

STATE AGRICULTURE DEVELOPMENT COMMITTEE

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

REGULAR MEETING

March 23, 2017

Acting Chairwoman Monique Purcell called the meeting to order at 9:06 a.m.

The flag salute was conducted at the start of the meeting.

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

Acting Chairwoman Monique Purcell
Thomas Stanuikynas (rep. DCA Commissioner Richman)
Ralph Siegel (rep. State Treasurer Scudder)
Cecile Murphy (rep. NJDEP Commissioner Martin - arrived at 9:08)
Jane Brodhecker
Brian Schilling (rep. Executive Dean Goodman)
Scott Ellis
Denis C. Germano, Esq.

Members Absent

Alan Danser, Vice Chairman
Peter Johnson
James Waltman

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

Others present as recorded on the attendance sheet: Stefanie Miller, Heidi Winzinger, Jeffrey Everett, Kristen Johnson, David Kimmel, Charles Roohr, David Clapp, Paul Burns, Steven Bruder, Hope Gruzlovic, Brian D. Smith, Esq., Cindy Roberts, Katie Garrett, Sandy Giambrone and Kendra Hall-Perkins, SADC staff; Lisa LeBeouf, Governor's Authorities Unit; Daniel Pace, Mercer County Agriculture Development Board (CADB); Brigitte Sherman, Cape May CADB; Donna Rue, landowner, Monmouth County; Tara Kenyon, Somerset CADB; Melanie Mason, Hunterdon CADB; Eric Agren, Gloucester CADB, and Greg Romano, New Jersey Conservation Foundation.

Minutes

A. SADC Regular Meeting of February 23, 2017 (Open and Closed Sessions)

It was moved by Mr. Siegel and seconded by Ms. Brodhecker to approve the Open Session and Closed Session minutes of the SADC regular meeting of February 23, 2017. The motion was unanimously approved.

REPORT OF THE ACTING CHAIRWOMAN

Acting Chairwoman Purcell advised that Secretary Fisher continues to be out due to a motor vehicle accident. He has an upcoming doctor's appointment to determine when he can return to work.

- Federal Agricultural Issues

Acting Chairwoman Purcell stated that confirmation hearings for U.S. Secretary of Agriculture nominee Sonny Perdue were scheduled to begin today. She noted that significant cuts – the third largest among federal departments – have been proposed for the U.S. Department of Agriculture (USDA) and will be followed closely.

State Cost-Share Rules

Acting Chairwoman Purcell advised that staffs from the State Soil Conservation Committee and the SADC are coordinating on any potential changes that may be necessary to the State Soil and Water Cost-Share rules, which are part of the State Committee's rules. The State Committee implements the Erosion Sediment Control Program – the Chapter 251 Program. There is a coordinated effort to ensure any amendments are done to streamline and dovetail with the proposed direction of the cost-share program. Mr. Ellis asked who updates the rules. Acting Chairwoman Purcell stated that the Department of Agriculture is responsible for updating the rules in coordination with the SADC. Mr. Siegel asked whether the Committee votes on the rules. Ms. Payne advised that the Committee does not vote on the rules but they govern how the Soil and Water Cost-Share Program works. The SADC approves the cost-share grants but the State Committee's rules dictate how those projects get approved and the funding is calculated.

REPORT OF THE EXECUTIVE DIRECTOR

- Appropriations Bills

Ms. Payne stated that all of the SADC's appropriations bills are up in the Assembly today for a floor vote. She was pleased to see them moving forward.

- Deer Fencing

Ms. Payne relayed that as of the morning of the meeting, the SADC has 30 deer fencing applications submitted from across the state. Staff will review applications and bring them back to the Committee for consideration at the April or May meeting.

- Litigation: Quaker Valley Farms – Soil Disturbance

Ms. Payne stated that the SADC was notified this week that the New Jersey Supreme Court will accept and hear appeals of the Appellate Division decision in the Quaker Valley Farms soil disturbance case. Mr. Payne anticipates the Supreme Court arguments will occur sometime this fall.

COMMUNICATIONS

Ms. Payne stated that SADC staff has received several questions from partners and others who want to know why only preserved farms are eligible for the deer fencing program. She directed Committee members to a memo in their meeting binders that staff distributed yesterday to help everyone understand that the SADC is funding the deer fencing program from constitutionally dedicated preservation funds that are specifically purposed for preserving land and for stewardship of those preserved lands. She acknowledged the need for deer fencing on unpreserved farms as well but stated that the SADC does not have the legal ability to open up the funds to unpreserved farms.

PUBLIC COMMENT

Dan Pace of the Mercer CADB asked whether the Governor has to sign the appropriation bills. Mr. Siegel confirmed that the Governor does have to sign the bills once they are passed by the Legislature.

OLD BUSINESS

A. Federal Agricultural Land Easement (ALE) Program – Deed of Easement Template

Ms. Payne recapped for the Committee the extensive negotiations staff has had with the Natural Resources Conservation Service (NRCS) on changes to the deed template for the federal Agricultural Land Easement (ALE) Program. She directed the Committee's attention to a chart summarizing how certain key issues were addressed in the prior federal deed and how they are addressed in the final proposed ALE template. She stated that there were four key areas that were most objectionable to the SADC. The first change was a prohibition on sod and bag and burlap-type nurse operations. The SADC sought to determine whether NRCS would approve those operations if they were consistent with an ALE plan – a conservation plan that makes sure the resources on the farm are being maintained properly. NRCS rejected that because they believe it is nearly impossible for a bag and burlap operation to function year after year in a way that does not degrade soil resources on the property. Since SADC had that conversation, NRCS adopted its final rules, which includes this prohibition, so their position is that they are not negotiating on this.

The second major issue was haying, mowing and harvesting for seed. Ms. Payne reminded the Committee that the original deed template basically said that someone can hay or mow, but if there is a population of birds in decline they could be restricted from

doing so. SADC staff asked what the landowner's role was. NRCS and the SADC were able to agree that for that provision, in order for a population of birds in decline to be protected under the deed, it would have to be identified in the ALE plan prepared prior to closing and the landowner would have to agree with that plan. SADC staff believes that this gives the landowner a major role in determining whether a population will be identified for protection, but it has to be in the ALE plan. NRCS indicated that this provision likely will only be included in the deed if the property is in a grassland use or is enrolling in ALE's Grassland Preservation Program specifically, which is separate from the normal ALE farmland preservation easement. SADC staff believes this will not happen very often and that this provision will not be in most deeds. Mr. Siegel asked if the farmer has to voluntarily identify his field as grasslands. Ms. Payne stated yes, and then the ALE plan that the farmer has to approve before it is adopted would specifically have to identify that they are going to manage that site for the protection of a certain species.

Ms. Payne advised that the third major issue pertained to division requirements. The federal template gave three options. One was to prohibit further subdivision of farms and the second was to define at the time of closing what future divisions would be permitted, both of which staff rejected. The third option was to identify the maximum number of divisions that could occur over the life of the program, but the configuration would be resolved at the time that subdivision was actually requested. The SADC elected the third option. NRCS will make the final decision on this. Ms. Payne stated that what NRCS is saying is that if they have a 300-acre farm seeking ALE funds and the farmer wants to preserve the right to subdivide that property once, twice or however many times in the future, then that request must be made at the time of application. NRCS will review it at that time and determine whether the farmer has made sufficient justification for future subdivisions. She stated that this is the least restrictive of the three options.

