

STATE AGRICULTURE DEVELOPMENT COMMITTEE

**Department of Agriculture
Market and Warren Streets
1st Floor Auditorium
Trenton, NJ 08625**

REGULAR MEETING

December 10, 2009

Chairman Fisher called the meeting to order at 9:10 a.m. In compliance with the “Open Public Meetings Notice”, the following statement was read:

“Pursuant to N.J.S.A. 10:4-6 et seq., adequate public notice of this meeting has been provided by giving written notice of the time, date, location and, to the extent known, the agenda. At least 48 hours in advance, this notice has been posted on the public announcement board, third floor, Health/Agriculture building, John Fitch Plaza, Trenton, NJ, mailed and/or faxed to the Newark Star Ledger, the Times of Trenton, the Camden Courier Post, and filed with the Office of the Secretary of State.”

Roll call indicated the following:

Members Present

Douglas H. Fisher, Chairperson (Left meeting at 11:10 a.m., returned at 11:55 a.m.)

Monique Purcell, Acting Chairperson (Arrived at 11:10 a.m. and left meeting at 11:55 a.m.)

Cecile Murphy (rep. DEP Acting Commissioner Mauriello)

Ralph Siegel (rep. State Treasurer Rousseau) (Left meeting at 3:02 p.m.)

Jim Requa (rep. DCA Acting Commissioner Richman)

James Waltman

Jane R. Brodhecker

Torrey Reade

Stephen P. Dey

Members Absent

Alan Danser

Denis C. Germano

Brian Schilling

Susan E. Craft, Executive Director
Jason Stypinski, Deputy Attorney General

Others present as recorded on the attendance sheet: Heidi Winzinger, Brian D. Smith, Charles Roohr, Paul Burns, Edgar Madsen, Edward Ireland, Bryan Lofberg, Dan Knox, Timothy Brill, Steve Bruder, David Kimmel, Cassandra McCloud, Patricia Riccitello and Sandy Giambrone, SADC staff, Daniel Pace, Mercer County Agriculture Development Board, Harriet Honigfeld and Amanda Brockwell, Monmouth County Agriculture Development Board, Barbara Ernst, Cape May County Agriculture Development Board, Gregory Romano, New Jersey Conservation Foundation, Nicki Goger, New Jersey Farm Bureau, Dan Kennedy, Burlington County Agriculture Development Board, Bill Millette and Rick Steffey, Hunterdon County Agriculture Development Board, Mirah Becker, Middlesex County Agriculture Development Board, Bill Mason, Landowner, Readington Township, Hunterdon County, Ed Walters, Landowner, Readington Township, Hunterdon County, Cindy Pyper, Hunterdon County, Rhyne (Mike) Simpson, Tewksbury Township, Hunterdon County.

Minutes

A. SADC Regular Meeting of November 5, 2009 (Open Session)

It was moved by Ms. Brodhecker and seconded by Ms. Reade to approve the open session minutes of the SADC regular meeting of November 5, 2009. The motion was approved (Mr. Requa, Dr. Dey and Mr. Waltman abstained).

B. SADC Regular Meeting of November 5, 2009 (Closed Session)

It was moved by Ms. Brodhecker and seconded by Ms. Reade to approve the closed session minutes of November 5, 2009. The motion was approved (Mr. Requa, Dr. Dey and Mr. Waltman abstained).

REPORT OF THE CHAIRPERSON

Chairman Fisher stated that the recent bond question passed and that the next step will be to determine whether or not the new administration will authorize the borrowing, and if so, in what time frame.

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Craft discussed the following with the Committee:

Deputy Executive Director Baumley has been hospitalized with a very high fever for which they are unsure of the cause. He is very anxious to return to work and in approximately 28 years this is only the third meeting he has missed. The SADC wishes him a speedy recovery and looks forward to his return.

- Transition of New Administration

Ms. Craft stated that the first meeting with the Governor's transition team will take place this coming Monday. She is looking forward to meeting with the transition team to see what is on their mind and what they see happening for the SADC.

