

STATE AGRICULTURE DEVELOPMENT COMMITTEE (SADC)

REGULAR MEETING

**REMOTE MEETING DUE TO CORONAVIRUS
EMERGENCY**

December 3, 2020

Chairman Fisher called the meeting to order at 9:04 am.

Mr. Everett read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Mr. Everett advised that anyone wishing to make a public comment at this meeting should email their comments to SADC@AG.NJ.GOV. All public comments will be read during the public comment portions of the meeting.

Roll call indicated the following:

Members Present

Chairman Fisher
Renee Jones
Gina Fischetti
Brian Schilling
Roger Kumpel
Ralph Siegel
Scott Ellis
Denis Germano
Pete Johnson
Richard Norz
James Waltman

Jeffrey Everett, Deputy Executive Director
Jason Stypinski, Esq., Deputy Attorney General

Minutes

A. SADC Regular Meeting of October 22, 2020 (Open Session)

It was moved by Mr. Norz and seconded by Mr. Germano to approve the Open Session minutes of the SADC regular meeting of October 22, 2020. Mr. Waltman abstained. The motion was unanimously approved by the remaining members.

Report of the Chairman

Chairman Fisher commended staff and the committee on its continued efforts during these trying times. He acknowledged there is discussion taking place regarding the draft solar bill and the SADC has stressed the importance of farmland to the legislature.

He also reminded everyone the Department of Agriculture is moving to a new location in the upcoming weeks and it is expected to have some limitations until the move is complete.

Report of the Deputy Executive Director

Mr. Everett introduced and welcomed SADC's new representative from the Governor's Authority Unit, Rudy Rodas, Esquire. He noted that our previous representative, Craig Ambrose, Esquire, had been appointed as a judge to the Superior Court, Family Division.

Mr. Everett reported that the Deed of Easement Subcommittee met on November 24 to review the latest Best Management Practices (BMPs) developed as part of the draft proposed Soil Protection Standards. He stated that this will be the last batch proposed at this time and it is anticipated they will be brought to the full Committee for review in January.

Mr. Everett referred the Committee to the enclosed current litigation spreadsheet and delegation report and noted that the latter includes five Certified Market Value reports.

Communications

Mr. Everett reviewed the packet of articles and encouraged the members to read them, making note of the article on Rappahannock County, Virginia, and the opportunities and challenges that come with urban edge agriculture in the Washington, DC, region, and the comprehensive article on the states that have lost the most farms in the last 100 years.

Public Comment

Two public comments were received and read to the committee:

I have several comments and concerns for SADC. I have been reading about the proposal to open up more farmland to solar development. 800 acres in salem county now another 600 acres in harmony NJ. The lands these are proposed on are all high quality high yielding farmland. The SADC needs to push the state to not allow solar development on high quality farmland. At the prices solar is offering its hard for us to compete to preserve the land. Only low class low, wasteland, superfunds sites

abandoned quarries landfills and rooftops should be used for solar development. Please do something about this.

Also we keep seeing in our news about warehouse developments all over. The warehouses are proposed on high quality flat farmland. We need to preserve the high quality flat farmland and not be preserving low quality land with limited development potential. The SADC needs to do more to counteract the zoning of tons for things like warehouses high density housing the expansion of sewer service area and even allowing affordable housing on farmland. I see the development picking up even more unless we do something more.

The problem is our appraisal system seems to not even be able to get close to what warehouse and solar development are paying as well

*Thanks
Jason Menegus*

Dear Secretary of Agriculture Fischer and SADC Director Payne:

I am writing to follow up on whether you have received feedback from the Attorney General regarding the request that Ralph Siegel, Executive Director, Garden State Preservation Trust, made at the October SADC meeting. Ralph recommended that, because the AG is counsel to the GSPT bond issuer, an outside bond counsel be hired to provide advice on whether the proposed six-acre or eight percent allowance of soil disturbance on farms under 60 acres would violate the federal limitation on private use for properties from tax-exempt bonds.

Thanks very much for any information you can provide.

*Sincerely,
Amy Hansen
Policy Analyst
New Jersey Conservation Foundation*

Old Business

A. OAL Final Decision – M. Ville, LLC v. Monmouth CADB and Millstone Twp

Mr. Smith reviewed the specifics of this Right to Farm case and presented the proposed Final Decision to the committee.

