

**RICHARD BAILEY and
MARIE BAILEY,**

Petitioners,

vs.

STATE OF NEW JERSEY

OAL DKT. NO.: ADC 2759-09
AGENCY REF. NO.: SADC 864

OAL DKT. NO.: ADC 2788-09
AGENCY REF. NO.: SADC 864A

OAL DKT. NO.: ADC 8130-09
AGENCY REF. NO.: SADC 864B

**HUNTERDON COUNTY AGRICULTURE
DEVELOPMENT BOARD; THEODORE
G. BLEW, JR., ERIC BLEW and
SUSAN BLEW,**

Respondents.

FINAL DECISION

PROCEDURAL HISTORY

Three (3) cases decided by the Office of Administrative Law (OAL) arise from a dispute under the Right-to-Farm Act, N.J.S.A. 4:1C-1, et seq. ("the RTF Act") between Theodore and Susan Blew, who own and operate a preserved farm in Franklin Township, Hunterdon County ("Blew" or "Blew Farm") and township residents Richard and Marie Bailey ("Bailey").

On September 1, 2005, Blew was denied a permit by the Franklin Township zoning officer for construction of a solar panel array on the Blew Farm and was required to appear before the township planning board. On September 14, 2005, the planning board approved the solar panel array without requiring Blew to plant vegetative screening, but on condition that it would rehear the screening issue if,

within one (1) year, any other property owner sought reconsideration. The planning board memorialized its decision by resolution dated October 12, 2005.

On October 3, 2005, Blew filed an application with the Hunterdon County Agriculture Development Board ("HCADB" or "board") for a site specific agricultural management practice ("SSAMP") determination for the proposed solar panels. Susan Blew was a member of the HCADB at the time the application was filed. The HCADB provided notice of the SSAMP application to Franklin Township on October 26, 2005 and to the State Agriculture Development Committee ("SADC") on October 31, 2005. On December 8, 2005, the board approved the Blew solar panel SSAMP and memorialized its decision in a resolution dated January 12, 2006. No one appealed the HCADB's decision of December 8, 2005 or resolution of January 12, 2006. Between February 2006 and April 2006 Blew completed construction of the solar panel array.

In October 2006 Bailey filed two (2) prerogative writ complaints in the Superior Court, Law Division, Hunterdon County. One lawsuit named the Franklin Township planning board and Blew as defendants; the other named the HCADB and Blew as defendants. The complaints alleged that the solar panel approval granted to Blew by the planning board was

improper due to violations of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. ("MLUL") and the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. ("OPMA"), and that the approval granted by the HCADB was improper due to violations of the OPMA and the Blews' misconduct.

On February 9, 2007, the trial court ordered that both cases be remanded to the Franklin Township planning board to hold another hearing on its conditional approval of the Blew solar panel array; the court dismissed both prerogative writ suits without prejudice but allowed Bailey to refile the complaints if dissatisfied with the results of the planning board rehearing. The planning board heard the Blew solar panel case on April 11 and 25, 2007, reaffirmed its 2005 approval and determined that no vegetative screening was necessary. The planning board decision was memorialized by resolution dated May 9, 2007. Bailey refiled the two (2) Superior Court complaints in June 2007 and, on November 6, 2007, the court again remanded the cases, this time to the HCADB.

Bailey filed a right-to-farm complaint with the HCADB against Blew on March 3, 2008 ("the Bailey RTF complaint"). The board discussed the Bailey RTF complaint at a meeting held on May 8 and scheduled a hearing on September 11, 2008.

On June 23, 2008, Blew filed an application with the HCADB for SSAMP approval of various agricultural production activities and for the solar panel array ("the Blew SSAMP"). The HCADB provided notice of the SSAMP application to Franklin Township and to the SADC on or about September 5, and a hearing on the Blew SSAMP was scheduled for September 11, 2008.

On July 1, 2008, Bailey filed a motion in the Superior Court seeking reconsideration of the November 6, 2007 remand order, contending that the HCADB's hearing procedures for the Bailey RTF complaint and Blew SSAMP conflicted with the order, but the motion was denied.

On August 31, 2008, Bailey submitted a letter to the HCADB objecting to the public notice provided for the upcoming September 11, 2008 hearing on the Bailey RTF complaint. On September 11 the board postponed the Bailey complaint and proceeded with the Blew SSAMP.

Beginning on September 11, 2008, and in the months of October 2008, December 2008, January 2009, and February 2009, the HCADB heard the Blew SSAMP request. On February 19, 2009, the board approved the Blew SSAMP and began consideration of the Bailey RTF complaint. Bailey asserted that the board lacked a quorum, and the board adjourned further proceedings until March 12, 2009, at which time it

dismissed the Bailey RTF complaint.

On March 17, 2009, Bailey filed a lawsuit against the HCADB and Blew in the Superior Court, Law Division, Hunterdon County, alleging that the board's February 19, 2009 meeting violated the OPMA, and that any formal action taken at the meeting was void, because only three (3) voting members participated ("the OPMA claim"). Bailey also claimed that John Van Nuys ("Van Nuys"), an HCADB member and chairperson of the Hunterdon County Soil Conservation District ("HCSCD") who participated at the February 19 meeting, could not vote because his dual positions created a conflict of interest.

On April 9, 2009 the HCADB passed two (2) resolutions memorializing the decisions made at its February 19 and March 12, 2009 meetings approving the Blew SSAMP and dismissing the Bailey RTF complaint. Bailey appealed each of these resolutions to the SADC on April 14, 2009. After the SADC transmitted the Bailey appeals to the OAL on April 21, 2009, the latter assigned docket number ADC 2759-09 to the appeal of the Bailey RTF complaint and docket number ADC 2788-09 to Bailey's appeal of the Blew SSAMP approval.

By order dated May 8, 2009 the trial court ordered a remand of Bailey's OPMA lawsuit to the SADC "pursuant to the doctrine of primary jurisdiction, *Sukin v. Northfield*

Bd. of Ed., 171 N.J.Super. 184 (App.Div. 1979).” The SADC transmitted that case to the OAL on June 23, 2009, and the matter was assigned docket number ADC 8130-09. All three (3) OAL cases were consolidated for the purpose of hearing.

In January 2010, Blew filed a notice of motion, supported by the HCADB, for summary decision dismissing the Bailey appeals and OPMA claim, and in February 2010 Bailey filed an opposing cross motion. The motions were argued before the OAL on July 19, 2010.

On August 6, 2010, the administrative law judge (ALJ) issued an Initial Decision voiding both of the HCADB's April 9, 2009 resolutions, dismissing Bailey's OPMA claim, and finding that Van Nuys was not a proper voting member of the HCADB.