- TDR Task Force Meeting

Ms. Craft stated that last week there was a TDR Task Force meeting held. She stated that there an effort among the environmental planning and land use communities to see if we identify how to make the transfer of development rights a more effective and readily implemented tool. The effort is being headed by Chris Sturm of the New Jersey Future, Director of Planning, and Phil Caton, who is a private planning consultant and who was very instrumental in implementing the Chesterfield TDR program, as well as being the planning consultant for a couple of very important pilot projects in South Jersey. She stated that the kickoff meeting was very good with a lot of very experienced individuals. The New Jersey Farm Bureau was in attendance. The goal over the next nine months or so is to try and deal with some of the really big obstacles that municipalities are facing in attempting to enact TDR and then at the end of that process to try to make a series of recommendations, whether they be statutory, regulatory or simply policy related in order to present a complete package of improvements that are needed to really help TDR implementation. She stated that she is on the task force and will keep the Committee informed.

COMMUNICATIONS

Ms. Craft encouraged the Committee to take home the various articles provided in the meeting binders.

PUBLIC COMMENT

The following members of the public addressed the Committee:

William Fox from Ocean County addressed the Committee. He inquired about the agri-tourism subcommittee and asked if there was any update on that. Ms. Craft stated that she recently met with Dave Kimmel and Brian Smith of her staff regarding calendar year 2010 goals and objectives. There are two major goals: first is to amend the Right to Farm regulations to clean up some procedural problems because there are inconsistencies between the Right to Farm Act and the regulations. Staff will also take that opportunity to see if we can improve the right to farm process and staff will be communicating with the counties and municipalities to solicit their ideas. The second goal is to see about reconstitute a working group to deal with agri-tourism and farm markets together as we are having difficulty separating those two issues since they are so related. She stated that she will work with Secretary Fisher on this and she needs to go back to see who was on the SADC's original subcommittee and review what came out of that process. She stated that the goal would be to have a draft agricultural management practice by the end of 2010.

William Pettit, Jr., William Pettit Sr. and Mrs. Pettit addressed the Committee regarding exceptions. He stated that he was speaking to a fellow preserved farm owner, Taylor Palmer from Monmouth County, who could not make it to the meeting. He stated that Mr. Palmer drafted a letter to the Committee and that Mr. Pettit wanted to read it for the Committee, which he did. The letter indicated how Mr. Taylor's family on both sides have always been in farming and that his immediately family are all involved in the farming operation. It states how one of his sons had to take a job off the farm due to the financial decline of the horse industry in New Jersey. It states how most farmers are having trouble meeting their financial obligations and that the cost of doing business goes up while the income generated from farms has not increased at the same rate and in some cases has declined. The equine industry alone has drastically declined in the past few years. The letter goes on to give a few specifics. The letter suggests to the SADC to allow a farmer to conduct nonagricultural business in a barn or small area of the farm. This area or barn would not interfere with the major agricultural activity on the farm. This nonagricultural business would help to supplement the farm income. The letter goes on to state that he has always felt strongly and that it is important for New Jersey to preserve farmland. He also feels, as many others do, we have to do everything we can to preserve the farmer as well. In order to do that, he has to have enough income to keep his farming operation financially stable. Allowing the use of a barn or small area on his farm for a nonagricultural

use is sometimes necessary in today's farm business climate. He hopes that the Committee will strongly consider these suggestions.

Mr. Pettit stated that there are a couple more dairy farms in Warren County who sold their herds a couple of months ago. Jean Mackavich is also struggling with her farm and hopefully doesn't sell it. Anything that we can do to allow these people to make extra income in other areas helps. He referred the Committee to various pictures of farms and the buildings on them in Burlington, a lot of them in disrepair. He reviewed the information with the Committee. He showed a picture of his brother's barn. When he sold the farm to Burlington County you could move into the house, he had a brand new remodeled kitchen and it looked great. One of the problems is that it took so long to get this farm re-sold from the County that there were people in there who cleaned out all the copper out of the basement and took everything out of the house that had any value. Yes it can all be replaced but as taxpayers it all costs money. He stated that he spoke to one of the people at a bank who does a lot of the agricultural financing in New Jersey and he asked how much value did that farm lose until it was resold, discounting what the economic environment is? The bank person responded at least \$200,000.00. The other problem is that the people who bought it, it will take them a long time to move in because they have to re-do all of this stuff with all the damage that was done to it while it sat idle.