The fourth point, which was the SADC's biggest financial concern, was the reimbursement provision. The deed requires that if the federal government has to enforce the deed, both the landowner and the grantee are each individually responsible for reimbursing the federal government the cost of enforcement. Staff raised several due process concerns. The outcome was NRCS agreed to a 180-day period where, if they believe the grantee is not enforcing the deed, the federal government must notify the grantee and the landowner and give both 180 days to resolve the issue before they will formally start enforcement proceedings. The only exception is if there is a real emergency under way such as destruction of resources, in which case NRCS will step in immediately. NRCS's enforcement rights only start when they determine that the grantee is failing to enforce the easement. Ms. Payne stated that this specific written 180-day due

process provides everyone the opportunity to get on top of the issue, interact and take action to prevent the federal government from stepping in. Mr. Schilling stated that if the disagreement continues and ultimately NRCS says that the SADC has not enforced the deed properly, they can come after the costs. Ms. Payne stated that is correct and noted the other concession was that NRCS limited the financial exposure for the grantee – the farmland preservation program – to the amount of their grant. For example, if there is \$2 million worth of destruction and NRCS provided a half-million dollar grant, the recapture of funds would be capped at \$500,000. That is not a small exposure but at least it is not an unlimited exposure.

Ms. Payne acknowledged that the deed template is not perfect but she believes it is the best compromise that could be negotiated. Staff had contacted the counties and their partners for comment and those comments are outlined in her memo to the Committee.

Mr. Siegel asked if the sod and ball and burlap prohibition was new and how the SADC handles this issue. Ms. Payne advised that it is a new prohibition and it is an issue that the Committee has looked at a few times in the past. She does not feel that the Committee is convinced that one cannot manage a farm with a sod or bag and burlap operation. NRCS has a zero tolerance for any degradation of the resource. NRCS's standard is higher than the SADC's.

Ashley Kerr of New Jersey Farm Bureau asked if an ALE plan would have to be amended if years later a landowner finds a population of declining birds in his fields. Ms. Payne responded that the ALE plan only needs to be amended if the agricultural use changes. The SADC's understanding from NRCS is if someone has an ALE plan and then happens to have these birds on his property, that landowner is not obligated to manage to protect them. That would only happen if the landowner sought to amend the plan to identify this for conservation. If the landowner changes from field crops to grain, he would have to get a new ALE plan and that issue would be raised for discussion at that time. Ms. Payne stated that the SADC's understanding is that NRCS will not force farmers to place this provision in their ALE plans and that is the representation that has been made.

Greg Romano of New Jersey Conservation Foundation (NJCF) wanted to emphasize the importance of federal funding. NJCF has more than 30 applications that have been approved or are in the process of being approved for the new ALE program. It represents a significant amount of funding, especially with less State funding available. NJCF realizes there might be less interest for certain landowners but does not feel that every farm has to have total flexibility as to what kind of agriculture they have. There are approximately 225,000 acres preserved and most of those farms have maximum

flexibility. In certain cases the ALE program would be beneficial to both the landowners as well as the State in leveraging State and local funding. Mr. Romano believes under the Farm and Ranch Lands Protection Program (FRPP) agreement there were provisions in the grant agreement whereby NRCS could force the grantee to enforce the provisions in the deed. Ms. Payne responded that it has varied. It was not in NRCS's statutes or in its regulations and then it was in their guidebook. Many states objected to the fact that the guidebook was never subject to regulatory review or due process. It has been inconsistent so NRCS wanted to clarify that and put it in the deed so now everyone is on notice. Mr. Romano stated that he understands that but noted NJCF holds a fair amount of those easements and has not had a problem for 10 to 15 years. He stated that this is certainly a little worrisome but overall hopefully it will not be a major obstacle.

Mr. Siegel asked if reporting a change in agricultural use is new. Ms. Payne responded that under the old FRPP deed, the landowner needed to have the plan for highly erodible lands. If you have highly erodible soil on your property, you had to have a conservation plan that dealt with that. Under ALE, every farm must have an ALE plan. This plan identifies what kind of agricultural uses are anticipated and how the property will be managed. In addition, under the ALE plan the landowner is obligated to manage the property in compliance with the plan. The grantee is obligated to make sure that the ALE plan is being followed. If the agricultural use changes, then the ALE plan would need to change. Mr. Siegel questioned whether staff provides guidance documents regarding federal applications. Ms. Payne stated that if the Committee accepts using this deed template then staff would create guidance documents aimed at the new ALE deed. Eric Agren of the Gloucester CADB stated that his office has not yet had the opportunity to discuss these requirements due to staffing issues. Mr. Schilling asked Ms. Payne about the federal government's involvement in monitoring properties preserved with FRPP or ALE funding. Ms. Payne stated that the SADC is required to annually submit to NRCS a report of the properties that have been monitored and are in compliance. Mr. Schilling asked whether that is the basis for them to detect something they would consider being in non-compliance. Ms. Payne replied that someone may call their office advising them that something is going on with a specific farm. Ms. Payne stated that she would advise the counties and the grantees that if they accept federal money they should monitor these farms closely and carefully. The SADC will have some training on that.

Ms. Purcell inquired whether the funding was approximately \$4 million to \$5 million a year. Ms. Payne stated that is what New Jersey has received on average in the past. She noted that FY2018 Farm Bill discussions are starting now so it remains to be seen how much will be available in the future. Ms. Roberts noted that NRCS does monitor once every five years. Melanie Mason of the Hunterdon CADB asked about the capping of

enforcement costs, whether it was per violation or per farm. Ms. Payne replied that she is not sure but will find out. She believes it would be per violation. Donna Hanahan of the Gloucester CADB asked if the ALE plan is in place before preservation. Ms. Payne advised that the ALE plan must be in place prior to closing. Dave Clapp has been helping to get ALE plans prepared in support of those closings to make sure plan preparation does not hold up closings. Ms. Payne advised that if the Committee was willing to accept the new federal deed template, a motion would have to be approved.

It was moved by Mr. Ellis and seconded by Mr. Siegel to approve the new deed template for the federal Agricultural Land Easement (ALE) program. The motion was unanimously approved.

NEW BUSINESS

A. Resolutions for Final Approval – Municipal and County Planning Incentive Grant Programs

Ms. Garrett referred the Committee to one request for amended final approval under the Municipal Planning Incentive Grant Program and one request 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 amended final approval as outlined in said resolutions.

It was moved by Mr. Siegel and seconded by Ms. Brodhecker to approve Resolutions FY2017R3(1) and FY2017R3(2) granting final approval to the following applications under the Municipal and County Planning Incentive Grant Programs, as presented and discussed, subject to any conditions of said resolutions:

MUNICIPAL PLANNING INCENTIVE GRANT PROGRAM

1. LeRoy J. Thumlert, SADC #17-0156-PG, **(AMENDED)** (Resolution FY2017R3(1)
Block 10, Lots 9 & 9.03, Upper Pittsgrove Twp., Salem County, 64.350 Net Easement Acres

COUNTY PLANNING INCENTIVE GRANT PROGRAM

1. James & Patricia Moffett, SADC #17-0149-PG, (Resolution FY2017R3(2))
Block 31, Lot 4, Upper Pittsgrove Township; Block 43, Lot 5, Pilesgrove Twp.,
Salem County, 46.45 Gross Acres

The motion was unanimously approved. This approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey. (Copies of Resolution FY2017R3(1) and Resolution FY2017R3(2) are attached to and are part of these minutes.)

- C. **Right to Farm** – Application for Emergent Relief, Summit City Farms
(Glassboro Borough, Gloucester County) – Arguments of Counsel

Mr. Smith advised that Glassboro Township enacted a permit parking-only ordinance some time ago. After that ordinance was passed, Summit City Farms obtained a site-specific agricultural management practice (SSAMP) from the Gloucester CADB allowing farm vehicle parking in front of its commercial farm on University Boulevard, which is one of the streets covered by the ordinance. Glassboro appealed the grant of the SSAMP to the SADC and the appeal was forwarded to the Office of Administrative Law (OAL). While the OAL appeal is pending, Summit City Farms filed with the SADC an application for emergent relief under the administrative procedural rules. The emergent relief application is opposed by Glassboro. SADC received paperwork from Summit City Farms as well from Glassboro. The attorneys from each party are present and will have the opportunity to make their arguments to the Committee, which Mr. Smith requested they limit to 10 minutes each. The Committee will then discuss this matter in Closed Session.

