

STATE AGRICULTURE DEVELOPMENT COMMITTEE (SADC)

**Department of Agriculture**

**Market and Warren Streets, 1<sup>st</sup> Floor Auditorium**

**Trenton, NJ 08625**

**REGULAR MEETING**

**June 27, 2019**

Chairman Fisher called the meeting to order at 9:12 a.m. The flag salute was conducted.

Ms. Payne read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Roll call indicated the following:

**Members Present**

Chairman Fisher

Renee Jones (Rep. NJDEP Commissioner Catherine R. McCabe)

Gina Fischetti (Rep. DCA Commissioner Sheila Oliver)

Brian Schilling

James Waltman

Jane Brodhecker

Ralph Siegel (arrived at 9:16 a.m.)

Alan Danser

Scott Ellis

**Members Absent**

Denis Germano

Pete Johnson

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Susan E. Payne, Executive Director

Jason Stypinski, Esq., Deputy Attorney General

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**Others present as recorded on the attendance sheet:** Donna Rue, public and other members of the public.

### **Minutes**

#### A. SADC Regular Meeting of May 23, 2019 (Open and Closed Sessions)

It was moved by Mr. Danser and seconded by Ms. Jones to approve the Open and Closed Session minutes of the SADC regular meeting of May 23, 2019. The motion was approved.

### **Report of the Chairman**

Chairman Fisher stated that Governor Murphy signed the appropriation bill for the CBT for farmland preservation and that gives a great opportunity for many people to join the farmland preservation program. He also noted that Ms. Mary Tovar, Chief of Staff for the Department of Agriculture, will be spearheading the move of the Health and Agriculture departments from the Health and Agriculture building to the Riverview building. Chairman Fisher thanked Ms. Tovar for her help as it is a huge endeavor. Finally, Chairman Fisher mentioned that there was discussion at the State Board meeting on June 26<sup>th</sup> about big upcoming initiatives, one being soil protection. He stated that soil is a very precious resource in agriculture and the topic of soil protection will be discussed later in the meeting.

### **Report of the Executive Director**

Ms. Payne referenced a new SADC manual for Committee members containing relevant reference documents. She also noted two Special Occasion Events (SOEs) working group meetings were held in June and that some of the basic framework for recommendations are taking shape. She indicated staff plans to meet with the New Jersey Wine Growers Association to get their ideas and feedback and the matter and that it will be brought back to the Committee at a future date.

Ms. Payne also thanked Dr. Brian Schilling and his staff at the Rutgers University Cooperative Extension for their efforts in hosting a productive meeting with SADC and NJDA staff on the issue of climate change at which the NJ State climatologist, Dr. Dave Robinson, gave an informative presentation.

Ms. Payne also noted that the SADC is soliciting applications for the Direct Easement Purchase Program.

**Public Comment**

There was no public comment.

**New Business**

**A. Term Farmland Preservation Program**

Mr. Kimmel referred the Committee to one renewal in the Term Farmland Preservation Program and reviewed the specifics of the application.

1. Renewal
  - a. SAND Farms, LLC (Anthony Berenato), Mullica Township, Atlantic County

**B. Resolutions of Preliminary Approval- FY2020 Nonprofit Program**

Ms. Miller reviewed the candidate farms for preliminary approval under the FY20 Nonprofit Program. Notice of available grants was published in the NJ Register with an application deadline of April 8, 2019. Three nonprofit organizations submitted seven easement purchase applications located in three counties, totaling approximately 373 acres. All seven applications are in their respective county Agriculture Development Areas (ADAs) and meet the criteria to qualify as eligible farms. The total costs for all seven farms are estimated at \$2,700,550, resulting in a 50% SADC cost share of just over \$1.35M.

It was moved by Mr. Danser and seconded by Mr. Schilling to approve Resolution FY2019R6(1), granting preliminary approval to seven easement purchase applications under the FY2020 Nonprofit Program, as presented, subject to any conditions of said resolution. The motion was unanimously approved. A copy of Resolutions FY2019R6(1) is attached to and is a part of these minutes.

**C. Resolutions of Final Approval: Direct Easement**

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

It was moved by Ms. Jones and seconded by Mr. Siegel to approve Resolutions FY2019R6(2) and FY2019R6(3), granting approval to the following application under the Direct Easement Program, as presented, subject to any conditions of said resolution.

1. Brian Feely, SADC ID #10-0268-DE, Resolution FY2019R6(2), Block 38, Lot 26, Franklin Township, Hunterdon County, 46.4 Net Acres
2. Estate of Engelbert Ecker, SADC ID #10-0266-DE, Resolution FY2019R6(3), Block 26, Lot 24, Kingwood Township, Hunterdon County, 59.7 Net Acres.