Mr. Pettit reviewed the remaining information that he handed out and made comments to the Committee. He stated that one of the documents he received through OPRA was Policy P29, which is the policy for granting exceptions, dated 1/17/1991. He stated that one of the interesting things in the policy states "discourage exceptions". This is what people were being told at that time.

Mr. Pettit referred the Committee to the following section of the policy: "Consideration would be given to granting exceptions of parcels which involve existing nonagricultural uses or are for a public purpose that demonstrates a compelling public need and only when all alternatives have been exhausted." He stated that makes him think that if you didn't ask about it you didn't get told about it. His question is were early applicants told it was possible to except out their buildings? It might be called a "if not asked, don't tell policy". He stated that the other interesting thing is that Burlington County had a policy that wasn't created until March 9, 1995. He stated that it was for nonseverable exceptions. What that means is you don't get paid for what you excepted out. You except out around your buildings and you can basically, within reason, do what you want. You don't have to abide by the 51% rule if you have a road stand, you can have a different kind of business in there. It is interesting that the policy was passed in

March 1995 and the first farm with an exception was in 1996 and then another one in 1997.

Mr. Pettit stated that what happens with these farms is for example one of the farms he showed needs a new roof; that is \$30,000.00 to \$40,000.00 for that roof. If you can't do something with the buildings to generate income, who is going to spend that kind of money? He stated that some of the old dairy barns need a lot of work and changes to make it into something you can use. He stated that he thinks beautiful, well kept buildings promote farmland preservation. One of his buildings (picture shown) on his son's farm, is well kept because a veterinary clinic is going in there. He showed another picture of the back of his farm that is solar powered. He stated that the Shuman farm is very interesting. It was able to get a nonseverable exception. They have dog kennels there and the kennels doubled in size this summer, the buildings look great and it is an asset to the community and it is doing very well, they are paying taxes and are paying more property taxes for income tax. Mr. Pettit provided the Committee with a copy of the Burlington County exception policy. He stated that it went into effect in 1995 and he has never heard of any problems with these exceptions and its been in effect for 14 years. The great thing about it is most farms being preserved today use this exception policy in Burlington County. It allows farmers to do things and it gives more freedom with road stands, alternative business in buildings. He thinks it is something that should be applied to the early farms that went into the programs so everyone is on equal footing. He stated that his daughter got married on his mother's farm and it was a great event. He thought to himself that they preserved the farm but they are not allowed to do weddings. It doesn't affect the farmland and if you have a farm that is having trouble surviving, this is a way to have extra income and a way to help show the public what these preserved farms look like. If you don't have an exception you cannot do it. He thanked the Committee for its time.

Chairman Fisher stated that Mr. Pettit talked about the barns and about the land around the barns, how about all the impervious cover. Mr. Pettit stated that is an interesting topic also because most of these old dairy barns have concrete barnyards. They make great parking lots and one of the problems is they tried to put the S206 bill in place, which would allow you to do some of these things but you're allowed 4 parking spots so that is a problem with that. He stated that for example for his buildings they use the same exact parking area that they used when they had the cow business there. He doesn't think that impervious cover is a big problem. That is another thing that needs to be addressed as a plus because all these farms have concrete barnyards and it's a great place to put solar panels, you can use them for parking, it is never going to be farmed, usually. His doesn't

have any paved area it is just crushed rock. The big thing is you need to look at the footprint of the buildings of the farm. As long as the footprint stays the same and it is inside these buildings that are standing there anyway, why not use them? If you are not using them they fall apart and if money is tight no one is going to fix them. Sometimes it skips generations. For example his great-grandfather had one of the first herds of cows in the State. It was about a mile from where he is today. He stated that he was very progressive and he had the first herd of cows to be tested for TB in New Jersey. The person who tested them said they were all positive for TB and they were all slaughtered and there wasn't one positive cow for TB. He lost his farm. If he had an alternative source of income that wasn't strictly relying on the farm, he might have survived and that farm might have stayed in the family. You need other ways to make an income. Some of the folks that come to their road stands say you have to have things for all seasons, once you lose one season you make up for it from another season.