Bailey filed exceptions to the Initial Decision on August 17, 2010. The HCADB filed its exceptions on September 2, 2010 after obtaining an extension from the SADC, and Bailey replied to the board's exceptions on September 6.

On August 18, 2010, the SADC sought an order from the OAL pursuant to N.J.S.A. 52:14B-10(c) for a 45-day extension to file a Final Decision, which order was granted on August 20, 2010 extending the Final Decision filing date to November 4, 2010. On October 21, 2010, the SADC sought

and obtained a second order from the OAL extending the time to file an Initial Decision to December 20, 2010. Both extension requests were based on the need to align SADC meeting dates with the due date of a Final Decision set forth in N.J.S.A. 52:14B-10(c).

FINDINGS OF FACT

Blew owns and operates a 160-acre, highly-diversified farm operation on Oak Grove Road in Franklin Township, Hunterdon County. The Blew Farm was preserved by the HCADB on December 19, 1985 with an SADC cost-share grant. There is no dispute in the record that the Blew Farm is a "commercial farm" as defined in N.J.S.A. 4:1C-3, entitling it to the protections afforded by the RTF Act. Agricultural production activities on the farm include the growing of vegetable, fruit and field crops; greenhouse crops and a cut flower operation; a farrow-to-finish hog operation; various buildings used for storage of crops, livestock and equipment; woodlot management; crop irrigation; and manure nutrient management. The record reflects that the hog operation, known as "High Hope Hogs", is run by Susan Blew and son Eric Blew; the remainder of the farm operation is known as "Oak Grove Plantation."

Bailey lives at _____ in Franklin Township; Bailey's property adjoins the Blew Farm property.

The HCADB was created in 1981 with twelve (12) voting members and five (5) nonvoting members. In 1983, the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, et seq. ("the ARDA") established the composition of agriculture development boards throughout the State at seven (7) voting members, four (4) of whom must be actively engaged in farming and three (3) of whom represent the public. The ARDA also required board membership to include three (3) nonvoting members comprised of a representative of the county soil conservation district, a member of the county planning board, and the Rutgers Cooperative Extension Service's county agent. N.J.S.A. 4:1C-14a. N.J.S.A. 4:1C-14g. temporarily "grandfathered" the membership composition of boards such as Hunterdon County's, created prior to May 3, 1982, by requiring that those boards reorganize no later than five (5) years after the ARDA's passage such that the membership is comprised of not more than a simple majority of active farmers or an equal number of farmer and non-farmer members.

In 1995, the HCADB adopted bylaws that included, in pertinent part, the following provision:

Article IV Quorum

A quorum necessary to conduct business of the Board shall consist of seven of its voting Members. A non-voting member shall not

present a motion to be voted upon or second any motion.

The HCADB also maintained an "unwritten policy" subsequent to 1995 allowing it to conduct public meeting business when four (4) voting members were present.

The board has a conflict of interest policy requiring members to disqualify themselves when they, their family members or their employees have a direct or indirect personal or financial interest in the subject matter before the HCADB. Board members must comply with the code of ethics adopted by the Local Finance Board, an agency within the New Jersey Department of Community Affairs.

On September 1, 2005, Blew applied for a zoning permit for the construction of a solar panel array on the Blew Farm. The Franklin Township zoning officer denied the permit in writing on September 6, 2005, stating that the proposed solar panel project might require site plan approval and/or a variance from the township planning board.

Blew appeared before the township planning board on September 14, 2005 with a representative of Sun Farm Network, the entity responsible for installing the solar energy system. An "Array Site Plan" prepared by New Jersey licensed architect Joseph DeMaria on behalf of Blew and Sun

Farm Network was submitted to the planning board. The site plan shows that the solar energy facility on the Blew Farm consists of nine (9) individual photovoltaic arrays generating a total of 57.834 kilowatts (kW) of energy, arranged in a 3 x 3 pattern, with each array containing 63 individual modules. Each array is 10' wide and about 48' long, and all of the panels occupy an approximate 87' by 152' area. The total area occupied by the arrays and associated open space, approximately 1 acre, is enclosed by fencing, and the plan indicates that the first row of arrays is situated no closer than 115' from the centerline of Oak Grove Road. The array was designed to meet 100% of the farm's electricity needs, including the farm residence.

In its memorializing resolution dated October 12, 2005, the planning board approved the solar panel array without requiring vegetative screening but added that if, within one year, any property owner requested that the panels be screened, the planning board would retain jurisdiction to hear and decide the request. This condition was imposed over the objection of Blew, whose expert testified that any vegetative screening exceeding 4' in height would adversely affect performance of the array.

On October 3, 2005, Blew filed an SSAMP application with the HCADB seeking approval of "a solar array to

produce electricity for the agricultural operation and residence". The preprinted application form provided by the board asked Blew to provide a detailed justification for the request. In response, Blew stated "solar produced electricity is recommended by N.J. Farm Bureau, N.J. Board of Public Utilities (BPU), N.J. Dept. of Agriculture, & U. S. Federal Government. Presently solar produced electricity is utilized by Guildbjerg Farm at [REDACTED], Franklin Twp. and the Lee Turkey Farm, Mercer County." Blew submitted to the HCADB the same "Array Site Plan" that had been filed with the planning board.

On December 7, 2005, HCADB representatives visited the Blew Farm. On December 8, 2005, the board conducted a hearing on the Blew SSAMP application and found the solar panel array system to be a generally accepted agricultural management practice that need not be screened due to the adverse effects screening would have on the ability of the panels to create energy. The board's decision was memorialized by resolution dated January 12, 2006. In its approval resolution, the HCADB noted Blew's proceedings before the Franklin Township planning board and recited Blew's testimony that "the site for the erection of the solar arrays was chosen because it is closest to the existing utilities and in an area where it is used as a

horse pasture. Additional fencing will be put in and the area will be used to raise chickens, so there will still be an agricultural operation in the location."

No one appealed the HCADB's decision of December 8, 2005 or resolution of January 12, 2006. Blew, relying on the Franklin Township planning board and HCADB approvals, installed the solar panel array between February 2006 and April 2006. There is no evidence in the record to suggest that the actual installation or current configuration of the solar panel array on the Blew Farm is different from that depicted on the 2005 "Array Site Plan".

The two (2) prerogative writ lawsuits filed by Bailey in October 2006 stemmed from information Bailey obtained as a result of Open Public Records Act requests made to Franklin Township in September 2006.