William Horner, the attorney for Dr. Lew DeEugenio and Summit City Farms, provided background on Summit City Farms and University Boulevard. He stated that the farm is the original farmstead for what is now about 500 acres of the farming operation. When it began the farming operation had the typical kind of clustered farmstead found in South Jersey. It was originally for horses and small vehicles. Now it is an active farm and the center of operations for a large farming business. He stated that as a result, that street, which is a quiet street, has been used on an ongoing basis for vehicles and farm equipment of all sorts. Spraying operations are staged alongside there, and large and small trucks, including some tractor trailers, routinely come to pick up and drop off materials and produce that are being brought from and taken to various areas, including the other farms that Dr. DeEugenio operates. He stated that there has never been any

problem with it – no complaints or municipal concerns. He stated that it is not a kind of use that dominates the street; it has been a couple of hours a day where a piece of equipment will be parked there, trucks lined up getting ready to use the loading dock will be parked waiting, and employees will be parked on the shoulder of the road. He stated that the curbway is about 32 feet wide paved and it is a 75 right-of-way so there is plenty of space on the grass on either side. His client farms both sides of the street.

Mr. Horner stated that Glassboro is having problems with student parking. He advised that the parking restriction is in place for part of the year, Labor Day to Memorial Day, and it only allows residential parking with a permit on the streets. This area is not zoned for agricultural use. The reason his client is a commercial farm is because of the ongoing nature of the operation. Farming is not allowed in this zoning district. Only residents can obtain parking permits. He stated that the only way a delivery truck can come in is if it is doing residential deliveries. He stated that this constrains the farming activities significantly. He stated that after a hearing, the CADB confirmed the parking restriction has a chilling effect on farming activities; it creates the prospect of a \$500 fine or 90 days in jail if violated. The CADB granted his client's request and created an exception for agricultural activity. He stated that the ordinance will remain in place and the Borough can enforce it against student parking. However, signs will be posted on all sign posts that say no parking except for farm-related parking. Mr. Horner noted that there is a winery at the farm but his client did not request relief for winery-related parking. Glassboro did not attend the hearing, however, it appealed the Gloucester CADB's decision. Mr. Horner stated Glassboro's decision not to uphold the CADB's decision is causing Dr. DeEugenio irreparable harm. Mr. Horner requests the Committee grant relief in the form of a statement to confirm that Glassboro must comply with the Gloucester CADB decision pending appeal. Responding to questions from Mr. Siegel, Mr. Horner clarified that the vehicles he is referring to are large farm vehicles, not all farmer-owned, and that Extension staff and consultants visit the farm but not the general public because there is not adequate parking for them.

Mr. Horner stated that his opposition has requested he meet a test based from *Crowe v. De Gioia*, which is a Supreme Court case that interpreted court rule. His reading of the rules is that there does not need to be that tight of an analysis in this type of situation, however his client meets it nonetheless. He stated that there is irreparable harm and no way to quantify the loss that comes from having business activities curtailed or burdened in this sort of way. Additionally, there is the threat of prosecution, fines and imprisonment per the ordinance. Mr. Horner stated that the Right to Farm Act says that the CADB has the ability to determine preemption over any municipal or county ordinance. He stated that this is an instance where a law is interfering with ongoing

agricultural activities. He stated that there has not been any demonstration by the Borough that there are any hazards to be protected from or public interest, and stated the Borough did not attend the CADB hearing. Ms. Murphy asked whether the vehicles that park on the road can enter and park on the farm. Mr. Horner replied that the vehicles can enter the farm but the idea is to not have them all in there moving around at once because of the proximity of the buildings and the surrounding production areas. He stated that it is a tight area and the waiting, staging, parking and preparation have all been taking place along the shoulders of this quiet dead-end street. Mr. Germano stated that normally when there is decision, unless the losing party obtains a stay of that decision, the winner can act on it. He questioned why then the case was brought to the Committee today. Mr. Horner stated that the reason is that Glassboro can take punitive measures against the farm. He stated that the Borough has indicated that it is disregarding the CADB decision. He and his client are asking the Committee to confirm the status quo. His client does not want to become a defendant in the criminal court without coming here first and obtaining an interpretation of the rules that he can show the municipal judge. Mr. Ellis asked if the farm is preserved and Mr. Horner replied it is not.

Chairwoman Purcell called on Glassboro's attorney, Cosmas P. Diamantis of the Zeller and Wieliczko law firm, to state his case to the Committee. Mr. Diamantis stated that he was before the Committee in opposition to the application for emergency relief and requested that the Committee deny Summit City Farms' application. Due to the limited nature of presentation, Mr. Diamantis stated that he would focus on two points. First, he stated that the Crowe v. De Gioia standards do apply to Summit City's application and there have been numerous decisions interpreting regulation and other applications to require that that analysis be taken. Second, he stated that the applicant did not meet the requirements of Crowe v. De Gioia and thus they are not entitled to the relief they have requested. Regarding the standard of Crowe v. De Gioia, Mr. Diamantis stated that the application was filed pursuant to administrative code that permits emergency and temporary relief. He stated that here the Committee is dealing with emergency relief. The papers forwarded to the Committee cite several cases, several administrative decisions interpreting that regulation and other applications for emergency relief to require analysis of Crowe v. De Gioia. That case did not interpret a court rule. It interpreted whether or not an applicant is entitled to injunctive relief. He stated that injunctive relief is a summary decision on the case that is pending appeal. The court said a body such as the Committee can award relief if the movant can prove four factors through clear and convincing evidence. The four factors are substantial, immediate and irreparable harm to the moving party; the claims of the matter must be well settled; the movant must show likelihood of success on the merits of the claim; and the movant must show that on balance the moving party has a greater hardship than the non-moving party. If any one of

those factors has not been proven, the application must fail. It is not a matter of right to have injunctive relief. It is the rare case that injunctive relief will be granted, not the rule or commonplace.

Mr. Siegel asked if Mr. Diamantis was equating injunctive relief with the act of the CADB approving Summit City Farms' site management plan. Mr. Diamantis stated that was correct. Mr. Siegel responded that the CADB has statutory authority to issue site specific management plans and asked how it was injunctive relief if the CADB is exercising its statutory authority to make findings. Mr. Diamantis responded that the Gloucester CADB does have statutory authority to grant site-specific agricultural management practices. Glassboro disagrees with their acceptance and jurisdiction over this matter because it involved activity not on the farm management unit. It does not involve local zoning ordinances; it involves traffic and safety ordinances on publicly owned roads. This is not a privately owned road that is owned by Dr. DeEugenio and it is not part of the farm management unit. One of the arguments that Glassboro will address before the OAL is whether or not there was proper jurisdiction. Mr. Diamantis stated that his second point is the rules and regulations are written in such a way where the County board makes a decision, grants a site-specific agricultural practice amendment and if it is not appealed it becomes binding. However, he asserted that it is not binding if the application is appealed. Because Glassboro appealed the application, they are entitled to a de novo hearing on all the issues before the OAL, which will then issue an initial decision that the Committee would then be able to review and modify or amend as they see fit. Mr. Diamantis stated that because the appeal was filed in a timely manner, the decision by the Gloucester CADB is not binding on Glassboro. He stated that because of Glassboro's arguments that the CADB lacked jurisdiction in the first instance, the question of whether or not the CADB's decision can override safety and traffic ordinances on a publicly owned road needs to wait for the OAL to make its findings and facts on the issues. OAL's first conference on this matter will be held next week. At that hearing the parties will discuss a schedule of hearings and discovery if necessary. At that point both parties will have a better idea of how long this case will take. He stated that there are procedures available to both parties to file summary decision motions to expedite relief. He is not sure whether Summit City Farms will avail themselves of those procedures.