Dorothy Pettit addressed the Committee. She stated that they entered their farm into the program in 1990 and they are not allowed to except out their buildings. It is impossible to keep these buildings in repair and not have income from them. Prior to 1990 they were milking approximately 140 head of registered Holsteins, selling breeding stock, embryos and milk. She stated that their advice to their son who was partner in their business was to go where the cows are because the dairy herds will not be here much longer. So her son and his wife have dropped 190 head of cattle plus a horse in Minnesota. That herd is still there and of course with the dairy business the way it is, it is struggling now like everybody is in the United States. The dairy business is hurting. She stated that they are currently leasing half of their farm and her husband, at 84 years old is growing and harvesting hay on the rest of the farm. She discussed the various repairs they have made to their buildings over the years. They are trying to keep this barn alive and it is the only barn standing in a 1,100 acre block of farms, which at one time included nine dairies approximately 40 years ago. In looking around the township there are very few barns left and those are in very sad condition. In 1951 there were 400 dairies in Burlington County. Today there are only two left and the breeder herds have left. The dairy barn that was build in 1970 stands quiet and the free stall area is used for parking loads of hay. Next year this area may very well be emptied as they are not moving as fast and as well as they used to. The front area is totally empty and this is where we used to milk cows, cared for cows with special needs, had a utility room for compressors and a tag room for milk storage, a rest room, shower, farm office etc. This building needs repairs on all four sides and since it is 80 feet by 100 feet they have yet to entertain an estimate. She stated that her computer records show that since 2001 they have spent \$46,420.00 on building repairs and maintenance. A major repair in 2009

was a replacement of a deep well pump, underground wiring, bladder tanks in the barn where the water system begins for all the buildings. The system was completed in 1970 when the barns were built. Replacement costs for this year was \$5,000.00.

Mrs. Pettit stated that to live on a farm and to watch it fall apart is difficult. Recently she met up with a good friend who preserved her farm. She lived in Chesterfield Township. She lost her husband and attempted to stay and leased out the farm. Her comment was that she learned she could live somewhere else and not maintain the buildings. The bottom line is that those of us who entered the program early need to derive income from their buildings and they should be on the same playing field as those who now enter the program and except them out. She commented that don't give her the excuse that a McDonalds will move in, they buy property. A nonseverable exception does not permit this. Farmers, young and old, who wish to obtain loans to purchase farms must present a cash flow statement. In other words proof that the loan can be paid. The farm business must make a profit. A farm with buildings in good repair is more acceptable to the lender and the buyer. Young and older farmers are not given loans if they cannot show a profit. She and her husband are on a first generation farm as are their three sons. They have the next generation coming and just what their college aged grandchildren will be doing is not carved in stone as yet. For sure a 140 acres of farmland used for grain and hay will not support a family. The farm needs freedom to adapt to any new business concepts that it can that do not negatively affect the agricultural land. We need help and the bill that was passed is of no help to us at all. They cannot lease out a little section of their buildings and then something goes wrong with the lease and then they have to apply all over again and pay another \$1,000.00 fee and then if they develop another business of their own they cannot transfer it. She stated that they need help and time is of the essence.

Mr. Pettit, Sr. addressed the Committee. He stated that a friend of his who preserved in farm in Pennsylvania was told that they do not preserve the buildings or the land around those buildings. This is in Northampton County and he knows the same thing is occurring in Chester County. He stated that this is something to think about because he doesn't think the SADC has had hardly any problems where exceptions have occurred. All the inspections that we go through, a lot of that can be eliminated if the buildings were not part of the deal. The big thing is the farmland and it seems to him that we should be thinking about this. We have all this money to work with the bill that passed and he sees no reason why there couldn't be some cutting of expenses, particularly in the CADBs where all these inspections occur. He stated that this is a very simple thing to do and it could

work and he urges the Committee to think about it.