In the complaint filed against the planning board and Blew ("the Bailey-Franklin Township suit"), Bailey alleged that the board's September-October 2005 proceedings were "cloaked in misrepresentation and fraud" because: (1) the meeting at which the Blew solar panels had been approved was not properly advertised to the general public and to adjoining property owners in violation of the MLUL and OPMA; and (2) the planning board violated township land use ordinances by failing to require the Blews to submit various documents in support of a minor site plan

application. In the complaint filed against the HCADB and Blew ("the Bailey-HCADB suit"), Bailey alleged that: (1) the board violated the OPMA because "adequate notice was not given to the public nor to neighbors within 200' in all directions of the Blew property"; (2) the Blew solar panel SSAMP should be remanded to the HCADB for a determination whether it had jurisdiction to hear the matter rather than the SADC; (3) the Blews altered the HCADB's application form to avoid burdensome reporting requirements that would have resulted in delays in constructing the solar panels and a loss of energy rebates; and (4) Susan Blew participated both as chairperson of the HCADB and as the applicant, and neither she nor Theodore Blew testified under oath in support of the application.

Both Bailey lawsuits were consolidated by the trial court and, on February 9, 2007, the court remanded the cases to the planning board to hold, on notice to Bailey, another hearing on the Blew solar panel array. The order determined that the October 2006 complaint filed by Bailey against the planning board constituted a timely objection to that board's October 12, 2005 conditional approval of the Blew solar energy project. The order also provided that if, after the planning board rehearing, Bailey was dissatisfied with its decision, both the Bailey-Franklin

Township suit and the Bailey-HCADB suit could be reinstated. The planning board reheard the case on April 11 and 25, 2007, reaffirmed its approval of the Blew solar array, determined that no vegetative screening was necessary, and memorialized its decision by resolution dated May 9, 2007. That action resulted in Bailey's June 2007 reinstatement of the superior court lawsuits originally filed in October 2006.

On November 6, 2007, the superior court remanded Bailey's reinstated lawsuits, but this time to the HCADB. The order noted the applicability of Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App.Div. 2001), *aff'd* 172 N.J. 147 (2002) regarding jurisdiction of the HCADB "over matters involving issues under the Right to Farm Act", but nonetheless remanded to the HCADB Bailey's complaint against the Franklin Township planning board involving MLUL and OPMA claims. In remanding the cases to the HCADB, the court required Bailey to exhaust administrative remedies by presenting all appropriate claims to the board, by filing an appeal with the SADC if dissatisfied with the HCADB's decision and, thereafter if necessary, by filing an appeal with the Superior Court, Appellate Division. If those remedies still did not resolve the issues to Bailey's satisfaction, the

prerogative writ lawsuits could be reinstated.

The record reflects the claim that Bailey did not receive the November 6, 2007 remand order until February 20, 2008. On March 3, 2008, the Bailey RTF complaint against the Blew solar panels was filed with the HCADB. Bailey made no nuisance or other allegations against Blew in the board's complaint form entitled "Right to Farm Disputes - Application for Hearing". Instead, Bailey recited that the HCADB issued the Blew SSAMP for the solar panels in December 2005 and attached a copy of the November 6, 2007 superior court remand order.

The HCADB discussed the Bailey RTF complaint at a meeting held on May 8, 2008; at that time the board also determined that Blew operated a "commercial farm" as defined in the RTF Act and scheduled a hearing on the Bailey complaint on September 11, 2008.

On June 23, 2008 the Blew SSAMP application was filed with the HCADB. Blew sought approval from the board that all of the Blew Farm's agricultural activities, including the solar panel array, constituted generally accepted agricultural practices. With respect to the solar panel array, Blew stated that it "generates electricity for agricultural operations and residence", that it had been recommended by the New Jersey Farm Bureau, and that it had

been approved by the New Jersey Board of Public Utilities, the HCADB, the SADC and the Franklin Township planning board. In support of the request, Blew resubmitted the "Array Site Plan" that had been filed with the October 2005 SSAMP request and submitted the HCADB's January 12, 2006 resolution of approval.

The Blew SSAMP also sought approval for the agricultural production activities: vegetable, fruit and field crops; the farrow-to-finish hog operation; sweet corn production; crop irrigation; manure nutrient management; greenhouse crop production; building usage for storage of crops, livestock and equipment; the cut flower operation; and woodlot management. Blew asserted that all of these activities were conducted in accordance with the recommendations of the Rutgers Cooperative Extension, Cornell University and Penn State University. Blew listed twelve (12) potential witnesses in support of the SSAMP application, including various state, county and local agricultural officials. The HCADB scheduled the Blew SSAMP application for hearing on September 11, 2008, the same meeting at which the Bailey RTF complaint would be heard.

On July 1, 2008, Bailey filed a motion for reconsideration of the trial court's November 6, 2007 remand order. Bailey claimed that the order required the

HCADB to hear only the Bailey RTF complaint, and objected to the HCADB's May 8, 2008 decision to consider both the Bailey RTF complaint and the Blew SSAMP. The trial judge dismissed the motion, declining to instruct the HCADB as to how to hear the Bailey-Blew dispute. The court concluded that the board had the discretion to combine the Bailey RTF complaint with the Blew SSAMP for reasons of "economy and efficiency."

On August 31, 2008, Bailey submitted a letter to the HCADB objecting to the public notice provided for the September 11, 2008 hearing. When the board met on September 11, HCADB counsel and Bailey discussed and tentatively agreed to the format of a revised public advertisement. A hearing on the Bailey RTF complaint was postponed, and beginning on September 11, 2008 the HCADB heard the Blew SSAMP request.

Although the 1995 HCADB bylaws provided for a quorum of seven (7) voting members, by September 2008 the HCADB consisted of nine (9) voting members. The voting membership in September 2008, consistent with N.J.S.A. 4:1C-14g., was as follows:

Peter Melick (Chairperson, Farmer)
William Bowlby (Farmer)
Robert Hoffman (Farmer)
David Bond (Farmer)
Susan Blew (Farmer)

John Van Nuys (Public member)
Wayne Hunt (Public member)
Paul Dahan (Public member)
Robert Zellely (Public Member)

The transcript of the September 11, 2008 HCADB meeting reflects that the following five (5) voting members participated in the Blew SSAMP hearing: William Bowlby (as Acting Chairperson); Wayne Hunt; Robert Hoffman; David Bond; and John Van Nuys. The transcript also indicates that four (4) members recused themselves from considering the Blew SSAMP: Peter Melick, Paul Dahan, Robert Zellely and Susan Blew. Ms. Blew, a party to the proceedings, appeared as a witness in support of the SSAMP application. A nonvoting member, Win Cowgill, the Hunterdon County Agricultural Extension Agent, was also present on September 11.