Mr. Germano asked if Glassboro's view is that the CADB's decision is not binding because it was appealed. Mr. Diamantis responded that was correct. Ms. Murphy noted that Mr. Diamantis mentioned that the parking regulations are connected to safety and asked him to talk about that. Mr. Diamantis responded that there were concerns before the Borough of Glassboro regarding Rowan University. It is an expanding university that

currently has 15,000 students and is projected to grow to 25,000 students in the next several years. There is a lot of development in Glassboro and at Rowan University. There have been complaints that parking is becoming insufficient on campus, which is causing an overflow into the neighboring residential communities. In response to the complaints as well as to the expected growth of Rowan University, the Glassboro Council instituted a parking ordinance throughout the municipality – not just in front of Summit City Farms – in the vicinity of Rowan University in an effort to help curb off-site student parking that residents were complaining about. Another issue related to this was safety as they do not want students walking through major roadways, a half-mile or a mile, to get to class because some of these roads do not have sidewalks. For example, the road in front of the farm does not have any sidewalks and is about 35 feet wide paved, so Glassboro was concerned and issued the ordinance. Ms. Murphy stated so it was the safety of the college students walking from their cars to the college that was at issue. Mr. Diamantis stated that it was one of the reasons. That ordinance was never appealed by Summit City Farms. He stated that they were aware of the ordinance and participated in it.

Mr. Ellis asked about local deliveries to the farm. Mr. Diamantis stated that his understanding is there is nothing that precludes local deliveries to the farm. The issue is whether they are able to park on the street or park in the Summit City Farms parking lot. Mr. Ellis asked if a moving van or tractor trailer is able to park on the street for a temporary delivery. Mr. Diamantis stated that he was not certain of what the procedure would be in that instance. He would guess there is an ability to get a temporary exemption from the Borough if one expects a moving van or some sort of extended delivery. Certainly, a pizza delivery van delivering a pizza to a house would not get cited for parking on the street. Mr. Ellis asked how this was this different than a farm. Mr. Diamantis advised that the parking of farm-related vehicles is one of the issues Glassboro needs to explore before the OAL. This is where they will have their hearing and have a factual record developed before the OAL on the issue of how large the farm vehicles are, how frequently they arrive to the farm and if they are there for extended periods of time or not. That is among the issues that have already been referred to the OAL. Here, there is no evidence before the Committee other than the testimony heard today regarding what the deliveries are, how often they are happening and whether the operational disruption of Summit City Farms is enough to warrant the irreparable harm standard. It would be explored before the OAL. The Committee has the opportunity to refer this to the OAL for full factual development before ruling on the application for emergent relief. It is a factual issue that needs to be explored but has not been brought before the Committee on this particular application.

Mr. Diamantis noted that his second point was that the Crowe v. De Gioia standards were not satisfied. He stated that he already touched on the irreparable harm element. Mr. Diamantis stated that the irreparable harm that is being alleged by Summit City Farms is in compliance with a valid ordinance that was not appealed by way of a prerogative writ to Superior Court. He stated that compliance with an ordinance does not rise to irreparable harm, especially an ordinance that is not appealed and is owed deference by the Committee and should have been owed deference by the CADB. Mr. Siegel asked Mr. Diamantis to clarify that. Mr. Diamanti responded that if an ordinance is enacted that someone does not agree with, they have a right to file an application before the Superior Court to overturn that ordinance. Ms. Payne asked if it was correct that ordinances are not valid until 45 days after they are enacted. Mr. Diamantis responded that was correct. Ms. Payne stated that there is an appeal period for every ordinance that is adopted, as it gives people who may be harmed by it an opportunity to appeal. After the appeal period, people are still entitled to take the government to court to claim that the ordinance is illegal for whatever reasons. Ms. Purcell asked Mr. Horner if instead of appealing the ordinance this is why his client chose to pursue an SSAMP. Mr. Horner responded that the Right to Farm Act was the remedy for this sort of action. Farmers should not be expected to go to Superior Court and repeal ordinances they do not like because it interferes with their farming. The ordinance should be allowed to stand because it has things it needs to do. The job of the agricultural board is to see if it is necessary for a carve-out for good reasons. Mr. Horner stated that his client has never had the idea of challenging Glassboro's parking ordinance because it is probably appropriate to a lot of other areas within the municipality. Mr. Horner advised that his client just does not want the ordinance to interfere with his business operations. It is like having a store where one needs to be able to have access to the street.

Mr. Diamantis stated with regard to the second factor, whether the law is well-settled, there has been no testimony from Summit City Farms and no submission showing the law is well settled on the issue of whether a CADB can issue an agricultural practice off the farm management unit and onto a publicly owned and dedicated road.

With regard to the third factor, he stated that Summit City Farms has not shown a likelihood of success on the merits and has not cited to any other case except the den Hollander case. In the first paragraph of that case, the Supreme Court makes clear that they were deciding the Right to Farm Act and how it applies to local zoning ordinances under the Municipal Land Use Law. In that case they found that the Right to Farm Act may preempt local land use ordinances subject to the traffic and safety concerns of the municipality. He stated that here we are not dealing with local land use ordinances but rather safety ordinances off the farm management unit. There is an SADC case, Wilkin,

which specifically mentioned a particular agricultural management practice request for on-farm labor housing. The requestor wanted to convert a chicken coop into labor housing and it was denied. He stated that the reason this was denied was that nothing in the regulations permitted that type of protection, and the SADC stated if the specific amendment request is not permitted in the regulations, then it is assumed to be excluded and not permitted. In this case, the County board and Summit City Farms cannot point to any SADC regulation that permits off-farm parking of a vehicle. Just as the Wilkin case stated, Glassboro would say that that is not permitted and not protected under the Right to Farm Act.

Mr. Diamantis stated that his last point will address the relative hardship of the parties. He believes the issues need to be addressed before the OAL in order to obtain a full factual record and hearing on what type of hardships Summit City Farms may or may not have relative to the ordinance. The allegations of destruction of business and the lack of deliveries have not been sorted out yet but will be before the OAL and the Administrative Law judge. Mr. Siegel asked hypothetically if he was a residential owner getting a new roof where a commercial vehicle would be parked at the location all day, would he need to go to the Borough to obtain a permit? Mr. Diamantis stated that he feels the issue is whether or not there are temporary delivery vehicles or whether there will be ongoing permanent parking on the street. The facts of this case are not for a temporary vehicle need. Mr. Siegel asked would they need a permit for that or does the Township look at this as temporary. Mr. Diamantis responded that he can imagine there is a process where that individual can go to Borough Hall and seek the appropriate relief from the ordinance to allow this temporary commercial vehicle.

Mr. Diamantis concluded that because the applicant must satisfy the *Crowe v. De Gioia* standards and they have not satisfied each of the required elements, the Committee must deny the relief requested. Alternatively, if there are factual disputes, the emergent matter should be referred the Administrative Law judge who currently has jurisdiction over the case to sort out any factual issues that the Committee may have.

