

RESOLUTION # 41

SOIL DISTURBANCE ON PRESERVED FARMLAND

1 **WHEREAS**, the Agricultural Retention and Development Act (ARDA) was written and
2 enacted in order to strengthen and support the agricultural and horticultural industry in New
3 Jersey, both through the preservation of the land base and by encouraging a positive
4 agricultural business climate; and

5 **WHEREAS**, at the 2015 State Agricultural Convention, the State Agriculture
6 Development Committee (SADC) presented a draft rule regarding soil disturbance on
7 preserved farms that was met with serious concern by Convention delegates; and

8 **WHEREAS**, the delegates directed the Department and State Board to form an ad
9 hoc sub-committee on the issue, with the focus to be on how a rule on soil disturbance could
10 impact the state's agricultural industries; and

11 **WHEREAS**, that sub-committee was formed and worked throughout the majority of
12 2015 to create a set of recommendations to the SADC to guide the development of any
13 future attempt to address the issue of soil disturbance, with primary focus being on the
14 concept that the purchase of the "development rights" of a preserved farm does not include
15 purchasing the "agricultural development rights"; and

16 **WHEREAS**, that sub-committee met in mid-2016 to again discuss the need for
17 "guidance" for farmers of preserved lands in order to avoid future lawsuits regarding issues
18 of soil disturbance; and

19 **WHEREAS**, the State Agriculture Development Committee's ability and authority to
20 assert if and/or when instances of excessive soil disturbance have occurred on deed-
21 restricted farmland, is currently an issue in a case currently pending before the State
22 Supreme Court; and

23 **WHEREAS**, while the standard deed of easement does include language requiring
24 soil conservation and the continued agricultural use of the land, it must also be
25 acknowledged that the deed of easement explicitly allows for "the construction of any new

26 buildings for agricultural purposes” and “the right to construct any roadway necessary to
27 service crops, bogs, agricultural buildings or reservoirs”.

28 **NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 103rd State
29 Agricultural Convention, assembled in Atlantic City, New Jersey, on February 7-8, 2018, do
30 hereby commend the ad hoc Soil Disturbance Committee for its work regarding the prior
31 proposed soil disturbance rule and its commitment to remain available for discussions if
32 future proposed rules address the issue of soil disturbance.

33 **BE IT FURTHER RESOLVED**, that we urge the SADC to adhere to the explicit
34 language of the entire deed of easement when seeking to reconcile the competing statutory
35 goals embodied in the language of documents guiding the preservation program regarding
36 the protection of the land base and the encouragement of a positive agricultural business
37 climate.

38 **BE IT FURTHER RESOLVED**, that we urge the SADC to acknowledge that the
39 limitations set forth in the deed of easement are fixed at the time each landowner signs the
40 deed of easement, and may not be unilaterally amended, and that the SADC should avoid
41 proscriptive regulations in light of the case pending before the Supreme Court.