At the next meeting of the HCADB on October 9, 2008, four (4) voting members were in attendance to consider the Blew SSAMP: Mr. Bowlby, Mr. Hunt, Mr. Hoffman and Mr. Van Nuys. HCADB counsel advised the board that it could not act because four (4) voting members was not a quorum for a nine (9) voting member body. In addition to the quorum issue, Bailey, who was present at the October 9 meeting, raised the question whether Mr. Van Nuys could permissibly be a voting member of the HCADB in light of his position as

HCSCD chairperson. The board, after consulting with counsel, decided to adjourn the Blew SSAMP.

The HCADB next met on December 11, 2008 to continue the hearing on the Blew SSAMP. Five (5) voting members of the board participated at that meeting: Mr. Bowlby, Mr. Hunt, Mr. Hoffman, Mr. Bond and Mr. Van Nuys. In addition to conducting the hearing, the board adopted an amendment to its 1995 quorum bylaw. The amendment rescinded the existing Article IV and replaced it with the following provisions:

Article IV Quorum

Under N.J.S.A. 4:1C-14 the membership of the Board is established at seven (7) voting members. However, Hunterdon County's Board was established prior to May 3, 1982 and so the voting membership of the Board can be up to twelve (12) members.

Therefore the law recognizes that in most Counties, the business of a County Agriculture Development Board can be conducted at a meeting with a Quorum of 4 members (4 of 7 voting members). Therefore a Quorum necessary to conduct business shall consist of four of the Board's voting members.

If a hearing or other proceeding begins at one meeting with a Quorum of four voting members participating, the hearing can continue at a subsequent meeting with less than four members in attendance for the hearing, unless any party to the proceeding objects. Other Board members can listen to the tape and read any documentary evidence in order to participate at future continuations of the hearing, or to participate in the vote. Since most hearings or proceedings involve Dispute Resolution and are required to be resolved or determined within a short time frame, a motion to

resolve a hearing can be adopted at a meeting with less than four members participating provided the motion receives a unanimous vote of three members in attendance. Three affirmative votes would be all that would be necessary to adopt a motion at a Board meeting with a full quorum of four members participating. If the motion fails to receive 3 affirmative votes, the matter will be reconsidered at a meeting conducted after 4 members have reviewed the record.

This reflects the practice of the Board for a number of years. Therefore the Board ratifies and affirms any determination previously made pursuant to this bylaw amendment.

The next meeting of the board occurred on January 8, 2009 at which further testimony was presented regarding the Blew SSAMP. Three (3) voting members, Mr. Bowlby, Mr. Hoffman and Mr. Van Nuys, participated as permitted by the newly-amended quorum bylaw. Two (2) other voting members, Mr. Melick and Mr. Dahan, were present at the meeting but recused themselves. Bailey was in attendance and objected to the board conducting a meeting with three (3) members in violation of the OPMA.

At the February 19, 2009 HCADB meeting the board took formal action on the Blew SSAMP and began the hearing on the Bailey RTF complaint. Voting members Bowlby, Bond and Van Nuys participated; voting members Melick, Dahan and Zelle were present but recused themselves. The board unanimously approved the Blew SSAMP but adjourned the hearing on the Bailey RTF complaint because, pursuant to

the amended quorum bylaw, it could not begin consideration without the presence of four (4) voting members. Bailey reiterated the objection to any formal action being taken by three (3) voting members.

On March 12, 2009, the HCADB met to hear the Bailey RTF complaint. Voting members Bowlby, Bond, Van Nuys and Hoffman participated. Board counsel read into the record minutes of the Franklin Township planning board meetings of April 11 and 25, 2007 at which the 2005 site plan approval was reaffirmed without the necessity of screening the arrays. Counsel recommended that since the solar panel arrays complied with municipal zoning requirements, the HCADB need not consider Bailey's complaint. The recommendation was approved by unanimous vote.

In two (2) separate resolutions dated April 9, 2009, the board memorialized its February 19, 2009 approval of the Blew SSAMP and its March 12, 2009 dismissal of the Bailey RTF complaint. Four (4) voting members, Mr. Bowlby, Mr. Bond, Mr. Hoffman and Mr. Van Nuys, unanimously approved the resolutions at the April 9, 2009 meeting. Bailey's appeals of the resolutions and OPMA claim followed.

INITIAL DECISION AND EXCEPTIONS

In the Initial Decision, the ALJ first briefly set

forth his understanding of the SSAMP process. He stated that the right-to-farm regulations provide for SSAMP recommendations to the SADC by a county agriculture development board (CADB). The ALJ stated that after the agency receives recommended SSAMPs from the CADBs, "the SADC makes a final administrative agency decision as to whether the SSAMPs are appropriate."

The ALJ reviewed the history of the HCADB. He noted that it was established in 1981 by the Hunterdon County freeholder board with twelve (12) voting members and five (5) non-voting members, and that in 1995 the bylaws of the HCADB provided for a seven (7) voting member quorum. However, the ALJ also observed that at the time the Bailey-Blew dispute was heard by the HCADB, three (3) voting member vacancies existed resulting in a maximum of nine (9) voting members that could be present at any one meeting.

The Initial Decision voided the HCADB decisions approving the 2008 Blew SSAMP and dismissing the Bailey RTF complaint because the board "failed to form a proper quorum". The ALJ recommended that "[t]hese matters should be remanded to the SADC unless or until the HCADB is able to resolve its inability to form a quorum. . . ." Because no quorum existed at several meetings at which the board considered the Bailey-Blew dispute, the court concluded

that no action had been taken by the HCADB at those meetings. Finally, the ALJ dismissed the Van Nuys conflict of interest claim but found that Van Nuys's membership on both the HCADB and HCSCD was incompatible.

The ALJ observed that the ARDA does not specify the number of CADB members that is necessary to constitute a quorum; instead, he relied on the common law and MLUL to conclude that a simple majority of the full authorized membership was required.

In dismissing Bailey's OPMA claim, the ALJ noted that the OPMA must be complied with when a public body holds a meeting. According to the ALJ, the OPMA definition of "meeting" excludes a gathering attended by less than an effective majority of the members, so any action taken by less than a majority is simply void, rendering unnecessary a finding of an OPMA violation because no meeting occurred to begin with. Since the HCADB consisted of nine (9) voting members during its consideration of the Blew SSAMP and Bailey RTF complaint, "at least five members should have been present at the hearings. . . in order for the HCADB to [have conducted] its business." Accordingly, no quorum existed, and no action could have been taken, at the HCADB meetings on January 8, February 19, March 12 and April 9, 2009.