Mr. Germano asked Mr. Diamantis if the real purpose of the ordinance is to keep students from taking up all the street parking in these residential zones, to keep students from parking on that street. Mr. Diamantis stated correct, that is one of the purposes. Mr. Germano stated that regarding the safety aspect of this, the Borough is not trying to prevent students from walking a mile to school, it is trying to keep them from parking a mile from school. Mr. Diamantis stated correct, there are parking facilities on Rowan but some of them are a little far out and may not be the most convenient for students. Mr. Germano responded that the point is that the issue is not the safety of the students

walking in the middle of the street because the whole purpose of this ordinance is to keep them from parking there in the first place. Mr. Diamantis indicated that was correct. Mr. Schilling stated that some of this is case-specific. One of the criteria or standards that Mr. Horner outlined was essentially the hardships of the farm versus the hardships of the municipality. Mr. Diamantis stated that was correct and that this was one of the elements. Mr. Schilling responded that Mr. Diamantis outlined several elements, however, his question is that without understanding the elements, how does the Committee make a decision? For example, are students parking on this road and is the ordinance basically among its purposes to address safety concerns of students walking from their cars to school? He questioned whether it is appropriate to get into facts because he is unclear how the standards are weighed. Mr. Stypinski stated that he can answer this question in Closed Session but he advised if the Committee believes that more facts need to be induced he believes under the Administrative Procedures Act rules the matter can be referred to OAL for a limited factual hearing, but he needs to take a look at this. Mr. Diamantis stated that it is the applicant's burden to show each of these elements and prove these elements to the Committee by clear and convincing evidence. Mr. Siegel asked whether the Borough had an affirmative responsibility to appear at the CADB hearing and make this case to that board. Mr. Diamantis responded that the Borough did authorize sending a letter objecting to the jurisdiction of the matter. The initial issue was that the CADB should not have heard the matter because the amendment was seeking a ruling that was off the farm management unit. The CADB decided to proceed anyway and made their decision.

Chairwoman Purcell advised Mr. Horner that he had five minutes to provide a rebuttal. Mr. Horner responded that regarding *Crowe v. De Gioia*, this is not a court of law and it is not expected to operate like one. This is supposed to be more simplistic. The *Crowe v. De Gioia* case was the court's attempt to make sense out of good cause. For injunctive relief of court rules, one needs to show good cause. There is no real standard built into good cause. He stated that *Crowe v. De Gioia* laid out this way of deciding what constitutes good cause in an injunctive matter. At the same time that the court was deciding on *Crowe v. De Gioia* in 1982, it was also deciding changes that had to be made in the predecessor to the emergent relief rule. In that case, the Supreme Court said that the standard for rendering emergency relief in an agency setting is simply the threat of irreparable harm. The Supreme Court, which had at the same time the *Crowe v. De Gioia* case that it decided nine days later, said nothing about a balancing test. The rule that resulted is the rule that exists now that does not mention the *Crowe v. De Gioia* test. It simply says that if you find a threat of irreparable harm you can grant emergency relief. The rule-maker showed knowledge of *Crowe v. De Gioia*, which had been decided in the past because a small piece of the *Crowe v. De Gioia* analysis is built into a lower part of

the regulation that deals with applications for temporary relief where the opposition does not have a chance to be heard. He stated that there was an opportunity for the rule-maker to consider fully incorporating *Crowe v. De Gioia* into the rule we are dealing with today but it is not there. It is suggested in opinions cited by the opposition in this case that the OAL might not employ *Crowe v. De Gioia* all the time; they may only employ it when other agency regulations call for it. The fundamental issue in the 1982 case that proceeded *Crowe v. De Gioia* by nine days is that this agency and others do not look to the OAL as precedent. The OAL is there as hearing officers who conduct a hearing that comes back to this agency and others to either adopt, reject or modify.

Ms. Purcell asked Mr. Horner to wrap up. Mr. Horner stated that the farm management unit is a jurisdictional classification for purposes of determining what a commercial farm is; it is not a jurisdictional boundary as to where there is the ability to preempt regulation. Mr. Siegel asked Mr. Horner to explain what he meant as it is the municipality's road. Mr. Horner responded that the Right to Farm Act states that all municipal laws that interfere with farming can be preempted if the proper findings are made. It does not confine it to land use ordinances that affect/happen on land. There are situations where one can see that a municipal ordinance may affect activities that happen off the property. One of them would be restrictions on truck traffic or weight limitations, as those are municipal roads. Mr. Horner stated that if his client were told that trucks are not allowed on roads leading to his farm he would go to the CADB in hopes it would recognize that it has the ability to deal with something that is imposed on a public street that inappropriately interferes with his client's farming activities. Mr. Germano asked for a response to Glassboro's position that the Gloucester CADB decision is not binding because the rule says it is not if someone appeals. Mr. Horner referenced the language of the rule and stated that Glassboro is trying to twist the language and substitute wording. Ms. Payne asked if Mr. Horner sought mediation. Mr. Horner stated that the Borough flatly refused it. He wanted it because he feels there may be a middle way on this matter but he feels it has been pretty rough opposition all this time. He is requesting the Committee affirm the status quo. Mr. Horner is also requesting that if the signs do not go up in 10 days, his client can do it and then Glassboro simply has to reimburse him. Or if Glassboro puts up the signs within 10 days and ultimately prevails, his client will pay the cost. He stated that his client needs the signs to be put up quickly.

PUBLIC COMMENT

None.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Friday, April 28, 2017, beginning at 9 a.m. Location: Health/Agriculture Building, First Floor Auditorium.

CLOSED SESSION

At 10:45 a.m., Ms. Murphy moved the following resolution to go into Closed Session. The motion was seconded by Ms. Brodhecker 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. Germano to approve the following Certifications of Value for the following applicants as discussed in Closed Session:

County Planning Incentive Grant Program

1. Todd & Margaret Casper #1, **AMENDED**, SADC #06-0149-PG
Block 501, Lots 9.05 & 17, Upper Deerfield Twp., Cumberland County, 32 Net Acres, 33 Gross Acres

Municipal Planning Incentive Grant Program

1. CTI Solutions, SADC #17-0176-PG
Block 1801, Lot 73, Pittsgrove Twp., Salem County, 84.5 Net Acres, 86.5 Gross Acres
2. Robert A. DeBoer , SADC #21-0598-PG
Block 32, Lots 8, 8.02 & 8.03, White Twp., Warren County, 53.07 Net Acres (Appraisal Order Checklist [AOC]), 56.07 Gross Acres (AOC)

Non-Profit Easement Purchase.

1. Gordon J. Ostrum #3, SADC #17-0051-NP
Block 26, Lot 2.09, Pilesgrove Twp., Salem County, 44.67 Net Acres (AOC),
46.67 Gross Acres (AOC)

The motion was unanimously approved. This approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey. This action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f. (Copies of the Certification of Value Reports are attached to and are a part of the Closed Session minutes.)

B. Attorney/Client Matters

1. Litigation
 - a. Review of Activities - Laurita Winery, Plumsted Twp.,
Ocean County

Ms. Payne stated that SADC staff will prepare a resolution for the Committee's consideration at next month's meeting and invite the property owner to be present to provide input to the Committee.

- b. Right to Farm - Application for Emergent Relief,
Summit City Farms (Glassboro Borough, Gloucester County)

Ms. Payne asked Mr. Smith to summarize a proposed motion for the Committee's consideration. Mr. Smith suggested that the Committee's motion will authorize the issuance of a written order confirming that the Gloucester CADB's decision preempts Glassboro's ordinance with regard to the parking of farm vehicles in front of the Summit City Farms operation on University Boulevard. Further, it will order that any remaining relief requested in the emergency application is not granted. Ms. Payne clarified that "farm vehicles" relates to commercial vehicles that can park there in service of the farm. They may not all have farmer plates but the Committee is referring to commercial vehicles utilizing the area in connection with the farm. Mr. Smith stated that the relief requested identified the type of farm vehicle - farm vehicles and equipment, farm employee and contractor vehicles and equipment, and vehicles

and equipment used to transport farm produce and other farm-related materials to and from the farm.

It was moved by Mr. Siegel and seconded by Mr. Germano to authorize issuance of a written order confirming that the Gloucester CADB's decision preempts Glassboro's ordinance with regarding to the parking of farm vehicles in front of Summit City Farms on University Boulevard, and further ordering that any remaining relief requested in the emergency application is not granted. The motion was unanimously approved.