Mr. Germano stated his support of the decision and requested it be revised to emphasize the importance that the landowner and farmer were not operating as a single enterprise as he feels this is precedent setting. He agreed that the landowner and farmer were not operating as a single enterprise and could not recall a past case that addressed this element of Right to Farm eligibility. He also found the testimony, as set forth in the judge's decision, to be inconsistent regarding the value received for the crops and who received compensation for said crops. Mr. Germano also requested that the Final Decision note that the OAL didn't undertake a single enterprise analysis and that the OAL and CADBs should deal with that issue, when necessary, in future cases.

Mr. Kaplan, attorney for M. Ville, LLC, asked the committee to adopt the initial decision based on the testimony and evidence presented at the OAL hearing of the case. He argued

that testimony from credible witnesses is just as reliable as the standard documentation normally required as proof of agricultural production.

Chairman Fisher asked for the revisions to be restated for the committee. Mr. Smith stated the first revision would be to switch paragraphs A. and B. in the Legal Discussion portion of the Final Decision. Statements will also be added regarding the OAL's lack of analysis of the single enterprise component in its initial decision and the SADC's opinion as to its importance in appropriate cases in the future.

It was moved by Mr. Germano and seconded by Mr. Siegel to approve the OAL Final Decision with the requested revisions. The motion was unanimously approved.

B. Giordano Exception Area Relocation – TLCNJ FY21 Nonprofit Program Application Preliminary Approval

Ms. Miller reviewed the Giordano Preliminary Approval originally presented at the September SADC meeting where the members had requested staff to ask if the landowner would reconfigure the exception area so it would take up less active farmland. The committee approved the preliminary approval with the condition if the exception was not moved, it would preserve its right not to grant final approval. TLCNJ requested that the committee review the new location of the exception area so it could move ahead with appraisals.

Ms. Miller provided the committee with a map showing the relocation of the exception area. Mr. Giordano stated the area appears to be the only viable place to erect a home and to maintain a good distance from the electrical utility easement. Mr. Norz stated his concern with using a portion of the field for a residence and possibly making it unfarmable.

Chairman Fisher commended the staff's effort address the committee's concerns and hearing no other objections advised to proceed as staff has recommended.

New Business

A. NRCS – Agricultural Land Easement Program 2018 Farm Bill Deed of Easement Template Modifications

Ms. Reynolds presented deed modifications to the Agricultural Land Easement (ALE) Program 2018 Farm Bill Deed of Easement to the committee and seeks the committee's approval of the deed template. The adoption of the 2018 Farm Bill created changes to the ALE Program which were incorporated into the NRCS minimal deed terms and in turn, required in the ALE deeds. Due to these changes, the SADC had to negotiate modifications to its current ALE deed template the committee previously approved in 2016 under the 2014 Farm Bill.

Ms. Reynolds provided the committee with a document showing the proposed changes SADC staff has agreed to with NRCS and highlighted the significant items for the committee.

The first modification is the addition of references to ALE's purpose and the elimination of the ALE Plan requirement. Under the 2014 Farm Bill, landowners were required to obtain an ALE Plan, which contained land conservation components and practices. The 2018 Farm Bill removed this requirement, but to capture these conservation elements, Congress added the following definition of "ALE purposes": to protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values. NRCS incorporated references to ALE purposes into its minimum deed terms.

SADC staff had concerns about the vagueness of the language and NRCS and SADC agreed it would be specified that the future agricultural viability is to be protected under the ALE and that the conservation values would be defined as the soil types on the land being preserved.

The next modification is the inclusion of sod farming. The previous ALE deed template prohibited sod farming; however, the SADC has since become aware of an NRCS guidance document stating sod farming may be eligible for the ALE program under certain conditions. Under the new deed template, sod farming would be allowed to continue if the farm was in sod production at the time of preservation and done in accordance with a conservation plan consistent with NRCS standards.

The next significant modification is the elimination of the pre-existing non-agricultural use paragraph. NRCS determined that allowing non-agricultural uses to continue on an ALE-preserved farm must be reviewed on a case-by-case basis and therefore, NRCS stated it was inappropriate to include this provision in the generally applicable template. SADC staff agreed to the removal since NRCS agreed to consider inclusion of non-agricultural uses on a case-by-case basis and due to the infrequency with which the program sees pre-existing non-agricultural uses.

