, except for farm markets, the AMP lacks comprehensive criteria that CADBs and others can use to determine which marketing efforts are included and which are excluded, adding that this can lead to excessive or arbitrary regulation and interpretation, unfairly constraining farmers.

Commenters expressed support for and against the following specific activities and events: life-celebratory events – e.g., weddings, birthdays, graduations, and anniversaries, primarily at wineries (Middle, Cape May Board of Chosen Freeholders, West Cape May, Curtis Bashaw); restaurants (Hampton, West Cape May, Curtis Bashaw); catering facilities (Hampton, West Cape May); and other marketing activities and events at wineries. The Cape May County Board of Chosen Freeholders, after noting that the AMP protected wine tastings and wine festivals, said it didn't see a distinction between those activities, and, for example, golden wedding anniversaries or civic association award meetings “at which tastings, display, and sales of a winery's products are a prime part of the event.”

Curtis Bashaw added that the AMP does not specifically mention food sales and celebratory life events in the AMP's sections for hours, lighting and sanitary facilities. West Cape May said the AMP's definitions of “on-farm direct marketing activities” and “on-farm direct marketing events” should be more clearly defined to address specific activities and distinguish between agricultural and other commercial activities.

**COMMENT:** The Cape May County Freeholders commented that they would be more comfortable with language in the AMP that employed an approach determining whether a

farm's marketing effort should receive RTF protection by looking not to the gross income of a specific effort or the name by which an event or activity is classified, but rather through inquiries about whether the marketing efforts promote the sale of a farm's agricultural products, helping the farm survive, or whether the marketing efforts honor the true measures of the farm's essential agricultural nature. The Freeholders expected that the AMP would not discourage activities that may help farms remain economically self-sufficient and viable, without harm to their essential agricultural nature. Overall, the Freeholders were concerned about providing CADBs with more comprehensible rationales to apply in evaluating specific challenged events at specific sites.

**COMMENT:** Middle Township commented that many other states more liberally permit agritourism events and that the AMP should be revamped to explicitly protect celebratory events, festivals, and other events, provided they comply with public safety concerns such as traffic, noise, and congestion. West Cape May commented that restaurants, catering facilities, life-event facilities, and recreational facilities should be explicitly excluded, saying that including them would inappropriately expand the notion of agriculture into the conventionally commercial realm.

**RESPONSE TO THE ABOVE THREE COMMENTS:** Most "celebratory" events would not meet the definition of on-farm direct marketing events at N.J.A.C. 2:76-2A.13(b) in the AMP, and the SADC previously ruled that not every marketing tool employed to attract customers to a winery, including a "celebratory" event, is protected by the RTFA. [In the Matter of Hopewell Valley Vineyards, Hopewell Township, Mercer County, SADC ID #786 (Hearing Officer's Findings and Recommendations of the State Agriculture Development Committee, March 24, 2011, pages 21-23)]. While it is conceivable that an event such as a wedding could be protected as a type of retail marketing provided that an overwhelming majority of the food and beverages served were produced from the output of the farm, the SADC believes that protecting such uses would require promulgation of a separate AMP to address the conditions under which RTF protection could be available.

The SADC recognizes the evolving nature of the agricultural industry, including the wine industry and winery operations, and will look at these activities more closely in the future. N.J.S.A. 4:1C-9(j) gives the SADC the ability to add additional agricultural activities to the list of activities eligible for RTFA protection, and the SADC has the ability to develop additional AMPs for other activities. If an activity or event does not fit within the authority granted the SADC in N.J.S.A. 4:1C-9(j), a legislative change would be required to include the activity or event within the scope of the RTFA.



**Comments related to CADB vs. municipal jurisdiction and roles, and municipal consideration**

- **CADB vs. municipal jurisdiction and roles regarding the “farm market” language in the RTFA**
- **Jurisdiction related to other aspects of on-farm direct marketing operations**
- **Municipal consideration and notification**

**General – Municipal consideration-related comments**

**COMMENT:** The Township of Hampton commented that the rule proposal summary, but not the rule itself, stated that CADBs must give appropriate consideration to local regulations and balance the public interest expressed in those local laws with the farmer’s interest in conducting legitimate agricultural operations. Hampton noted that the rule summary cited Township of Franklin v. den Hollander, 172 N.J. 147 (2002) in support of this idea and commented that the concept should be set forth in the final rule as being applicable to all SSAMP matters considered by the CADB or SADC.

**RESPONSE:** The SADC agrees that CADBs must give appropriate consideration to municipal input and local ordinances when considering a commercial farm’s request for an SSAMP determination. RTFA case law such as the den Hollander decision should not be copied or paraphrased in other RTFA rules, however, as the most appropriate legal approach is to leave such case law, without paraphrasing, in its original format. Greater awareness about RTFA case law and interpretations is important, and the SADC can include these topics in future educational materials it may develop.

**General – Jurisdiction-related comments**

**COMMENT:** Several commenters (Hampton Township, Borough of West Cape May, Curtis Bashaw, and Robert L. Myers) said that municipalities should have more control of and/or a greater role in regulating specific aspects of on-farm direct marketing operations, such as hours, lighting, signs, parking, buffers/setbacks, and events.

Robert L Myers commented that the proposed rules are too lenient and vague, to the exclusion of other public and private goals and objectives, and that a more reasonable and balanced system is needed that would provide for a greater municipal role.

The Borough of West Cape May stated that it is very concerned about agriculture-related activities conforming to the RTFA’s original intent, and that municipalities should retain an appropriate degree of control over on-farm direct marketing activities and events. West Cape May’s commented that hours of operation, lighting, signs, parking, buffers and setbacks are issues that are best handled by municipalities, and that the AMP should be amended to state that those issues are subject to individualized municipal regulation. West Cape May also commented that specific aspects of on-farm direct marketing events should be left to individual municipalities to regulate.

**RESPONSE:** The SADC recognizes the commenters' concerns while noting that regarding RTFA matters, CADBs and the SADC have primary jurisdiction over agricultural management practices involving commercial farms. The AMP sets forth the generally accepted agricultural management practices for on-farm direct marketing operations, including standards for the issues mentioned in the comments above. It is possible for municipalities to adopt local regulations on the same topics, however such local regulations could be preempted by the RTFA if a qualified commercial farm was complying with the AMP's standards. The adoption of stricter municipal standards is not recommended for this reason.

## **RTF procedural rules**

### **2:76-2.3(b) – SSAMP Notification-related comments**

**COMMENT:** With regard to the notification provision for requests for SSAMP determinations, N.J.A.C. 2:76-2.3(b), the Township of Hampton commented that CADBs or the applicant should be required to serve a full copy of the farm's application and accompanying documents on the affected municipality(s).

**RESPONSE:** N.J.A.C. 2:76-2.3(b) states that a CADB shall advise the SADC and the municipality(s) in writing of the nature of the application with 10 days of the request. The SADC notes that some SSAMP applications implicate municipal ordinances while others do not. With this in mind, a CADB may determine whether or not to include a full copy of the farm application in its N.J.A.C. 2:76-2.3(b) notification. In a given case, if a full copy is not provided initially but the municipality would like a copy, the CADB can provide a copy at the municipality's request.

### **2:76-2.3(h)3 – Jurisdiction, roles, and consideration-related comments**

**COMMENT:** NJFB supports the ability of CADBs to waive, reduce, and/or determine the non-applicability of SSAMP checklist items in its review of an SSAMP application filed by a commercial farm, saying this allows for consideration of site-specific elements.

**RESPONSE:** The SADC agrees that CADBs, when reviewing SSAMP applications, have the discretion to determine what a commercial farm needs to submit based on the nature of the application and relevant site-specific elements.

**COMMENT:** The Township of Hampton commented that the discretion to allow waivers should be vested in the CADB only, not the board staff. Hampton added that waiver decisions should be discussed during a public hearing, where the public can have input and where discussions are on the record. Hampton said this will usually require routine, mundane, and quick discussions but will eliminate concerns or suspicions that an applicant is being given special treatment by CADB staff outside of the public hearing process.

**RESPONSE:** The SADC disagrees that a public hearing should be required regarding this initial, preparatory application stage of determining what a commercial farm should submit using the CADB's review checklist. While a board may delegate initial checklist review and waiver decisions to board staff, the SADC agrees it is the board that ultimately makes final determinations regarding waivers and what should be submitted using the board's checklist. This is contained in N.J.A.C. 2:76-2.3(i), which states that it is the board that determines whether a farm's application and checklist items are complete. To clarify this point, the SADC amends N.J.A.C. 2:76-2.3(h)3 as follows: "...The board may delegate this function to board staff, with final review and decision making authority vested in the board. In making such decisions, the board and/or board staff shall consider relevant site-specific elements such as, but not limited to, the following..."

#### **2:76-2.3(h)4 – Jurisdiction-related comments**

**COMMENT:** NJFB supports the provision at N.J.A.C. 2:76-2.3(h)4 that states that, subject to N.J.A.C. 2:76-2.3(k), CADBs may retain jurisdiction over any or all municipal ordinances and/or county resolutions related to a commercial farm's application for an SSAMP determination.

**RESPONSE:** The SADC agrees with the comment and notes that in the case of farm markets and on-farm direct marketing facilities, that CADBs may retain primary jurisdiction and that the construction of building and parking areas must be in conformance with municipal standards except as otherwise provided for in N.J.A.C. 2:76-2A.13(r)2.

**COMMENT:** The Township of Hampton commented that the first sentence of N.J.A.C. 2:76-2.3(h)4 should be changed to read, "Subject to the provisions of (k) below and of N.J.S.A. 4:1C-9(c)...", to have it comply with the RTFA language that the construction of buildings and parking areas for farm markets be in conformance with municipal standards. Hampton made this specific comment after observing that "the construction of building and parking areas (be) in conformance with municipal standards" should be included somewhere in the proposed regulation.

**RESPONSE:** The SADC does not make the suggested change, as the RTFA gives CADBs and the SADC primary jurisdiction over compliance with and/or potential preemption of local ordinances as they relate to farm markets and other agricultural practices. This includes primary jurisdiction over whether a commercial farm's construction of building and parking areas for the farm's farm market are in conformance with municipal standards. The SADC also notes that N.J.A.C. 2:76-2A.13(r)2 provides an avenue for relief from these municipal standards should the standards be overly restrictive.

**COMMENT:** The Township of Hampton recommended changing the word "related" to the phrase "as they apply" in the third line of N.J.A.C. 2:76-2.3(h)4, saying that otherwise, CADBs will have the impression they can acquire jurisdiction over the

ordinances themselves, which Hampton said would be usurpation of the municipality's law-making authority.

**RESPONSE:** The SADC makes the suggested change, as it will add clarity that CADBs and the SADC are not taking control of the local ordinances themselves but rather that CADBs and the SADC have primary jurisdiction over whether local ordinances are impacting agricultural practices and may be preempted through the RTFA.

#### **2:76-2.3(k) – Jurisdiction-related comments**

**COMMENT:** NJFB supports the provision within N.J.A.C. 2:76-2.3(k) that states in cases where a municipal ordinance, county resolution, or any portion thereof exceeds state regulatory standards, CADBs shall have the authority to determine whether the ordinance, resolution, or portion thereof that exceeds such state regulatory standards is preempted by the CADB's approval of a commercial farm's SSAMP.

**RESPONSE:** The SADC appreciates the comment and notes that the first part of N.J.A.C. 2:76-2.3(k) reiterates how CADBs cannot preempt state laws and regulations delegated to the municipality or county for administration and enforcement. Only if a local ordinance or resolution exceeds the delegated state standards may a CADB consider whether or not the portion exceeding the state standards should be preempted.

#### **2:76-2.5(c) – Jurisdiction-related comments**

**COMMENT:** The Township of Hampton asked that the following be added at the end of N.J.A.C. 2:76-2.5(c): "If the Board or Committee, as applicable, determines that the municipality or county's standards or requirements for the commercial farm owner or operator's agricultural operations or practices are not unduly restrictive or that the municipality or county is not unreasonably withholding approvals related to the commercial farm owner or operator's agricultural operation or practices, then the commercial farm owner or operator's request shall be denied."

**RESPONSE:** The SADC does not make the suggested change, noting that the general idea suggested by Hampton is already implied by the use of the "if" clause at the beginning of existing N.J.A.C. 2:76-2.5(c). For clarification purposes, the SADC adds the following language to the end of N.J.A.C. 2:76-2.5(c): "The board, or Committee in counties where no board exists, shall review the matter and make a determination regarding whether RTFA protection is warranted."

#### **On-farm direct marketing AMP**

##### **General – Jurisdiction-related comments**

**COMMENT:** The Township of Hampton commented that the AMP does not include standards related to the size of on-farm direct marketing facilities and the height of facilities' structures. Hampton said that size standards are related to neighborhood and

environmental impacts, e.g., drainage and impervious cover, and that the AMP should be revised to specify that size and height standards fall within the municipality's jurisdiction, pursuant to N.J.S.A. 4:1C-9(c). Hampton said the AMP should be revised to require CADB deference to municipal requirements regarding facility construction in this regard.

**RESPONSE:** The SADC recognizes that on-farm direct marketing involves a variety of types and sizes of facilities, activities, and events and that it would be impossible for the AMP to address every detail and situation. If a topic is not addressed in the AMP and a RTFA determination is sought by a commercial farm, the farm may request a site-specific AMP determination from the CADB. In the event of a RTFA complaint, a CADB would similarly review the site-specific nature of the matter. In both instances, the CADB would consider the facts of the individual case and issue a decision. The SADC believes that the municipal standards referred to in N.J.S.A. 4:1C-9(c) do not relate to community design based size and height standards pertaining to on-farm direct marketing facilities. Rather, they relate to physical construction standards for farm market building and parking areas to make sure such areas are safe for the public. Regarding Hampton Township's concerns related to drainage and impervious cover, the SADC notes that the RTFA cannot preempt municipal jurisdiction as it pertains to achieving compliance with State stormwater management rules [subject to the limitations in N.J.A.C. 2:76-2.3(k)].

**N.J.A.C. 2:76-2A.13(c) – Jurisdiction-related comments (Hours)**

**COMMENT:** Curtis Bashaw commented that the 6:00 A.M. to 10:00 P.M. (or 11:00 P.M.) hours of operation for marketing activities are excessive, that they should be limited to 8:00 A.M. to 6:00 P.M., and that extensions should only be allowed by the municipality.

**RESPONSE:** The SADC does not make the suggested change, as it believes the AMP's hours of operation standards provide an appropriate range within which commercial farms may effectively operate.

**N.J.A.C. 2:76-2A.13(d) – Jurisdiction-related comments (Lighting)**

**COMMENT:** The Township of Hampton commented that regarding lighting used to illuminate parking areas, there should be qualifying language similar to what is used in N.J.A.C. 2:76-2A.13(h), "In the absence of municipal standards for lighting as a component of construction of parking areas..." Hampton commented that otherwise, the AMP will deviate from the scope of N.J.S.A. 4:1C-9(c).

**RESPONSE:** The SADC does not make the suggested change, as the SADC does not believe the language in N.J.S.A. 4:1C-9(c) regarding the construction of building and parking areas relates to lighting.

**N.J.A.C. 2:76-2A.13(i) – Jurisdiction-related comments (Buffers)**

**COMMENT:** The Township of Hampton commented that having setback standards for the location of building and parking areas for on-farm direct marketing facilities infringes on the authority reserved for municipalities in N.J.S.A. 4:1C-9(c). Hampton suggested N.J.A.C. 2:76-2A-13(i)2i. be revised with the following introductory sentence: “In the absence of municipal standards for the construction of building and parking areas, the following standards shall apply to the location of building and parking areas for on-farm direct marketing facilities...”

**RESPONSE:** The SADC does not make the suggested change, as the SADC does not believe the language in N.J.S.A. 4:1C-9(c) regarding the construction of building and parking areas relates to setbacks.

**N.J.A.C. 2:76-2A.13(k) – Jurisdiction-related comments (Use of structures or improvements in conjunction with On-Farm Direct Marketing (OFDM) activities and events)**

**COMMENT:** The Township of Hampton suggested that a provision be added at N.J.A.C. 2:76-2A-13(k)3 stating that the construction of structures or improvements for on-farm direct marketing activities and events shall also conform to municipal standards pursuant to N.J.S.A. 4:1C-9(c).

**RESPONSE:** The SADC does not make the suggested change. The section of the RTFA cited by Hampton is associated with farm markets or on-farm direct marketing facilities, and not with on-farm direct marketing activities and events.

**N.J.A.C. 2:76-2A.13(p) – Jurisdiction, roles, and consideration-related comments (Approval of site plan elements for new or expanded on-farm direct marketing facilities)**

**COMMENT:** Regarding approval of site plan elements for new or expanded on-farm direct marketing facilities, NJFB said it strongly supports the option in the AMP that farmers can seek such approval from the CADB by requesting an SSAMP determination. NJFB commented that municipalities are not always educated in common agricultural practices and may not be best suited to make decisions that could impact farm businesses.

**RESPONSE:** N.J.A.C. 2:76-2A.13(p) lays out the basic options commercial farms may pursue, stating that farms seeking to establish a new, or expand an existing, on-farm direct marketing facility may apply to the municipality and/or the CADB for approval of site plan elements. This provision, along with the revised Right to Farm procedure rules regarding SSAMP determinations, N.J.A.C. 2:76-2.3 and 2.4, reflects the realities of OFDM facility review, i.e., the availability of CADB/SADC primary jurisdiction through the Right to Farm Act, the ability of commercial farms to choose how to begin their process of seeking approval, and the relative strengths and abilities of CADBs/SADC and municipalities regarding reviews of site plan elements and agricultural proposals.

The process of seeking approval of site plan elements for an OFDM facility could follow several paths. A commercial farm might apply to the municipality and have all of the elements approved in their entirety, or a commercial farm might apply to the CADB for complete approval. In the alternative, the farm might apply to the municipality, discover conflicts in a few select areas, and then apply to the CADB for an SSAMP determination seeking relief on just those areas. Another option is that a farm might apply to the CADB for an SSAMP determination, receive SSAMP approval for many items, and then be referred by the CADB to the municipality for review of some other items, with the CADB opting to retain jurisdiction over some, all, or none of those other items. On the other hand, the farm may choose to seek approval of site plan elements by talking with or applying to the municipality, and then be directed by the municipality to the CADB for approval of some or all elements. Which of these processes takes place depends on how the commercial farm decides to seek approval at the outset, and how the CADB or municipality subsequently responds when taking on the review and making a determination. Nevertheless, whatever path the commercial farm chooses in seeking approval, the CADB is free to refer any items to the municipality over which the CADB feels it does not have the needed expertise to properly decide.

While the SADC agrees that municipalities may not always be familiar with common agricultural practices, municipalities do have experience reviewing site plans in general. At the same time, while CADBs are very familiar with common agricultural practices, in some cases CADBs may not be as familiar with reviewing site plan elements.

The SADC acknowledges the concern that because municipalities may not be familiar with agriculture, a municipality's site plan element review process for on-farm direct marketing facilities could potentially be onerous or unduly restrictive. With this in mind, and because the Right to Farm Act gives CADBs and the SADC primary jurisdiction over agricultural matters, N.J.A.C. 2:76-2A.13(p) specifies that a commercial farm may also seek approval of site plan elements from the CADB.

**COMMENT:** The Township of Hampton suggested changing "may" to shall" in N.J.A.C. 2:76-2A.13(p)1, commenting that otherwise, there is no requirement for a farm to obtain review of site plan elements from either the municipality or the CADB. Hampton added that it objects to how N.J.A.C. 2:76-2A.13(p) allows commercial farms the option of avoiding municipal site plan review. Hampton stated that this section negates the municipality's role by allowing a commercial farm to circumvent municipal site plan procedures that largely deal with health, safety, building, and parking issues, noting that municipal land use boards regularly review such matters and have the expertise to do so. Hampton commented that as part of the deference accorded to municipalities per den Hollander, supra, and N.J.S.A. 4:1C-9, the AMP should specify the following process: Site plans should be submitted to the municipal land use board, and if the board denies the application, the commercial farm would then have the option to appeal the land use board's decision or to file an SSAMP application with the CADB. Hampton said this process will insure the municipality has a voice and the CADB will have access to the municipality's position and reasoning. Alternatively, if the SADC

disagrees with this suggested process, Hampton suggested that the rule be revised to state that the CADB shall formally request review of and comment on the SSAMP application by the municipal land use board and that the CADB shall consider those comments and applicable municipal standards in making its determination.

**RESPONSE:** Regarding the use of “may” versus “shall” in N.J.A.C. 2:76-2A.13(p)1, the SADC does not make the suggested change, noting that not all municipalities have review requirements for establishing new, or expanding existing, on-farm direct marketing facilities.

Still, the SADC recognizes that the wording of N.J.A.C. 2:76-2A.13(p)1 could be made clearer to explain that a farm is seeking approval of site plan elements to establish or expand a facility. With this in mind, the SADC will amend the wording for clarification: “A commercial farm seeking approval of site plan elements 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 such approval of site plan elements.”

The SADC disagrees with Hampton Township that the municipality’s role and input are negated when a commercial farm is seeking approval of site plan elements for an on-farm direct marketing facility. As noted in the response to the previous comment, a farm’s process of seeking approval could follow many paths and involve the municipality and/or the CADB. Further, although the RTFA gives CADBs and the SADC primary jurisdiction over agricultural matters, CADBs and the SADC must give appropriate consideration to municipal input and local ordinances when considering a commercial farm’s request for an SSAMP determination, as discussed in Township of Franklin v. den Hollander, 172 N.J. 147 (2002). The RTF process rules regarding SSAMP determinations, N.J.A.C. 2:76-2.3(b) and 2.4(b), specify that the municipality shall be notified when a farm requests an SSAMP determination, and the RTF hearing procedures rules, N.J.A.C. 2:76-2.8(c), specify that the municipality shall be given written notice of the SSAMP public hearing to the municipality.

With regard to the comment that municipalities’ input and ordinances be included and considered more formally in the rules, the SADC believes that the procedures outlined in the rules are proper and sufficient. The SADC notes it could also provide additional guidance by revising its policy guidance documents for SSAMP requests and RTF complaints (Policy P-2 and Policy P-3) to highlight municipal notice and consideration requirements. The SADC intends to revise these documents to match the specifics of the new rules. Where appropriate, the documents can also include RTFA case law educational reminders.

#### **N.J.A.C. 2:76-2A.13(r)2 – Jurisdiction-related comments**

**COMMENT:** A few comments were made about N.J.A.C. 2:76-2A.13(r)2, which states that if a commercial farm believes a municipality’s standards for the construction of building and parking areas 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 CADB, or SADC in counties where no CADB exists, make a determination in a matter by requesting an SSAMP determination.