2. Policy P-2 - LLC Representation at Right to Farm Hearings

Ms. Payne stated that based on the Committee's discussion and an understanding of the implications of court rules compared to SADC's Policy P-2, the Committee has directed staff to develop proposed changes to Policy P-2. These changes are intended to make it explicit that a principal of an LLC may represent the LLC before the CADB and SADC in Right to Farm proceedings without the LLC having to be represented by an attorney. This will be on a future SADC agenda, with more details, for the Committee's consideration.

ADJOURNMENT

There being no further business, it was moved by Mr. Siegel and seconded by Mr. Germano and unanimously approved to adjourn the meeting at 12:32 p.m.

Respectfully Submitted,



Susan E. Payne, Executive Director
State Agriculture Development Committee

Attachments

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2017R3(1)

AMENDED FINAL REVIEW AND APPROVAL OF A PLANNING INCENTIVE
GRANT TO

UPPER PITTSBORO TOWNSHIP
for the
PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of
Thumlert, LeRoy J. ("Owner")
Upper Pittsgrove Township, Salem County

N.J.A.C. 2:76-17A. et seq.
SADC ID# 17-0156-PG

March 23, 2017

Amendment Synopsis:

- Utilizing funding released from a withdrawn application cures the prior shortfall of approximately \$10,703.55 of SADC grant funding
- Increases the SADC grant from \$3,533.95/acre to a full cost share of \$3,700/acre

WHEREAS, on December 15, 2007, the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") plan application from Upper Pittsgrove Township, which included the Thumlert Farm, identified as Block 10, Lots 9 and 9.03, Salem County, totaling approximately 64.350 net easement acres hereinafter referred to as "Property" (Schedule A); and

WHEREAS, the SADC granted Final Approval for the Property on September 22, 2016 which included one (1) 2-acre non-severable exception area for and limited to one (1) future single family residential unit and to afford future flexibility of uses and an easement value of \$5,600/acre (Schedule B); and

WHEREAS, Upper Pittsgrove Township's SADC PIG account at the time of Final Approval had a SADC funding shortfall of approximately \$10,703.55, which can now be paid due to the Township's withdrawal of the previously approved Madosky application; and

WHEREAS, Upper Pittsgrove Township has requested the SADC encumber \$238,095 of its SADC grant funds and sufficient funds are available (Schedule C); and

WHEREAS, the final approval is being amended to increase the SADC cost share from \$227,798.45 or \$3,533.95/acre to the maximum eligible amount of \$238,095 or \$3,700/acre.

WHEREAS, pursuant to N.J.A.C. 2:76-17A.13, by resolution the Upper Pittsgrove Township Committee approved the application and its funding commitment of \$950/acre or 16.965% of the easement purchase on the Thumlert Farm on July 12, 2016 and the Salem County Agriculture Development Board approved the application on July 27, 2016 and secured a commitment of funding for \$950/acre or 16.965% of the easement purchase from the Salem County Board of Chosen Freeholders for the required local match on August 3, 2016; and

WHEREAS, the new estimated cost share breakdown is as follows:

	<u>Total</u>	
SADC	\$238,095	(\$3,700/acre)
Upper Pittsgrove Twp.	\$ 61,132.50	(\$ 950/acre)
<u>Salem County</u>	<u>\$ 61,132.50</u>	<u>(\$ 950/acre)</u>
Total	\$360,360	(\$5,600/acre)

NOW THEREFORE BE IT RESOLVED, that the SADC amends the cost share of the September 22, 2016 Final Approval Resolution FY17R9(6); and

BE IT FURTHER RESOLVED, the SADC approves a revised cost share grant to Upper Pittsgrove Township for the purchase of a development easement on the Thumlert Farm by Salem County, comprising approximately 64.35 acres, at a State cost share of \$3,700 per acre for an estimated total of \$238,095 (66.07% of certified market value and estimated total cost) pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in Schedule D; and

BE IT FURTHER RESOLVED, all other provisions of the September 22, 2016 final approval shall remain in effect; and

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

3/23/17

Date



Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Monique Purcell, Acting Chairwoman	YES
Thomas Stanuikynas (rep. DCA Commissioner Richman)	YES
Ralph Siegel (rep. State Treasurer Scudder)	YES
Cecile Murphy (rep. NJDEP Commissioner Martin)	YES
Brian Schilling (rep. Executive Goodman)	YES
Jane Brodhecker	YES
Alan Danser, Vice Chairman	ABSENT
Scott Ellis	YES
Denis C. Germano, Esq.	YES
Peter Johnson	ABSEMT
James Waltman	ABSENT

Preserved Farms and Active Applications Within Two Miles

X:\counties\salco\projects\thumert_2mile.mxd



Application within the (PA4b) Rural Env Sens Area

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Le Roy Thumert
Block 10 Lots 9.03 (24.3 ac); P/O 9 (39.7 ac) &
P/O 9-EN (non-severable exception - 2.0 ac)
Gross Total = 66.0 ac
Upper Pittsgrove Twp., Salem County



NOTE:
The parcel location and boundaries shown on this map are approximate and should not be construed to be a land survey as defined by the New Jersey Board of Professional Engineers and Land Surveyors

Sources:
NJ Farmland Preservation Program
Green Acres Conservation Easement Data

SADC Municipal Financial Status
Schedule B

Upper Pittsgrove Township, Salem County

SADC ID#	Farm	Acres	Pay Acres	SADC Certified or Negotiated Per Acre	SADC Grant Per Acre	SADC		Federal Grant		Grant			Balance
						Cost Basis	Cost Share	Total Federal Grant	SADC Federal Grant	Fiscal Year 09	Fiscal Year 11	Fiscal Year 13	
17-0096-PG	Kernan	75.305	75.305	4,200.00	2,920.00	316,281.00	219,890.60	191,906.00	219,890.60	219,890.60	219,890.60	219,890.60	1,750,000.00
17-0097-PG	Newkirk	59.622	59.048	6,500.00	4,150.00	383,812.00	245,049.20	191,906.00	191,906.00	191,906.00	191,906.00	191,906.00	1,530,108.40
17-0108-PG	Schmid	22.845	22.179	6,000.00	3,900.00	133,074.00	86,498.10	86,498.10	86,498.10	86,498.10	86,498.10	86,498.10	1,338,203.40
17-0111-PG	Lewis	19.116	18.542	6,050.00	3,925.00	114,179.10	72,777.35	72,777.35	72,777.35	72,777.35	72,777.35	72,777.35	1,251,705.30
17-0112-PG	Madosky	16.000	16.000	6,000.00	3,900.00	96,000.00	62,400.00	62,400.00	62,400.00	62,400.00	62,400.00	62,400.00	1,178,927.95
17-0113-PG	Kramme	30.872	30.872	6,600.00	4,200.00	203,745.20	129,662.40	129,662.40	129,662.40	129,662.40	129,662.40	129,662.40	1,116,527.95
17-0120-PG	Scottie	57.534	57.534	4,800.00	3,280.00	276,163.20	188,711.52	166,648.60	79,396.92	109,314.60	109,314.60	109,314.60	986,865.55
17-0136-PG	Newkirk/Kernan ancilcost												866,813.45
17-0137-PG	Jasper	93.300	93.300	5,300.00	3,550.00	494,490.00	331,215.00	234,900.00	72,900.00	307,800.00	307,800.00	307,800.00	535,598.45
17-0137-PG	Bishop Bros	81.000	81.000	5,800.00	3,800.00	469,800.00	307,900.00	234,900.00	72,900.00	307,800.00	307,800.00	307,800.00	877,550.95
17-0156-PG	Thumert, Leroy	64.460	64.460	5,600.00	3,533.95	360,976.00	227,798.45			227,798.45	227,798.45	227,798.45	227,798.45
Totals Closed		6	263,480			1,425,264.50	942,589.17	358,554.60	132,540.12	331,215.00	331,215.00	331,215.00	1,750,000.00
Totals Encumbered		4	254,760			1,421,266.00	929,213.45	234,900.00	72,900.00	307,800.00	307,800.00	307,800.00	500,000.00
										Encumber/Expended FY09	49,265.55		
										Encumber/Expended FY11	379,947.90		
										Encumber/Expended FY13	500,000.00		
										Total	700,734.45		
											120,052.10		
											0.00		