The motion was unanimously approved. A copy of Resolutions FY2019R6(2) and FY2019R6(3), are attached to and a part of these minutes.

**D. Resolutions of Approval: County PIG**

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

It was moved by Mr. Waltman and seconded by Mr. Danser to approve Resolutions FY2019R6(4) and FY2019R6(5) granting final approval to the following applications under the County PIG Program, as presented, subject to any conditions of said resolution:

1. Christian and Barbara Jannen, SADC ID #03-0429-PG, Resolution FY2019R6(4), Block 1205, Lots 3.01 and 3.03, Southampton Township, Burlington County, 34.697 Acres.
2. Route 57 Partnership, SADC ID #21-0613-PG, Resolution FY2019R6(5), Block 1, Lot 6, Franklin Township, Warren County, 71.1 Acres.

The motion was unanimously approved. A copy of Resolutions FY2019R6(4) and FY2019R6(5), are attached to and a part of these minutes.

### **E. Resolutions of Final Approval: Municipal PIG**

Ms. Mazzella referred the Committee to one request for final approval under the Municipal PIG Program. She reviewed the specifics of the application with the Committee and stated that staff recommendation is to grant final approval.

It was moved by Mr. Danser and seconded by Mr. Ellis to approve Resolution FY2019R6(6), granting approval to the following application under the Municipal PIG Program, as presented, subject to any conditions of said resolution.

1. Diane Carol and Paul Charles Duffy, SADC ID #17-0203-PG, Resolution FY2019R6(6), Block 40, Lot 16.03, Mannington Township, Salem County, 24.8 Acres.

The motion was unanimously approved. A copy of Resolutions FY2019R6(6) is attached to and a part of these minutes.

### **F. Stewardship**

Mr. Roohr referred the Committee to one request for division of premises under the Stewardship Program. He reviewed the specifics of the request with the Committee and stated that staff recommendation is to grant approval.

It was moved by Mr. Danser and seconded by Ms. Brodhecker to approve Resolution FY2019R6(7), granting approval to the following application, for division of premises, under the Stewardship Program, as presented, subject to any conditions of said resolution.

1. Rescinding Division of Premises
  - a. DeWolf Farm, Resolution FY2019R6(7), Block 82, Lots 6 & 7, Plumsted Township, Ocean County, 207.24 Acres.

The motion was unanimously approved. A copy of Resolutions FY2019R6(7) is attached to and a part of these minutes.

### **G. Resolution of Approval: Soil and Water Conservation Cost-Sharing**

Mr. Clapp referred the Committee to three requests for approval under the Soil and Water Cost Share Program for a new high volume well and pump, irrigation system and sub

surface drainage. He reviewed the specifics of the applications with the Committee and stated that staff recommendation is to grant approval.

Mr. Clapp noted that Mr. Dave Kimmel worked closely with the landowner, Mr. Randal Peck, regarding installing sub surface drainage and discovered that there was a wet area on the property. The landowner stated that when the turnpike went in there was drainage associated with the turnpike that was not being maintained, so Mr. Kimmel was able to work with the town to get the area drained to the north of the farm and that made it feasible to install a drainage system that would be functional. Mr. Waltman stated that Hightstown and East Windsor have a huge runoff issue from the turnpike that was built, and he asked Mr. Clapp where the runoff would go once the fields are drained. Mr. Waltman was concerned that the runoff may disturb other people who live nearby the farm. Mr. Clapp stated that there is a pond and a ditch that runs out and down and it takes the water that is being blocked by the beaver dam and gets it offsite.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolutions FY2019R6(8), FY2019R6(9), and FY2019R6(10) granting approval to the following applications under the Soil and Water Cost Share Program, as presented, subject to any conditions of said resolution.

1. Brown Brother's Farm, Inc., SADC ID #08-0022-8M, Resolution FY2019R6(8), Block 1207, Lot 12, east Greenwich Township, Gloucester County, 86.2 Acres.
2. Kevin Young, SADC ID #17-0176-DE, Resolution FY2019R6(9), Block 38, Lot 1, Lower Alloways Creek Township, Salem County, 55.803 Acres.
3. Randal Peck, SADC ID #11-0025-FS, Resolution FY2019R6(10), Block 43, Lots 1, 4, 4.01, 6, 7, 9, 10, 12, 13, East Windsor Township, Mercer County, 72.273 Acres.