NJFB commented that it strongly supported this provision, while the Township of Hampton opposed it and commented it should be deleted.

Specifically, the Township of Hampton said that N.J.A.C. 2:76-2A.13(r)2 appears to be an attempt to override municipal authority, but that this authority is not preempted by the RTFA. Hampton said farmers can seek recourse through the courts to contest the provisions of an ordinance on these topics. Hampton also said N.J.A.C. 2:76-2A.13(r)2 conflicts with N.J.A.C. 2:76-2.3(k), which states that CADBs shall have no authority to determine a commercial farm's compliance with State laws and regulations delegated to the municipality for enforcement, including stormwater management and construction code requirements.

**RESPONSE:** The RTFA at N.J.S.A. 4:1C-9 lists the following as among the activities eligible for protection: "Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards." The statute does not require municipal approval for parking; rather, the statute requires that the construction of parking conform to municipal standards.

In terms of the RTFA and primary jurisdiction, CADBs may retain primary jurisdiction over compliance with and/or potential preemption of local ordinances as they pertain to farm markets and other agricultural practices, as N.J.A.C. 2:76-2A.13(r)2 and N.J.A.C. 2:76-2.3(h)4 outline and describe. CADBs may retain jurisdiction and determine whether a commercial farm's construction of building and parking areas for its farm market are in conformance with municipal standards.

The SADC disagrees that N.J.A.C. 2:76-2A.13(r)2 conflicts with N.J.A.C. 2:76-2.3(k), as these regulations address distinct circumstances. Section 2.3(k) provides for situations in which local government administers and enforces, by ordinance, a state law delegated to the municipality, but the ordinance contains a provision exceeding a standard set forth by statute. Section 2.3(k) properly recognizes that the municipality's additional standard is not a state law and is to be treated no differently than any other local ordinance in the context of the RTFA.

Section 2A.13(r)2 is not directed at municipal ordinances exceeding standards established in a state law delegation. Instead, that section effectuates the SADC's interpretation that the requirement to conform with municipal standards set forth in N.J.S.A. 4:1C-9 is intended to ensure that public safety is achieved through the use of sound construction techniques and materials for building and parking areas. The SADC does not believe that it provides municipalities carte-blanche ability to enforce excessive, overly restrictive building and parking codes that defeat the ability of a farm to operate a farm market (e.g., requiring the use of Belgium block curbing, bricks or historically accurate lighting fixtures). To allow preemption of such municipal standards, the CADB or the SADC

must not merely balance all competing interests in its review but also must find that the municipal standards are unduly restrictive and that the farmer has demonstrated a legitimate agriculturally-based reason for not complying.

**COMMENT:** The Township of Hampton suggested adding a provision to the AMP to have CADBs, or the SADC where applicable, make periodic (annual) review of farms that had received SSAMP determinations to see whether the farms continue to be eligible for protection. Hampton commented the CADB or SADC should determine each year whether a farm meets the RTFA's definitions of "commercial farm" and "farm market," should require the farm to submit sufficient credible evidence, and should send written notice of each determination to the municipality within 10 days of the determination.

**RESPONSE:** The SADC does not make the suggested change, as CADB and SADC responsibilities do not include annual review of every SSAMP determination a CADB and the SADC has made. A CADB need only review a matter if an issue arises or a new complaint is filed pursuant to the RTFA, or if the CADB had determined as part of an SSAMP resolution that additional monitoring or follow-up was necessary in a particular case.

#### **Comments of a clerical nature**

##### **N.J.A.C. 2:76-2.3(f)**

**COMMENT:** The Township of Hampton commented that N.J.A.C. 2:76-2.3(f)1 seemed to be incorrectly numbered.

**RESPONSE:** The SADC appreciates the comment and notes that N.J.A.C. 2:76-2.3(f)1 is similar in arrangement to N.J.A.C. 2:76-2.7(c)1. N.J.A.C. 2:76-2.3 and N.J.A.C. 2:76-2.7 are structured differently, and the SADC agrees that section 2.3(f)1 may seem repetitive or incorrectly numbered. The SADC will revise section 2.3 by moving paragraph 2.3(f)1 up one level and inserting it between subsection (b) and (c). It will become a new subsection (c), with the current subsection (c) being re-lettered as subsection (d) and the old subsection (d) being deleted as duplicative.

##### **N.J.A.C. 2:76-2.7**

**COMMENT:** The Township of Hampton commented that the references to "(c)" in N.J.A.C. 2:76-2.7(g), (h), (i), and (k) should be changed to "(e)."

**RESPONSE:** The SADC appreciates the comment and does not make the change suggested by Hampton, but rather makes the following, related change: Where "N.J.A.C. 2:76-2.7(c)" is referenced in N.J.A.C. 2:76-2.7(g), (h), (i), and (k), the SADC will change it to "N.J.A.C. 2:76-2.7" for better clarity.

## **RTF procedural rules – Additional comments (section by section)**

### **General comments**

**COMMENT:** The Cape May County Board of Chosen Freeholders was concerned that the proposed changes to the RTF procedures, with an absence of enforcement provisions and impact assessments, coupled with an absence of additional State funding, may not sufficiently equip CADBs to take on their newly proposed responsibilities to conduct site plan reviews, hold hearings on RTF complaints and SSAMP requests, and issue detailed resolutions. The Freeholders expressed concern about the costs and effects of implementing provisions that they said would shift new administrative and jurisdictional powers to the CADBs, without adequate funding. The Freeholders also believed the AMP should fully describe the expected impacts of the newly proposed CADB procedures.

**RESPONSE:** The SADC recognizes the Freeholders' concerns while also noting that the RTFA procedural rules and AMP are not adding new responsibilities to CADBs, but rather are helping to clarify existing RTFA protections and CADB jurisdiction, and helping to clarify generally accepted agricultural management practice standards. While the RTFA gives CADBs primary jurisdiction over agricultural matters – including potentially the review and approval of site plan elements, which may be a more technical process – CADBs may benefit from, for instance, the expertise of their county planning, engineering, and other county staff. In some cases, CADBs have collaborated with municipalities regarding some aspects of review, while still retaining RTFA jurisdiction. Where CADBs lack the required technical resources, they may delegate review of such matters back to the municipalities in order to ensure that the health and welfare of the public is protected.

**COMMENT:** The Cape May County Board of Chosen Freeholders commented that the rules do not account for the lack of enforcement power in local CADBs.

**RESPONSE:** As noted in the comments above, the RTFA confers the extra benefit of certain protections to commercial farms, provided they meet the Act's eligibility requirements and AMP standards, but it does not provide for enforcement. However, a new complaint may be filed against a commercial farm pursuant to the RTFA, which would be reviewed by a CADB or the SADC to determine RTFA protection.

### **N.J.A.C. 2:76-2.3 Determinations of site-specific agricultural management practices where a board exists**

**COMMENT:** The New Jersey Farm Bureau (NJFB) supports the ability of a farmer and CADB staff to hold a pre-application meeting to discuss site-specific agricultural management practice (SSAMP) application requirements and board jurisdiction and procedures.

**RESPONSE:** The SADC appreciates NJFB's comment on this provision, N.J.A.C. 2:76-2.3(a)1. A pre-application meeting can help parties become familiar with the SSAMP process.

**COMMENT:** The Borough of West Cape May generally endorsed the proposed amendments to the rules governing SSAMP determinations and RTF complaints. The Borough also specifically commented that N.J.A.C. 2:76-2.3(b) should require that municipal notice be sent to the clerk, not the zoning or construction official or the planning or zoning board. The Borough also suggested that N.J.A.C. 2:76-2.3(h)3 should require CADBs to notify the municipality if the board seeks to waive or reduce compliance with a municipal standard, and that N.J.A.C. 2:76-2.3(j)8 should include municipal engineering staff and/or licensed professionals, in addition to those of the county, for consultation.

**RESPONSE:** The SADC revises N.J.A.C. 2:76-2.3(b) as follows, to add clarifying language that municipal notice should be made to the municipal clerk: "The board shall advise the Committee and the clerk(s) of 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." The clerk can then forward the notice to the appropriate municipal staff or entities.

Regarding the suggestion related to N.J.A.C. 2:76-2.3(h)3, the SADC notes that N.J.A.C. 2:76-2.3(h)3 is not focused on a board's consideration of municipal standards but rather on the items on the board's SSAMP review checklist. If the intent of the comment was to say that CADBs should give notice to the municipality if an SSAMP application seeks a waiver or reduced compliance with a municipal standard, the SADC notes that municipalities must be notified regarding the nature of the SSAMP application, pursuant to N.J.A.C. 2:76-2.3(b), and that the SADC will revise its SSAMP guidance document (Policy P-3) to highlight that municipal input must be considered when SSAMP requests implicate municipal regulations.

The SADC notes, in response to the Borough's suggestion related to N.J.A.C. 2:76-2.3(j)8, that subparagraph (j) also includes "Any other organization or person which may provide expertise concerning the particular practice." Accordingly, the SADC does not make the suggested change.

#### **N.J.A.C. 2:76-2.8     Hearing procedures for Right to Farm cases**

**COMMENT:** NJFB supports the new Right to Farm hearing procedures, N.J.A.C. 2:76-2.8, saying they will save commercial farm owners time and money.

**RESPONSE:** The SADC appreciates NJFB's comment and notes that N.J.A.C. 2:76-2.8 is designed to help clarify the hearing procedures for SSAMP requests and Right to Farm complaints. To the extent the new process is more streamlined, all of the other parties that may be involved may save time and money

**COMMENT:** The Township of Hampton suggested that in N.J.A.C. 2:76-2.8(c)2ii., the phrase “together with the certified list of property owners” be added after “proof of service.”

**RESPONSE:** The SADC amends N.J.A.C. 2:76-2.8(c)2ii. to specify that regarding the notice requirements for RTF hearings, a commercial farm’s proof of notice should also include the certified list of property owners to whom notice was given. This provision was inferred in the original proposal, but the inclusion of this language clarifies the SADC’s intent.

The section as amended reads, “The written notice set forth in (c)1 above shall be served at least 10 days in advance of the hearing, and proof of service of the notice, along with the certified list of property owners, shall be provided by the commercial farm to the board.”

### **AMP– Additional comments (section by section)**

#### **N.J.A.C. 2:76-2A.13(b) – Definitions**

**COMMENT:** Deborah Post commented that the definition of “farm market” should be revised to clarify that the 51% requirement need not be related to products produced on the farm market’s site or on contiguous properties, so long as products are generated by the farm market owner elsewhere in New Jersey, qualifying as “local,” or on a different commercial farm qualifying for Farmland Assessment.

**RESPONSE:** The SADC declines to make the suggested change, as the definition of “farm market” is statutory.

**COMMENT:** The Township of Hampton commented that the AMP’s definition of “agricultural output of a commercial farm” generously expands the types of products that are eligible for RTFA protection by including ingredients that are not grown on the farm. Hampton gave the example of a grain or hay mixture, with 51% of the mix coming from the farm and 49% coming from another source, to describe something that should not be considered part of the farm’s agricultural output. Hampton expressed concern that the definition will give off-farm products greater protection than what is contemplated by the RTFA and will distort the 51/49 ratio of what may be sold from a farm market.

**RESPONSE:** The SADC appreciates the comment while noting that the AMP’s definition of “agricultural output of a commercial farm” properly recognizes that a farm’s agricultural output may include the items specified in N.J.S.A. 4:1C-9a. that a commercial farm produces as well as the value-added or processed products produced from those items. The SADC disagrees that the definition will distort the RTFA’s protections regarding farm markets, as the definition includes the clear qualifier that in terms of these value-added or processed products, the retail sale of such products are protected only if the primary and predominant ingredients used to produce the products are grown or raised on the commercial farm on which the farm market is located.

**COMMENT:** The Township of Hampton commented that the AMP's definitions of "products that contribute to farm income," "complementary products," and "supplementary products" appear to 'allow the exception to swallow the rule,' saying that by not including the word "related" before "complementary products" and before "supplementary products" in the definitions, the required relationship between these products and a farm's agricultural output is not present. Hampton said that this creates a disconnect between the products that may be sold within the 49% category and the products that make up the farm's agricultural output as the 51% category.

Hampton cited a portion of a 2011 SADC Right to Farm decision, In the Matter of Hopewell Valley Vineyards, Hopewell Township, supra, in support of its position that a clear nexus be required between "products that contribute to farm income" and the farm's agricultural output. Without this nexus, Hampton said that an unintended consequence may be that RTFA protection is given for the sale and marketing of items bearing no or little genuine relationship to a given farm's agricultural output.

**RESPONSE:** The SADC agrees that an on-farm direct marketing facility's "products that contribute to farm income" must have a clear connection to the farm's agricultural output to be eligible for RTFA protection. However, the SADC disagrees that the definitions referenced in the above comment need additional language to support this conclusion. The terms complementary and supplementary, and their use and definitions within the AMP, highlight the required relationship that "contributing" products must have to the agricultural output of a commercial farm. A commercial farm's "products that contribute to farm income" will possess the appropriate nexus to the RTFA's protection of agricultural production activities if the products are complementary to or supplement the commercial farm's agricultural output.

**COMMENT:** The Township of Hampton commented that the phrase "promotional items" in the AMP's definition of "complementary products" should be clarified, saying it as an undefined category and that it appears intended to mean items like souvenirs. Hampton said this intent should be made clear and that there should be a separate, narrowly drawn definition of "promotional items" so there is no misunderstanding that not every product that attracts customers to a farm market qualifies for RTFA protection. Hampton proposed the following definition for promotional items: "Souvenir items such as shirts, bags, calendars, caps and pens and the like bearing the name or logo of the commercial farm given away or sold to current or prospective customers to promote the agricultural output of the commercial farm."

**RESPONSE:** The SADC agrees that further defining the term "promotional items" within the definition of "complementary products" would enhance the understanding of the definition. The SADC amends the definition of "complementary products" by adding another sentence as follows: "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. Examples of promotional items

include but are not limited to souvenir items such as commercial farm-branded shirts, hats, and bags.”

**COMMENT:** Robert L. Myers commented that the use of the terms “incidental” and “accessory to” in the AMP’s definitions rendered them unnecessarily vague. Mr. Myers suggested the following changes: adding “clearly” before “incidental” in the definition of “ancillary entertainment-based activities” and defining the “de minimus fee” associated with such activities; substituting or adding “clearly incidental” instead of “accessory to” in the definitions of “farm based recreational activities” and “on-farm direct marketing”; making it clear that a farm market facility or on-farm direct marketing facility is a building and does not include the productive agricultural land or soils; and including a provision in the definition of “on-farm direct marketing events” to specify that such events should be scheduled and located in a way that accounts for impacts on adjacent properties.

**RESPONSE:** The SADC does not make the suggested changes, as it believes the AMP’s definitions are sufficiently clear as written. Additional or alternative language is not necessary to understand the use and meaning of “incidental,” “accessory to,” “de minimus,” and “facility.”

**COMMENT:** The Cape May County Freeholders commented that the AMP’s definitions of “products that contribute to farm income,” “complementary products,” and “supplementary products” acknowledge the reality and necessity of coupling other items and activities with farm products in order for a farm to successfully market those products, thereby remaining economically viable.

**RESPONSE:** The SADC agrees that selling “products that contribute to farm income” can help attract customers to the farm market. The SADC notes that there are also some commercial farms that sell only what they grow. For the purposes of RTFA protection, “products that contribute to farm income” must be complementary or supplementary, as outlined in N.J.A.C. 2:76-2A.13(b), and have a clear connection to the farm’s agricultural output.

#### **N.J.A.C. 2:76-2A.13(d) – Lighting**

**COMMENT:** Deborah Post commented that where N.J.A.C. 2A.13(d)1 states, “This lighting shall provide, at a minimum, the amount of light necessary for customer safety.” the mandatory “shall” language should be modified to include only a farmer’s reasonable best efforts and judgment, and to recognize the financial and physical impracticality of requiring fully lit farm fields. Ms. Post commented that the regulation could create litigation concerns. She also commented that lighting requirements should be restricted to areas with moving vehicles and that lighting elsewhere on the farm should be provided at the farmer’s discretion.

**RESPONSE:** The SADC does not make the suggested change, as it believes the portion of N.J.A.C. 2A.13(d)1 cited in the comment sets forth an acceptable public health and

safety-related and performance-based standard. This standard does not require that all of a farm's fields must be lit or fully-lit, but rather that any areas used by customers, if used after dark, should have adequate lighting. The standard is performance-based in that it does not prescribe a specific amount of required lumens and types of lights. Rather, what should be provided is simply the amount of light deemed appropriate and necessary for customer safety.

**COMMENT:** Robert L. Myers commented that temporary lighting removal within 30 days of an event should be reduced to a 10-day removal period.

**RESPONSE:** The SADC does not make the suggested change, as 30 days provides a flexible but not extensive timeframe within which to remove temporary lighting. During this period, the lighting will also not be turned on, as the activities or events will have ended.

#### **N.J.A.C. 2:76-2A.13(e) – Sanitary facilities**

**COMMENT:** The Township of Hampton commented that its planner recommends that the time at N.J.A.C. 2:76-2A.13(e)1ii. be reduced from 90 to 60 minutes, especially in instances when it is intended that children are to attend or participate.

**RESPONSE:** The SADC appreciates the comment but does not make the suggested change. N.J.A.C. 2:76-2A.13(e)1ii., which states that a commercial farm shall provide sanitary facilities if an on-farm direct marketing activity or event promotes customers staying on-site for more than 90 minutes, provides for an amount of time that the SADC considers reasonable as an AMP standard. Farms are not precluded from providing sanitary facilities to a greater extent than what is outlined in the AMP, and some farms do in fact go further regarding sanitary facilities as a best management hospitality practice.

**COMMENT:** Deborah Post commented that the reference to “hand-sanitizing” in N.J.A.C. 2:76-2A.13(e)3 needs to be defined, and she suggested that running water in reasonable proximity be specified as an acceptable minimum standard. Ms. Post expressed concerns about the AMP resulting in farm visitors littering farm fields with anti-bacterial wipes and gel bottles.

**RESPONSE:** The SADC does not make the suggested change, as it would be overly prescriptive and burdensome to certain agricultural operators. For clarification purposes, the SADC revises N.J.A.C. 2:76-2A.13(e)3 as follows to include the same descriptive information that appears in N.J.A.C. 2:76-2A.13(m)5iv. regarding hand sanitizing facilities: “A commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of sanitary facilities. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations.”



### **N.J.A.C. 2:76-2A.13(g) – Sign standards**

**COMMENT:** Robert L. Myers commented that the AMP does not balance road frontage with allowed signage, and that signage for farms with thousands of feet of road frontage need to be regulated differently than those with minimal frontage.

**RESPONSE:** While the SADC considers the AMP’s sign standards to be reasonable and appropriate, it understands that each farm’s layout and configuration is different. Accordingly, the AMP provides a maximum allowable signage regime within which a commercial farm operation can comply in order to obtain RTF protection. A CADB must take into account the commercial farm operation’s location and frontage and balance those factors with the AMP’s sign standards.

### **N.J.A.C. 2:76-2A.13(h) – Parking standards**

**COMMENT:** Deborah Post commented that N.J.A.C. 2:76-2A.13(h)2i., which notes that “the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume,” should be modified because “sufficiency is a number that is not knowable.” Ms. Post commented that the language should be revised: 1) to require that a farm to make a best effort to provide parking based on anticipated parking needs, and 2) to reflect that having sufficient parking to meet the demands of a peak demand day may be impossible.

**RESPONSE:** The SADC does not make the suggested changes because the AMP subsection cited in the comment already incorporates the performance-based standard of having sufficient parking based on anticipated volume. N.J.A.C. 2:76-2A.13(h)1 also notes that areas temporarily devoted to parking may be used when additional parking capacity is needed.

**COMMENT:** Deborah Post commented that N.J.A.C. 2:76-2A.13(h)2ii., which notes that parking areas should have safe ingress and egress points, should be amended to discourage municipalities from denying reasonable requests for road access. Ms. Post commented that farmers should be able to determine what is safe themselves without needing burdensome road entry permits.

**RESPONSE:** Ingress and egress points and traffic circulation are essential components of an agricultural management practice in ensuring the protection of public health and safety are essential to providing right-to-farm protection to farm market operations. One criterion for RTFA protection is that the commercial farm not pose a direct threat to public health and safety; accordingly, a CADB or the SADC must address traffic, vehicular circulation and parking safety issues posed by the commercial farm operation and, as such, it is not appropriate to allow farmers themselves to determine what is safe, as suggested by the commenter. Whether a road access permit may be needed depends on site-specific conditions, the government entity having jurisdiction over the road, and the State Highway Access Management Code, N.J.A.C. 16:47-1.1 et seq. Finally, we note that since the underlying rationale for any AMP is to provide standards for the

operation of commercial farms, not to direct municipal action or to set forth the consequences of municipal inaction, the SADC declines to add a provision to discourage municipalities from denying reasonable requests for road access.

**COMMENT:** Deborah Post commented that N.J.A.C. 2:76-2A.13(h)2iii., which states, “Where applicable, parking areas shall accommodate bus traffic and allow for the safe unloading of bus passengers,” should be revised because “where applicable” is an unclear qualifier. Ms. Post commented that a farm should not be denied RTFA protection due to its bus policies, as not all farms allow bus groups, or field facilities, as not all farms have the field facilities to safely park buses.

**RESPONSE:** The SADC believes the “where applicable” language in this subsection of the AMP adequately addresses the commenter’s concerns. However, the SADC revises the paragraph as follows for clarification purposes: “Where applicable, on farms that allow buses, parking areas shall accommodate bus traffic and allow for the safe unloading of bus passengers.”

**COMMENT:** Deborah Post commented that the phrase “such that bare ground is not parked on” should be deleted from N.J.A.C. 2:76-2A.13(h)4ii., which states, “Areas temporarily devoted to parking may include, but are not limited to, hay field, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover, such that bare ground is not parked on.” Ms. Post commented that even the best planned parking areas could be made muddy as a result of the weather, and this should not keep a farm that needs to stay open from getting RTFA protection.

Ms. Post similarly commented that N.J.A.C. 2:76-2A.13(h)4v. should be deleted, saying the standard to provide safe and sufficient traction during wet conditions is impossible to meet if the weather turns a field to mud.

**RESPONSE:** The SADC does not make the suggested changes, as both paragraphs set forth non-prescriptive performance standards that are intended to foster safe parking areas.

**COMMENT:** Deborah Post commented that N.J.A.C. 2:76-2A.13(h)4iii., which states that “The slope of the land shall be considered to address issues related to drainage, puddles and pockets of standing water, and safety,” is unclear in its purpose and meaning. Ms. Post commented that the slope of a farm field is a natural condition and that farmers should not be required to grade, implement “stormwater management,” or do other slope remediation in order to accommodate temporary parking needs.