Dan Kennedy from the Burlington County Agriculture Development Board addressed the Committee. He stated that he agrees with some of what the Pettits have relayed to the Committee but he disagrees with an equal, if not more, amount. He stated that he could not discuss a lot of the details but would like to focus on the farms that were discussed by Mr. Pettit. All of those farms are in compliance with the deed of easement. The deed of easement doesn't state that buildings can't fall down. You may say that if buildings are falling down it may be a symptom of a failed state of agricultural affairs and he is not sure that he would disagree with that in some aspects of the agricultural industry. However, in some aspects of the agricultural industry people are investing, putting up greenhouses, digging wells and putting up hoop houses. He stated that as some sectors of agriculture moves forward some may fall behind. He stated that the state should advocate and he knows that they are, for the dairy and livestock industry, however this is the nature of business. The deed doesn't really speak much about the nostalgia of these old buildings. He stated that they are not really fitted well for modern agricultural and he agrees with the Pettits regarding that, whether in the commodities or otherwise. He also agrees that S206 is flawed and by its nature the SADC regulations as well, the commercial purpose resolution, he agrees with that. He stated that the regulations the SADC had to approve because of the box it was put in, doesn't meet the stated objectives of the people who passed that bill. He thinks, as Ms. Craft had mentioned, as you try to work on the agri-tourism issues you would be well suited to start working on some sort of remedies within that because that may alleviate the counties, the SADC and landowners from dealing with some of these issues. He stated that agriculture boards and the SADC have to monitor the easements as they were written and as they have evolved over time. He stated that there have been people caught in the middle of all that. The SADC nor the agriculture boards have the authority by law, as directed by the Attorney General's Office to make retroactive exception areas so we may or may not agree with the Pettits but the reality is that we do not have the authority to do that. Burlington County has advocated for some solution, whether it is through a better commercial permit or some narrow type of buy back for commercial farmers to resolve these issues that were created, not by any sort of malice or injustice, but just by the evolution of the program. He stated that he does agree that exception areas, contemporary policies are better suited than the policy we had in 1989, and that is a good model to move forward with.

Chairman Fisher stated that he appreciated everyone coming in today to add to the discussion and the dialog of issues that are going to continue so that we can find workable solutions. He stated that comments discussed were broken down into

several issues, one being the preservation of the old farm buildings and not seeing them just falling down in disrepair, not being able to use them. Then it was brought up about other business activities taking place on farms and then we talked about easements and whether or not at what point folks were into the program and out of the program and how some of these areas changed for inclusion into something more permanent.

OLD BUSINESS

A. Request for a Division of the Premises

1. Willis Farm, Hopewell Township, Cumberland County

Mr. Roohr referred the Committee to Resolution FY2010R12(1) regarding the Willis Farm request for a division of the premises. He stated that last month the Committee took action to approve the request but at that time there was not a resolution prepared for the Committee to review and vote on. Since that time staff has completed the resolution based on last month's discussion and is before the Committee today. He stated that the Willis' brought back some additional information last month that included forestry management plans, a deed transferring the property to their son Ian, subject to receiving approval for the division of the premises by the Committee, a supplemental resolution from the Cumberland CADB which articulated some additional thoughts that the Board had. He stated that staff was convinced about enough of the information they provided to prepare the approval resolution.

Mr. Roohr stated that the resolution does approve the division as requested and the two separate parcels, 134 acres and 84 acres. He stated that the agricultural viability test was not the biggest issue with staff and staff was able to work through those issues, however, the agricultural purpose was a concern to staff. In this case the Willis' have retired from farming, they were renting both pieces, the one they live on and the one they are going to be transferring to their son Ian. Their son was not a farmer at that time. He had also taken an off-farm job. Staff had some concerns with that but what staff felt is compelling about this application is the fact that these were two independent operations, working as two separate farms by two distinctly different farm operators, a peach orchard and a vegetable farm, with the peach orchard having a sixteen (16) year lease and the vegetable farm having had a lease on the property for many years and having invested heavily into agricultural infrastructure, such as irrigation systems and the like, showed that there was a historical use as separate parcels on these properties. Mr. Roohr stated that also the agricultural encumbrances on these two parcels, the sixteen (16) year lease for the peach orchard and the many years that the

vegetable farmer had the other ground and provided all the infrastructure, that keeping these parcels together and in the case of a forced sale would be a detriment to the agricultural industry. There would be no easy way for this to be sold as a single unit and both of these farmers with their long-term investments to be made whole out of this. Therefore staff found that these factors were substantial enough to determine a reasonable agricultural purpose.