Mr. Schilling recused from the Randal Peck discussion and the vote. Mr. Waltman abstained from the vote. The motion was approved. A copy of Resolutions FY2019R6(8), FY2019R6(9) and FY2019R6(10), are attached to and a part of these minutes.

## **H. Soil Protection Standards (Discussion Only)**

Mr. Everett stated that the impact of the Supreme Court's August 2018 Quaker Valley Farms (QVF) decision prompted this discussion and staff has begun to explore the development of soil protection standards over the past 10 months. Mr. Everett stated that the two salient components of this presentation are what is and isn't considered soil disturbance and protection, and what are the prescribed limits of it. Staff will share the conceptual framework developed thus far with the Committee and after receiving the Committee's direction, come up with a more detailed proposal at successive Committee meetings. As such, no action will be taken today.

Mr. Everett stated that there are three important takeaways from the Quaker Valley Farms decision. First, there was a violation of the easement in terms of agriculture development because there was too much soil destruction in this case. Second, despite the SADC having not adopted regulations on this topic, in this case the destruction was so significant that it was a clear case of a violation, however, there may be cases that aren't so clear, and landowners need guidance on what they can and cannot do. Third, there needs to be a balance among the needs of the agricultural industry and the needs of the public's interest in the permissible uses on farmland preservation properties. The question is how we reach that balance and conceptualize this legally to put conservation on equal footing with agricultural development.

Mr. Everett recommended the term "soil disturbance" be replaced with "soil protection" to better reflect what the SADC is trying to accomplish, the proper stewardship of preserved farmland by private landowners. Mr. Everett suggested the incorporation of Best Management Practices (BMPs) which, when done properly, would result in a soil protection outcome and would entrust landowners with protecting the soil for future generations. Regarding acceptable limits, in the QVF case, the Court determined that there was 20 acres of destruction on a 120-acre preserved farm, which calculates to 17% of the farm, and that this level of destruction violated the deed of easement, so the Court gave the SADC a benchmark from where to start. Staff has researched the current science, applied it and used that information to determine the limitations for what is and what is not detrimental to soil protection.

Mr. Everett showed the Committee several slides which gave statistics of work done by Rowan University that depicts a statistically significant number of farms in NJ and the number of acres of development on those farms. Statistically, 99% of farms have 6 acres or

less of agricultural development. The SADC did its own internal study which corroborates with the findings of Rowan University. SADC found that there is a commonality of the ratio of open land to developed land, so that infrastructure and high intensity use (the farmstead complex) is localized to a smaller portion of the farm. Analysis shows the average farmstead complex size is 6% of the farm, and that on average only half of the complex is actually disturbed/developed. Accounting for growth, an acceptable amount of soil disturbance may be 6 acres or 8% of the farm, whichever is greater. Six acres is 8% of the average-size farm in NJ, which is 74 acres. Mr. Everett stated that when applying this 6-acre or 8% standard to 2,198 of the preserved farms, there are 6 farms that don't comply with this standard.

Mr. Everett then discussed the application of gravel to this proposed standard. He stated that based on the findings and the statistics on soil disturbance, it appears that gravel can be a conservation practice to control erosion. One in every three farms in NJ is equine or nursery, which often involve heavy application of gravel, so it seems prudent to incorporate gravel in this proposal. Mr. Everett also recognized that runoff is a big concern as well. Based on his research, 10% of impervious surface is the "magic" number since the benefits of a percentage below that figure are minimal, and he asked the Committee members to consider that during this discussion on a potential 6-acre or 8% standard.

Mr. Everett asked the Committee members for their thoughts on the next steps that staff should take. Mr. Siegel stated that an impervious coverage standard could be simpler. Ms. Payne stated that 8% or 6 acres, whichever is greater, for hard disturbance creates a box that if the landowner stays within the box they will never have an issue with the SADC. Staff suggested giving an additional allowance for gravel in response to the nursery and equine industries as part of the balancing that the Supreme Court mandated be done. There will be standards for what is considered the proper use of gravel as part of a BMP. Mr. Siegel stated that if one has ag buildings and is driving around it, that dirt becomes impervious. Mr. Everett stated that this type of disturbance may be able to be remediated and therefore, it is not currently factored in the standard, which reflects the high intensity nature of agriculture in NJ.