**RESPONSE:** The SADC does not make any changes to the subsection, as the purpose of the paragraph is to identify specific land characteristics that a commercial farm should consider regarding the location of areas temporarily devoted to parking and other related matters. N.J.A.C. 2:76-2A.13(h)4i notes that 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.

**COMMENT:** N.J.A.C. 2:76-2A.13(h)4iv. states that “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.” Deborah Post commented that the last clause, requiring that vegetation not come in contact with the underside of vehicles, should be deleted and replaced with the clarification that farm visitors should acknowledge the associated reasonable risks of visiting the farm, such as vegetation touching their vehicles.

**RESPONSE:** The SADC does not make the suggested deletion, as the performance-based standard in this subsection is a generally accepted standard for public safety considerations, specifically related a fire hazard. However, the SADC revises the paragraph as follows for clarification purposes: “During dry conditions, areas temporarily devoted to parking shall be mowed, so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles ~~so that vegetation does not come in contact with the underside of customer vehicles.~~”

**COMMENT:** Deborah Post commented that N.J.A.C. 2:76-2A.13(h)4vi., which states, “A commercial farm shall mark, sign, or otherwise indicate where vehicles should be parked,” is vague. Ms. Post said that farmland does not lend itself to having painted lines for parking, that most farms manage parking with staff directing cars, and that excessive signage may be ignored or misleading.

**RESPONSE:** The SADC disagrees that N.J.A.C. 2:76-2A.13(h)4vi. is vague, as this section sets forth a reasonable public health and safety performance-based measure. In conjunction with different on-farm direct marketing facilities, activities, or events, commercial farms may use staff to assist with parking. The use of staff for this purpose is included within the N.J.A.C. 2:76-2A.13(h)4vi. phrase “or otherwise indicate.” However, the SADC revises the paragraph as follows for clarification purposes: “A commercial farm shall mark, sign, ~~or otherwise indicate~~ or indicate through staff direction or other means where vehicles should be parked.”

#### **N.J.A.C. 2:76-2A.13(i) – Buffer standards**

**COMMENT:** The Township of Hampton suggested changing “may” to “shall” in N.J.A.C. 2:76-2A.13(i)1i., commenting that otherwise, there is no reason to have buffer standards since farm operators will be free to disregard them. Hampton commented that buffers are necessary to ensure that adjacent properties are protected from a farm’s activities and facilities.

**RESPONSE:** The SADC acknowledges the importance of buffers but does not make the suggested change. neighbors. There are other techniques that might be employed to address these concerns, including changes to the agricultural operation, so use of the word “may” rather than “shall” as it applies to utilizing buffers is appropriate. It will be up to the CADB to determine whether an operation will need to take additional steps in order to protect public health and safety and to mitigate unreasonably adverse impacts on

neighbors. There are other techniques that might be employed to address these concerns, including changes to the agricultural operation, so use of the word “may” rather than “shall” as it applies to utilizing buffers is appropriate.

**COMMENT:** The New Jersey Farm Bureau (NJFB) feels that the 50-foot front, side, and rear-yard setback standards set forth in N.J.A.C. 2:76-2A.13(i)2 for new or expanded on-farm direct marketing facilities’ permanent structures are too large and should be reduced, saying the setbacks may cause some valuable agricultural land to be taken out of production.

**RESPONSE:** The SADC declines to make the change, noting that N.J.A.C. 2:76-2A.13(i)2v. gives CADBs the ability to require lesser setback distances based on consideration of a number of criteria, including the physical features and constraints of the farm property.

**COMMENT:** NJFB commented on how the AMP’s buffer standards in N.J.A.C. 2:76-2A.13(i)2ii. through (i)2vii. apply differently to existing on-farm direct marketing facilities, activities, and events than to new operations. NJFB expressed support for the language that says existing operations, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions of N.J.A.C. 2:76-2A.13(i)2ii. through (i)2iv. NJFB further commented that farms with existing operations can go to the CADB for a site-specific AMP determination.

The Township of Hampton commented that this section of the AMP should be amended to define what “current” and “existing” mean, e.g., defining the terms such that they mean “as of the effective date of the RTFA.” Hampton said that if the terms refer to a farm market operated on the date an SSAMP application is filed, farmers will make changes in advance of their SSAMP request to establish their modified operation as “existing.” Hampton also suggested that language be added to give CADBs authority to impose AMPs and best management practice requirements on existing facilities, activities, and events when complaints are filed with the CADB or when requested by a municipality.

**RESPONSE:** The SADC appreciates the comments and recognizes the importance of having the AMP specify appropriate buffer standards for existing on-farm direct marketing operations, which may involve pre-established configurations, as well as for new or expanded operations.

The SADC agrees that clarifying what “existing” means will enhance the understanding of the AMP’s standards. With this in mind, the SADC adds the following clarifying language in a new N.J.A.C. 2:76-2A.13(i)4: “For the purposes of N.J.A.C. 2:76-2A.13(i), existing on-farm direct marketing facilities, activities, or events are those operations which are in operation as of the effective date of the AMP.” The SADC simultaneously deletes the word “existing” from N.J.A.C. 2:76-2A.13(i)2vii., as the word “existing” had been used in a different context here as in the new N.J.A.C. 2:76-2A.13(i)4.

Regarding the ability of farms to seek site-specific AMP determinations, the SADC notes that farms may seek such determinations for currently operating as well as for new or expanded on-farm direct marketing facilities, activities, or events. The SADC also notes that site-specific AMP determinations must be consistent with the practices set forth in the AMP, as noted in N.J.A.C. 2:76-2A.13(r)1.

The SADC disagrees with the suggestion that CADBs be given authority to impose AMPs, and notes that AMPs are not rules that CADBs enforce, but rather are sets of standards that farms may choose to follow to satisfy an eligibility requirement for receiving RTFA protection.

**COMMENT:** Deborah Post commented that the history of an agritourism business being in existence prior to a neighbor moving in next to the farm should be included in N.J.A.C. 2:76-2A.13(i)1iii. as an additional consideration for making determinations about the extent or necessity of buffers. Ms. Post said that a newly arriving neighbor who purchased adjacent property with the knowledge of agritourism occurring next door has a lesser right to demand buffers than a long-time resident who experiences a new agritourism operation.

**RESPONSE:** The SADC does not make the suggested change. N.J.A.C. 2:76-2A.13(i)1iii.(1) and (2) already note the following as considerations: the nature of existing adjacent property uses, and the nature and scale of the commercial farm's on-farm direct marketing operation. N.J.A.C. 2:76-2A.13(i)2iii.(4) also mentions existing, occupied residences, and N.J.A.C. 2:76-2A.13(i)2v. provides for the ability of commercial farms to request SSAMP determinations that take site-specific conditions into consideration.

**COMMENT** Deborah Post commented that the requirement in N.J.A.C. 2:76-2A.13(i)3ii., that vegetative screening achieve 75% screening within five years, should be deleted. Ms. Post commented that this standard promotes the use of fast growing invasive plant species and that a farmer should be able to use slower-growing and more majestic native species.

**RESPONSE:** The SADC does not make the suggested change, as screening may consist of vegetation and/or structures, and five years is an acceptable time for vegetative screening to become established.

**N.J.A.C. 2:76-2A.13(k) – Use of structures or improvements in conjunction with OFDM activities and events**

**N.J.A.C. 2:76-2A.13(l) – Impact of OFDM activities and events on the land**

**COMMENT** Deborah Post commented that N.J.A.C. 2:76-2A.13(k) and (l) should be deleted because the SADC does not have the authority to limit the use of structures or use of the land unless the land is deed-restricted under a farmland preservation program. Ms. Post commented that the rule would deny RTFA protection to farmers who dedicate all or parts of their barns to a non-agricultural use.

**RESPONSE:** The SADC disagrees with the comments, as (k) and (l) are permissive rather than limiting, and the SADC does have the authority pursuant to the RTFA to set forth accepted agricultural management practices for RTFA protection purposes. The RTFA protects agricultural production activities and also specific activities related to marketing a farm's production, and the AMP establishes appropriate standards to ensure that activities eligible for protection do not have an adverse impact on the farm's agricultural production capacities. Regarding the use of barns, subsection (k) specifies how structures and improvements may be used or constructed in conjunction with on-farm direct marketing activities and events; this includes the potential use of all or parts of barns for on-farm direct marketing activities and events, provided the standards in (k) are met.

**N.J.A.C. 2:76-2A.13(m) – On farm direct marketing activities**

**COMMENT:** The New Jersey Farm Bureau (NJFB) commented that the AMP's hayrides and wagon rides standard that hayride wagon operators have a current motor vehicle operator's license, N.J.A.C. 2:76-2A-13(m)4v(6), be removed. NJFB commented that the other provisions in this section are sufficient to protect public health and safety and have more bearing on a person's ability to safely operate a tractor, adding that tractors are completely different from motor vehicles.

**RESPONSE:** The SADC disagrees with the suggested change, as having a valid driver's license is an important indicator of the ability to drive a vehicle in a manner that protects passenger safety.

**COMMENT:** The Warren CADB recommended the SADC consider adding a provision stating that farmers should use a secure hitch-pin when pulling people in wagons.

**RESPONSE:** The SADC appreciates the CADB's comment but believes the basic agricultural management practice standards in the hayrides and wagon rides section, N.J.A.C. 2:76-2A-13(m)4, are sufficiently protective of public safety as written.

**COMMENT** Deborah Post commented that N.J.A.C. 2:76-2A.13(m)1i., which says that "Visitors [involved in pick-your-own activities] shall be informed of any rules to follow and instructed as to which fields they are permitted harvest," was unclear and unnecessary. Ms. Post said it is not possible for farmers to communicate with every visitor on a busy day and that how farmers choose to communicate with their customers should be a private business decision.

**RESPONSE:** The SADC disagrees with the comment, as N.J.A.C. 2:76-2A.13(m)1i. is an appropriate agricultural management practice and is clear as written. This subsection also sets forth performance-based standards that allow commercial farms to make their own business decisions regarding how best to provide rule-information and other instruction.

**COMMENT** Deborah Post deemed impractical the requirement in N.J.A.C. 2:76-2A.13(m)1i. that pick-your-own fields be marked. Ms. Post commented that picking fields change rapidly and are not always known in advance, that excessive signage is not read, and that the use of signs should be at the discretion of farmers based on their best judgment.

**RESPONSE:** The SADC believes that N.J.A.C. 2:76-2A.13(m)1i. is an appropriate agricultural management practice. Identifying which fields are open for pick-your-own activities helps to inform visitors where they may and may not go, which may be important if there are other fields or areas that for safety reasons are not open to visitors.

**N.J.A.C. 2:76-2A.13(n) – Event management plans for on-farm direct marketing events**

**COMMENT:** The Township of Hampton expressed its concern that a commercial farm, under N.J.A.C. 2:76-2A.13(n), could proceed with an event despite a municipality's concerns that the plan did not sufficiently protect public health and safety. Hampton stated that a streamlined procedure should be established in which a municipality presents its concerns about a plan to the SADC, and the SADC makes an expedited determination whether the event(s) may proceed. Hampton added that any plan, especially those submitted for multiple events, should specify the date(s) of the event(s) and that proof of adequate liability insurance should also be submitted with all plans.

**RESPONSE:** The SADC recognizes there are public health and safety issues that must be considered when a farm has an on-farm direct marketing event where the expected volume of traffic and visitors for the event is significantly greater than the volume regularly accommodated by the farm's on-farm direct marketing facility. The SADC disagrees that another procedure needs to be established should a municipality have concerns about a farm's plans, as the RTFA already outlines a formal complaint process. If a municipality is aggrieved by the operation of a commercial farm, including an event management plan a farm has developed, the municipality may file a complaint with the CADB and follow the established RTFA process.

The SADC notes that N.J.A.C. 2:76-2A.13(n)2i addresses Hampton Township's concerns, by stating that such plans must note multiple occurrences of an event. However, the SADC makes the following change for clarification purposes: "If an event of the type described in section (n)1 above occurs periodically or more than once per year and occurs under the same basic conditions, a commercial farm may satisfy the provisions of section (n)1 above for the multiple events by submitting a single event management plan that notes the multiple occurrences and the future dates of the event."

The SADC also will renumber N.J.A.C. 2:76-2A.13(n)2i as N.J.A.C. 2:76-2A.13(n)3, and change the reference from "subparagraph i" to "paragraph 3."

The SADC recognizes that maintaining adequate liability insurance may be an agricultural industry best management business practice, but it is not an AMP standard that must be met to qualify for RTFA protection.

The AMP encourages farmer-municipality coordination on health and safety issues by requiring the farmer shall provide a copy of the plan to the municipality as an advisory notice 30 days in advance of the event.

**COMMENT:** Robert L. Myers commented that marketing events should be restricted to no more than one per season or 4 per year with a 2-day limit on each event.

**RESPONSE:** The SADC does not make the suggested change, as it is not appropriate for the AMP to specify a maximum frequency or number of events. Operations and local conditions vary around the state.

**COMMENT:** Robert L. Myers commented that the AMP's parking requirements for events are vague, and that it should specify the required number of spaces depending on expected event attendance.

**RESPONSE:** The SADC does not make the suggested change as it believes that N.J.A.C. 2:76-2A-13(n), combined with the parking standards at N.J.A.C. 2:76-2A-13(h), describes appropriate performance-based standards for parking in conjunction with on-farm direct marketing operations.

**COMMENT:** The Borough of West Cape May commented that the proposed use of an event management plan to handle large-scale events is not a sufficient substitute for municipal control. The Borough felt that the AMP does not sufficiently address limitations on the frequency of marketing events and activities, saying that individualized municipal control is warranted. In particular, West Cape May commented that the AMP should direct that municipalities specify the number and frequency of events that are annually permitted on a particular property. Alternatively, West Cape May suggested that the AMP dictate a low number of permitted events that, if exceeded, would require municipal approval. West Cape May also commented that the permitted hours of operation are too generous and that such hours are best left to the individual municipality.

**COMMENT:** The Borough of West Cape May commented it that it was not clear when an event management plan would be required, and what entity would make that determination. The Borough was also concerned that the AMP did not consider the monetary requirements involved (insurance, bonding, or payment of the cost of police, fire, and emergency services) and the impact on traffic and congestion.

**RESPONSE:** The SADC recognizes the Borough of West Cape May's concerns while noting that CADBs and the SADC have primary jurisdiction over agricultural management practices, including on-farm direct marketing event management plans. The SADC believes that N.J.A.C. 2:76-2A.13(n)1 provides the best possible descriptive criteria for when a plan is needed, considering the varied nature and size of farm



operations around the state. It is the farmer who decides whether a plan is needed in accordance with the criteria in N.J.A.C. 2:76-2A.13(n)1. Insurance and payments for public safety protection are private business matters as opposed to agricultural management practice standards, and N.J.A.C. 2:76-2A.13(n) specifies how addressing traffic management is a necessary component of a plan.

**COMMENT** Deborah Post commented that there is no statutory authority in the RTFA to require that event management plans be filed with and/or approved by a municipality. Ms. Post commented that municipalities are often hostile to agritourism operations and that this requirement creates municipal interference, which the RTFA is supposed to protect against. Ms. Post commented that any requirement for municipally approved plans should only be the result of the municipality filing a RTFA complaint and the complaint being upheld after the municipality demonstrates “good cause” for such a plan based on a specific, documented threat to public safety. Ms. Post gave the following as an example: A farm whose operation regularly disrupts traffic flow or creates unsafe road conditions might need to work with the municipality to rectify the issues. Otherwise, she said, farms that manage their operations safely and without incident should be given the deference to rely on their own qualifications to manage their own affairs without municipal involvement. Ms. Post commented that subsection (n) should be revised to become an optional guideline that says that plans only need to be submitted if a farm believes it would help municipal relations.

**RESPONSE:** As written, N.J.A.C. 2:76-2A.13(n) does not specify that an event management plan be approved by a municipality but rather that the plan be shared with the municipality as an advisory notice, to facilitate any farmer-municipality coordination that may be necessary. If a municipality has a complaint about a plan, it can file a complaint with the CADB, request mediation, or seek other informal resolution.

#### **N.J.A.C. 2:76-2A-13(o) – Overnight lodging**

**COMMENT:** The Cape May County Board of Chosen Freeholders commented that there was no rationale for the AMP’s exclusion of overnight marketing activities and for why the time of day during which an event occurs has any bearing on whether it is validly related to marketing a farm’s agricultural or horticultural output. The Freeholders believed that the exclusion is inconsistent with State-supported agritourism and ecotourism goals, which they said are especially critical in the State’s non-urban counties.

**RESPONSE:** The SADC recognizes that some farms offer overnight lodging and camping and that these activities are important to those which offer them. However, the SADC considers overnight accommodations to be beyond the scope of the RTFA at this time, in part because such accommodations involve residential standards beyond the SADC’s expertise and are already regulated by other entities. Overnight accommodations also have difficulty fitting within the AMP’s on-farm direct marketing related definitions. With this in mind, the AMP notes that the AMP shall not be construed as extending RTF protection to such accommodations. This does not mean that farms cannot offer overnight

accommodations, only that such activities are subject to relevant state, county and local laws.

**N.J.A.C. 2:76-2A.13(p) – Approval of site plan elements for new or expanded on-farm direct marketing facilities**

**COMMENT** Deborah Post commented that a specific statement should be added to the AMP to clarify that a farm’s efforts to work cooperatively with a municipality regarding agritourism should not be construed as subjecting the farm to the Municipal Land Use Law, N.J.S.A. 40:55D-53.2, except where approval for a new permanent structure is sought, nor should it be construed as an intent to allow municipalities to charge fees for plan reviews or approvals.

**RESPONSE:** The SADC does not make the suggested change, as the RTFA’s ability to preempt municipal and county regulations is clear within the RTFA, the den Hollander decision, and other case law. In terms of seeking approval of site plan elements for new or expanded on-farm direct marketing activities, N.J.A.C. 2:76-2A.13(p) outlines how a commercial farm may seek such approval from the municipality and/or CADB. If a farm chooses to seek such approval from a municipality, then there may be review fees associated with the municipality’s review.

**N.J.A.C. 2:76-2A.13(q) – Relevant Federal and State laws, rules, and regulations**

**COMMENT** Deborah Post commented that N.J.A.C. 2:76-2A.13(q) could be interpreted to mean that the RTFA is subordinate to the statutes listed, but she said that the RTFA is intended to protect farmers from burdensome rules and regulations. Ms. Post further commented that requiring compliance with the Highlands Act is vulnerable to being interpreted as meaning that on-farm direct marketing activities are not agricultural activities. Ms. Post said that agricultural activities are exempt from Highlands regulations and the AMP should explicitly state that agritourism is an exempt agricultural activity.

**RESPONSE:** The RTFA requires compliance with relevant federal and state laws, rules, and regulations in order to be eligible for protection. The SADC agrees that under NJDEP’s Highlands Water Protection and Planning Act regulations, N.J.A.C. 7:38-1.1 et seq., “agricultural development” is excluded in the definition of “Major Highlands Development.” The SADC also notes that N.J.A.C. 2:92-1.1 et seq., “Agricultural Development in the Highlands,” promulgated by the New Jersey Department of Agriculture, may apply.

**N.J.A.C. 2:76-2A.13(r) – Additional provisions**

**COMMENT:** The New Jersey Farm Bureau (NJFB) commented that regarding N.J.A.C. 2:76-2A.13(r)1, it supports that the AMP does not preclude a commercial farm from requesting a site-specific AMP (SSAMP) determination for on-farm direct marketing facilities, activities, and events that may not be specifically identified in the AMP, noting

that farmers are always adapting and that they should be able to receive Right to Farm protection for the new practices they adopt.

**RESPONSE:** The SADC agrees that the AMP does not preclude a commercial farm from requesting an SSAMP determination regarding on-farm direct marketing facilities, activities, or events. A farm may request an SSAMP determination for an operation or practice that is described or not described in the AMP. SSAMP determinations made by CADBs or the SADC, however, must be consistent with the standards and provisions set forth in the AMP, as noted in N.J.A.C. 2:76-2A.13(r)1.

**Summary of Agency-Initiated Changes:**

1. N.J.A.C. 2:76-2A.13(m) – “[The on-farm direct marketing activities standards for on-farm direct marketing facilities, activities, and events on commercial farms]\* **Standards for certain on-farm direct marketing activities**\* shall be as follows:

**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.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

SUBCHAPTER 2. RIGHT TO FARM

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

(a) (No change from proposal.)

(b) The board shall advise the Committee and **\*the clerk(s) of\*** 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) The board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.\***

**\*[(c)]\* \*(d)\*** 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.-2. (No change.)

**\*[(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) (No change from proposal.)

(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 board members conduct the inspection, the board shall ensure that less than a quorum, as defined in the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

\*[1. The board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether 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) (No change from proposal.)

(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 provide information using a checklist adopted by the board.

1. (No change from proposal.)

2. (No change from proposal.)

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 farm owner and/or operator pursuant to this section. The board may delegate this function to board staff \*, **with final review and decision making authority vested in the board** \*. 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. – iv. (No change from proposal.)

4. Subject to the provisions of (k) below, the board may retain jurisdiction over any or all municipal ordinances and/or county resolutions \*[related]\* **as they apply** \* to the commercial farm owner or operator's application for a site-specific agricultural management practice determination.

5. (No change from proposal.)

(i) – (m) (No change from proposal.)

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

(a) – (c) (No change from proposal.)

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

(a) – (b) (No change.)

(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. **\*The board, or Committee in counties where no board exists, shall review the matter and make a determination regarding whether RTFA protection is warranted.\***

(d) – (e) (No change from proposal.)

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

(a) – (f) (No change from proposal.)

(g) If the board determines that the dispute subject to \*[(c) above]\* **\*N.J.A.C. 2:76-2.7\*** 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.

(h) If the board determines that the dispute subject to \*[(c) above]\* **\*N.J.A.C. 2:76-2.7\*** 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. – 2. (No change from proposal.)

(i) If the Committee determines that the dispute subject to \*[(c) above]\* **\*N.J.A.C. 2:76-2.7\*** 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.

1. – 3. (No change from proposal.)

(j) (No change from proposal.)

(k) Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with \*[(c) above]\* \*N.J.A.C. 2:76-2.7\* 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. – 2. (No change from proposal.)

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

(a) – (b) (No change from proposal.)

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

1. (No change from proposal.)

2. The written notice set forth in (c)1 above 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 and/or prior to the hearing.

i. (No change from proposal.)



ii. The written notice set forth in (c)1 above shall be served at least 10 days in advance of the hearing, and proof of service of the notice \*, **along with the certified list of property owners,\*** shall be provided by the commercial farm to the board.

iii. (No change from proposal.)