The next modification is the addition of the environmental warranty section. NRCS's minimum deed terms include the following language: Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

SADC staff had concerns with the provision as it is overly onerous on the landowner to make that warranty when the Grantor does not have actual knowledge of previous actions and releases and asked for it to be removed or amended to narrow its scope to the current Grantor. The federal government office of general council would not agree to the initially proposed amendments, but did agree to the insertion of the word "Grantor" so it reads the grantor is only responsible for the completeness and accuracy of the information she or he discloses to the grantee and the USA.

Ms. Reynolds also noted the deed template will also include language to allow for building envelope adjustments that was inadvertently removed from the template presented to the committee.

Mr. Johnson asked if a sod farm was preserved under ALE and subsequently sold, would the new farmer be able to continue the sod operation. Mr. Everett and Ms. Reynolds stated they believe it would if it is done in accordance with a conservation plan. However, if a new landowner wanted to convert an ALE-preserved vegetable farm into a sod farm, that would not be allowed. Ms. Reynolds stated there were provisions in the template that would be applicable to either situation.

Mr. Johnson stated it was not clear if the operation would need to be reapproved at the transfer of title or if it would carry over to the new owner. Ms. Reynolds stated she would verify it with NRCS.

Chairman Fisher stated the re-inclusion of sod farming into the ALE Program is great news.

Mr. Germano asked if SADC staff if they thought it was possible for NRCS to agree to put a second option for the non-agricultural uses that contained the language that would be used for the continuation of pre-existing non-agricultural uses and could be transferred to a new owner. Ms. Reynolds stated those discussions have taken place and NRCS is not open to that option.

It was moved by Mr. Germano and seconded by Ms. Fischetti to approve the new modifications to the ALE deed template negotiated with NRCS under the 2018 farm bill. The motion was unanimously approved.

B. Stewardship

House Replacement – Canhouse Properties LLC/Mehaffey Farm Upper Deerfield, Cumberland Co.

Mr. Roohr referred the committee to a request to replace an existing single-family residence on the 160-acre nursery owned and operated by Mr. Mehaffey and his daughter.

The existing house is slightly less than 2000 square feet and the new 2350 square feet residence would consist of 3 bedrooms. The request was approved by the Cumberland CADB at its November 10th meeting. The SADC staff recommendation is to approve the request.

It was moved by Mr. Norz and seconded by Mr. Germano to approve Resolution FY2021R12(1) for the House replacement on Canhouse Properties LLC/Mehaffey Farm. The motion was unanimously approved. A copy of Resolution FY2021R12(1) is attached to and is part of these minutes.

C. Resolutions: Final Approval- County PIG Program

Ms. Miller referred the committee to one request for final approval under the County PIG Program. She reviewed the specifics of the requests with the committee and stated that the staff recommendation is to grant final approval.

It was moved by Mr. Germano and seconded by Ms. Jones to approve Resolution FY2021R12(2) granting approval to the following applications under the County PIG Program, as presented, subject to any conditions of said resolution.

1. Onuschak, Jason and Serridge, Ashley, SADC ID #10-0432-PG, Resolution FY2021R12(2), Block 30, Lot 13, Franklin Twp., Hunterdon Co., 20.1 acres.

The motion was unanimously approved. A copy of Resolution FY2021R12(2) is attached to and a part of these minutes.

D. Resolutions: Final Approval- Municipal PIG Program

Ms. Miller referred the committee to five requests for final approval under the Municipal PIG Program. She reviewed the specifics of the requests with the committee and stated that the staff recommendation is to grant final approval.

It was moved by Mr. Kumpel and seconded by Mr. Germano to approve Resolutions FY2021R12(3) through FY2021R12(6) granting approval to the following application under the Municipal PIG Program, as presented, subject to any conditions of said resolution.

1. Thomas, Susan, SADC ID# 10-0434-PG, Resolution FY2021R12(3), Block 21, Lot 13, East Amwell Twp., Hunterdon Co., 34 acres.

2. Doble, Ethel, SADC ID# 17-0226-PG, Resolution FY2021R12(4), Block 13, Lot 5, Pilesgrove Twp., Salem Co., 16.3 acres.

3. Kelley, Thomas F. and Amber L., SADC ID# 17-0218-PG, Resolution FY2021R12(5), Block 40, Lot 12, Mannington Twp., Salem Co., 15.65 acres.