State Agriculture Development Committee
SADC Final Review: Development Easement Purchase

Thumlert, LeRoy J. (Thumlert)
17- 0156-PG
PIG EP - Municipal 2007 Rule
64 Acres

Block 10 Lot 9 Upper Pittsgrove Twp. Salem County
Block 10 Lot 9.03 Upper Pittsgrove Twp. Salem County

SOILS:	Other	1% *	0	=	.00
	Statewide	99% *	.1	=	9.90
					SOIL SCORE: 9.90
TILLABLE SOILS:	Cropland Harvested	93% *	.15	=	13.95
	Wetlands	2% *	0	=	.00
	Woodlands	5% *	0	=	.00
					TILLABLE SOILS SCORE: 13.95
FARM USE:	Soybeans-Cash Grain				67 acres

On June 23, 2016 the SADC certified a value of \$5,600.00 per acre for the development easement.

The Township is contracted to purchase the easement for per acre.

The SADC approves a purchase price of the development easement of per acre for an estimated

The SADC % cost share pursuant to N.J.A.C. 2:76-6.11 is per acre for an estimate of County % cost share is per acre for an estimate of

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 Possible future single family residential unit and flexibility of uses.
 - Exception is not to be severed from Premises
 - Exception is to be limited to one single family residential unit(s)
 - c. Additional Restrictions: No Additional Restrictions
 - d. Additional Conditions:
 1. Old Right to Farm ordinance language for Upper Pittsgrove, restricts swine and intensive fowl operations, and is present in the Deed from 2009, which conflicts with the future Deed of Easement. Final approval is conditioned on this restrictive language being removed from the vesting deeds for lots 9 and 9.03, prior to settlement and inclusion of the provisions of the Township's current Right to Farm Ordinance.
 - e. Dwelling Units on Premises: No Dwelling Units
 - 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.

SADC Municipal Fy Financial Status
Schedule C

Upper Pittsgrove Township, Salem County

SADC ID#	Farm	Acres	Pay Acres	SADC Certified or Negotiated Per Acre	SADC Grant Per Acre	Grant% Per Acre	SADC			Federal Grant			Grant		
							Cost Basis	Cost Share	Total Federal Grant	Total Federal Grant	Fiscal Year 09	Fiscal Year 11	Fiscal Year 13	Fiscal Year 17	Encumbered
17-0096-PG	Kernan	75.305	75.305	4,200.00	2,920.00	69.52%	316,281.00	219,890.60	191,906.00	191,906.00	219,890.60	219,890.60	219,890.60	1,750,000.00	1,750,000.00
17-0097-PG	Newkirk	59.622	59.048	6,500.00	4,150.00	63.85%	383,812.00	245,049.20	191,906.00	191,906.00	191,906.00	191,906.00	191,906.00	1,530,109.40	1,530,109.40
17-0108-PG	Schmid	22.845	22.179	6,000.00	3,900.00	65.00%	133,074.00	86,498.10	86,498.10	86,498.10	86,498.10	86,498.10	86,498.10	1,338,203.40	1,338,203.40
17-0111-PG	Lewis	19.116	18.542	6,050.00	3,925.00	64.88%	112,179.10	72,777.35	72,777.35	72,777.35	72,777.35	72,777.35	72,777.35	1,251,705.30	1,251,705.30
17-0113-PG	Kramme	30.872	30.872	6,600.00	4,200.00	63.64%	203,755.20	129,662.40	129,662.40	129,662.40	129,662.40	129,662.40	129,662.40	1,178,927.95	1,178,927.95
17-0120-PG	Sottile	57.534	57.534	4,800.00	3,280.00	68.33%	276,163.20	188,711.52	166,648.60	166,648.60	188,711.52	188,711.52	188,711.52	1,049,265.55	1,049,265.55
17-0136-PG	Newkirk/Kernan ancilcost	90.620	85.250	5,300.00	3,550.00	66.98%	451,825.00	302,637.50	234,900.00	234,900.00	302,637.50	302,637.50	302,637.50	826,575.95	826,575.95
17-0137-PG	Bishop Bros	81.000	81.000	5,800.00	3,900.00	65.52%	469,800.00	307,800.00	234,900.00	234,900.00	307,800.00	307,800.00	307,800.00	318,775.95	318,775.95
17-0156-PG	Thumbert, Leroy	64.350	64.350	5,600.00	3,700.00	66.07%	360,360.00	238,095.00	234,900.00	234,900.00	238,095.00	238,095.00	238,095.00	80,680.95	80,680.95
17-0162-PG	Williams, Steven & Kathy	22.000	22.000	3,750.00	2,650.00	70.67%	82,500.00	58,300.00	58,300.00	58,300.00	58,300.00	58,300.00	58,300.00	22,380.95	22,380.95
Totals Closed		7	348.730				1,877,089.500	1,245,226.670	358,554.600	358,554.600	132,540.120	132,540.120	132,540.120		
Totals Encumbered		3	167.350				912,660.000	604,195.000	234,900.000	234,900.000	72,900.000	72,900.000	72,900.000		
									Encumber/Expended Fy09	Encumber/Expended Fy11	Encumber/Expended Fy13	Encumber/Expended Fy17	Total		
									49,265.55	73,210.40	477,619.05	700,734.45	422,689.60	22,380.95	
														22,380.95	

Thumlert, LeRoy J. (Thumlert)
17- 0156-PG
PIG EP - Municipal 2007 Rule
64 Acres

Block 10 Lot 9 Upper Pittsgrove Twp. Salem County
Block 10 Lot 9.03 Upper Pittsgrove Twp. Salem County

SOILS:	Other	1% *	0	=	.00
	Statewide	99% *	.1	=	9.90
					SOIL SCORE: 9.90
TILLABLE SOILS:	Cropland Harvested	93% *	.15	=	13.95
	Wetlands	2% *	0	=	.00
	Woodlands	5% *	0	=	.00
					TILLABLE SOILS SCORE: 13.95
FARM USE:	Soybeans-Cash Grain				67 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:
 - b. Exceptions:
 - 1st two (2) acres for Possible future single family residential unit and flexibility of uses.
 - Exception is not to be severed from Premises
 - Exception is to be limited to one future single family residential unit(s)
 - c. Additional Restrictions: No Additional Restrictions
 - d. Additional Conditions:
 1. Old Right to Farm ordinance language for Upper Pittsgrove, restricts swine and intensive fowl operations, and is present in the Deed from 2009, which conflicts with the future Deed of Easement. Final approval is conditioned on this restrictive language being removed from the vesting deeds for lots 9 and 9.03, prior to settlement and inclusion of the provisions of the Township's current Right to Farm Ordinance.
 - e. Dwelling Units on Premises: No Dwelling Units
 - 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 FY2017R3(2)

FINAL REVIEW AND APPROVAL OF A PLANNING INCENTIVE GRANT TO

SALEM COUNTY

for the

PURCHASE OF A DEVELOPMENT EASEMENT

On the Property of

James & Patricia Moffett ("Owners")

Upper Pittsgrove and Pilesgrove Townships, Salem County

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

SADC ID#17-0165-PG

March 23, 2017

WHEREAS, on December 15, 2008 the State Agriculture Development Committee ("SADC") received a Planning Incentive Grant ("PIG") plan application from Salem 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, Salem County received SADC approval of its FY2017 PIG Plan application annual update on May 26, 2016; and