3. (No change from proposal.)

(d) (No change from proposal.)

2:76-2A.13 Agricultural management practice for on-farm direct marketing facilities, activities, and events

(a) (No change from proposal.)

(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-9.a 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 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 (N.J.S.A. 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 (N.J.S.A. 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.

“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. **\*Examples of promotional items include but are not limited to souvenir items such as commercial farm-branded shirts, hats, and bags.\***

“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 enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm.

Examples of farm-based recreational activities 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; hunting and fishing; and bonfires. Activities and related infrastructure not considered farm-based recreational activities include, but are not limited to: athletic fields; paintball; 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 percent 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 percent 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; 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.

“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.

“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 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.

“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.

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

(c) – (d) (No change from proposal.)

(e) The requirements for sanitary facilities at on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. – 2. (No change from proposal.)

3. A commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of the sanitary facilities. **\*Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations.\***

4. (No change from proposal.)

(f) – (g) (No change from proposal.)

(h) In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this subsection shall apply to facilities’ parking areas.

1. (No change from proposal.)

2. The following standards shall apply to all parking areas:

i. – ii. (No change from proposal.)

iii. Where applicable, **\*on farms that allow buses,\*** parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers.



3. (No change from proposal.)

4. The following standards shall apply to areas temporarily devoted to parking:

i. – iii. (No change from proposal.)

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]\* **\*so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles\***;

v. (No change from proposal.)

vi. A commercial farm shall mark, sign, \*[or otherwise indicate]\* **\*or indicate through staff direction or other means\*** where vehicles should be parked.

(i) The standards for buffers for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. (No change from proposal.)

2. The setback requirements are as follows:

i. – vi. (No change from proposal.)

vii. \*[Existing on-farm]\* **\*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 paragraph.

3. (No change from proposal.)

**\*4. For the purposes of N.J.A.C. 2:76-2A.13(i), existing on-farm direct marketing facilities, activities, or events are those facilities, activities or events that are in operation as of the effective date of the AMP.\***

(j) – (l) (No change from proposal.)

(m) \*[The on-farm direct marketing activities standards for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows]\* **\*Standards for certain on-farm direct marketing activities shall be as follows\*:**

1. – 6. (No change from proposal.)

(n) The event management plan for on-farm direct marketing events shall include the following:

1. (No change from proposal.)

2. A commercial farm may satisfy the provisions of (n)1 above by obtaining a special events permit, or its equivalent, from the municipality in which the commercial farm is located.

\*[i.]\* **\*3.\*** If an event of the type described in (n)1 above occurs periodically or more than once per year and occurs under the same basic conditions, a commercial farm may satisfy the provisions of (n)1 above for the multiple events by submitting a single event management plan that notes the multiple occurrences **\* and the future dates\*** of the event.

(o) (No change from proposal.)

(p) The approval of site plan elements for new or expanded on-farm direct marketing facilities shall be as follows:

1. A commercial farm seeking **\*approval of site plan elements\*** 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 **\*such\*** approval **\*[of site plan elements]\***.

i. – iii. (No change from proposal.)

(q) - (r) (No change from proposal.)

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

(No change from proposal.)

**S:\RIGHTTOFARM\AMPs\On-farm direct marketing\2013 rule proposal related docs\Comments on the 6-17-13 proposal\December 2013 proposedrules submittal.doc**

# Memo

**To: SADC Members**  
**From: Jeffrey C. Everett, Chief of Agricultural Resources, SADC**  
**Date: 12/4/2013**  
**Re: Annual Monitoring Report**

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Pursuant to N.J.A.C. 2:76-6.13, 2:76-6.18A, and 2:76-17.16, County Agriculture Development Boards (CADBs) and non-profits who are in receipt of SADC cost share grant funds for the acquisition of development easements are required to monitor all lands to ensure compliance with the provisions of the Deed of Easement. Monitoring activities shall consist of the following:

1. An onsite inspection shall be performed at least once a year.
2. All inspections and monitoring shall be completed within the period commencing July 1 and ending June 30.
3. A written summary shall be provided to the Committee by July 15, verifying that the inspections were conducted during the scheduled period with a certification concerning whether the farm was in compliance with the provisions of the Deed of Easement.
4. The Board shall inform the SADC if any of the terms and conditions of the Deed of Easement were violated within 30 days of identifying such violation.
5. Appropriate action shall be taken within the board's and/or County's authority to ensure that the terms and conditions of the Deed of Easement are enforced.
6. Maintain a database of all lands from which a development easement was acquired.
7. Annually inform the SADC of any record ownership changes which occur on lands from which development easements have been acquired.
8. Inform the SADC of any actions which require the SADC's review and/or approval.

Staff has compiled easement monitoring statistics for the last three years in order to gauge performance for the various easement programs and the results are as follows: 4 counties achieved a 100% or greater completion rate (division of premises and additional acquisitions during a particular year account for a figure higher than 100%); 6 counties achieved a completion rate between 76% - 99%; 3 counties fell within the 51% - 75% quartile; 3 fell between 26% - 50%; and 2 had a 0% - 25% rate. The vast majority of easements (77%) are held by counties, who averaged a 69% completion rate from 2011 - 2013. SADC held the second-highest total of easements (20%), and averaged a 102% completion rate over the same period. Easements held by non-profits account for 3% of the total number of easements, and their average completion rate is 33%. Collectively, the programs average a 75% completion rate, which is short of the regulatory requirement of 100%.

To assist entities who are falling short of their monitoring obligations, staff will be sending out letters and personally visiting underperforming localities to offer technical assistance. Specifically, staff will train entities not utilizing SADC's E-form monitoring system (<http://www.nj.gov/agriculture/sadc/farmpreserve/postpres/monitoringreportEform.pdf>), which should make the monitoring of farms much faster, easier, and more reliable. Its many benefits are enumerated below:

1. The form is web-based so it can be accessed from any location as long internet access is available, which many users find helpful in allowing greater scheduling flexibility because it allows them to complete and submit forms from almost any location at any time.
2. The form can be downloaded and saved as a writable PDF, so if the user knows they will be in a location that does not have internet access, they can still open, complete, and save the form to their computer and simply submit it when it's convenient and when internet access is available.
3. By filing the forms electronically, the user has the ability to pull up forms from prior years for reference purposes.
4. By filing the forms electronically, the user has the ability to request reports on previous submissions.
5. By filing the forms electronically, the user will not be burdened with digging up historical monitoring reports for paperwork audits for state and/or federally funded easements.

Staff will be undertaking a pilot project in the spring on SADC Direct purchases to incorporate building footprints measured by Rowan University as part of the ongoing Soil Disturbance Project and link spatial data (Geographic Information Systems) with tabular data (Oracle database) to populate the E-forms repository. If successful, SADC could assist entities with pre-populating data for their respective preserved farms so that they will have a monitoring baseline from which to work. Eventually, all entities will be required to utilize E-forms and endeavor to achieve a 100% monitoring compliance rate.

**2013 Annual Monitoring Report Showing Last Three Years of Data**

County-Held Easements	2011 Completion Rate	2012 Completion Rate	2013 Completion Rate	2011-2013 Completion Rate
County 1	107%	118%	86%	104%
County 2	107%	104%	99%	103%
County 3	108%	105%	95%	102%
County 4	111%	98%	93%	100%
County 5	100%	86%	100%	95%
County 6	92%	86%	107%	95%
County 7	107%	75%	85%	89%
County 8	106%	63%	89%	86%
County 9	120%	93%	27%	79%
County 10	102%	95%	41%	79%
County 11	109%	0	67%	57%
County 12	77%	65%	25%	54%
County 13	52%	70%	33%	52%
County 14	0%	0%	109%	38%
County 15	55%	11%	46%	37%
County 16	0%	100%	0%	33%
County 17	18%	38%	17%	24%
County 18	0%	0%	0%	0%
<b>Totals</b>	<b>75%</b>	<b>62%</b>	<b>70%</b>	<b>69%</b>

SADC-Held Easements	2011 Completion Rate	2012 Completion Rate	2013 Completion Rate	2011-2013 Completion Rate
<b>Totals</b>	<b>102%</b>	<b>100%</b>	<b>104%</b>	<b>102%</b>

All Easements (Includes Non-Profit-Held)	2011 Completion Rate	2012 Completion Rate	2013 Completion Rate	2011-2013 Completion Rate
<b>Totals</b>	<b>81%</b>	<b>70%</b>	<b>76%</b>	<b>75%</b>

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2014R12(1)

Peter & Heather Jansen  
Harmony Greenhouses

December 12, 2013

**Installation of Ground Mounted Solar Energy Generation Facility, Structures and Equipment  
on a Preserved Farm**

Subject Property: Harmony Greenhouses  
Block 34, Lot 4  
Harmony Township, Warren County  
77.12-Acres

WHEREAS, Peter and Heather Jansen, hereinafter "Owners", are the record owners of Block 34, Lot 4, in the Township of Harmony, County of Warren, by Deed dated February 10, 2005, and recorded in the Warren County Clerk's Office in Deed Book 1984, Page 165, totaling approximately 77 acres, hereinafter referred to as "Premises" (as shown on Schedule "A"); and

WHEREAS, the development easement on the original Premises, totaling 77 acres, was conveyed to Warren County on November 13, 2007, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., PL 1983, as a Deed of Easement recorded in Deed Book 2182, Page 226; and

WHEREAS, P.L. 2009, c.213 signed into law on January 16, 2010, (N.J.S.A. 4:1C-32.4, hereinafter the "Renewable Energy Law") requires State Agriculture Development Committee (SADC) approval before constructing, installing, and operating renewable energy generating facilities, structures and equipment on preserved farms, including areas excepted from the Premises; and

WHEREAS, pursuant to the Renewable Energy Law, on June 3, 2013, the SADC's regulations became effective which set forth the requirements for installation of solar energy facilities on preserved farmland (N.J.A.C. 2:76-24); and

WHEREAS, the Renewable Energy Law and resulting regulations permit the owner of a preserved farm to construct, install and operate renewable energy generation facilities on preserved farms for the purpose of generating power or heat, provided that, as set forth in N.J.S.A. 4:1C-32.4a(1)-(5), the systems:

- (1) do not interfere significantly with the use of the land for agricultural or horticultural production, as determined by the committee;

- (2) are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of an agreement with the installer of the biomass, solar, or wind energy generation facilities, structures, or equipment by which the landowner uses the income or credits realized from the biomass, solar, or wind energy generation to purchase the facilities, structures, or equipment;
- (3) are 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; and
- (4) are limited (a) in annual energy generation capacity to the previous calendar year's energy demand plus 10 percent, in addition to what is allowed under subsection b. of this section, or alternatively at the option of the landowner (b) to occupying no more than one percent of the area of the entire farm including both the preserved portion and any portion excluded from preservation.
- (5) The person who owns the farm and the energy generation facilities, structures, and equipment may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to paragraph (2) of this subsection; and

WHEREAS, the Renewable Energy Law further requires that the "Committee shall within 90 days of receipt, approve, disapprove, or approve with conditions an application" submitted for the purposes of developing renewable energy facilities on preserved farmland, and further requires that the decision of the Committee "shall be based solely upon the criteria" listed in (1) - (5) above (N.J.S.A. 4:1C-32.4c); and

WHEREAS, the Owners submitted an "Application for Energy Generation Facilities on Existing Buildings or Structures on Preserved Farmland" pursuant to N.J.S.A. 4:1C-32.4, which was deemed complete on November 15, 2013; and

WHEREAS, the Owners are seeking SADC approval for the construction of a ground mounted photovoltaic solar energy generation facility; and

WHEREAS, the land area on the Premises that will support the ground mounted solar energy generation facility is the edge of a field, along an existing farm lane with a calculated occupied area of 0.99 acres as identified on Schedule "A"; and

WHEREAS, the energy demand from this ground mounted unit is exclusively from the permanent greenhouse just south of the array; and

WHEREAS, the energy demand for the previous calendar year for the farm as it is currently operated is approximately 401,440 kWh's as confirmed by the Owner's submission of 12 months of utility bills; and

WHEREAS, the rated capacity of the proposed solar energy generation facility is 291,044 kWh's per year (72.5% of demand); and



WHEREAS, the solar array is located on prime soils; however, the only non-prime soils on the site are under and directly in front of the greenhouse structure, making placement of the solar panels on those soils impracticable due to the shading of the panels that would occur due to placement in close proximity to the greenhouse structure; and

WHEREAS, the impervious cover created by the ground mounted system is limited to surface area of the 12-inch diameter steel screw-in posts, which amounts to approximately 84 sq./ft. of impervious cover; and

WHEREAS, the site disturbance for the ground mounted array is limited to the area immediately surrounding the panel array, measured as 20 feet out from the perimeter of the array, used to provide access to the panels as well as an approximately 130 foot by 12-inch by approximately 3 foot deep trench connecting the array to the greenhouse and the 84 sq./ft. of impervious coverage created by the screw in posts, which all together cause a minimal amount of disturbance to the soil and subsoil and over an area that totals 8,514 sq./ft. (0.2 acres); and

WHEREAS, there are no other renewable energy generation facilities existing on the Premises;  
or

WHEREAS, the solar energy generation facility will be owned by the Owners at the conclusion of an 8-year lease agreement; and

WHEREAS, the Owners provided evidence confirming that the solar energy generation facility will provide power to the farm directly through net metering to reduce energy costs on the farm; and

WHEREAS, the Owners provided evidence that the annual solar energy generation does not exceed 110% of the previous calendar year's energy demand for the total energy usage of the farm as it is currently operated ; and

WHEREAS, pursuant to N.J.S.A. 4:1C-32.4, the SADC forwarded a copy of the Owner's application to the Warren County Agriculture Development Board, to provide comments concerning the installation, construction, operation and maintenance of the solar energy generation facility, structures and equipment; and

WHEREAS, on October 21, 2013, the Warren CADB advised the SADC that it has no objections to the Owners solar application;

WHEREAS, the property previously has been the subject of SADC review as a result of site disturbance activities that occurred on the site in preparation for the construction of greenhouses, and the Committee finds the following events occurred in relation to this matter:

- 1) Beginning in the fall of 2007 approximately 10-11 acres of the site were altered to accommodate the construction of an approximately 5-acre permanent greenhouse;

- 2) On February 26, 2008 the SADC filed a complaint and request for temporary restraints against Quaker Valley Farms (QVF) for violation of the Farmland Preservation Program deed of easement in connection with site disturbance activities that were occurring on the QVF site in preparation of construction hoop houses;
- 3) On March 4, 2008 the SADC became aware of the site work occurring on the Jansen Farm and on March 5, 2008 the Committee issued a letter notifying the Warren CADB and the Owners that earthwork being conducted on the farm must cease and may be in violation of the farmland preservation Deed of Easement;
- 4) On March 24, 2008, the SADC conducted a site visit of the Jansen Farm and determined that the site disturbance activities proposed had been completed;
- 5) At its March 27, 2008 meeting, the SADC reviewed the Jansen Farm matter but, in light of the pending litigation against QVF, did not make a determination on whether the site disturbance activities that had occurred on the Jansen Farm constituted a violation of the Deed of Easement;
- 6) The Owners completed construction of the greenhouse later in that year and have been operating the greenhouse since that time; and

WHEREAS, the QVF litigation has been ongoing since February 26, 2008 and is now pending before the Appellate Division of Superior Court; and

WHEREAS, the SADC has yet to make a determination as to whether the aforementioned activities on the Premises constitute a violation of the Deed of Easement; and

WHEREAS, pursuant to the Renewable Energy law, SADC may only render a decision on an applicant's renewable energy facilities on preserved farmland based solely on the criteria listed at N.J.S.A. 4:1C-32.4;

NOW THEREFORE BE IT RESOLVED, that the SADC finds that the Owners have complied with all of the provisions of N.J.S.A. 4:1C-32.4 and N.J.A.C. 2:76-24 concerning the installation of a photovoltaic solar energy generation facility, structures and equipment on the Premises; and

BE IT FURTHER RESOLVED, that the SADC approves of the construction, installation, operation and maintenance of the photovoltaic energy generation facilities, structures and equipment consisting of approximately 0.99 acres of space located along the edge of the field adjacent to an existing farm lane having a rated capacity of 291,044 kWh's of energy as identified in Schedule "A", and as described further herein; and

BE IT FURTHER RESOLVED, that total electrical energy demand of the farm as currently operated, including the greenhouse area subject to disturbance, is 401,440 kWh's annually; and

BE IT FURTHER RESOLVED, this approval for the construction of solar facilities on the farm cannot and shall not be construed in any manner whatsoever as a determination by the Committee that the soil disturbance that occurred on the Premises is in compliance with the FPP Deed of Easement; and

BE IT FURTHER RESOLVED, that this approval is conditioned upon all of the farm activities on the Premises being in compliance with the Deed of Easement and, should it be determined that the soil disturbance that has occurred on the Premises constitutes a violation of the Deed of Easement which results in any degree of site restoration or modifications to the building affecting the electrical demand of the Premises, this approval and the scope of the approved solar facilities shall be subsequently modified to reflect and be consistent with the energy demands resulting from such site restoration and/or building modifications in accordance with N.J.A.C. 2:76-24; and

BE IT FURTHER RESOLVED, that this approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey; and

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.

12-12-13

DATE



Susan E. Payne, Executive Director  
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairperson	YES
Fawn McGee (rep. DEP Commissioner Martin)	ABSENT
Gina Fischetti (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
Denis Germano	YES
Peter Johnson	ABSENT
Torrey Reade	YES (via phone conference)
James Waltman	YES

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# Schedule "A"

Jansen Farm

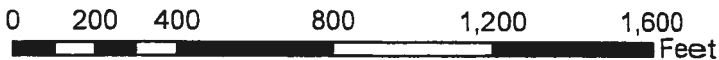


Approximate location of ground mount solar array

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## FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Jansen Farm  
Block 34, Lot 4  
Harmony Township, Warren County  
77.12 Acres



### Farmland Preservation Program

- PRESERVED EASEMENT
- EXCEPTION AREA
- PRESERVED EASEMENT / NR
- EXCEPTION AREA / NR
- FINAL APPROVAL
- PRELIMINARY APPROVAL
- ACTIVE APPLICATION
- 8 YEAR PRESERVED
- TARGETED FARM
- INACTIVE APPLICATION
- NO CORRESPONDING DATA

- ### State Planning Areas
- (PA1) METRO
  - (PA2) SUBURBAN
  - (PA3) FRINGE
  - (PA4) RURAL
  - (PA6) RURAL ENV SENS
  - (PA8) ENV SENS
  - (PA3a) ENV. SENSITIVE BARRIER IS
  - (P10) PINELANDS
  - PARK
  - MILITARY
  - NEW JERSEY MEADOWLANDS
  - WATER
  - ELLIS ISLAND- NJ
  - ELLIS ISLAND- NY
- ### Base Map
- County Boundaries
  - Municipal Boundaries
  - Highlands Planning Area
  - Highlands Preservation Area
  - Highlands Area
  - Pinelands Area
  - Green Acres Preserved Easements

month/day/year

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2014R12(2)

FINAL REVIEW AND APPROVAL OF A PLANNING INCENTIVE GRANT TO

CUMBERLAND COUNTY  
for the  
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of  
Howard H. Uhland, Inc. ("Owner")  
a.k.a Robert W. Hasher, Jr. (President of Howard H. Uhland, Inc.)  
Stow Creek Township, Cumberland County

N.J.A.C. 2:76-17 et seq.  
SADC ID# 06-0127-PG

December 12, 2013

WHEREAS, on December 15, 2008, the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") plan application from Cumberland 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, Cumberland County received SADC approval of its FY2014 PIG Plan application annual update on May 23, 2013; and

WHEREAS, on June 4, 2012 the SADC received an individual application for the sale of a development easement from Cumberland County for the Property identified as Block 20, Lot 4; Block 21, Lot 4, Stow Creek Township, Cumberland County, totaling 66.622 surveyed acres hereinafter referred to as "Property" (Schedule A); and

WHEREAS, the Property is located in Cumberland County's Stow Creek Project Area; and

WHEREAS, the Property includes one (1) single family residence, zero (0) agricultural labor units, no pre-existing non-agricultural uses and no exception areas; and

WHEREAS, at the time of application the Property was in wheat and nursery stock production; and

WHEREAS, the Owner has read and signed SADC Guidance Documents regarding Exceptions, Division of the Premises and Non-agricultural uses; and

WHEREAS, because the Property consists of non-contiguous parcels the landowner has signed the SADC Division of the Premises Guidance Document for non-contiguous parcels; and

WHEREAS, the Property has a quality score of 60.18 which exceeds 41, which is 70% of the County's average quality score as determined by the SADC on July 28, 2011; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9(b) on June 29, 2012 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, there is an existing Life Estate to Melody Long-Hasher, on Block 21, a portion of Lot 4, encompassing the existing house, covering an area of 175 feet by 135 feet, and recorded in Deed Book 2743, Page 113; and

WHEREAS, the two appraisers and the SADC review appraiser considered the presence of the Life Estate in their easement value determinations; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.11, on July 26, 2012 the SADC certified a current easement value of \$4,200/acre based on zoning and environmental regulations in place as of March 2012; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.12, the Owner accepted the County's offer of \$4,200 per acre for the development easement for the Property; and

WHEREAS, currently the County has \$0 of base grant funding available, and is eligible for up to \$3,133,748.78 in FY13 competitive funding competitive grant funding, subject to available funds (Schedule B); and

WHEREAS, the County prioritized its farms and submitted it to the SADC to conduct a final review of the application for the sale of a development easement pursuant to N.J.A.C. 2:76-17.14; 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, the Cumberland County Agriculture Development Board is requesting \$194,536.24 of FY13 competitive grant funding, leaving a balance of approximately \$2,939,212.54 (Schedule B); and

WHEREAS, the estimated cost share breakdown is as follows (based on 66.622 acres):

	<u>Cost Share</u>	
SADC	\$194,536.24	(\$2,920 per acre)
<u>Cumberland County</u>	<u>\$ 85,276.16</u>	<u>(\$1,280 per acre)</u>
Purchase Price	\$279,812.40	(\$4,200 per acre); and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13, on Stow Creek Township approved the application on March 12, 2013, the Cumberland County Agriculture Development Board approved the application on September 12, 2012, and the Cumberland County Board of Chosen Freeholders approved the required local match (\$1,280/acre) on October 23, 2012; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.14, the SADC shall approve a cost share grant for the purchase of the development easement on an individual farm consistent with the provisions of N.J.A.C. 2:76-6.11;