4. Mahalik, Matthew and Eddis, Dawn, SADC ID# 17-0225-PG, Resolution FY2021R12(6), Block 39, Lot 18.01, Mannington Twp., Salem Co., 14.3 acres.

The motion was unanimously approved. A copy of Resolutions FY2021R12(3) through FY2021R12(6) is attached to and a part of these minutes.

It was moved by Ms. Jones and seconded by Mr. Kumpel to approve Resolution FY2021R12(7) granting approval to the following application under the Municipal PIG Program, as presented, subject to any conditions of said resolution.

Ms. Jones inquired about who holds the conservation easement and whether it is listed on the township ROSI. Ms. Miller suggested to amend the final approval to include a condition stating the conservation easement has undefined terms and restrictions and, subject to SADC legal review and approval, this area will either be deemed as a non-severable exception area, or the farmland deed of easement will cover this area, but the acreage within the conservation easement will be deducted from the SADC grant calculation for the easement purchase.

5. Van Mater, III, Pierre D. and Carol A., SADC ID #13-0471-PG, Resolution FY2021R12(7), Block 415, Lots 32.01, 34.01 and 35, Marlboro Twp., Monmouth Co., 28.25 acres.

The motion was unanimously approved. A copy of Resolution FY2021R12(7) is attached to and a part of these minutes.

E. Resolutions: Final Approval- Direct Easement Purchase Program

Ms. Miller referred the committee to five requests for final approval under the Direct Easement Purchase Program. She reviewed the specifics of the requests with the committee and stated that the staff recommendation is to grant final approval.

It was moved by Mr. Sigel and seconded by Mr. Kumpel to approve Resolutions FY2021R12(8) through FY2021R12(12) granting approval to the following application under the Direct Easement Purchase Program, as presented, subject to any conditions of said resolution.

1. Cerbo, Anthony A. III and Joseph R., SADC ID #19-0027-DE, Resolution FY2021R12(8), Block 3202, Lot 24.02, Hampton Twp., Sussex Co., 38.45 acres.

2. Brown, William, SADC ID #19-0025-DE, Resolution FY2021R12(9), Block 18, Lot 9, Vernon Twp., Sussex Co., 116.9 acres.

3. LAM Services, LLC (Lot 1), SADC ID #17-0308-DE, Resolution FY2021R12(10), Block 73, Lots 1 and 3, Pilesgrove Twp., Salem Co., 97.4 acres.

4. LAM Services, LLC (Lot 6), SADC ID #17-0342-DE, Resolution FY2021R12(11), Block 18, Lot 6 and Block 17, Lot 28, Mannington Twp., Salem Co., 106.7 acres.

5. Ayars, Patricia A., SADC ID #17-0353-DE, Resolution FY2021R12(12), Block 11, Lot 16, Alloway Twp., Salem Co., 77.6 acres.

The motion was unanimously approved. A copy of Resolutions FY2021R12(8) through FY2021R12(12) is attached to and a part of these minutes.

F. Resolutions: Preliminary Approval - Direct Easement Purchase Program

Ms. Miller referred the committee to one request for preliminary approval under the Direct Easement Purchase Program. She reviewed the specifics of the requests with the committee and stated that the staff recommendation is to grant preliminary approval.

It was moved by Mr. Sigel and seconded by Mr. Germano to approve Resolution FY2021R12(13) granting preliminary approval to the following application under the Direct Easement Purchase Program, as presented, subject to any conditions of said resolution.

1. Riggs, Donald, SADC ID #21-0078-DE, Resolution FY2021R12(13), Block 51, Lot 1, Franklin Twp., Warren Co., 34 acres.

Mr. Norz voted against the motion. The remaining members voted in favor of the motion. The motion was approved. A copy of Resolution FY2021R10(13) is attached to and a part of these minutes.

Public Comment

There is no public comment.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: 9 A.M., Thursday January 28, 2021

Location: TBA

ADJOURNMENT

The meeting was adjourned at 10:42 a.m.

Respectfully Submitted,



Jeffrey C. Everett, Deputy Executive Director
State Agriculture Development Committee