The ALJ at first decided that the disqualification of John Van Nuys as a voting member of the HCADB "need not be addressed since the [board] failed to have a quorum." The ALJ then engaged in a lengthy analysis of the HCADB's conflict of interest policy, relevant court decisions dealing with conflicts and incompatible office holding, and the statutes describing the duties of CADBs and soil conservation districts. The ALJ ultimately found that Van Nuys's dual offices were incompatible, and the ALJ found that Van Nuys "is not a proper voting member of the HCADB . . . because he also serves as chairman of the HCSCD". However, the ALJ refused to invalidate Van Nuys's votes at the board meetings he attended and included him in the count of members necessary to form a quorum during the proceedings at which the Bailey-Blew dispute was considered. The ALJ found that Van Nuys had no direct or indirect personal or financial interest in the subject matter of the proceedings before the HCADB. Instead, the ALJ cautioned the HCADB that Van Nuys could not continue as a voting member and recommended that Van Nuys "determine which office he should continue to fill."

Bailey's exceptions to the Initial Decision can be summarized as follows: (1) the ALJ's recital of the "Procedural History" should have been expanded to include

certain other filings and notices by the parties that occurred prior to the HCADB's January 2010 motion for summary decision¹; (2) the ALJ's statement that the SADC takes final agency action on a recommended SSAMP is inconsistent with the ARDA and SADC regulations stating that a county board's SSAMP decision is binding if not appealed within 45 days; (3) the ALJ incorrectly concluded that the HCADB could conduct a meeting with five (5) voting members; (4) the Initial Decision improperly provided for a remand of the Bailey-Blew dispute to the SADC only if the HCADB could not assemble a lawful quorum.

Bailey reviewed the SADC regulations and relevant right-to-farm cases, concluding that the agency has or should have ultimate authority to determine the propriety of SSAMPs in order to insure consistent utilization of the management practice by other commercial farms throughout the State. Because the ARDA and agency regulations provide that an unappealed SSAMP decision is binding after 45 days, Bailey sought amendment of the laws establishing the SADC's automatic review of, and final agency action on, SSAMPs in order to correct erroneous CADB decisions and to prevent counties from issuing different management practice

¹ The SADC is satisfied with the content of the "Procedural History" contained in the Initial Decision and notes that all of the parties' filings were included in the voluminous record transmitted to the agency by the OAL. N.J.A.C. 1:1-18.1(f).

decisions on the same subject matter.

Bailey's objection to the ALJ's approval of a five (5) voting member quorum was based on the understanding that the HCADB consisted of twelve (12) voting members as originally constituted in 1981. According to Bailey, the voting membership remains twelve (12) and a quorum must be seven (7) voting members. In seeking a remand of the Bailey-Blew dispute directly to the SADC for a final decision rather than to the HCADB, Bailey expressed doubt that the HCADB could remedy its quorum issue, noted that the dispute "has been lingering since 2006", and expected further appeals should the matters be reheard by the HCADB.

The HCADB took exception to the ALJ's rejection of the board bylaw that "4 members constituted a quorum" and that a hearing could continue with less than that quorum so long as three (3) members voted unanimously on the action to be taken. The board objected to the voiding of the SSAMP, asserting that since the SSAMP is a recommendation, either the OAL or the SADC should conduct a new hearing on the propriety of the Blew solar panel array. The HCADB also disagreed with the ALJ's determination that Van Nuys holds incompatible offices.

The board defended its 4-member quorum rule by relying on Robert's Rules of Order, which govern the conduct of

HCADB meetings in accordance with board bylaws, and on the ARDA. Chapter XI, Section 40 of Robert's Rules specifically allows for a board or committee to set its own quorum. N.J.S.A. 4:1C-14e. permits a CADB to "establish procedures" for the conduct of its meetings. The HCADB stated that N.J.S.A. 4:1C-14a. provides for a ten (10) member board, with seven (7) voting members and three (3) nonvoting members, thus allowing for a quorum of four (4) voting members. The board also stressed its inability to arrive at a consistent complement of twelve (12) voting members due to vacancies unfilled by the freeholder board, recusals and conflicts of interest. The HCADB conceded that at the time it heard the Bailey-Blew dispute there were nine (9) appointed voting members.

With respect to the Van Nuys disqualification, the board objected to the ALJ considering the issue because it was not fully briefed and no notice had been given to the county freeholder board, Van Nuys and the HCSCD. In any event, the HCADB suggested that since a soil district representative is permitted by statute to be a non-voting member of a CADB, the Legislature has concluded that dual representation on a CADB and conservation district cannot constitute a conflict.

The board joined Bailey in objecting to a remand of

the case to the HCADB based on its position that a recommended SSAMP is subject to review and approval by the OAL and/or the SADC.

Bailey's reply to the HCADB's exceptions claimed that the board acted arbitrarily when it amended its bylaws to allow for a quorum to consist of four (4) voting members on a twelve (12) voting member body, and reiterated that the ALJ's decision regarding the lack of a proper quorum should be upheld. Bailey also contended that issues surrounding Van Nuys's membership were not only fully briefed by the parties, but should have been known to the HCADB and freeholder board at the time of his appointment.

Blew did not file exceptions to the Initial Decision.

CONCLUSIONS OF LAW

The 2005 Solar Panel Array SSAMP

The ARDA and SADC regulations insulate a commercial farm against public and private nuisance suits and unduly restrictive local ordinances if a CADB determines: (a) the commercial farm engages in agricultural management practices recommended by the SADC by rule; or (b) the farm's site specific agricultural management practice, or SSAMP, is generally acceptable. N.J.S.A. 4:1C-9; N.J.A.C. 2:76-2.3. The only condition placed on an SSAMP determination is that the practice relate to one of the

permitted activities listed in N.J.S.A. 4:1C-9. If no CADB exists, then the commercial farm must apply to the SADC for such a determination. Id.

N.J.A.C. 2:76-2.3(c) through (f) set forth the notice and hearing procedures for SSAMP applications. After an SSAMP application is filed and the CADB determines that the applicant is a "commercial farm", the board advises the SADC and the municipality in which the farm is located. N.J.A.C. 2:76-2.3(c). The CADB is authorized to consult with federal, state, county and other appropriate agricultural agencies and organizations to assist it in formulating an SSAMP recommendation. N.J.A.C. 2:76-2.3(d). Upon issuance of the recommended SSAMP, the CADB forwards copies to the commercial farmer, the SADC and any other individual or entities deemed appropriate. N.J.A.C. 2:76-2.3(e).