NOW THEREFORE BE IT RESOLVED, that the SADC grants final approval to provide a cost share grant to Cumberland County for the purchase of a development easement on the Property, comprising 66.622 surveyed acres at a State cost share of \$2,920 per acre for a total grant need of \$194,536.24 pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in (Schedule C); and

BE IT FURTHER RESOLVED, the County will utilize FY13 competitive grant funding to cover the SADC cost share; and

BE IT FURTHER RESOLVED, that if additional funds are needed due to an increase in acreage base grant funding, if available, may be utilized so long as it does not impact any other applications' encumbrance; and

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

BE IT FURTHER RESOLVED, that the SADC's cost share grant to the County for the purchase of a development easement on the approved application shall be based on 66.622 acres which is the final surveyed acreage of the premises adjusted for proposed road rights-of-way, other rights-of-way or easements, streams or water bodies on the boundaries of the premises as identified in Policy P-3-B Supplement; 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 all survey, title and all additional documents required for closing shall subject to review and approval by the SADC; and

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

12-12-13

Date

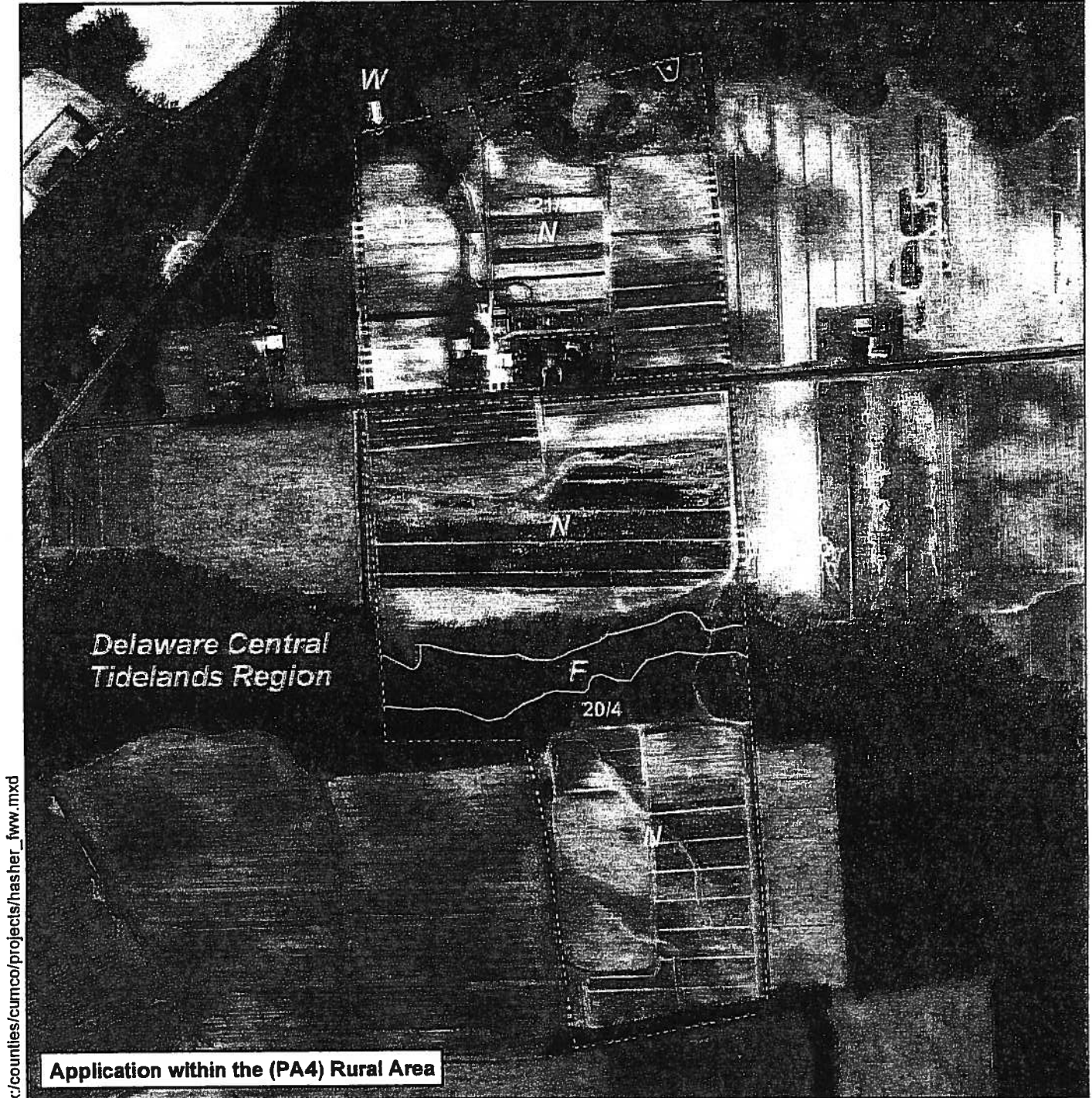


Susan E. Payne, Executive Director  
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairperson	YES
Fawn McGee (rep. DEP Commissioner Martin)	ABSENT
Gina Fischetti (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
Denis Germano	YES
Peter Johnson	ABSENT
Torrey Reade	YES (via phone conference)
James Waltman	YES





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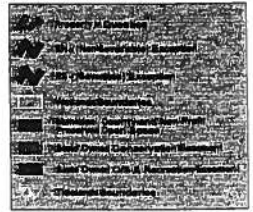
**FARMLAND PRESERVATION PROGRAM  
NJ State Agriculture Development Committee**

Robert Hasher, Jr.  
Block 20 Lot 4 (43.0 ac) & Block 21 Lot 4 (22.6 ac)  
Gross Total = 65.7 ac  
Stow Creek Twp., Cumberland County



**TIDELANDS DISCLAIMER:**  
The linear features depicted on this map were derived from the NJDEP's CD RDM series 1, volume 4, "Tidelands Claims Maps". These linear features are not an official NJDEP determination and should only be used as a general reference. Only NJDEP Bureau of Tidelands Management can perform an official determination of Tidelands/Riparian claims.

**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.



**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  
NJOTTOGIS 2007/2008 Digital Aerial Image



State Agriculture Development Committee  
SADC Final Review: Development Easement Purchase

Hasher Farm  
06- 0127-PG  
County PIG Program  
67 Acres

Block 20	Lot 4	Stow Creek Twp.	Cumberland County
Block 21	Lot 4	Stow Creek Twp.	Cumberland County

<b>SOILS:</b>	Other	8% * 0	=	.00
	Prime	29% * .15	=	4.35
	Statewide	43% * .1	=	4.30
	Unique .125	10% * .125	=	1.25
	Unique zero	10% * 0	=	.00

**SOIL SCORE: 9.90**

<b>TILLABLE SOILS:</b>	Cropland Harvested	74% * .15	=	11.10
	Other	6% * 0	=	.00
	Wetlands	6% * 0	=	.00
	Woodlands	14% * 0	=	.00

**TILLABLE SOILS SCORE: 11.10**

<b>FARM USE:</b>	Ornament Nursery Products	41 acres
	Wheat-Cash Grain	8 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 Residual Dwelling Site Opportunities on the Premises subject to confirmation of acreage by survey.
3. Compliance with all applicable statutes, rules and policies.
5. Other:
  - a. Pre-existing Nonagricultural Use: No Nonagricultural Uses
  - b. Exceptions: No Exceptions Recorded
  - c. Additional Restrictions: No Additional Restrictions
  - d. Additional Conditions:
 

On Block 21, a portion of Lot 4, there is an existing Life Estate provided to Melody Long-Hasher for the area encompassing the house, (175' by 135') recorded in Deed Book 2743, page 113.
  - e. Dwelling Units on Premises:
 

Standard Single Family
  - f. Agricultural Labor Housing Units on Premises: No Ag Labor Housing
6. The SADC's grant for the acquisition of the development easement is subject to the terms of the Agriculture Retention and Development Act, N.J.S.A. 4:10-11 et seq., P.L. 1983, c.32, and N.J.A.C. 2:76-7.14.
7. Review and approval by the SADC legal counsel for compliance with legal requirements.

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2014R12(3)

FINAL REVIEW AND APPROVAL OF A PLANNING INCENTIVE GRANT TO  
CUMBERLAND COUNTY  
for the  
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of  
Dean A. & Ann Rork ("Owners")  
Hopewell Township, Cumberland County

N.J.A.C. 2:76-17 et seq.  
SADC ID# 06-0128-PG

December 12, 2013

WHEREAS, on June 7, 2012, the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") plan application from Cumberland 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, Cumberland County received SADC approval of its FY2014 PIG Plan application annual update on May 23, 2013; and

WHEREAS, on June 7, 2012, the SADC received an individual application for the sale of a development easement from Cumberland County for the Rork Farm identified as Block 80, Lots 15 and 16, Hopewell Township, Cumberland County, totaling 112.422 surveyed acres (hereinafter referred to as "Property") (Schedule A); and

WHEREAS, the Property is located in Cumberland County's Hopewell South Project Area; and

WHEREAS, the Property has one 2-acre severable exception area restricted to one single family residence; and

WHEREAS, the Property has no pre-existing non-agricultural uses; zero (0) residences and zero (0) agricultural labor units on the area to be preserved outside of the exception area; and

WHEREAS, at the time of application the farm was dedicated to potato production; and

WHEREAS, the owners have read and signed SADC Guidance Documents regarding Exceptions, Division of the Premises and Non-agricultural uses; and

WHEREAS, the Property has a rank score of 69.17, which is 70% of the County's average quality score of 41 as determined by the SADC on July 28, 2011; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9(b), on June 26, 2012, SADC staff 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 July 26, 2012, the SADC certified a development easement value of \$3,400 per acre based on zoning and environmental regulations in place as of March 2012; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.12, the Owner accepted Cumberland County's offer of \$3,400 per acre for the purchase of the development easement on the Property; and

WHEREAS, currently the County has \$0 of base grant funding and FY11 competitive funding available and is eligible for up to \$2,939,212.54 in FY13 competitive grant funding, subject to available funds (Schedule B); and

WHEREAS, a parcel application was submitted by the New Jersey Conservation Foundation (NJCF) to the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), Federal Farm and Ranch Lands Protection Program (FRPP); and

WHEREAS, the NRCS determined that the Property and Landowner qualify for FRPP grant funds; and

WHEREAS, the FRPP grant based on an estimated FRPP current easement value of \$3,400 per acre would result in an FRPP grant of \$1,700 per acre (50% of \$3,400) totaling approximately \$185,300 in total FRPP funds; and

WHEREAS, as this application is an FRPP substitute for the VanMeter 2 application that closed without using FY12 FRPP monies, the maximum total FRPP grant contribution is \$137,350; and

WHEREAS, the landowner has agreed to the additional restrictions required for obtaining an FRPP grant, including a 6.33% maximum impervious coverage restriction (approximately 7.12 acres) for the construction of agricultural infrastructure on the Property outside of the exception area, which is the maximum impervious coverage allowable for this Property through the FRPP program at this time; and

WHEREAS, the Open Space Institute (OSI) indicated that it is prepared to contribute up to \$109,000 toward the total purchase price of the development easement, or one-sixth of the total easement cost (\$63,680.31), whichever is less with no additional restrictions on the Property, to assist toward its goal of preserving land within the Delaware Bayshore region; and

WHEREAS, the terms and conditions of the proposed OSI funding contribution is subject to advanced review and approval by SADC legal staff and the Office of the Attorney General; and

WHEREAS, Cumberland County is requesting that the OSI and FRPP funding first cover the County's cost share and then reduce the SADC's cost share; and

WHEREAS, on October 4, 2013 the County prioritized its farms and submitted its application in priority order to the SADC to conduct a final review of the application for the sale of a development easement pursuant to N.J.A.C. 2:76-17.14; 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, the County is not requesting an additional 3% buffer because the survey is completed, therefore, 112.422 acres will be utilized to calculate the grant need; and

WHEREAS, the Cumberland County Agriculture Development Board (CADB) is requesting \$274,309.68 of FY13 competitive grant, leaving a balance of \$2,664,902.86 (Schedule B); and

**Cost share breakdown prior to FRPP and OSI Grants (based on 112.422 acres):**

	<u>Total</u>	
SADC	\$274,309.68	(\$2,440/acre)
Cumberland County	\$ 88,813.38	(\$ 790/acre)
<u>Hopewell Township</u>	<u>\$ 19,111.74</u>	<u>(\$ 170/acre)</u>
<b>Total</b>	<b>\$382,234.80</b>	<b>(\$3,400/acre)</b>

**Cost share breakdown with FRPP and OSI Grants of \$201,030.31 (based on 112.422 acres):**

	<u>Total</u>	<u>OSI</u>	<u>FRPP</u>	<u>New Cost Share</u>
SADC	\$274,309.68		\$112,216.93	\$ 162,092.75
County	\$ 88,813.38	\$63,680.31	\$ 25,133.07	\$ 0
Township	\$ 19,111.74			\$ 19,111.74
OSI				\$ 63,680.31
<u>FRPP</u>				<u>\$ 137,350.00</u>
<b>Total</b>	<b>\$382,234.80</b>	<b>\$63,680.31</b>	<b>\$137,350</b>	<b>\$382,234.80</b>

WHEREAS, pursuant to N.J.A.C. 2:76-17.13, on January 24, 2013 the Hopewell Township Committee approved the application with a contribution of \$170.00 per acre; and

WHEREAS, the (CADB) approved the application on October 10, 2012, and secured a commitment of funding from the Cumberland County Board of Chosen Freeholders on March 26, 2013 for 28.24% or \$790.00 per acre; and

WHEREAS, should OSI and FRPP funding not be available, the County and Township have agreed to fully fund the entire local (non-SADC) cost-share in order to proceed with the preservation of this farm; and

WHEREAS, the SADC has determined that the encumbrance of competitive grant funds associated with the acquisition of development easements that ultimately may be purchased, in part, with FRPP funds does not have an immediate adverse impact on another county's access to competitive funds, but if a closing is unreasonably delayed for any reason, including securing the use of FRPP and/or OSI funds, the SADC retains the right to rescind its Final Approval of encumbered competitive grant funds equal to the amount of the anticipated FRPP grant for the acquisition of a development easement on an affected Property; and

WHEREAS, should alternate FRPP funding become available from other funding years or through other qualified entities such as a Non-Profit organization, the SADC or the County, the alternate funding may be utilized if such funding benefits the easement acquisition and/or the successful use of FRPP funding; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.14, the SADC shall approve a cost share grant for the purchase of the development easement on an individual farm consistent with the provisions of N.J.A.C. 2:76-6.11;

NOW, THEREFORE BE IT RESOLVED, that the SADC grants final approval to provide a cost share grant to Cumberland County for the purchase of a development easement on the Property, comprising 112.422 surveyed acres, at a State cost share of \$2,440 per acre (71.76 % of certified market value and the purchase price) for a total grant of approximately \$274,309.68, pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in (Schedule C); and

BE IT FURTHER RESOLVED, the County will utilize FY13 competitive grant funding to cover the SADC cost share; and

BE IT FURTHER RESOLVED, that if FRPP and/or OSI funding is secured and approved for use by the SADC, said funding will be used to reduce the County cost share first and then offset SADC grant needs; and

BE IT FURTHER RESOLVED, if a closing is unreasonably delayed for any reason, including securing the use of FRPP and/or OSI funds, the SADC retains the right to rescind its Final Approval of encumbered competitive grant funds equal to the amount of the anticipated FRPP grant for the acquisition of a development easement on the Property; and

BE IT FURTHER RESOLVED, that if additional funds are needed due to an increase in acreage, base grant funding, if available, may be utilized only if it does not impact any other application's encumbrance; and

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

BE IT FURTHER RESOLVED, that the SADC's cost share grant to the County for the purchase of a development easement on the approved application shall be 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 and for residual dwelling site opportunities allocated pursuant to Policy P-19-A; 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 the terms and conditions of the proposed OSI funding contribution, as well as the survey, title and all additional documents required for closing, shall be subject to the advanced review and approval by the SADC and the Office of the Attorney General; and

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-4.

12-12-13

Date



Susan E. Payne, Executive Director  
State Agriculture Development Committee

**VOTE WAS RECORDED AS FOLLOWS**

Douglas H. Fisher, Chairperson	YES
Fawn McGee (rep. DEP Commissioner Martin)	ABSENT
Gina Fischetti (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
Denis Germano	YES
Peter Johnson	ABSENT
Torrey Reade	YES (via phone conference)
James Waltman	YES



# Schedule A



x:/counties/cumco/projects/roork\_fwv.mxd

Delaware Central  
Tideland Region

80/P/O 16

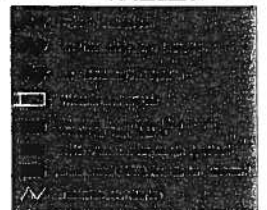
80/15

exception area

Application within the (PA4) Rural Area

## FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Dean and Ann Rook  
Block 80 Lots 15 (33.1 ac); P/O 16 (78.1 ac)  
& P/O 16-ES (severable exception - 2.0 ac)  
Gross Total = 113.2 ac  
Hopewell Twp., Cumberland County



500 250 0 500 1,000 Feet

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**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 L  
NJOT/OGIS 2007/2008 Digital/Aerial Image

June 21, 2012

Project	Municipality	AEC	BIDS Certified P.C. Amt.	Approved For A/C	SMBB Grant P.C. Amt.	Eminent Domain	Cost Share	Base Grant		Competitive Grant		TOTAL	Eligibility
								Expend	Encumbered	Expend	Encumbered		
Shimp, Newton B. III	Stow Creek	102	4,500.00	4,500.00	3,100.00	458,617.50	458,617.50	214,021.50	214,021.50	214,021.50	214,021.50	2,800,000.00	2,800,000.00
Keeswitch, Norman & Lynette	Stow Creek	17,37	8,000.00	8,000.00	4,900.00	135,704.00	135,704.00	75,704.00	75,704.00	75,704.00	75,704.00	8,000,000.00	8,000,000.00
Jones, Clifton & Dorothy	Greenwich	70	4,000.00	4,000.00	2,900.00	274,000.00	274,000.00	169,000.00	169,000.00	169,000.00	169,000.00	4,000,000.00	4,000,000.00
Newton, Thomas	Greenwich	45,3	8,500.00	8,500.00	3,100.00	195,853.50	195,853.50	100,000.00	100,000.00	100,000.00	100,000.00	8,500,000.00	8,500,000.00
Dickman, Everett et al	Shiloh Boro	40	6,300.00	6,300.00	4,050.00	257,178.60	257,178.60	185,328.10	185,328.10	185,328.10	185,328.10	6,300,000.00	6,300,000.00
Cum Chy/Cates, Thomas	Lawrence	25	5,200.00	5,200.00	3,900.00	165,145.50	165,145.50	88,924.50	88,924.50	88,924.50	88,924.50	5,200,000.00	5,200,000.00
Cum Chy/Sheppard Anne	Stow Creek	47	4,900.00	4,900.00	3,400.00	224,910.00	224,910.00	153,306.00	153,306.00	153,306.00	153,306.00	4,900,000.00	4,900,000.00
Cum Chy/Sheppard Anne	Stow Creek	71	3,750.00	3,750.00	2,850.00	292,092.20	292,092.20	188,791.30	188,791.30	188,791.30	188,791.30	3,750,000.00	3,750,000.00
Coll #1, Kevin A.	Stow Creek	41	5,100.00	5,100.00	3,450.00	198,500.00	198,500.00	134,550.00	134,550.00	134,550.00	134,550.00	5,100,000.00	5,100,000.00
Coll #2, Kevin A.	Stow Creek	48	7,200.00	7,200.00	4,900.00	339,796.80	339,796.80	212,373.00	212,373.00	212,373.00	212,373.00	7,200,000.00	7,200,000.00
Adamucci #2, Carmen	Hopewell	209	5,800.00	5,800.00	3,650.00	266,021.00	266,021.00	180,015.00	180,015.00	180,015.00	180,015.00	5,800,000.00	5,800,000.00
Cumberland Co/Riggins #2	Fairfield Twp.	40	6,700.00	6,700.00	4,250.00	1,131,856.00	1,131,856.00	483,811.20	483,811.20	483,811.20	483,811.20	6,700,000.00	6,700,000.00
Ruska, Roger, Margret & Chris	Hopewell	41	6,700.00	6,700.00	4,250.00	282,465.60	282,465.60	168,489.50	168,489.50	168,489.50	168,489.50	6,700,000.00	6,700,000.00
Van Meter, Alfred #2	Hopewell	89	4,300.00	4,300.00	2,900.00	297,560.00	297,560.00	206,218.00	206,218.00	206,218.00	206,218.00	4,300,000.00	4,300,000.00
Keung Lam Realty	Lawrence	30	7,000.00	7,000.00	4,000.00	184,942.00	184,942.00	116,186.40	116,186.40	116,186.40	116,186.40	7,000,000.00	7,000,000.00
Paladino, Vincent	Darfield	70	8,500.00	8,500.00	4,150.00	452,888.50	452,888.50	268,079.95	268,079.95	268,079.95	268,079.95	8,500,000.00	8,500,000.00
Bellinger, Frank P., III	Hopewell	11	12,100.00	12,100.00	7,280.00	134,600.40	134,600.40	80,760.24	80,760.24	80,760.24	80,760.24	12,100,000.00	12,100,000.00
Ridich, Michael et al	Hopewell	80	7,000.00	7,000.00	4,200.00	411,423.70	411,423.70	256,610.44	256,610.44	256,610.44	256,610.44	7,000,000.00	7,000,000.00
DeWilde/Bakker Jr., Abram #1	Shiloh Boro	100	6,000.00	6,000.00	3,900.00	590,194.00	590,194.00	383,619.60	383,619.60	383,619.60	383,619.60	6,000,000.00	6,000,000.00
DeWilde/Bakker Jr., Abram #2	Shiloh Boro	92,412	6,800.00	6,800.00	4,223.00	155,935.85	155,935.85	98,959.53	98,959.53	98,959.53	98,959.53	6,800,000.00	6,800,000.00
Cum.Co/Mironos/Hiam	Greenwich	23,449	6,000.00	6,000.00	4,050.00	582,542.10	582,542.10	374,491.35	374,491.35	374,491.35	374,491.35	6,000,000.00	6,000,000.00
Cross #1	Hopewell	34,172	9,250.00	9,250.00	5,550.00	131,091.00	131,091.00	78,654.60	78,654.60	78,654.60	78,654.60	9,250,000.00	9,250,000.00
Cross #2	Hopewell	55,672	6,500.00	6,500.00	4,150.00	381,868.00	381,868.00	231,038.80	231,038.80	231,038.80	231,038.80	6,500,000.00	6,500,000.00
Cross #3	Hopewell	68	5,000.00	5,000.00	3,400.00	350,200.00	350,200.00	238,136.00	238,136.00	238,136.00	238,136.00	5,000,000.00	5,000,000.00
Cross #4	Hopewell	68	5,200.00	5,200.00	4,000.00	434,248.00	434,248.00	290,160.00	290,160.00	290,160.00	290,160.00	5,200,000.00	5,200,000.00
DeWilde, Bakker Jr., Abram #3	Shiloh Boro	88,378	6,500.00	6,500.00	4,150.00	444,457.00	444,457.00	282,766.70	282,766.70	282,766.70	282,766.70	6,500,000.00	6,500,000.00
DeWilde, Bakker Jr., Abram #4	Hopewell	88,007	6,200.00	6,200.00	4,000.00	235,643.40	235,643.40	131,629.90	131,629.90	131,629.90	131,629.90	6,200,000.00	6,200,000.00
DeWilde, Bakker Jr., Abram #5	Hopewell	97,434	6,500.00	6,500.00	4,150.00	240,656.00	240,656.00	131,629.90	131,629.90	131,629.90	131,629.90	6,500,000.00	6,500,000.00
Adamucci #1, Camen Sr.	Hopewell	108,897	5,900.00	5,900.00	3,850.00	639,483.30	639,483.30	417,885.95	417,885.95	417,885.95	417,885.95	5,900,000.00	5,900,000.00
SF Systems Company/sheppard	Lawrence	42	4,400.00	4,400.00	3,040.00	190,344.00	190,344.00	131,116.40	131,116.40	131,116.40	131,116.40	4,400,000.00	4,400,000.00
DeVeechio, Brian & Susan	Lawrence	45,234	5,100.00	5,100.00	3,450.00	230,795.40	230,795.40	156,126.30	156,126.30	156,126.30	156,126.30	5,100,000.00	5,100,000.00
Edwards	Upper Deerfil	40	5,000.00	5,000.00	3,400.00	206,000.00	206,000.00	130,948.00	130,948.00	130,948.00	130,948.00	5,000,000.00	5,000,000.00
Trell	Upper Deerfil	48,177	5,100.00	5,100.00	3,450.00	242,587.78	242,587.78	156,110.84	156,110.84	156,110.84	156,110.84	5,100,000.00	5,100,000.00
Blew	Hopewell	25	5,600.00	5,600.00	3,600.00	138,050.00	138,050.00	88,924.50	88,924.50	88,924.50	88,924.50	5,600,000.00	5,600,000.00
Cum.Co/Sheppard Mark K.	Stow Creek	70,18	5,200.00	5,200.00	3,500.00	423,800.00	423,800.00	245,700.00	245,700.00	245,700.00	245,700.00	5,200,000.00	5,200,000.00
Camino, Joseph & Edlin	Hopewell	52	5,700.00	5,700.00	3,750.00	305,292.00	305,292.00	193,666.00	193,666.00	193,666.00	193,666.00	5,700,000.00	5,700,000.00
Stow Creek	Hopewell	66,622	4,200.00	4,200.00	2,920.00	279,812.40	279,812.40	181,556.84	181,556.84	181,556.84	181,556.84	4,200,000.00	4,200,000.00
Roork	Hopewell	112,422	3,400.00	3,400.00	2,440.00	382,234.80	382,234.80	274,866.88	274,866.88	274,866.88	274,866.88	3,400,000.00	3,400,000.00
Waiting for final approval	Hopewell												
Watson #1	Hopewell	49	4,900.00	4,900.00	3,340.00	247,303.00	247,303.00	168,569.80	168,569.80	168,569.80	168,569.80	4,900,000.00	4,900,000.00
Van DerVeer	Hopewell	17	5,900.00	5,900.00	3,850.00	103,309.00	103,309.00	87,413.50	87,413.50	87,413.50	87,413.50	5,900,000.00	5,900,000.00
TOTAL													