However, there were a number of issues discussed at the previous meeting that were brought to the Committee, the CADB and the Willis', that were considered and this resolution, while it approves the division request, does point out some of the issues that staff thinks would not be acceptable for "agricultural purpose". He stated that what that will do is if, in the future, the SADC gets a request and it is only based on these things that the SADC does not feel are suitable, we can relay it to folks that the Committee discussed these issues and it does not feel that they would be acceptable to the SADC. He stated that those issues would be the forest management plan, though while it was a good plan, had relatively low production, therefore the staff didn't think that by itself it was compelling for an agricultural purpose. Also was the issue of an inter-generational transfer to a child who does not farm. The Committee felt that it would be different if Mr. Ian Willis was a farmer, then it would have been a different rationale. The fact that he was not farming did not supply a compelling reason to justify an agricultural purpose, maintaining the agricultural character of the farmstead. It was noted that Ian Willis had done some work in keeping the farm buildings up and was in the process of repairing the farm house. That is a noble cause and something that continues, however it is not compelling enough to meet the agricultural purpose test.

Mr. Roohr stated that probably the biggest issue is simply the fact that they are two separate noncontiguous parcels, to us was not an agricultural purpose. There are many farms that are two separate parcels that are noncontiguous, not all as far apart as these two, but just the fact that they are two separate parcels does not convince staff in any way that would be a reasonable agricultural purpose to divide a property. He stated that those items are made clear in the resolution.

Mr. Siegel referred the Committee to page five of the resolution. He stated that section #1 does not reflect his recollection regarding this issue of estate planning. He stated that in following the CADB's judgment he thought there was an acceptable basis to accept estate planning. He stated that the resolution states to accomplish estate planning is not a sufficient basis for granting a division of the premises. Ms. Craft stated that the Committee needs to be comfortable with that conclusion. Mr. Siegel stated that for him and the agency he represents the estate

planning is the most interesting of the items listed in the resolution. He stated that it was interesting that the CADB took the estate planning at face value and we cannot criticize them for that because the SADC never gave them any other direction. He stated that going forward we need to make it clear to the CADBs and the applicants that if someone is coming in and going to say we're dividing for reasons of estate planning, which he believes is a legitimate reason, and it is going to be increasingly urgent agricultural purpose, they must explain.

Mr. Waltman felt that the resolution is very carefully worded and it does not say that to accomplish estate planning is not a legitimate purpose, it says it is not a "sufficient" basis. He feels that this wording very appropriately and carefully allows us not to answer that. He stated that if someone came in with 50 acre farm and wanted to divide it into two pieces for estate planning purposes and it was a contiguous 50 acre parcel with one clear operation, we would not say that if it was for estate planning purposes that was a sufficient reason. He stated that in this particular case it was such a peculiar situation with a lot of factors at play that it was very appropriate for staff to take a long and careful approach.

Chairman Fisher stated that what he is hearing is that the resolution needs to include that, otherwise anyone can come to the SADC and simply claim "estate planning" to justify a subdivision.

Mr. Siegel stated that assisting a family that would otherwise be forced to sell because of tax liability is a legitimate agricultural purpose. Ms. Murphy stated that if none of the owners are farming and they are being forced to sell it to someone who is going to farm it.....however, she doesn't think it applies in this situation.

Mr. Siegel stated that if you are going to apply for a division of the premises and you are going to claim estate planning you have to show the SADC what your plan is protecting you from. If a farmer can do that, it is an agricultural purpose to keep that agricultural operation under the family's control and not place it in the hands of a bankruptcy judge or to have the family get a letter saying you have six months to pay say \$800,000.00 or they will put up a for sale sign on the property to sell it to anyone.