The regulations provide that a CADB's recommended SSAMP is binding if not appealed to the SADC by an aggrieved party within 45 days of receipt of the board's decision. If an appeal is timely filed, the SADC forwards the matter to the OAL, which renders an Initial Decision to the agency. The SADC's Final Decision is considered final administrative action appealable to the Superior Court, Appellate Division. N.J.A.C. 2:76-2.3(f)(1) and (2).

The regulations do not require any particular form of notice or identify specific individuals or entities to whom notice should be given other than the SADC and the municipality in which the farm applying for the SSAMP is located. N.J.A.C. 2:76-2.3(c). From 1984 to 1999 the regulation only required that county boards provide notice of the SSAMP to the SADC. When the agency proposed substantial amendments to N.J.A.C. 2:76 in June 1999, section 2.3(c) was revised to include notice to the municipality as part of other broader Right-to-Farm amendments. The April 1999 Impact Statements accompanying the proposed amendments stressed the SADC's interest in minimizing a commercial farm's time and expense securing an SSAMP. See, 31 N.J.R. 816(a), 31 N.J.R. 1603(a). Accordingly, the SADC decided not to mandate MLUL-type notice in order to provide commercial farmers an efficient and cost-effective SSAMP process and to provide CADBs with some discretion given the expected statewide variety and differing scope of SSAMP applications. We reject Bailey's claim that because den Hollander, supra, allows for preemption of local zoning under certain circumstances, the HCADB in 2005 should have provided notice of the Blew SSAMP to property owners within 200' because "it is the MLUL that controls when the CADB and/or SADC conducts public hearings

addressing SSAMP's and [RTF] Complaints".

The regulations provide that a CADB-approved SSAMP is "recommended" to the SADC, but "recommended" has never been construed by the agency as vesting final decision-making authority with the SADC in the absence of an appeal. Instead, the agency considers a recommended SSAMP to be a CADB's formal expression of support for a particular farming practice. In allowing a commercial farm to seek and a CADB to grant an SSAMP determination, the Legislature recognized that the SADC cannot anticipate every agricultural practice appropriate to specific farms throughout the State that are engaging in or supporting the permitted activities listed in N.J.S.A. 4:1C-9. A recommended SSAMP also assists the SADC in determining whether particular practices are so generally accepted in the agricultural community as to justify promulgation of an agricultural management practice rule. Accordingly, so long as a CADB exists and no appeal of the board's SSAMP decision is filed within 45 days, the SADC has no statutory or regulatory authority to review that decision.

Blew's application for an SSAMP on the solar panel array was filed in October 2005, heard and approved by the HCADB in December 2005, and the approval was memorialized by resolution dated January 12, 2006. No appeal of that

decision was filed within 45 days. Bailey contended that no appeal was timely filed because the board failed to provide notice to property owners within 200' of the Blew Farm. It is clear, however, that SADC regulations did not require the HCADB to notice Bailey or anyone else within 200' of the Blew property in 2005, the HCADB's written procedures did not require such notice for an SSAMP application, and the board did comply with the provisions of N.J.A.C. 2:76-2.3(c) by providing notice of Blew's 2005 SSAMP application to the SADC and Franklin Township. We conclude that the absence of notice to Bailey does not affect the validity of the SSAMP granted by the HCADB to Blew in 2005 for the solar panel array.

The record also reflects a claim by Bailey that the HCADB had no jurisdiction to hear the 2005 Blew SSAMP request because a solar panel project was at that time not recognized as an agricultural management practice in SADC rules. However, N.J.S.A. 4:1C-9 allows a commercial farmer to apply for and obtain a determination from a CADB that the farm's "*specific* operation or practice. . . constitute[s] a generally accepted agricultural operation or practice" so long as it is related to or supports one or more of the permitted activities listed in that statute. [Emphasis added]. It is clear to the SADC, as it was clear

to the HCADB in 2005, that the electrical power generated by Blew's solar panels was limited in nature and extent to supporting various agricultural production operations on the Blew Farm permitted by section 9 of the RTF Act. There is no evidence in the record supporting any finding that in 2005 the solar panels or the Blew Farm's agricultural production activities violated Federal or state law or presented a direct threat to public health and safety.

Bailey also contended that in 2005 Susan Blew participated in her own SSAMP hearing as both a HCADB member and as an applicant, and that neither she nor Mr. Blew were sworn in by the board at the October 2005 hearing. These claims were apparently based on Bailey's reading of the October 12, 2005 HCADB meeting minutes. While it is true that the board's meeting minutes typically list HCADB members "in attendance", there is nothing in the voluminous record before us proving that Ms. Blew participated at her own hearing in an official capacity. Whether or not witnesses testify under oath at CADB hearings is left to the sound discretion of board members and their counsel on a case-by-case basis due to the nature and presentation of the matters before CADBs. We defer to the HCADB on issues such as witness credibility arising at the 2005 Blew SSAMP hearing.

The SADC also deems significant Bailey's delay in filing the prerogative writ lawsuit against the HCADB and Blew in which Bailey complained about the board's failure to provide notice. Construction of the solar panel array began in February 2006, well within the 45 day period to appeal the HCADB's January 12, 2006 resolution approving the Blew solar panel SSAMP. Bailey's property adjoins Blew's, and there is testimony in the record that Bailey traveled on Oak Grove Road and considered the solar panels an "eyesore". Accepting as true Bailey's claim that the October 2006 prerogative writ lawsuit against the board and Blew was filed only after receipt of OPRA documents from Franklin Township in September 2006, it is apparent Bailey waited some five (5) months after Blew's completion of the arrays before exhibiting any concern about the solar energy project and the HCADB and township planning board proceedings leading to the project's approval.

Bailey also asserted that Blew falsified the 2005 SSAMP application by not properly completing the HCADB's prescribed form. However, Bailey never pressed this issue before the HCADB, and the record is devoid of any evidence that Blew completed the application with the intent to mislead the board. CADB application forms for right-to farm disputes and SSAMPs are designed to assist boards for

preliminary fact-gathering purposes, and all applicants are required to fully present their cases before CADBs acting in an adjudicatory capacity. Deficiencies in applications are usually remedied prior to the hearing upon request of the CADB administrator or at the hearing through board member questioning of the applicants and witnesses.