Create C

State Agriculture Development Committee  
SADC Final Review: Development Easement Purchase

Rork, Dean A. & Ann  
06- 0128-PG  
County PIG Program  
109 Acres

Block 80            Lot 15            Hopewell Twp.            Cumberland County  
Block 80            Lot 16            Hopewell Twp.            Cumberland County

**SOILS:**

	Other	12% *	0	=	.00
	Prime	62% *	.15	=	9.30
	Statewide	25% *	.1	=	2.50
	Unique zero	1% *	0	=	.00

**SOIL SCORE: 11.80**

**TILLABLE SOILS:**

	Cropland Harvested	68% *	.15	=	10.20
	Other	12% *	0	=	.00
	Wetlands	2% *	0	=	.00
	Woodlands	18% *	0	=	.00

**TILLABLE SOILS SCORE: 10.20**

**FARM USE:**            Irish Potatoes-Field Crop            90 acres            white potatoes

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 Residual Dwelling Site Opportunities on the Premises subject to confirmation of acreage by survey.
3. Compliance with all applicable statutes, rules and policies.
5. Other:
  - a. Pre-existing Nonagricultural Use: No Nonagricultural Uses
  - b. Exceptions:
    - 1st two (2) acres for existing SFR, outbuildings
    - Exception is severable
    - Right to Farm language is to be included in Deed of Future Lot
    - Exception is to be restricted to one single family residential unit(s)
  - c. Additional Restrictions:
    1. FY12 FRPP substitution funding via NJCF, funds set aside originally for VanMeter 2
  - d. Additional Conditions:
    - Pursuant to the Federal Farm and Ranch Land Protection Program the landowner has agreed to a maximum impervious coverage of 6.33% or 7.12 acres
  - e. Dwelling Units on Premises:
    - No Structures On Premise
  - f. Agricultural Labor Housing Units on Premises: No Ag Labor Housing
6. The SADC's grant for the acquisition of the development easement is subject to the terms of the Agriculture Retention and Development Act, N.J.S.A. 4:10-11 et seq., P.L. 1983, c.32, and N.J.A.C. 2:76-7.14.
7. Review and approval by the SADC legal counsel for compliance with legal requirements.

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2014R12(4)

FINAL REVIEW AND APPROVAL OF A PLANNING INCENTIVE GRANT TO

CUMBERLAND COUNTY

for the

PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of

Neil A. Vander Veer ("Owner")

Hopewell Township, Cumberland County

N.J.A.C. 2:76-17 et seq.

SADC ID# 06-0131-PG

December 12, 2013

WHEREAS, on December 15, 2008, the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") plan application from Cumberland 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, Cumberland County received SADC approval of its FY2014 PIG Plan application annual update on May 23, 2013; and

WHEREAS, on July 26, 2012 the SADC received an individual application for the sale of a development easement from Cumberland County for the Property identified as Block 8, Lot 10.02, Hopewell Township, Cumberland County, totaling approximately 17 acres hereinafter referred to as "Property" (Schedule A); and

WHEREAS, the Property is located in Cumberland County's Shiloh-Hopewell North Project Area; and

WHEREAS, the Property includes zero (0) single family residences, zero (0) agricultural labor units, no pre-existing non-agricultural uses and no exception areas; and

WHEREAS, at the time of application the Property was in ornamental nursery production; and

WHEREAS, the Owner has read and signed SADC Guidance Documents regarding Exceptions, Division of the Premises and Non-agricultural uses; and

WHEREAS, the Property has a quality score of 74.14, which is 70% of the County's average quality score of 41 as determined by the SADC on July 28, 2011; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9(b) on August 16, 2012 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 September 27, 2012 the SADC certified a current easement value of \$5,900/acre based on zoning and environmental regulations in place as of March 2012; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.12, the Owner accepted the County's offer of \$5,900 per acre for the development easement for the Property; and

WHEREAS, the County has requested to encumber an additional 3% buffer for possible final surveyed acreage increases, therefore, 17.51 acres will be utilized to calculate the SADC grant need; and

WHEREAS, currently the County has \$0 of base grant funding and FY11 competitive funding available and is eligible for up to \$2,496,333.06 in FY13 competitive grant funding, subject to available funds (Schedule B); and

WHEREAS, the County prioritized its farms and submitted it to the SADC to conduct a final review of the application for the sale of a development easement pursuant to N.J.A.C. 2:76-17.14; 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, the Cumberland County Agriculture Development Board is requesting \$67,413.50 of FY13 competitive grant funding, leaving a balance of approximately \$2,428,919.56 (Schedule B); and

WHEREAS, the estimated cost share breakdown is as follows (based on 17.51 acres):

	<u>Cost Share</u>	
SADC	\$ 67,413.50	(\$3,850 per acre)
<u>Cumberland County</u>	<u>\$ 35,895.50</u>	<u>(\$2,050 per acre)</u>
Purchase Price	\$103,309	(\$5,900 per acre); and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13, Hopewell Township approved the application on April 11, 2013 without a funding commitment; the Cumberland County Agriculture Development Board approved the application on November 14, 2012, and the Cumberland County Board of Chosen Freeholders approved the required local match (\$2,050/acre) on April 23, 2013; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.14, the SADC shall approve a cost share grant for the purchase of the development easement on an individual farm consistent with the provisions of N.J.A.C. 2:76-6.11;

NOW THEREFORE BE IT RESOLVED, that the SADC grants final approval to provide a cost share grant to Cumberland County for the purchase of a development easement on the Property, comprising approximately 17.51 acres at a State cost share of \$3,850 per acre for a total grant need of \$67,413.50 pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in (Schedule C); and

BE IT FURTHER RESOLVED, the County will utilize FY13 competitive grant funding to cover the SADC cost share; and

BE IT FURTHER RESOLVED, that if additional funds are needed due to an increase in acreage base grant funding, if available, may be utilized so long as it does not impact any other applications' encumbrance; and

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

BE IT FURTHER RESOLVED, that the SADC's cost share grant to the County for the purchase of a development easement on the approved application shall be 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 and for residual dwelling site opportunities allocated pursuant to Policy P-19-A; 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 all survey, title and all additional documents required for closing shall subject to review and approval by the SADC; and

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-4.

12-7-13

Date



Susan E. Payne, Executive Director  
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairperson	YES
Fawn McGee (rep. DEP Commissioner Martin)	ABSENT
Gina Fischetti (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
Denis Germano	YES
Peter Johnson	ABSENT
Torrey Reade	YES (via phone conference)
James Waltman	YES

# Schedule A



x:/counties/cumco/projects/vanderveer\_fwv.mxd

## FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Neil A. Van Der Veer  
Block 8 Lot 10.02 (19.2 ac)  
Gross Total = 19.2 ac  
Hopewell Twp., Cumberland County



**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  
NLCIT/DGIS 2007/2008 DigitalAerial Image

August 7, 2012



Agency	Project Name	Acres	Base Grant	Match	State	Federal	Total	Reliability
Shimp, Newton B. III	Slow Creek	102	4,500.00	4,500.00	4,500.00	4,500.00	18,000.00	3,000.00
Kecawich, Norman & Lynette	Slow Creek	17.37	17,891.00	8,000.00	8,000.00	8,000.00	31,681.00	5,000.00
Jones, Clifton & Dorothy	Greenwich	70	4,500.00	4,500.00	4,500.00	4,500.00	18,000.00	3,000.00
Newton, Thomas	Greenwich	43.3	4,500.00	4,500.00	4,500.00	4,500.00	18,000.00	3,000.00
Dickinson, Everett et al	Shiloh Boro	40	412.00	5,000.00	4,500.00	4,500.00	14,412.00	3,000.00
Cum Cty/Kates, Thomas	Lawrence	25	25,750.00	5,000.00	4,500.00	4,500.00	39,750.00	5,000.00
Coll #1, Kevin A.	Slow Creek	71	48,411.00	4,000.00	4,000.00	4,000.00	60,411.00	5,000.00
Cum Cty/Sheppard Anns	Greenwich	47	73,130.00	3,750.00	4,000.00	4,000.00	85,130.00	5,000.00
Coll #2, Kevin A.	Slow Creek	41	42,223.00	5,100.00	4,500.00	4,500.00	56,323.00	5,000.00
Admervul #2, Carmen	Hopewell	48	49,444.00	7,000.00	4,500.00	4,500.00	65,444.00	5,000.00
Cumberland Co/Riggins #2	Slow Creek	76,154	3,500.00	3,500.00	3,500.00	3,500.00	14,000.00	5,000.00
Ruske, Roger, Margaret & Chris	Fairfield Twp.	205	211,150.00	5,500.00	5,500.00	5,500.00	229,650.00	5,000.00
Van Meter, Alfred #1	Hopewell	40	41,200.00	6,700.00	6,700.00	6,700.00	57,600.00	5,000.00
Van Meter, Alfred #2	Hopewell	41	42,230.00	6,700.00	6,700.00	6,700.00	58,630.00	5,000.00
Keung Lam Realty	Deerfield	30	30,900.00	7,000.00	7,000.00	7,000.00	44,900.00	5,000.00
Paladino, Vincent	Hopewell	70	72,100.00	6,500.00	6,500.00	6,500.00	91,600.00	5,000.00
Batlinger, Frank P. III	Hopewell	11	11,330.00	12,100.00	12,100.00	12,100.00	35,630.00	5,000.00
DeWilde/Bakker Jr., Abram #1	Shiloh Boro	60	61,600.00	7,000.00	7,000.00	7,000.00	76,600.00	5,000.00
DeWilde/Bakker Jr., Abram #2	Shiloh Boro	100	103,000.00	6,000.00	6,000.00	6,000.00	115,000.00	5,000.00
Cum, Co/Mooneyham	Greenwich	23,449	6,800.00	6,800.00	6,800.00	6,800.00	27,200.00	5,000.00
Guzman, Daniel & Diane	Hopewell	85,184	6,300.00	6,300.00	6,300.00	6,300.00	25,200.00	5,000.00
Cross #1	Hopewell	12,179	9,250.00	9,250.00	9,250.00	9,250.00	37,000.00	5,000.00
Cross #2	Hopewell	55,972	6,500.00	6,500.00	6,500.00	6,500.00	26,000.00	5,000.00
Cross #3	Hopewell	68	5,000.00	5,000.00	5,000.00	5,000.00	20,000.00	5,000.00
Cross #4	Hopewell	66	6,200.00	6,200.00	6,200.00	6,200.00	25,000.00	5,000.00
DeWilde/Bakker Jr., Abram #3	Shiloh Boro	68,378	6,500.00	6,500.00	6,500.00	6,500.00	26,000.00	5,000.00
DeWilde/Bakker Jr., Abram #4	Hopewell	5,404	8,200.00	8,200.00	8,200.00	8,200.00	33,000.00	5,000.00
DeWilde/Bakker Jr., Abram #5	Hopewell	57,684	6,500.00	6,500.00	6,500.00	6,500.00	26,000.00	5,000.00
Admervul #1, Carmen Sr.	Hopewell	42	5,900.00	5,900.00	5,900.00	5,900.00	23,600.00	5,000.00
SF Systems Company/Sheppard	Lawrence	48,354	4,400.00	4,400.00	4,400.00	4,400.00	17,600.00	5,000.00
DeWilde/Bakker Jr., Abram #6	Lawrence	40	41,200.00	5,000.00	5,000.00	5,000.00	51,200.00	5,000.00
Edwards, Brian & Susan	Lawrence	40	41,200.00	5,000.00	5,000.00	5,000.00	51,200.00	5,000.00
Edwards, Brian & Susan	Upper Deerfield	48,177	47,582.00	5,100.00	5,100.00	5,100.00	105,764.00	5,000.00
Trelli	Upper Deerfield	25	25,750.00	3,400.00	3,400.00	3,400.00	32,550.00	5,000.00
Cum, Co/Sheppard Mark K.	Slow Creek	70.8	53,560.00	7,000.00	7,000.00	7,000.00	67,560.00	5,000.00
Chirno, Joseph & Edith	Hopewell	52	52,000.00	5,000.00	5,000.00	5,000.00	67,000.00	5,000.00
Hasher	Slow Creek	68,822	4,200.00	4,200.00	4,200.00	4,200.00	17,000.00	5,000.00
Watson #1	Hopewell	48	50,470.00	3,400.00	3,400.00	3,400.00	57,670.00	5,000.00
Watson #2	Hopewell	17	17,510.00	5,900.00	5,900.00	5,900.00	35,310.00	5,000.00
Van DerVaer	Hopewell	17	17,510.00	5,900.00	5,900.00	5,900.00	35,310.00	5,000.00
Waiting for final approval								
Endorsed/Expended FY11								
Endorsed/Expended FY12								
Total		2,348	12,833,308	11,968,259	7,654,997	13,816,563	45,272,127	8,000,000

State Agriculture Development Committee  
SADC Final Review: Development Easement Purchase

Neil A. Vander Veer  
06- 0131-PG  
County PIG Program  
17 Acres

Block 8	Lot 10.02	Hopewell Twp.	Cumberland County
<b>SOILS:</b>		Prime	100% * .15 = 15.00
			<b>SOIL SCORE: 15.00</b>
<b>TILLABLE SOILS:</b>		Cropland Harvested	100% * .15 = 15.00
			<b>TILLABLE SOILS SCORE: 15.00</b>
<b>FARM USE:</b>	Ornament Nursery Products		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 Residual Dwelling Site Opportunities on the Premises subject to confirmation of acreage by survey.
3. Compliance with all applicable statutes, rules and policies.
5. Other:
  - a. Pre-existing Nonagricultural Use: No Nonagricultural Uses
  - b. Exceptions: No Exceptions Recorded
  - c. Additional Restrictions: No Additional Restrictions
  - d. Additional Conditions: No Additional Conditions
  - e. Dwelling Units on Premises:  
No Structures On Premise
  - f. Agricultural Labor Housing Units on Premises: No Ag Labor Housing
6. The SADC's grant for the acquisition of the development easement is subject to the terms of the Agriculture Retention and Development Act, N.J.S.A. 4:10-11 et seq., P.L. 1983, c.32, and N.J.A.C. 2:76-7.14.
7. Review and approval by the SADC legal counsel for compliance with legal requirements.

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2014R12(5)

FINAL REVIEW AND APPROVAL OF A PLANNING INCENTIVE GRANT TO

ALEXANDRIA TOWNSHIP  
for the  
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of  
William & Diane Kappus ("Owners")  
Alexandria Township, Hunterdon County

N.J.A.C. 2:76-17A

SADC ID# 10-0332-PG

December 12, 2013

WHEREAS, on December 15, 2007, pursuant to N.J.A.C. 2:76-17A.4, the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") application from Alexandria Township, Hunterdon County; and

WHEREAS, pursuant to N.J.A.C. 2:76-17A.7, the SADC granted approval to Alexandria Township's Farmland Preservation FY14 PIG Plan application annual update on May 23, 2013; and

WHEREAS, on April 25, 2012, the SADC received an individual application for the sale of a development easement from Alexandria Township for the Kappus Farm, identified as Block 18, Lot 47, Alexandria Township, Hunterdon County, totaling approximately 16 easement acres (Schedule A); and

WHEREAS, the Kappus Farm is located in the Township's Delaware River Project Area and the Highlands Planning Area; and

WHEREAS, the Property has zero (0) existing single family residences, zero (0) agricultural labor housing and no pre-existing non-agricultural uses; and

WHEREAS, the Hunterdon CADB conditioned its approval on the Farm being preserved without any residential opportunities; and

WHEREAS, at the time of application the Property was in soybean production; and

WHEREAS, the Owners have read and signed SADC Guidance Documents regarding Exceptions, Division of the Premises and Non-agricultural uses; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9A(b) on May 3, 2012 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. 2:76-17A.9(a); and

WHEREAS, pursuant to N.J.A.C. 2:76-17.11, on July 25, 2013, the SADC certified a development easement value of \$7,650/acre based on January 1, 2004 zoning and environmental regulations and \$7,650/ acre based on current zoning and environmental regulations as of March 2013; and

WHEREAS, a condition of the certification was securing an agricultural access easement on the adjacent Kappus farm, Block 18, Lot 9.01 in order to provide alternate access from Kappus Road for agricultural use; and

WHEREAS, the Owners accepted the Township's offer of \$7,650 per acre for the development easement for the Property; and

WHEREAS, the Kappus family in ownership of Lot 9.01 is agreeable to the access easement and SADC Counsel is working with Municipal partners on a draft easement; and

WHEREAS, to date \$1,750,000 of FY09 - FY13 funding has been appropriated for the purchase of development easements on the eligible list of farms identified in the Township's approved PIG Plan; and

WHEREAS, to date Alexandria Township has expended \$141,885.48 of its SADC grant funds leaving a cumulative balance of \$1,608,114.52 (Schedule B); and

WHEREAS, Alexandria Township has four other projects currently pending against this balance; and

WHEREAS, pursuant to N.J.A.C. 2:76-17A.13, on October 9, 2013 the Alexandria Township Committee approved the application and a commitment of funding for their \$1,452.50/acre cost share; and

WHEREAS, the Hunterdon County Agriculture Development Board approved the application on November 14, 2013 and secured a commitment of funding on December 3, 2013 from the Hunterdon County Board of Chosen Freeholders for the required local match (\$1,462.50/acre); and

WHEREAS, the cost share breakdown is approximately as follows (based on 16 acres):

	<u>Total</u>	
SADC	\$ 75,600	(\$4,725/acre)
Hunterdon County	\$ 23,400	(\$1,462.50/acre)
<u>Alexandria Township</u>	<u>\$ 23,400</u>	<u>(\$1,462.50/acre)</u>
Total Easement Purchase	<b>\$122,400</b>	<b>(\$7,650/acre)</b>

WHEREAS, pursuant to N.J.A.C. 2:76-17A.15, the County shall hold the development easement since the County is providing funding for the preservation of the farm; and

WHEREAS, pursuant to N.J.A.C. 2:76-17A.14, the SADC shall approve a cost share grant for the purchase of the development easement on an individual farm consistent with the provisions of N.J.A.C. 2:76-6.11; and

WHEREAS, pursuant to N.J.A.C. 2:76-6.11, the SADC shall provide a cost share grant to the Township for up to 50% of the eligible ancillary costs for the purchase of a development easement which will be deducted from its PIG appropriation and subject to the availability of funds;

NOW THEREFORE BE IT RESOLVED, that the SADC grants final approval to provide a cost share grant to Alexandria Township for the purchase of a development easement on the Kappus Farm by Hunterdon County, comprising approximately 16 acres, at a State cost share of \$4,725/acre, for an estimated total grant need of \$75,600 pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in (Schedule C); and

BE IT FURTHER RESOLVED, an access easement, approved by SADC Counsel, will be secured prior to closing on the adjacent Kappus farm, Block 18, Lot 9.01 in order to provide alternate access from Kappus Road for agricultural use ; and

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


BE IT FURTHER RESOLVED, that the SADC's cost share grant to the County for the purchase of a development easement on the approved application shall be 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 and for residual dwelling site opportunities allocated pursuant to Policy P-19-A; and

BE IT FURTHER RESOLVED, that all survey, title and all additional documents required for closing shall be subject to review and approval by the SADC; and

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-4.

