

RESOLUTION # 3

SOIL PROTECTION ON 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**, the State Agriculture Development Committee (SADC) previously
6 presented a draft rule regarding soil disturbance on preserved farms that was met with
7 serious concern by Convention delegates, who directed the Department and State Board to
8 form an ad hoc sub-committee on the issue, with the focus on how a rule on soil disturbance
9 could impact the state's agricultural industries; and

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

14 **WHEREAS**, in the wake of that sub-committee's work, SADC has revisited the issue
15 with an eye toward "soil protection," and has compiled new recommendations for a draft rule;
16 and

17 **WHEREAS**, the SADC has given several presentations on the new proposed rules to
18 the State Board of Agriculture and the SADC's Soil Protection Subcommittee has twice met
19 in person with the State Board's Policy Subcommittee to get the Board's input on any
20 remaining concerns; and

21 **WHEREAS**, an oft-cited concern among farmers, expressed at county agriculture
22 boards and the State Board of Agriculture meetings alike, is the approach of making the new
23 soil-protection regulations retroactive to farms already preserved under the Farmland
24 Preservation program, instead of applicable only to those who preserve their farms after the
25 new regulations take effect; and

26 **WHEREAS**, the SADC’s authority to assert if and/or when instances of excessive soil
27 disturbance have occurred on deed-restricted farmland was the subject of a case before the
28 State Supreme Court, with the Court ruling in favor of the SADC; and

29 **WHEREAS**, while the standard deed of easement does include language requiring
30 soil conservation and the continued agricultural use of the land, it must also be
31 acknowledged that the deed of easement explicitly allows for “the construction of any new
32 buildings for agricultural purposes” and “the right to construct any roadway necessary to
33 service crops, bogs, agricultural buildings or reservoirs.”

34 **NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 108th State
35 Agricultural Convention, assembled in Atlantic City, New Jersey, on February 8-9, 2023, do
36 hereby strongly urge the SADC to continue to make itself available for all opportunities and
37 forums to present to agricultural groups, especially county agricultural boards, the new
38 proposed Soil Protection standards under consideration, both before and after that rule
39 proposal is to be published in the New Jersey Register, and particularly during the public-
40 comment period after publication, and to acknowledge that the limitations set forth in the
41 deed of easement are fixed at the time each landowner signs the deed of easement, and
42 thus cannot be unilaterally amended, and to meet, but not exceed, the mandate given to it by
43 the courts to address the issue of soil protection on preserved farms.

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

49 **BE IT FURTHER RESOLVED**, that since the State Agriculture Development
50 Committee’s website speaks to SADC leading in the preservation of New Jersey farmland
51 and promoting innovative approaches to maintaining the viability of agriculture, that
52 agricultural viability should be of the utmost importance and priority for the SADC and all

53 commodity groups when addressing all standards, future and existing, within the program.

54 **BE IT FURTHER RESOLVED**, that there needs to be a method to address any
55 operation that potentially will be impacted, with an emphasis on remediation and accessibility
56 to the best management practices in order for continued growth in the operation and allow
57 profitable farming in the state.

58 **BE IT FURTHER RESOLVED**, that all standards should take into consideration the
59 best ecological approaches with regards to soil erosion and the SADC should work closely
60 with the soil conservation districts so that both are aligned.

61 **BE IT FURTHER RESOLVED**, that we strongly urge the SADC to adopt language in
62 any Soil Protection Rules that will allow soil disturbance limits to be transferred between
63 preserved properties that supports smart agricultural development that is consistent with the
64 discussion at the December 21, 2022 State Board meeting to broaden the discussion to
65 include a farm-viability stewardship approach, as well as other ideas that may develop from
66 the subcommittee's ongoing discussions with the SADC, prior to the publishing and adoption
67 of these rules.

68 **BE IT FURTHER RESOLVED**, that we strongly urge the SADC to abandon the
69 approach of making the new soil-protection rules retroactive to farms that already are the
70 subject of farmland-preservation deeds of easement, as those farmers did not believe that
71 they would be subjected to regulations that limit their agricultural practices and opportunities
72 when they signed the deed of easement contract.

73 **BE IT FURTHER RESOLVED**, that the delegates strongly urge the SADC to create and
74 share with preserved farmland owners the data that illustrates exactly how much disturbance
75 each preserved farm has prior to publishing and adopting the Soil Protection Rule.