Ms. Craft stated that the point necessary to clarify is that it is easy for us to assume that many people will come and for the purposes of estate planning want to divide their farms and they will probably convincingly show us the benefit of doing that. The critical point here is on page five of the resolution under estate planning and inter-generational transfer is the last sentence: "Therefore,

justification of providing an estate plan to allow for the inter-generational transfer of the land to a child that is not actively involved in the day-to-day operations of the agricultural operation does not provide support for the “agricultural purpose” standard”. She stated that before we give any guidance to the county, the threshold question is does the SADC consider estate planning a factor to consider when anyone claims it or when a farming operation claims it, in order to pass the farm to the next generation of family farmers. Ms. Craft stated that she can acknowledge that the inter-generational transfer of land within farm families is a huge issue nation-wide and is integral in keeping family farming operations on the land and viable. The question she is trying to clarify is when someone comes in and says for example, he is a doctor and he owns this property. He has two children and for estate planning purposes it is better for his family to divide this into pieces but they have nothing to do with agriculture. That is the line she is trying to determine whether the Committee supports that. If it does then we can clearly communicate that to the counties.

Dr. Dey stated that he has a problem with the resolution. The last part of it is on the last page under the first Be It Further Resolved that says in order to cause this division we have to have a transfer deed to Ian, who happens to be the son. Because this resolution, if accepted, still has to be reviewed by the Governor’s Office, that cannot happen simultaneously at the table. He doesn’t think that this clause is legal. Mr. Siegel stated that it is a conditional clause and if they don’t make the transfer the entire resolution goes away.

Mr. Roohr stated that the wording can be amended to make it more correct but the point of it was that we are agreeing that the owners said they would be transferring this property to their son Ian. Dr. Dey asked that the wording be clarified.

Ms. Reade stated that she realizes that there is a concern with this as a potential precedent and one of the things for her that differentiates this application from some of the others is the level of stewardship of the land. It came into the program in good shape and it has been maintained in very high standards. She stated that she doesn’t know how to reflect it in the resolution but she feels it is a major contextual difference with this application. Mr. Waltman asked if there was a way to add an additional clause that makes it very clear that this is a particular ruling on a particular case with a particular set of facts and in no way sets a precedent.

Ms. Murphy stated that it was her understanding from the last meeting that Dr. Dey’s motion was based on the agricultural use, which was forest management,

that there would be an increase in agricultural use of the property due to the forest management was going to occur and the other part of it was that they were not contiguous. The resolution today actually says that those two things are not the basis. She is somewhat confused by that. She stated that her concern about number four in the resolution today is that is the agricultural encumbrance simply the lease, because if it is agricultural infrastructure related to the peach operation there is a lot of intensive agricultural infrastructure on the properties that we look at on farms. She stated that she wouldn't want extensive agricultural infrastructure to be the reason to approve a subdivision. Just because we have one big 150 acre farm and fifty acres of it had a whole bunch of horse barns, a riding arena and rink and 100 acres is in hay fields, she wouldn't want the reason to approve the subdivision to be that the equine operation would function more efficiently without all those surplus acres.

Chairman Fisher suggested that we ask SADC staff to review draft and provide more information into the draft resolution regarding the "precedent" and "stewardship" issues and then supply a revised draft. Would that work for the Committee?

Dr. Dey stated that he had made the previous motion because in his mind those two farms have been split into different types of operations before they ever went to become preserved. Today it is a completely different operation for each of these farms. If you maintain that they have to stay together it will be an economic loss as farm as farmland is concerned when it is sold. There are very few options where someone is going to buy a fruit farm and a vegetable farm. They require different infrastructure and machinery along with many other things. Ms. Craft stated that every case is going to be a little different but the Committee needs to be consistent in how it addresses certain issues and be consistent on how we think about estate planning and managing woods as a reason to divide a farm. That is what we are trying to set down here is some parameters and then build on the specifics of this case. She stated that what she is hearing in providing more information to the resolutions is the high degree of stewardship that supports the finding now and continuance of management in a high quality fashion. She stated that she didn't think that the resolution anywhere said that the contiguous nature of these cannot count towards the Committee's consideration. What we are trying to say is that just because they are contiguous it isn't automatically considered. She stated however, that it is a contributing factor and that needs to be added to the discussion. Thirdly, is that we reiterate the fact-specific nature of this case and then finally the last section of the resolution regarding the mechanics of the transaction.

Ms. Craft stated that SADC staff will take this back to the office and then provide the additional information to the Committee later in the meeting to review and take action on.