12-12-13

Date



Susan E. Payne, Executive Director  
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairperson	YES
Fawn McGee (rep. DEP Commissioner Martin)	ABSENT
Gina Fischetti (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
Denis Germano	YES
Peter Johnson	ABSENT
Torrey Reade	YES (via phone conference)
James Waltman	YES

# Schedule A



x:\counties\hunco\projects\kappus\_fw.mxd

**FARMLAND PRESERVATION PROGRAM  
NJ State Agriculture Development Committee**

William and Diane Kappus  
Block 18 Lot 47 (16.8 ac)  
Gross Total = 16.8 ac  
Alexandria Twp., Hunterdon County



**Wetlands Legend:**  
F - Freshwater Wetlands  
L - Linear Wetlands  
M - Wetlands Modified for Agriculture  
T - Tidal Wetlands  
N - Non-Wetlands  
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/GIS 2007/2008 Digital Aerial Image

Municipal Planning Incentive Grant  
Alexandria Township, Hunterdon County

Project Name	SADC ID	Pay Amount	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC		SADC GLA	SADC GLA	SADC GLA	SADC GLA	SADC GLA
														Estimated Consideration	Total Share					
Rosenfield	10-0275-PG	28,239	10/27/08	07/23/09	06/24/10	09/06/11	9,400.00	5,640.00	236,475.80	236,475.80	141,885.48	141,885.48	141,885.48	141,885.48	75,600.00	75,600.00	753 - 68PT	1,750,000.00	1,809,114.52	1,532,514.52
Keppus	10-0332-PG	16,000	05/03/12	07/25/13	11/14/13		7,650.00	4,725.00	122,400.00	122,400.00	75,600.00	75,600.00	75,600.00	75,600.00						
pending CNV & FA																				
Kappa	10-0342-PG	120,000	03/19/13	09/26/13				2,920.00												
Lambda North	10-0345-PG	49,000	12/14/12	09/26/13				5,050.00												
Lambda South	10-0347-PG	15,000	05/31/13	09/26/13				5,560.00												
pending GLA																				
Jacobson	10-0352-PG	31,000																		
Total Pending		316,000	6	6	2	1									0.00					
Total Encumbered															75,600.00					

Schedule C

State Agriculture Development Committee  
SADC Final Review: Development Easement Purchase

Kappus, William & Diane #1  
Undetermined  
Easement Purchase - SADC  
165 Acres

Block 18	Lot 9.01, 9.02	Alexandria Twp.	Hunterdon County
Block 18	Lot 47	Alexandria Twp.	Hunterdon County
Block 18	Lot 23	Alexandria Twp.	Hunterdon County

<b>SOILS:</b>	Other	53% * 0	=	.00
	Prime	17% * .15	=	2.55
	Statewide	30% * .1	=	3.00
				<b>SOIL SCORE: 5.55</b>
<b>TILLABLE SOILS:</b>	Cropland Harvested	52% * .15	=	7.80
	Woodlands	48% * 0	=	.00
				<b>TILLABLE SOILS SCORE: 7.80</b>
<b>FARM USE:</b>	General-Primary Crops		acres	
	Soybeans-Cash Grain		16 acres	

**This final approval is subject to the following:**

1. Available funding.
2. The allocation of 0 Residual Dwelling Site Opportunity(ties) 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: No Nonagricultural Uses
  - b. Exceptions: No Exceptions Recorded
  - c. Additional Restrictions:
 

CADB approval contingent upon no residential opportunity or exception area
  - d. Additional Conditions:
 

Certification and final approval are conditioned on finalizing a farm access easement across Block 18, Lot 9.01, which is owned by members of the Kappus family, including William and Diane.
  - e. Dwelling Units on Premises:
 

No Structures On Premise - AR zoning 6 ac min (04 & Current)
  - f. Agricultural Labor Housing Units on Premises: No Ag Labor Housing
5. Review and approval by the Office of the Attorney General for compliance with legal requirements.



**STATE AGRICULTURE DEVELOPMENT COMMITTEE**  
**REVIEW OF A NON-AGRICULTURAL DEVELOPMENT PROJECT IN AN**  
**AGRICULTURAL DEVELOPMENT AREA**  
**SUSQUEHANNA-ROSELAND ELECTRICAL TRANSMISSION PROJECT IN**  
**WARREN, SUSSEX, MORRIS AND ESSEX COUNTIES**  
**RESOLUTION FY2013R12(6)**

**December 12, 2013**

WHEREAS, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-19, et seq., any public body or public utility which intends to exercise the power of eminent domain within an Agricultural Development Area (ADA), or which intends to advance a grant, loan or interest subsidy or other funds within an ADA for the construction of dwellings, commercial or industrial facilities, transportation facilities or water or sewer facilities to serve nonfarm structures shall file a Notice of Intent (NOI) with the County Agriculture Development Board (CADB) and the State Agriculture Development Committee (SADC) 30 days prior to the initiation of the action; and

WHEREAS, CADBs and the SADC are charged with the responsibility, pursuant to N.J.S.A. 4:1C-19, to review the proposed action to determine the its effect upon the preservation and enhancement of agriculture in the ADA, the municipally approved program, and overall State agriculture preservation and development policies; and

WHEREAS, Public Service Electric & Gas Company (PSE&G) contacted the Sussex CADB and the SADC in 2009 to present for review a 145-mile electrical transmission upgrade project proposal from PPL Electric Companies' Susquehanna Switching Station in Susquehanna, Pennsylvania to PSE&G's substation in Roseland Borough, New Jersey, as identified in Schedule A; and

WHEREAS, the 45-mile New Jersey portion of the proposed new 500kV transmission line will cross the Delaware River in the vicinity of the Delaware Water Gap National Recreation Area and almost exclusively follow an existing, 150 foot wide right-of-way (ROW) through 16 municipalities in Warren, Sussex, Morris and Essex Counties, including ADAs and preserved farmland in Sussex and Morris Counties, as shown in Schedule B; and

WHEREAS, the Susquehanna-Roseland Project was identified by PJM Interconnection LLC, the regional, independent electric transmission grid operator, as needed to maintain the reliability of the electric grid in northern New Jersey and, on February 11, 2010, the New Jersey Board of Public Utilities approved the Project as "reasonably necessary for the service, convenience or welfare of the public;" and

WHEREAS, The Berger Group, environmental consultants for this PSE&G project, evaluated three (3) alternative power line routes and solicited public input into the selection of a preferred route, as documented in an Alternative Routing Investigation Report, as shown in Schedule C; and

WHEREAS, in an effort to minimize impacts to the natural and human environment and take advantage of existing utility ROWs where possible, many factors were considered including the linear feet of agricultural land crossed and additional acreage of forest land cleared; and

WHEREAS, Alternative Route B was selected as the preferred route from an economic, environmental, land use and public perspective, primarily because the project could be constructed almost entirely within an existing 230kV transmission line in New Jersey, with significantly fewer feet of agricultural land crossed (12,100 linear feet vs. 22,600 and 38,200 linear feet associated with Alternatives A and C, respectively); and

WHEREAS, in June of 2009, PSE&G received a favorable determination from the New Jersey Highlands Council for the portion of the project that crosses the Highlands region and in January 2010, the NJ Department of Environmental Protection approved this determination; and

WHEREAS, the National Park Service released a final Environmental Impact Statement on August 31, 2012 and a Record of Decision on October 2, 2012 supporting the preferred route (Alternative B) for the four miles of the line that cross the Delaware Water Gap National Recreation Area and the Appalachian Trail along the existing ROW; and

WHEREAS, on July 15, 2013, after more than four years of dialogue between the SADC staff and representatives of PSE&G, PSE&G submitted a comprehensive NOI, including detailed project plans and a list of parcels in the Sussex and Morris County ADAs; and

WHEREAS, PSE&G provided supplemental information on October 15, November 22 and 27, and December 3, 2013 in order to complete the NOI process, including the project impacts to 54 parcels totaling approximately 118 acres in the Sussex and Morris County ADAs as shown in Schedule D; and

WHEREAS, while most of the project will be constructed within existing ROW that was granted to PSE&G in the late 1920s and early 1930s, 18 of the 54 parcels listed in Schedule D will have temporary construction access road impacts outside the ROW limits; and

WHEREAS, PSE&G has represented that project construction will have minimal impact to existing farmland and that PSE&G will seek to mitigate or lessen project impacts with each specific property owner based on language in a sample Temporary Access Road Agreement for Power Line Construction submitted with the NOI package (Schedule E); and

WHEREAS, as indicated in Schedule D, PSE&G has attempted to work with landowners to address parcel-specific impacts to agricultural operations during construction which will continue periodically until project completion in 2015 with the understanding that

temporary access roads will be removed and ROWs restored to a condition similar to or better than prior to construction; and

WHEREAS, project plans call for the suspension of farming activities in the ROW during construction, which generally consists of the replacement of existing towers with significantly taller towers in new locations, with the understanding that once construction is complete, PSE&G will allow farmers to continue to farm the ROW as it has for the past 80 years with no additional restrictions; and

WHEREAS, the project impacts include five (5) permanently preserved farms, including one (1) farm permanently preserved by Sussex County through its Easement Purchase Program without SADC cost share and not enrolled in the State Farmland Preservation Program, and one (1) County Planning Incentive Grant Program application with Final SADC Approval; and

WHEREAS, on October 25, 2013, in response to a PSE&G complaint based on a September 10, 2009 Settlement Agreement between PSE&G, the Fredon Board of Education and the Fredon Parents Against the Lines (a group of parents of students in the Fredon Township Elementary School), Superior Court Judge Stephen Hansbury ordered that the existing PSE&G ROW on the preserved Southway Farms be relocated further from the school, impacting Block 1801, Lot 4.03 (preserved by Sussex County with a SADC cost share grant on May 15, 2008) and Lot 4.04 (preserved independently by Sussex County on February 17, 2011 without SADC funding) in Fredon Township, Sussex County, and that the existing ROW be extinguished, as shown in Schedule F and G; and

WHEREAS, at the request of SADC staff, PSE&G was able to avoid the need for new or enhanced access roads on the permanently preserved Nature Conservancy / PMI Farm, Block 1001, Lot 1.01 in Fredon Township but not entirely on the permanently preserved Pattison Farm, Block 130, Lot 1 in Andover Township, as shown on Schedules H and I; and

WHEREAS, project impacts to the Oakes Farm, Block 50002, Lot 2 and Block 5003, Lots 11 and 12 in Rockaway Township, Morris County will be confined to existing PSE&G ROW; and

WHEREAS, project impacts to the Sella Farm, Block 801, Lot 32.03 in Fredon Township, Sussex County (a County Planning Incentive Grant Application with Final SADC Approval) are also confined to the existing PSE&G ROW; and

WHEREAS, the temporary storage / staging areas in Morris County (also referred to as "laydown areas" and "fly yards"), include Block 20901, Lot 13.01 and Block 20701, Lot 1 in Boonton Township, Block 4, Lot 5 in East Hanover Township, and Block 765, Lots 88 and 89 in Parsippany-Troy Hills Township, are all outside the Morris County ADA; and

WHEREAS, condemnation proceedings in accordance with N.J.S.A. 20:3-1, et seq. are not necessary for this project; and

WHEREAS, it is anticipated that the Sussex and Morris CADBs, public meetings on December 12 and December 16, 2013, respectively, will also review the project to determine if the proposed action would cause unreasonably adverse effects on preserved farms, the ADA, or State agricultural preservation and development policies; and

WHEREAS, the SADC has reviewed the NOI submitted by PSE&G and their environmental consultants, consulted with the Warren, Sussex and Morris CADB staff, and determined that PSE&G has adequately addressed all requirements and information about the project pursuant to N.J.S.A. 4:1C-19 and N.J.A.C. 2:76-7.1, et seq.

NOW, THEREFORE, BE IT RESOLVED that the SADC has reviewed the proposed action to determine its effect upon the preservation and enhancement of agriculture in the ADAs, the municipally approved program, and upon overall State agriculture preservation and development policies, and finds that the PSE&G Susquehanna-Roseland Project in Warren, Sussex, Morris and Essex Counties would not cause unreasonably adverse effects on the preserved farms, ADA or State agricultural preservation and development policies pursuant to N.J.S.A. 4:1C-19, N.J.S.A. 4:1C-25, and N.J.S.A. 40:55D-128 for the following reasons:

1. The proposed project is necessary in order to satisfy a need to maintain the reliability of the electric grid in northern New Jersey, pursuant to the NJ Board of Public Utilities Decision and Order, dated February 11, 2010;
2. The project has been designed to avoid and/or minimize environmental and agricultural impacts to environmental and cultural resources as well as the ADAs and preserved farms in this very environmentally-sensitive corridor to the greatest extent possible;
3. PSE&G and their consultants have evaluated all options and determined that the proposed route, almost exclusively within existing utility rights-of-way, will have little or no permanent agricultural effects; and

BE IT FURTHER RESOLVED that the SADC recommends that PSE&G adhere to Soil Conservation District requirements and best management practices to prevent soil erosion and sedimentation, protect topsoil, avoid soil compaction, restore soil and replant disturbed areas with an appropriate herbaceous cover crop, where appropriate; and

BE IT FURTHER RESOLVED, for all sites in the ADA and especially on preserved farmland, construction activities must be confined to the existing PSE&G ROW and approved access roads and work shall be scheduled to allow farmers access to fields in active production during construction and to avoid or minimize impacts to pasture areas, existing buffer areas and surface waters; and

BE IT FURTHER RESOLVED that the SADC finding specifically excludes the Pattison Farm, Block 130, Lot 1 in Andover Township, Sussex County in order to allow the SADC to thoroughly evaluate information related to alternative access roads within and just outside the existing PSE&G ROW as shown in Schedule I and in supplemental information received on December 11, 2013; and

BE IT FURTHER RESOLVED that the SADC will work with PSE&G, the Sussex and Morris CADBs and farmers / landowners to resolve site-specific impacts to farms in the ADAs, particularly with respect to soils in agricultural production and surface and subsurface drainage systems, during and after construction; and

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.