To the extent the November 6, 2007 order could be construed as remanding the Bailey-planning board dispute to the HCADB, Bailey's allegations that the Franklin Township planning board acted improperly with respect to the Blew site plan approval in September-October 2005 and April-May 2007 are beyond the jurisdiction of the SADC and the CADB. The agency is only authorized to hear appeals of CADB decisions and to conduct hearings involving SSAMP requests and right-to-farm disputes if no CADB exists. N.J.S.A. 4:1C-9 and 10.1a. In addition to their duties with respect to the farmland preservation program, N.J.S.A. 4:1C-11, et seq., CADBs only hear right-to-farm complaints and SSAMP applications pursuant to the RTF Act. The SADC notes that, despite some confusing language in the November 6, 2007 trial court remand order, the court directed that only right-to-farm matters should be heard by the HCADB, and we interpret that order as allowing Bailey to preserve the right to reinstitute *non-RTF* Act suits in the Superior

Court after exhaustion of all administrative agency appeals that may be filed with respect to RTF Act issues.

Bailey's March 2008 filing of an RTF complaint with the HCADB against the Blew solar panel array did not allege that the facility constituted a nuisance. By attaching the November 6, 2007 Superior Court remand order, Bailey essentially presented to the HCADB the claims made in Bailey's two (2) June 2007 prerogative writ complaints against the planning board, the HCADB and Blew. The SADC has now disposed of the arguments Bailey made in the lawsuit against the HCADB and Blew as regards any defects in the 2005 SSAMP the HCADB granted Blew for the solar panels, and has determined that the claims made against the township planning board are beyond the jurisdiction of the SADC and HCADB.

Finally, the SADC strongly agrees with Bailey's observation in the Exceptions to the Initial Decision that almost five (5) years have passed since Blew obtained the solar panel SSAMP and first planning board approval. The SADC concludes based on the Findings of Fact that, as a matter of law, the Blew's 2005 SSAMP for the solar panel array is final, valid and binding. We therefore **MODIFY** the Initial Decision by upholding the HCADB's 2005 SSAMP granted to Blew for the solar panel array, dismissing the

Bailey RTF complaint, and considering moot that part of Blew's 2008 SSAMP application related to the same solar energy facility.

The HCADB's 2008-2009 Hearings

When the ARDA and RTF Act were enacted in 1983, the Legislature envisaged an SADC-CADB partnership promoting farmland preservation, fostering agricultural business, and protecting responsible commercial farmers against nuisance and municipal zoning enforcement suits. Some counties had already recognized the importance of these public policies and formed agricultural boards in the early 1980's. Hunterdon County, for example, formed its board in 1981. At that time the HCADB consisted of twelve (12) voting members and five (5) nonvoting members.

The ARDA addressed the creation of new CADBs and the existence of ongoing boards in N.J.S.A. 4:1C-14g. Newly-created CADBs were to consist of ten (10) members, seven (7) voting members of whom (4) were to be actively engaged in farming and three (3) were to represent the general public; and three (3) nonvoting members comprised of a member of the county planning board, a representative of the county soil conservation district, and the county agricultural extension agent. Existing CADBs, like Hunterdon County's, could continue their current membership

but were required to reorganize within 5 years of the enactment of the ARDA with a board containing a simple majority of voting, farmer members or equal voting representation between farmers and nonfarmers. Id. The ARDA also allowed CADBs to determine how to conduct their meetings. N.J.S.A. 4:1C-14e. provides as follows:

The board shall meet as soon as may be practicable following the appointment of its members and shall elect a chairman from among its members *and establish procedures for the conduct of regular and special meetings, provided that all meetings are conducted in accordance with the provisions of the "Open Public Meetings Act," P.L.1975,c.231 (C.10:4-6 et seq.)*. The chairman shall serve for a term of 1 year and may be reelected. [Emphasis added].

Bailey's superior court OPMA complaint against the HCADB was remanded to the SADC by the court in May 2009 pursuant to Sukin v. Northfield Bd. of Ed., 171 N.J.Super. 184 (App.Div. 1979), in which a school board allegedly violated the OPMA at a meeting in which the board decided not to rehire a principal. The Appellate Division ruled that the New Jersey Department of Education (NJDOE) had primary jurisdiction over Sukin's OPMA claim because of the agency's statutory authority over all controversies and disputes arising from the school laws.

The SADC has serious reservations about the applicability of Sukin to appeals from CADB decisions, and is undertaking review of Bailey's claim of OPMA violations

only with the greatest reluctance and in deference to the judicial branch of government. The SADC views its role vis-à-vis CADBs as statutorily limited to being a cost-share participant when a farm is enrolled in the state farmland preservation program and to applying its expertise and limited resources to reviews of agriculturally-related right-to-farm disputes and SSAMP issues only when a timely appeal of a CADB decision is filed. The SADC's relationship with CADBs cannot be equated to that of the NJDOE's pervasive regulatory authority over local school boards. The SADC accepts primary jurisdiction of Bailey's OPMA claim as directed by Sukin only because the claim is directly connected to the underlying appeal of the HCADB's decision in the Bailey-Blew dispute.

In its Exceptions the HCADB relied on N.J.S.A. 4:1C-14e. to justify its Article IV Quorum rule, which in 1995 established a seven (7) voting member quorum and then in 2008 allowed a four (4) voting member quorum to conduct business. Article IV also permitted hearings which began with four (4) voting members participating to continue, and for a decision to be made, with three (3) voting members so long as the three (3) unanimously voted on the action taken. While the SADC agrees that Section 14e. of the ARDA gives CADBs the authority to establish meeting procedures,

that discretion is not unfettered: at a minimum, the boards must still hold a "meeting" as defined in the OPMA.

The OPMA defines "meeting" as

. . .any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. *Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more public bodies at a convention or similar gathering [N.J.S.A. 10:4-8b.]*[Emphasis added].

The SADC agrees with both the ALJ and the HCADB that, beginning in September 2008 and through April 2009 hearings on the Blew SSAMP and Bailey RTF complaint were conducted with a board whose full authorized voting membership was nine (9)--five (5) farmer members and four (4) public members in compliance with the ARDA requirement that the board reflect a simple majority of farmer members. Since the OPMA "meeting" definition recognizes that only a majority of voting members can conduct business, under the OPMA a lawful quorum to hear and decide the Blew SSAMP was five (5) voting HCADB members.

The SADC does not find, as suggested by Bailey, that the HCADB's authorized voting membership was twelve (12) for the purpose of conducting hearings on the Blew SSAMP and Bailey RTF complaint. As a practical matter the

authorized membership was nine (9), and the twelve (12) member voting body was only a historical number that diminished over time.

