RESOLUTION # 5

SOIL PROTECTION ON PRESERVED FARMLAND

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

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

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

**WHEREAS**, in the wake of that sub-committee’s work, SADC has revisited the issue with an eye toward “soil protection,” and has proposed a new rule; and

**WHEREAS**, following the publication of this most recent proposed new rule and the request for a public hearing, the agricultural industry and the preserved and non-preserved farm owners, overwhelmingly expressed major opposition to retroactivity and the imposition of impervious coverage (never before regulated in the deed) with a set of onerous regulations difficult to interpret and understand; and

**WHEREAS**, the SADC has given many presentations to the agricultural community and stakeholders on the new proposed rules including most recently to the Hunterdon, Cumberland, and Somerset County Boards of Agriculture, to the State Board of Agriculture and the SADC’s Soil Protection Subcommittee has twice met in person with the State Board’s Policy Subcommittee to get the Board’s input on any remaining concerns; and

**WHEREAS**, the SADC and State Board subcommittees have agreed to continue meeting and discussing the issue, and the SADC has committed to continue giving presentations to county agriculture boards, and to continue accepting public comments on the proposed rules until after this Convention; and

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

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

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

**WHEREAS** the standard deed of easement does already include (since 1993) the compliance mechanism originally intended to balance agricultural development with conservation/stewardship practices through the farmland conservation plan which; i. is required to be obtained within one year of the date of the deed of easement, and approved by the local soil conservation district and, ii. controls future changes to the property since the deed of easement requires that “Grantor’s long-term objectives that shall conform with the provisions of the farm conservation plan.”; and

**WHEREAS**, farm conservation plans are developed with the assistance of the Natural Resource Conservation Service local field office and must conform with the June 1, 2005 NRCS New Jersey Field Office Technical Guide (NJFOTG), which may be found at: <http://www.nrcs.usda.gov/technical/efotg/>; and.

**WHEREAS**, we believe that the proposed Soil Protection regulations are an inappropriate taking of current preserved farm owners’ agricultural development rights; and

**WHEREAS**, we believe that the proposed Soil Protection regulations will, if adopted to apply to future deeds of easement, will discourage farmers from preserving their land, thereby doing significant damage to the Farmland Preservation Program.

**NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 109th State Agricultural Convention, assembled in Atlantic City, New Jersey, on February 7-8, 2024, do hereby strongly urge the SADC to continue to make itself available for all opportunities and forums to present, discuss, and accept comments and suggestions from agricultural groups, especially county agricultural boards, the new proposed Soil Protection standards under consideration.

**BE IT FURTHER RESOLVED** , the SADC acknowledge that the limitations set forth in the deed of easement are fixed at the time each landowner signs the deed of easement, and thus cannot be unilaterally amended, and to meet, but not exceed, the direction given to it by the courts to address the issue of soil protection on preserved farms.

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

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

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

**BE IT FURTHER RESOLVED**, that in order to provide for continued growth in farming operations and to foster profitable farming in the state, any new regulations applying to future deeds of easement should focus on conservation practices and remediation where appropriate to provide avenues for growth and change.

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

**BE IT FURTHER RESOLVED**, that we strongly and emphatically urge the SADC to abandon the retroactive approach and broaden the discussion to include a farm-viability stewardship/guidance approach, as well as other ideas that may develop from the subcommittee’s ongoing discussions with the SADC.

**BE IT FURTHER RESOLVED**, that we strongly urge the SADC to abandon the approach of making the new soil-protection rules retroactive to farms that already are the subject of farmland-preservation deeds of easement, as those farmers did not believe nor agree that they would be subjected to regulations that limit their agricultural development rights when they signed the deed of easement contract; and to immediately consider an alternative that the industry can support and that meets the Supreme Court direction through stewardship practices and a guidance document; (for example, such guidance document might provide illustrative examples of egregious soil disturbance that is of a magnitude that would trigger enforcement action by the SADC, with the stewardship practices being implemented through the Farm Conservation Plans already required in the deed of easement.)

**BE IT FURTHER RESOLVED**, that we urge the withdrawal of the full proposal from consideration because it is our opinion that it is unworkable and that it be replaced with an alternative approach focusing on guidance documents to farmers on soil protection.