12-12-13

Date

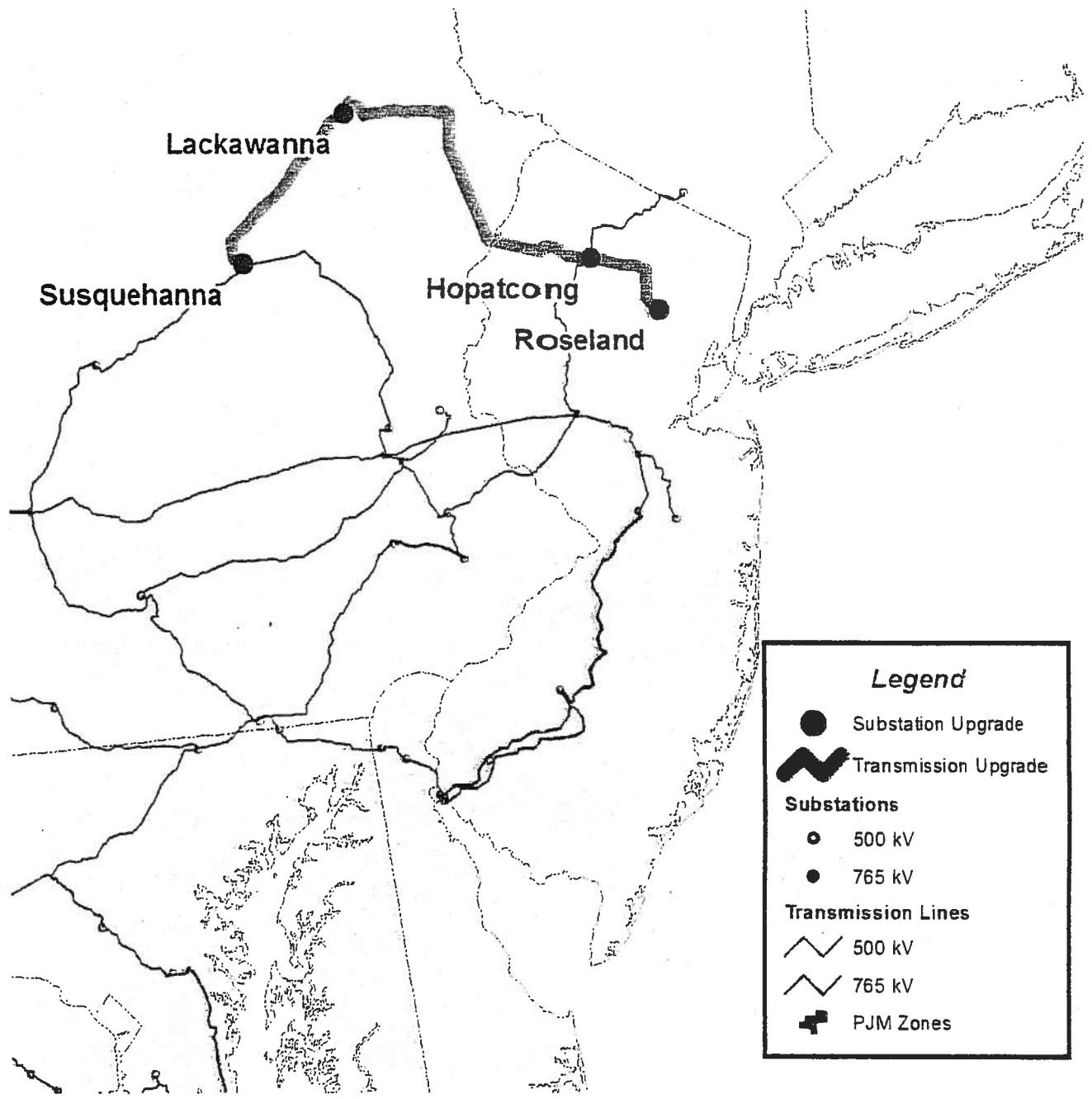


Susan E. Payne, Executive Director  
State Agriculture Development Committee

**VOTE WAS RECORDED AS FOLLOWS**

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

Schedule A



**Legend**

- Substation Upgrade
- ▬ Transmission Upgrade

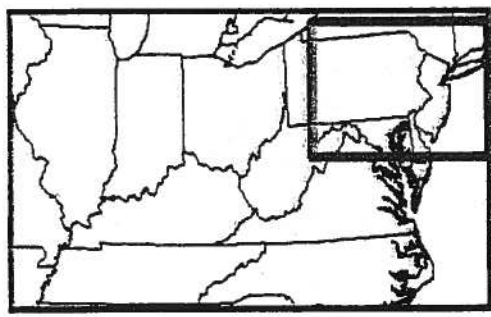
**Substations**

- 500 kV
- 765 kV

**Transmission Lines**

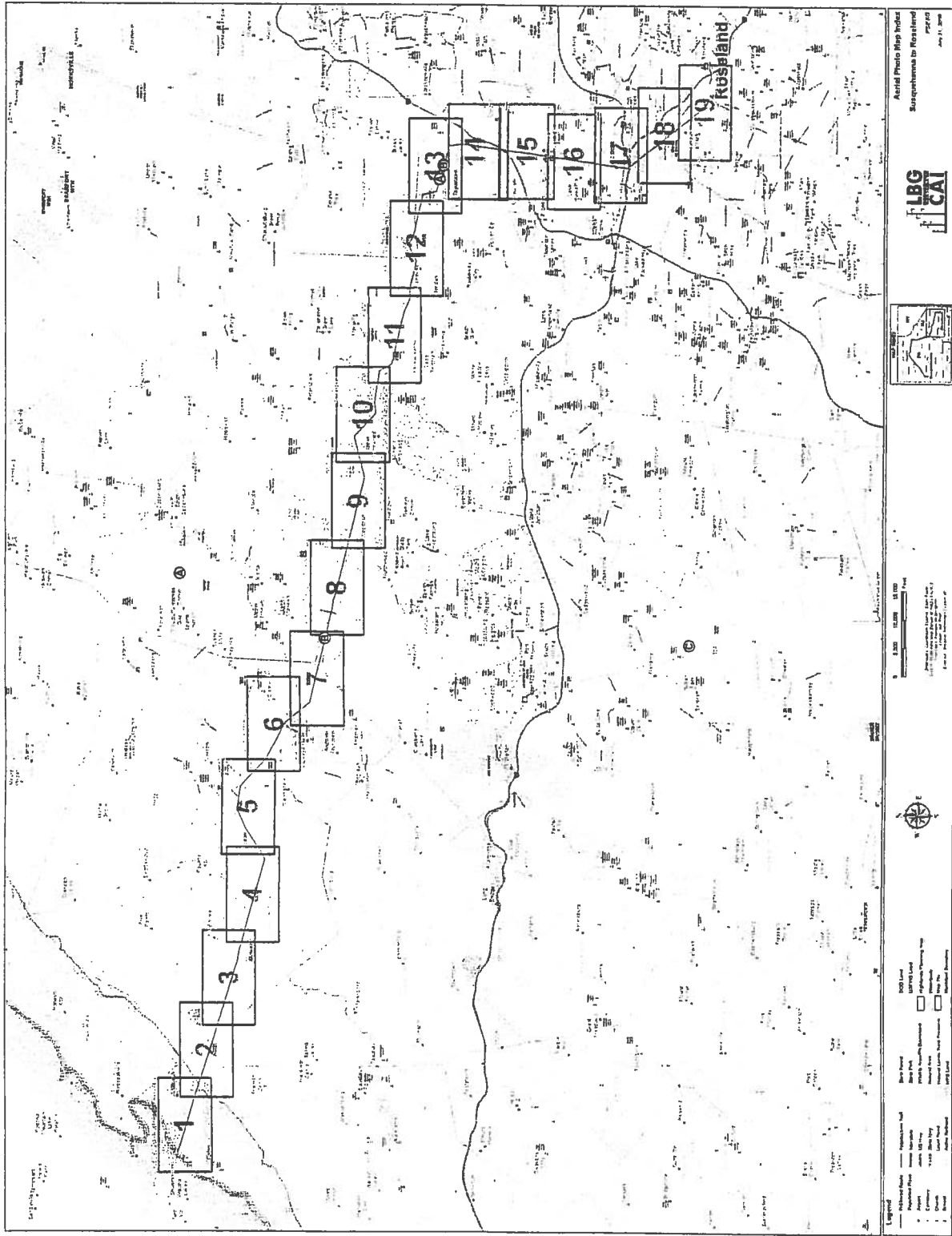
- ▬ 500 kV
- ▬ 765 kV

⊕ PJM Zones



PJM Territory Served

Schedule B







Impact	Comments
within ROW Limits, remove and install Tower 43/1	
within ROW Limits, remove and install Tower 43/1 & 43/2	
within ROW Limits, remove and install Tower 43/2	
within ROW Limits, remove and install Tower 43/3 & 43/4	Work with owner to isolate cattle from the AR. Have also delayed installing AR until late August to early September 2013 to allow for hay production
ed within ROW limits, remove Tower 44/1 from wetland and then move tower 44/2	
ed within ROW limits - remove and install Tower 44/3 & 44/4	Work with owner by delaying installing AR until late August to early September 2013 to allow for hay production
ed within ROW limits - remove and install Tower 44/5	
ss Road #6 - Outside ROW limits - Install Tower 44/5A	Property owner is a forester. Pusuant to an access road agreement owner has been reimbursed for tree removal
ss Road #6 and #7 - Outside ROW limits - remove and install	Property owner is a forester. Pusuant to an access road agreement owner has been reimbursed for tree removal
ss Road #7 - Outside ROW limits - remove and install Tower 45/1	Property owner is a forester. Pusuant to an access road agreement owner has been reimbursed for tree removal
within ROW limits	
within ROW limits - remove and install Tower 45/3	Horse Farm - work with owner to isolate horses from the AR. Have also delayed installing AR until late August to early September 2013
ve and install Tower 45/3 and 45/4	
ed within ROW limits - remove and install tower 45/4	No impact to farming was noted
ss Road #10 - Outside ROW limits - remove and install Tower	No impact to farming was noted. Owner did not request any additional compensation for farming activities
ss Road #10.1 - Outside ROW limits - remove and install Tower	Work with owner by delaying installing AR until late August to early September 2013 to allow for hay production. PSE&G agreed to compensation owner for any damaged crops.
ed within ROW limits - remove and install tower 46/3	Work with owner by delaying installing AR until late August to early September 2013 to allow for hay production. PSE&G agreed to compensation owner for any damaged crops
ss Road #10.4 - Outside ROW limits - remove and install Tower	There are no farming activiies on this lot. This lot is part of an approved subdivision
ss Road #10.4 - Outside ROW limits - remove and install Tower	There are no farming activiies on this lot. This lot is part of an approved subdivision
ss Road #10.4 - Outside ROW limits - remove and install Tower	There are no farming activiies on this lot. This lot is part of an approved subdivision
ss Road #10.4 - Outside ROW limits - remove and install Tower	There are no farming activiies on this lot. This lot is part of an approved subdivision
ed within ROW limits - remove and install Tower 47/2	Work with owner to isolate cattle from the AR and work area.
ed within ROW limits	The owner decided not to raise the cattle. and was compensated for the loss of income
ed within ROW limits - remove and install Tower 47/3	No impact to farming was noted
ss Road #13.2 - Outside ROW limits - remove and install Tower	In accordance with the access road agreement, worked with owner to place the access road in a location which would have the least amount of impact on the property and no impact to farming.
ss Road #14 - Outside ROW limits - remove and install Tower	In accordance with the access road agreement, worked with owner to place the access road in a location which would have the least amount of impact on the property and no impact to farming.
ss Road #15 - Outside ROW limits - remove and install Tower	Property owner is a forester. Pusuant to an access road agreement owner has been reimbursed for tree removal
ed within ROW limits - remove and install Tower 47/6	Property owner is a forester. Pusuant to an access road agreement owner has been reimbursed for tree removal
ed within ROW limits - remove and install Tower 48/1	Horse Farm - work with owner to isolate horses from the AR
ss Road #16 - Outside ROW limits - remove and install Tower	Horse Farm - work with owner to isolate horses from the AR
ed within ROW limits - remove and install Tower 48/3	No farming activity noted on this parcel
ed within ROW limits - remove and install Tower 48/3	No farming activity noted on this parcel
ss Road #16 - Outside ROW limits - remove and install Tower	In accordance with the access road agreement, worked with owner to place the access road in a location which would have the least amount of impact on the property and no impact to farming.

Schedule E

Parcel No: [REDACTED]  
Proposed Access Road No: [REDACTED]

**TEMPORARY ACCESS ROAD AGREEMENT FOR  
POWER LINE CONSTRUCTION**

THIS INDENTURE, made this 28<sup>th</sup> day of APRIL, 2010 between [REDACTED] a resident of the State of New Jersey having an address at [REDACTED], New Jersey [REDACTED] and PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation of the State of New Jersey, having its office at 80 Park Plaza, Newark, New Jersey 07102 (hereinafter called "Grantee").

WHEREAS, Grantor owns certain real property situate in the Township of [REDACTED] in County of [REDACTED] in the State of New Jersey, commonly known as Block [REDACTED], Lot [REDACTED], (hereinafter the "Property").

WHEREAS, the Grantor does agree to convey temporary easement containing [REDACTED] square feet, for the use, occupancy and enjoyment of Grantee, its licensees, successors in interest and assigns, in connection with the construction and installation of a transmission facilities (hereinafter called "Facilities") as shown as Access Road [REDACTED] on the drawing attached hereto as Exhibit "A" (the Temporary Easement Area") being Sheets [REDACTED] and [REDACTED] of a set of plans prepared by PSEG Services Corp, Newark, New Jersey, dated January 14, 2010, titled "Susquehanna-Roseland Transmission Project, Access Roads"; prepared at 1" = 200' and containing 38 sheets.

NOW THEREFORE, WITNESSETH: In consideration of these premises and the sum of [REDACTED] (\$ [REDACTED]), paid to the Grantor by the Grantee, the receipt of which is hereby acknowledged, and in further consideration of the mutual conditions, covenants, promises and terms hereinafter contained, it is agreed that:

1. Grantor does hereby grants and convey unto Grantee a temporary easement as depicted on Exhibit A, for a term commencing upon execution of this document and terminating sixty (60) months from the date hereof. Grantee will have access to, egress and ingress in, from and over all points of the Temporary Easement Area.
2. Grantor does further grant and convey unto Grantee the right, privilege and authority to trim, cut and remove such tree branches, roots, shrubs, plants trees and vegetation which might, within the exclusive discretion and sole judgment of Grantee, be necessary for use of the Temporary Easement Area. Grantee shall also have the right to make any improvements to said Temporary Easement Area as Grantee determines necessary, in its sole discretion, for installation of a construction access road to its existing transmission right-of-way.
3. Grantor does further grant and convey unto Grantee the right, privilege and authority to sign any such applications on its behalf as may be needed for approval of the access road or construction. Grantee shall provide Grantor with copies of any applications filed, and it shall provide Grantor with any other information related to those applications, permits or approvals that Grantor reasonably requests.
4. Grantee shall perform all work in connection with the rights, privileges and authority herein granted and conveyed in a workmanlike manner and with a minimum of inconvenience to the

Grantor; and any damage or improvements done to the Property shall be promptly removed, repaired and restored to as near its condition immediately prior to being damaged as is reasonably possible, at the sole cost and expense of Grantee. *GRANTEE AGREES TO PAY ALL CRAP DAMAGES CAUSED BY GRANTEE'S ACTIONS N/A C.W. [initials]*

5. Unless caused by the negligence or willful misconduct of Grantor, Grantee shall defend and indemnify Grantor against, and shall save Grantor harmless from, and shall reimburse Grantor with respect to, any and all claims, demands, actions, causes of action, injuries, orders, losses, liabilities (statutory or otherwise), obligations, damages, fines, penalties, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) incurred by, imposed upon or asserted against Grantor by reason of any accident, injury (including death at any time resulting therefrom) or damage to any person or property arising out of or resulting from its use and enjoyment of the Temporary Easement Area, including without limitation, Grantee's construction, installation and maintenance of the Temporary Easement Area.

6. Grantor covenants and binds itself, its successors and assigns to warrant and forever defend the title to this Agreement to Grantee, its successors and assigns, against the lawful claims of all persons for the term of this Agreement.

7. This Temporary Easement shall be governed by and construed in accordance with the laws of the State of New Jersey. The provisions of this Temporary Easement shall inure to the benefit of and be obligatory upon the respective parties hereto and their successors and assigns.

IN WITNESS WHEREOF, Grantor has duly signed these presents the day and year first above written.

ATTEST: WITNESS

GRANTOR:



BY:   
Name: 

ATTEST:

GRANTEE:

PUBLIC SERVICE ELECTRIC AND GAS COMPANY ; By  
*PSEG Services Corporation ; Its Agent*



BY:   
Name:   
Title: 

ACKNOWLEDGMENTS

STATE OF NEW JERSEY )  
: SS.  
COUNTY OF SUSSEX )

BE IT REMEMBERED, that on this 28<sup>th</sup> day of April, 2010, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared [REDACTED] who I am satisfied, is the person(s) who executed the foregoing instrument and is the person(s) who signed said instrument as their voluntary act and deed.

Mary Caputo  
Notary  
MARY CAPUTO  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 8/5/2013

STATE OF NEW JERSEY )  
: SS.  
COUNTY OF ESSEX )

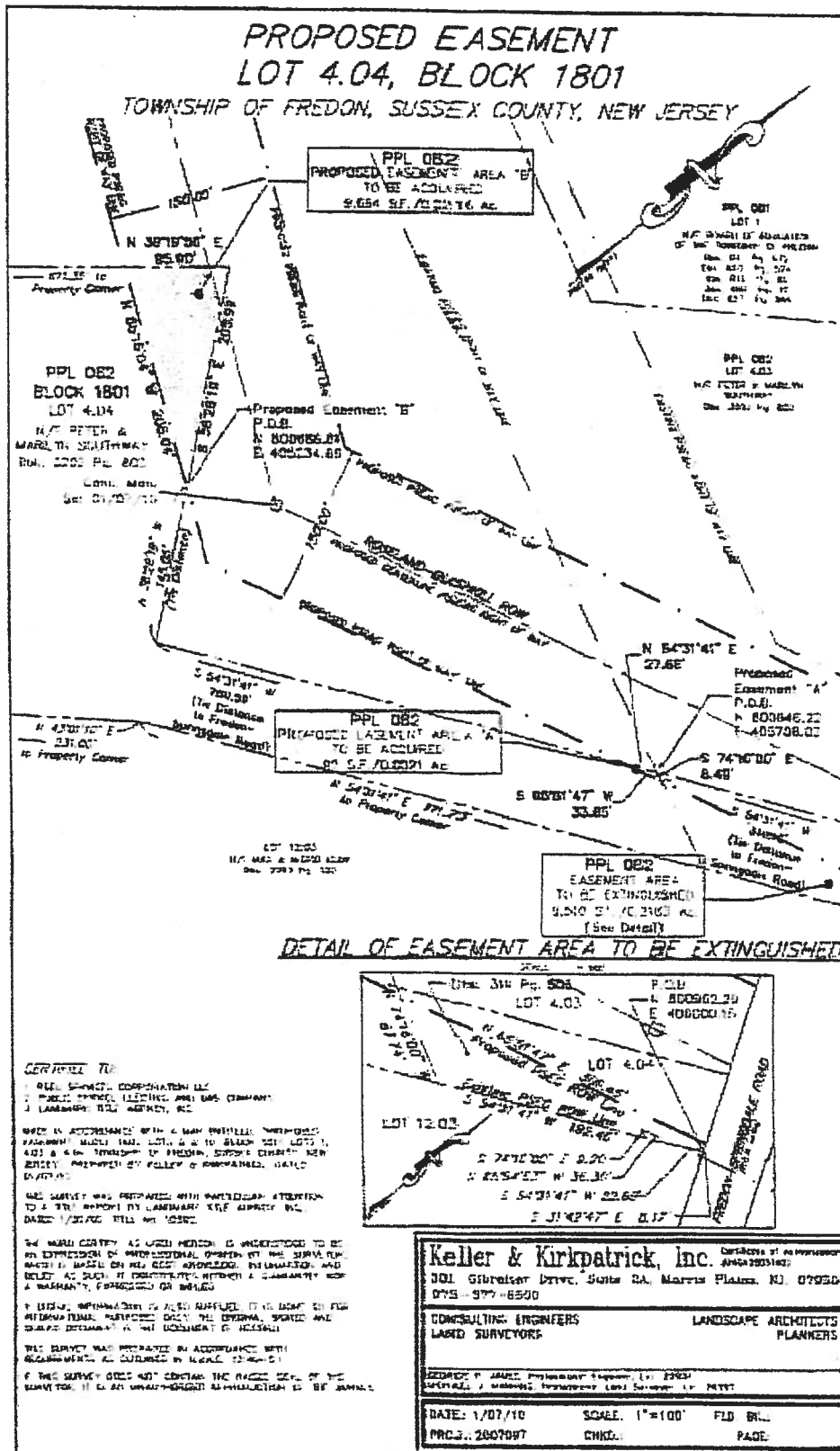
BE IT REMEMBERED, that on this 4<sup>th</sup> day of June, 2010, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared RICHARD A. FRANKLIN, who I am satisfied, is the Manager - Corporate Properties of PUBLIC SERVICE ELECTRIC AND GAS COMPANY, the corporation named in and which executed the foregoing instrument, and he is the person who signed said instrument as such officer for and on behalf of said corporation, and he acknowledged that said instrument was made by said corporation and sealed with its corporate seal as the voluntary act and deed of said corporation.

Lynne Delosto  
Notary  
LYNNE DELOSTO  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 7/23/2010

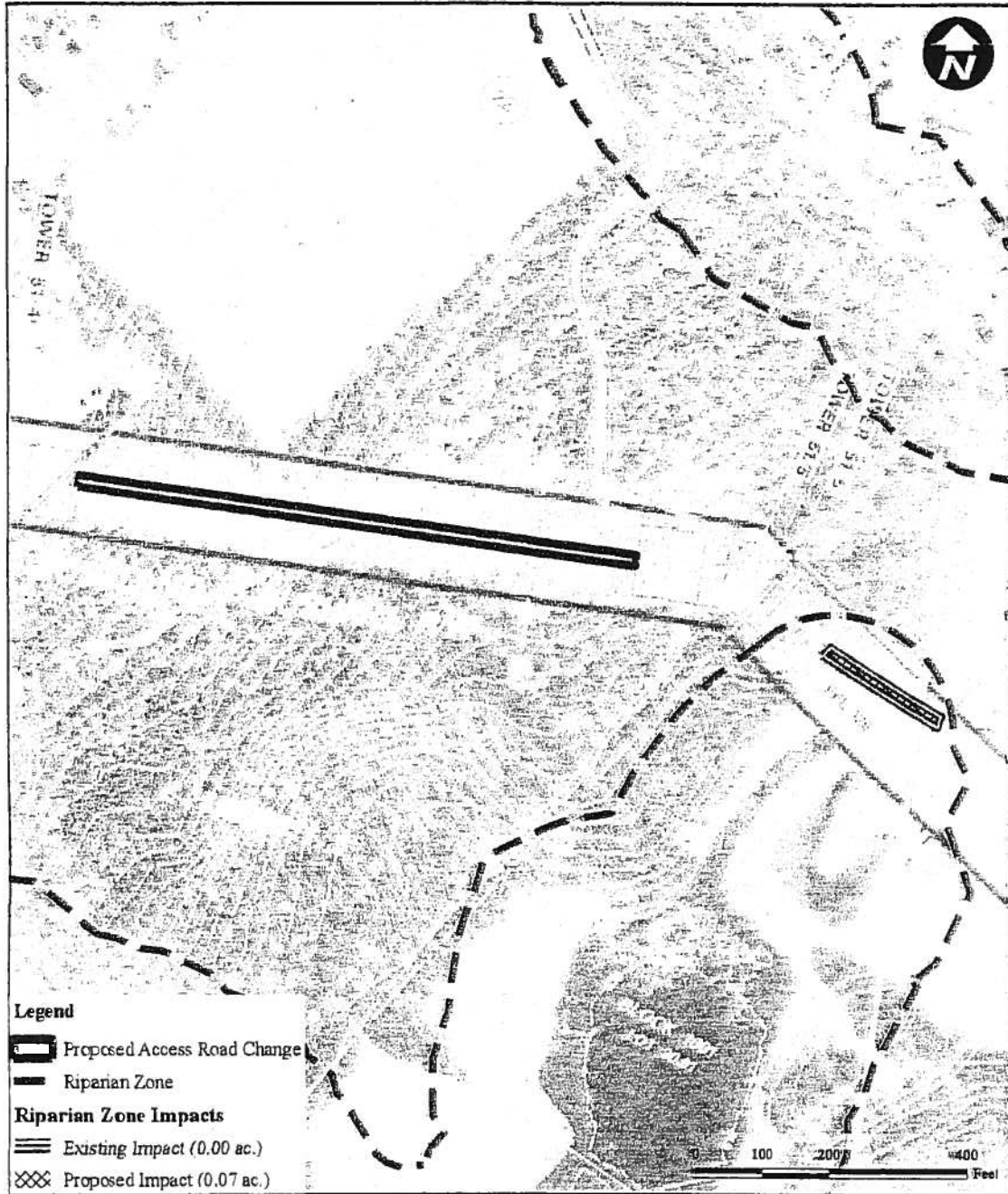
This document was drafted by:  
Tim Davis, SR/WA  
Commonwealth Associates, Inc.  
P.O. Box 1124  
Jackson, MI 49204-1124







Schedule G



Schedule H



**Legend**

-  Proposed Access Road Change
-  Riparian Zone
- Riparian Zone Impacts**
-  Existing Impact (0.00 ac.)
-  Proposed Impact (0.07 ac.)

**CHANGE REQUEST FOR ACCESS ROADS 22 & 28**  
 Susquehanna - Roseland 500kV T-Line  
 Fredon Township & Newton Town, Sussex County, New Jersey

Note  
 The proposed access road changes will increase riparian zone impacts by 0.07 acres.

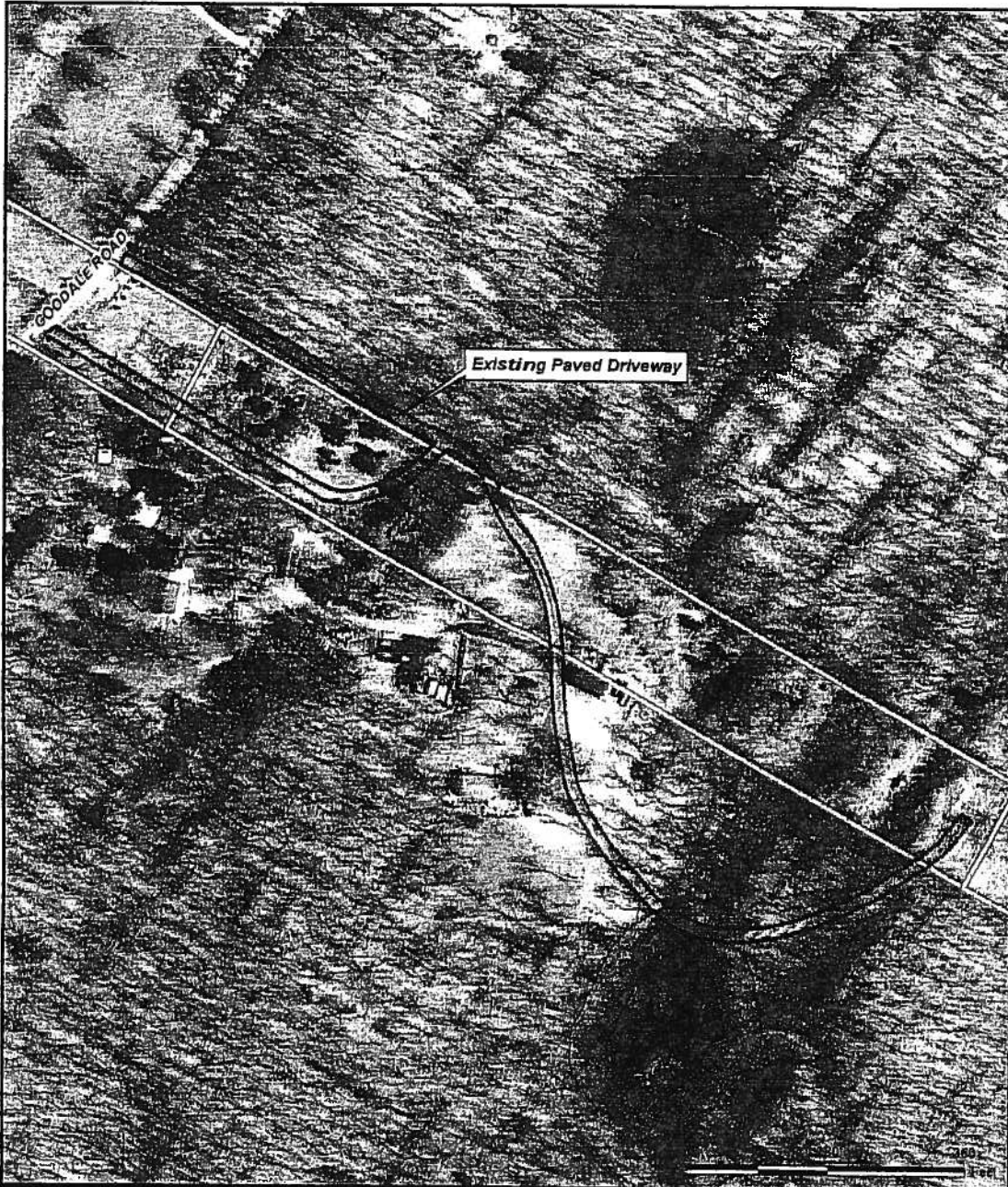
Source  
 Basemap from Susquehanna-Roseland Transmission Project, Individual Freshwater Wetlands Permit Application, Plans, Sheet 11, prepared by ICE&S Surveys & Mapping, dated 12/12/2008



Drawn By: JA	Scale: 1" = 200'	Project No. 01315.071
Chk'd By: DG	Date: 1/29/2013	Figure No. 1

Path: P:\01315071\TMM\Maps\FredonandNewton\_AccessRoadsChange\AccessRoads\_22\_28\_20130129\_00.mxd

Schedule I



- Legend**
- ROW Easement
  - Proposed Access Road
  - Proposed Mats
  - Approx. Wetland Buffer
  - Transition Area Impact

**PSE&G PROPOSED ACCESS ROAD 28**  
 Susquehanna - Roseland 500kV T-Line  
 Andover Township, Sussex County, New Jersey



Note  
 Impact to the wetland transition area is:  
 0.04 acres

Drawn By: JA	Scale: 1" = 180'	Project No. 01315.071
Chk'd By: DG	Date: 12/11/2012	Figure No. 1

Path: P:\01315\071\VTM\Map\toRoseland\shk\AccessRoads\PropAccessRoad\_28\_20121210\_D0.mxd