Mr. Waltman thanked Mr. Everett and the SADC staff as well as Rowan and Rutgers University for the incredible amount of work that they put in on this endeavor. He stated that this is something that the Committee would support, but he does have several concerns. He stated that 6 acres allowance on a small farm is a big percentage. It looks like 99% of the farms have less than 6 acres of disturbance, so there is a concern for the small to medium size farms. Mr. Waltman also stated that based on his experience, gravel is eventually going to be



impervious and that is a concern that needs to be addressed. He also said that there are some things on a farm that are problematic and there are some things that should not be condoned on a preserved farm even if they are less than 8%. Mr. Waltman stated that he would rather grandfather in farms that don't meet the chosen standard rather than have all farms comply with a more lenient standard.

Mr. Siegel asked if staff is thinking about a waiver process that would solve the grandfathering issue. Chairman Fisher stated this should be part of a future discussion and asked the Committee to come up with some considerations that they would like the entire board to deliberate on, so the staff can put together a more final draft. Mr. Siegel brought up concerns with the application of the 6-acre standard to small farms. Ms. Fischetti suggested capping the size of the farm to 75 acres so that if the farm were smaller than 75 acres, the 8% standard would apply, but if it were equal to or greater than 75 acres, either 8% or 6-acres would apply, whichever is greater. Mr. Danser said that with regard to gravel, since we are really worried about reversibility more so than runoff, he didn't think it was that large of a concern. Mr. Schilling stated that there are practices that can be implemented to minimize impacts of gravel. Ms. Jones stated that there are some people at the Department of Environmental Protection (DEP) that she will recommend Mr. Everett consult to help with some more research. Mr. Danser stated that this process is just trying to set a standard so that if there should be a legal dispute again, the courts can't say that the landowner did not have a standard to meet.

Chairman Fisher asked Ashley Kerr what the NJ Farm Bureau's thoughts are on this. Ashley stated that it seems this is heading in the right direction but there was a hard time discussing it because there were no slides or specifics to look at. Chairman Fisher stated that this is still in the works and the appropriate path for handing out documentation will be discussed later. Chairman Fisher stated that Mr. Everett is the lead on this process and if there are any further questions it is advisable for the Committee to submit them to Mr. Everett and he thanked Mr. Everett for his hard work on this matter.

#### **I. Right to Farm- Appeal of Sussex CADB SSAMP- Brodhecker Farm, LLC.**

**Note: Mrs. Brodecker recused from this discussion and left the room at 10:51 a.m. before the discussion started.**

Mr. Smith stated that there is a new appeal in the Brodhecker case which has been in administrative litigation for 10 years, including an Appellate Division decision. The latest

action taken by the Sussex County Agriculture Development Board (CADB) was to grant a Site-Specific Agriculture Management Practice (SSAMP) application to Brodhecker which was in response to the SADC's final decision issued in 2014. One of the issues that was not addressed in the original SSAMP application was the parking and the on and off-site traffic impact presented by Brodhecker farm market. In the SADC's final decision, which was upheld by the Appellate Division in 2016, Brodhecker was directed back to the Sussex CADB for a SSAMP application for the parking and traffic or apply to Hampton Township for local land use board approval on those issues. Brodhecker elected to go to the Sussex CADB and filed the application in October of 2017. In November 2017 the county scheduled its first hearing but later decided that there may be conflicts with board members hearing the case, so they didn't get to the merits of the matter. In November of 2017 they wrote a letter to the Local Finance Board (LFB) seeking guidance on whether certain members could hear the case. It took the LFB approximately one year to issue its decision, finding there was no conflict. The hearing on the merits of the case was held November of 2018 and a resolution was issued by the CADB in March of 2019 and that's the resolution that has been appealed by the Brodhecker neighbor, Mr. Pierson, who also appealed the prior decision of the Sussex CADB. Hampton Township, which was an original appellant, did not appeal the current SSAMP approval.

Mr. Peirson raises some issues that were already disposed of by the Appellate Division decision, but there are other issues raised that appear to have merit based on staff's initial review. First, the CADB did not make a finding that Brodhecker was a commercial farm; secondly, the CADB relied on a financial attestation report that had been issued in 2017 for 2016 farm market operations, despite the CADB's second SSAMP hearing not taking place until 2018. Finally, in the SADC's final decision, it was determined that all of the sheds and outside storage items that had been the subject of the dispute were permissible if the size of those items were commensurate with the ag products that were being sold by Brodhecker. There was cryptic reference in the March 2019 CADB resolution that says "the landowner is not limited to one non-farm produced product for display and inventory". Mr. Smith stated that he has no idea what that sentence means, but the CADB opened the issue back up in relation to what kind of sheds and other structures can be displayed in the front of the Brodhecker farm.