The SADC also finds it difficult to accept the HCADB's argument that a quorum can be comprised of four (4) voting members. That position appears to be based on bylaw Article IV which declares that seven (7) voting members constitute a quorum of the HCADB. The board apparently reasons that recusals can be included in that quorum number, and the HCADB can still act at a public meeting, so long as four (4) voting members remain to conduct business. However, Allen v. Toms River Regional Bd. of Educ., 223 N.J.Super. 642, 646 (Law Div. 1989), Garner v. Mountainside Bd. of Adjustment, 212 N.J.Super. 417, 425 (Law Div. 1986) and Aurentz v. Planning Board of Tp. of Little Egg Harbor, 171 N.J.Super. 135, 141 (Law Div. 1979) [cited by the ALJ], all have held that the presence of members who recuse themselves due to conflicts of interest cannot be used to create a quorum so that the remaining members can act.

The board's Exceptions state that the HCADB "can be up to twelve (12) members", so the SADC can understand why seven (7) voting members constitutes a quorum for a board of that size. But the HCADB's argument supporting a four (4) voting member quorum based on its 2008 bylaw becomes

muddled in view of its 1995 bylaw pegging the quorum number at seven (7) and the real number of nine (9) total voting members in 2008-09. The Exceptions do not distinguish between whether the "twelve (12) members" refers to the 1981 complement of total voting members or the current complement of nine (9) voting and three (3) nonvoting members. If the voting number is twelve (12), then four (4) voting members is not a quorum; if the voting number is nine (9), then four (4) voting members cannot be a quorum either. In any event, the establishment of a seven (7) voting member quorum in 1995, leading to the board's conclusion that four (4) is a quorum of seven (7), has little or no bearing on the issue before the SADC, as the HCADB admits that between September 2008 and April 2009 the board actually consisted of nine (9) voting members. In view of the clear direction of the OPMA and the cases cited above, the SADC cannot allow a CADB to reduce its quorum by counting disqualified members or by relying on an overall voting membership not based on an actual count. In making this determination, the SADC understands and appreciates the practical problems the HCADB and other boards face due to recusals, unfilled vacancies and absences; however, RTF Act cases implicate serious public policy issues requiring strict conformance with the OPMA, vigilance as to the due

process rights of all parties, and common notions of fairness.

Accordingly, the SADC accepts that part of the Initial Decision determining, as a matter of law, that the HCADB could not conduct a public meeting to hear and decide the 2008 Blew SSAMP request without the attendance of at least five (5) voting members. The board held hearings in the presence of five (5) voting members on September 11 and December 11, 2008, indicating that the HCADB is able to convene proper meetings despite recusals and vacancies. However, only three (3) voting members attended the meetings on January 8 and February 19, 2009 and only four (4) voting members were in attendance on March 12 and April 9, 2009. The SADC therefore **AFFIRMS** the Initial Decision, for the reasons expressed by the ALJ, that because no valid public meetings were held by the HCADB on the above four (4) dates, the actions taken by the board on those occasions are void.

We have previously modified the Initial Decision by deeming the Blew 2005 solar panel SSAMP final, valid and binding, dismissing the Bailey RTF complaint, declaring moot that portion of the 2008 Blew SSAMP request dealing with the solar panels, and leaving for disposition only that part of Blew's 2008 SSAMP application that sought

protection for the farm's agricultural production activities. After declaring void the actions taken by the HCADB at the four (4) meetings noted above, the ALJ ordered the Bailey RTF complaint and 2008 Blew SSAMP "be remanded to the SADC unless or until the HCADB is able to resolve its inability to form a quorum to act on the SSAMP application." The ALJ's remand order must now be revised in light of the conclusions reached in this Final Decision, and the SADC hereby **MODIFIES** the Initial Decision to reflect the following points: first, since the Bailey RTF complaint has now been dismissed, and that portion of the 2008 Blew SSAMP dealing with the solar panel array has now been declared moot, these parts of the case will not be remanded to either the SADC or the CADB; second, by voiding the action taken at the March 12 and April 9, 2009 meetings, there is no SSAMP for Blew's agricultural production activities, and the burden is now on Blew to reapply to the HCADB for such a determination; third, if Blew decides to reapply to the HCADB for an SSAMP for the farm's production activities, the board shall hear that case with a proper quorum of at least five (5) voting members.

The Van Nuys disqualification

The Initial Decision concluded that Van Nuys had no

conflict of interest as a result of his memberships on the HCADB and HCSCD, but found that the two (2) offices were incompatible and rendered him "not a proper voting member of the HCADB". However, the ALJ refused to invalidate the actions taken by Van Nuys and counted him as a voting member for the purpose of calculating a quorum.

The SADC commends the ALJ for his thoughtful analysis of the conflict of interest laws and the doctrine of incompatibility. However, the ALJ did not address the fundamental question of whether the SADC has the statutory or regulatory authority to review those issues, or whether a case similar to Sukin may otherwise vest such review power in the agency. The SADC concludes there is nothing in the ARDA, the RTF Act, the agency's regulations or the case law giving it review authority over the fact sensitive and highly specialized legal issues surrounding conflicts of interest and incompatible offices issues. We decline to engage in such an analysis with respect to Mr. Van Nuys, and **MODIFY** the Initial Decision by remanding the matter to the HCADB for a determination as to whether he holds incompatible offices. The HCADB is encouraged to obtain a written opinion from the Local Finance Board in the New Jersey Department of Community Affairs pursuant to N.J.S.A. 40A:9-22.7e.

Summary

As a result of this Final Decision, the Initial Decision is:

MODIFIED by upholding Blew's 2005 SSAMP for the solar panel array, dismissing the Bailey RTF complaint, and declaring moot that portion of Blew's 2008 SSAMP application involving the same solar energy facility;

AFFIRMED with respect to the ALJ's conclusion that because no valid public meetings were held by the HCADB on January 8, February 19, March 12 and April 9, 2009 due to the lack of a proper quorum, the actions taken by the board on those dates are void;

MODIFIED to reflect that the Bailey RTF complaint and the 2008 Blew SSAMP for the solar panel array will not be remanded to either the SADC or the CADB; that there is no SSAMP for Blew's agricultural production activities, and the burden is now on Blew to reapply to the HCADB for such a determination; that if Blew decides to reapply for an SSAMP for those activities, the board shall hear the case with a proper quorum of at least five (5) voting members;

MODIFIED by remanding the Van Nuys conflict of interest matter to the HCADB for a determination as to whether he holds incompatible offices and encouraging the board to seek the written assistance of the Local Finance

Board.

IT IS SO ORDERED.

Dated: December 9, 2010

Douglas H. Fisher, Chairman
State Agriculture Development
Committee