WHEREAS, on August 6, 2015, the SADC received an application for the sale of a development easement from Salem County for the subject farm identified as Block 31, Lot 4, Upper Pittsgrove Township and Block 43, Lot 5, Pilesgrove Township, Salem County totaling approximately 46.45 gross acres hereinafter referred to as "the Property" (Schedule A); and

WHEREAS, the Property is located in Salem County's Cohansey-Pole Tavern-Pine Tavern (1) Project Area; and

WHEREAS, the Property includes one (1), approximately 1.2 acre non-severable exception area for and limited to one (1) future single family residential unit and to afford future flexibility of uses resulting in approximately 45.30 net acres to be preserved; and

WHEREAS, the portion of the Property outside the exception area includes zero (0) housing opportunities, zero (0) agricultural labor units, one (1) unimproved cabin limited to use for storage and recreational use and no pre-existing non-agricultural uses; and

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

WHEREAS, the Owners 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 62.80 which exceeds 48, which is 70% of the County's average quality score as determined by the SADC July 23, 2015; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9(b) on April 11, 2016 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 22, 2016, the SADC certified a development easement value of \$5,400 per acre based on zoning and environmental regulations in place as of the current valuation date July 13, 2016; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.12, the Owner accepted the County's offer of \$5,400 per acre for the development easement for the Property; and

WHEREAS, on January 26, 2017 the County prioritized its farms and submitted its applications 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. 2:76-17.13, on November 8, 2016, the Upper Pittsgrove Township Committee passed a resolution approving the Owner's application for the sale of development easement and a commitment of funding for \$900/acre, or 15.92% of the easement purchase price, on the acreage in Upper Pittsgrove; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13, on October 25, 2016, the Pilesgrove Township Committee passed a resolution approving the Owner's application for the sale of development easement and a commitment of funding for \$900/acre, or 0.74% of the easement purchase price, on the acreage in Pilesgrove; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13 on October 26, 2016, the Salem CADB passed a resolution granting final approval for the development easement acquisition on the Property; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13 on November 2, 2016, the Board of Chosen Freeholders of the County of Salem passed a resolution granting final approval and a commitment of funding for \$900 per acre to cover the local cost share; and

WHEREAS, the County has requested to encumber an additional 3% buffer for possible final surveyed acreage increases, therefore, 46.66 acres will be utilized to calculate the grant need; and

WHEREAS, the estimated cost share breakdown is as follows (based on 46.66 acres); and

	<u>Total</u>	<u>Per/acre</u>
SADC	\$167,976	(\$3,600/acre)
County	\$ 41,994	(\$ 900/acre)
Upper Pittsgrove	\$ 40,122	(\$ 900/acre based on 44.58 acres)

<u>Pilesgrove</u>	\$ 1,872	(\$ 900/acre based on 2.08 acres)
Total Easement Purchase	\$251,964	(\$5,400/acre)

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, pursuant to N.J.A.C. 2:76-17.14, the Salem County Agriculture Development Board is requesting \$167,976.00 in FY13 competitive grant funding which is available at this time (Schedule B); 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 subject to available funds and 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 Salem County for the purchase of a development easement on the Property, comprising approximately 46.66 net easement acres, at a State cost share of \$3,600 per acre, (66.67% of certified easement value and purchase price), for a total grant not to exceed of \$167,976 pursuant to N.J.A.C. 2:76-6.11 and the conditions contained in (Schedule C); and

BE IT FURTHER RESOLVED, the Property includes one (1), approximately 1.2 acre non-severable exception area for one (1) future and limited to one (1) single family residential unit and to afford future flexibility of use; and

BE IT FURTHER RESOLVED, the portion of the Property outside the exception area includes zero (0) housing opportunities, zero (0) agricultural labor units, and one (1) unimproved cabin limited to use for storage and recreational use and no pre-existing non-agricultural uses and does not represent a dwelling opportunity; and

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

BE IT FURTHER RESOLVED, that if unencumbered base grant funds become available subsequent to this final approval and prior to executing the grant agreement, the SADC shall utilize those funds before utilizing competitive funding; and

BE IT FURTHER RESOLVED, should additional funds be needed due to an increase in acreage and if base grant funding becomes available the grant may be adjusted to utilize unencumbered base grant funds; 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 area of the Property to be preserved outside of any exception

areas, 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 as identified in Policy P-3-C; 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 be subject to review and approval by the SADC; 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.

3/23/17

Date



Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Monique Purcell, Acting Chairwoman	YES
Thomas Stanuikynas (rep. DCA Commissioner Richman)	YES
Ralph Siegel (rep. State Treasurer Scudder)	YES
Cecile Murphy (rep. NJDEP Commissioner Martin)	YES
Brian Schilling (rep. Executive Goodman)	YES
Jane Brodhecker	YES
Alan Danser, Vice Chairman	ABSENT
Scott Ellis	YES
Denis C. Germano, Esq.	YES
Peter Johnson	ABSEMT
James Waltman	ABSENT

S:\Planning Incentive Grant -2007 rules County\Salem\Moffett, James & Patricia(Moffett farm)\Moffett_FinalApprovalResolution_2017.03.01.doc

Schedule A



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Application within the (PA4) Rural Area

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

James and Patricia Moffett
Upper Pittsgrove Twp. - Block 31 Lots P/O 4 (44.0 ac);
P/O 4-EN (non-severable exception - 1.2 ac)
Pilesgrove Twp. - Block 43 Lot 5 (1.2 ac)
Gross Total = 46.5 ac
Salem County



	Property In Question
	EN - (Non-Severable) Exception
	ES - (Severable) Exception
	Primary - Limited Access
	Federal or State Hwys
	County Roads
	Municipal/Local Roads



Sources:
Green Acres Conservation Easement Data
NJGIT/OGIS 2012 Digital Aerial Image

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

March 18, 2016

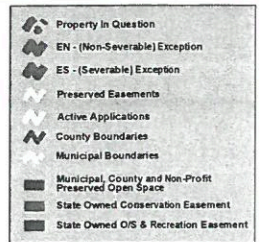
Preserved Farms and Active Applications Within Two Miles

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FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

James and Patricia Moffett
Upper Pittsgrove Twp. - Block 31 Lots P/O 4 (44.0 ac);
P/O 4-EN (non-severable exception - 1.2 ac)
Pilesgrove Twp. - Block 43 Lot 5 (1.2 ac)
Gross Total = 46.5 ac
Salem County



Sources:
NJ Farmland Preservation Program
Green Acres Conservation Easement Data
NJOT/OGIS 2012 Digital Aerial Image

NOTE:
The parcel location and boundaries shown on this map are approximate and should not be construed to be a land survey as defined by the New Jersey Board of Professional Engineers and Land Surveyors

State Agriculture Development Committee
 SADC Final Review: Development Easement Purchase

Moffett, James & Patricia (Moffett farm)
 17- 0149-PG
 PIG EP - Municipal 2007 Rule
 44 Acres

Block 31	Lot 4	Upper Pittsgrove Twp. Salem County
SOILS:		
	Other	38% * 0 = .00
	Prime	56% * .15 = 8.40
	Statewide	6% * .1 = .60
		SOIL SCORE: 9.00
TILLABLE SOILS:		
	Cropland Harvested	53% * .15 = 7.95
	Wetlands	26% * 0 = .00
	Woodlands	21% * 0 = .00
		TILLABLE SOILS SCORE: 7.95
FARM USE:	Hay	22 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:
 - b. Exceptions:
 - 1st (1.2) acres for Future single family residential unit
 Exception is not to be severed from Premises
 Exception is to be limited to one future single family residential unit(s)
 - c. Additional Restrictions:
 1. It should be noted that there is a cabin on the property, that is unimproved; no permanent foundation, electric, water or septic. Used for storage for 35 years. It will be noted on the Deed of Easement as a unimproved cabin that cannot become a single family resident.
 - d. Additional Conditions: No Additional Conditions
 - e. Dwelling Units on Premises:
Cabin - storage
 - 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.