Mr. Smith stated that staff recommendation is to have the SADC hold the hearing since the scope of the issues are limited, using the record created to date. The SADC reserves the right to call witnesses, but this can be done just on the documentation that both parties would provide. After the hearing is done, staff will draft a final decision for consideration by the SADC for final agency action, appealable to the Appellate Division of the Superior Court.

Chairman Fisher asked Mr. Smith to explain what the hearing process would be. Mr. Smith stated that the process would be for him to draft a set of interrogatories for Brodecker to provide additional information to the SADC to fill in the gaps in data related to the issues raised in Mr. Peirson's appeal.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve the SADC retaining the appeal of Sussex CADB SSAMP for Brodhecker Farm, LLC for clarification purposes. The motion was approved. Ms. Brodhecker was not present for the discussion or vote on the matter and is therefore recused.

### **Public Comment**

Mr. Robert Merenich, Esq., representative of David den Hollander of Quaker Valley Farm, stated that there may be later discussion during this meeting by the Committee on how the property will be remediated. He stated that he wanted to give some observations surrounding that and said that the SADC needs to understand the current condition of the property in relation to the proposed remediation that the SADC may consider. He reviewed specifics of the case with the Committee and stated that he would like the Committee to consider a 1% slope because it is more conducive to a greenhouse/hoophouse operation and claimed that there wouldn't be an issue with reversibility if there was an intent to farm that area again. Mr. Merenich also mentioned that consideration could be given to a land swap as part of a settlement.

Mr. Merenich acknowledged that the Supreme Court has ruled on this case and that he is not re-litigating the issues. Chairman Fisher stated that he is glad that Mr. Merenich spoke to the Committee to give them more context. Chairman Fisher asked Mr. Merenich if he thinks it is a mistake to mix rock with top soil when there is excavation because that is a major topic of discussion. Mr. Merenich stated their position is that this did not happen and if there was rock mixed in, it became part of the subsoil.

Chairman Fisher thanked Mr. Merenich for coming in and asked if there was anyone from the public who had further comment. Ms. Donna Rue stated that she is impressed regarding the soil disturbance discussion because she can relate to the circumstances, particularly when she was building her greenhouse. She stated that she likes the terminology change and thinks the staff is moving in the right direction.

**TIME AND PLACE OF NEXT MEETING**

**SADC Regular Meeting: 9 A.M., Thursday July 25, 2019**

**Auditorium of the Health/Agriculture Building**

**CLOSED SESSION**

At 11:30 a.m. Ms. Payne read the following resolution to go into Closed Session:

In accordance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-13, it is hereby resolved that the SADC shall now go into executive session to discuss certain matters including the certification of values for property acquisitions under the farmland preservation program, personnel matters, any pending or anticipated litigation, including discussion of the remediation phase of the pending Quaker Valley Farms litigation and/or any matters falling within the attorney-client privilege. The minutes of such meeting shall remain confidential until the Committee determines that the need for confidentiality no longer exists.

It was moved by Mr. Siegel and seconded by Mrs. Brodhecker to approve the resolution to go into closed session. The motion was unanimously approved.

**ACTION AS A RESULT OF CLOSED SESSION**

**A. Real Estate Matters – Certification of Values**

It was moved by Mr. Siegel and seconded by Mr. Danser to approve the Certification of Values for the following applications as discussed in closed session:

1. County Planning Incentive Grant Program
  - a. Paula DuBrow, SADC ID #10-0428-PG, Block 42, Lot 1.01, Franklin Township, Hunterdon County, 33.05 Net Acres.
2. Municipal Planning Incentive Grant Program

- a. Earl and Robert Moore, SADC ID #17-0212-PG, Block 4, Lot 12, Mannington Township, Salem County, 24.1 Acres.
  - b. Estate of Lester and Laura Terhune, SADC ID #18-0227-PG, Block 19, Lot 36, Franklin Township, Somerset County, 21.90 Acres.
  - c. Hom Family Farm, SADC ID #13-0461-PG, Block 17, Lot 10 and Block 23, Lot 2.02, Millstone Township, Monmouth County, 81 Net Acres.
3. Direct Easement Purchase
- a. Alexandria Airpark LLC, SADC ID #10-0267-DE, Block 10, Lot 63, Alexandria Township, Hunterdon County, 65.90 Net Acres.

The motion was unanimously approved. Copies of the Certification of Value Reports are attached to and are a part of the Closed Session minutes.

**B. Attorney/Client Matters**

None.

**ADJOURNMENT**

The meeting was adjourned at 12:35 P.M.

Respectfully Submitted,



Susan E. Payne, Executive Director  
State Agriculture Development Committee