Ms. Craft stated that earlier in the meeting the Committee instructed staff to modify the original resolution before it to address concerns the Committee had in various areas. She stated that the following areas were amended to address the Committee's concerns:

Resolution FY2010R12(1) (**additions bolded, deletions bracketed**[])

First Amendment - Page 4 (second Whereas). Under item # 2 - Maintaining the Agricultural Character of the Premises: The following language is added: **"Parcel "A" and "B" have been continuously operated with a high degree of stewardship."**

Second Amendment - Page 5 (first Whereas). Under item # 2 - Maintaining the Agricultural Character of the Premises. The following language was removed: "[The restoration of the existing "farmstead]".....

The following language was amended: Removed: [The] restoration of the existing "farmstead" to maintain the agricultural character of Parcel-B is not [sufficient basis] to support an "agricultural purpose" finding. The deed of easement specifically does not require the Premises be maintained in any particular state or condition, therefore [although the restoration of the farmstead is an indication of good stewardship, it does not constitute a finding that the division meets the test of an agricultural purpose]".

The paragraph was amended to read as follows: **"The high degree of stewardship of the premises, including** restoration of the existing "farmstead" to maintain the agricultural character of Parcel-B, is not **an exclusive reason** to support an "agricultural purpose" finding. The deed of easement specifically does not require the Premises be maintained in any particular state or condition; therefore, **good stewardship does not on its own constitute a finding that the division meets the test of an agricultural purpose. It does, however, indicate that Parcel A and Parcel B are likely to continue to be managed with a high degree of stewardship in the future."**

She stated that this last sentence reinforces the positive impact on good

stewardship for our consideration.

Third Amendment - Page 5 - Item # 4: Parcel-A and Parcel-B are not Contiguous and are Managed Independently: Ms. Craft referred the Committee to the strike-out of the encumbrance language, which is being removed “[because of this agricultural “encumbrance” on the farm, Parcel-A and Parcel]”..... She referred the Committee to the addition of the following language in the same section as follows:These lease arrangements, **“and the fact that Parcel A and Parcel B are noncontiguous”**

Ms. Craft stated that under the Now Therefore It be Resolved section # 1 staff inserted the following language: **“based on the limited factual circumstances specific to this application, and expressly intending no precedential effect to its determination,”**.....

Ms. Craft stated that she thinks that the language should stop after “based on the limited factual circumstances specific to this application“.... She doesn’t think that you can say “and expressly intending no precedential effect to its determination” because she doesn’t think there is such a thing. Every action the SADC takes has a precedential effect, whether we like it or not. Therefore that amended language she feels should be removed. The Committee agreed and the amended language “ and expressly intending no precedential effect to its determination” was removed from the amendment.

Under the first “Be It Further Resolved” section the following language has been added: **“and shall be effective upon”** in the first sentence. Also added in the first sentence is the following language: **“and such deed shall have been reviewed and approved in advance by SADC staff”**. This amendment is to address Dr. Dey’s concerns that the resolution is effective upon the transfer of ownership to Ian Willis.

It was moved by Dr. Dey and seconded by Mr. Requa to approve the amended Draft Resolution FY2010R12(1) approving a request by Howard and Nola Willis, owners of Block 80, Lot 18, and Block 82, Lot 9, Hopewell Township, Cumberland County, 212.86 total acres, to divide the premises as presented and discussed and subject to any conditions of said resolution. The motion was unanimously approved.

NEW BUSINESS

A. Resolution for Approval: FY 2009 Planning Incentive Grant Program

1. Final Approval of Municipal Planning Incentive Grant Program Application including the Comprehensive Farmland Preservation Plan and Project Area Summary for Kingwood Township, Hunterdon County

Mr. Brill referred the Committee to Resolution FY2010R12(2) for a request for final approval of the municipal Planning Incentive Grant Program application including the comprehensive farmland preservation plan and project area summary for Kingwood Township, Hunterdon County. He reviewed the specifics of the resolution with the Committee and stated that staff recommendation is to grant final approval.

It was moved by Dr. Dey and seconded by Ms. Brodhecker to approve Resolution FY2010R12(2) granting final approval of the Municipal Planning Incentive Grant Program Application including the Comprehensive Farmland Preservation Plan and Project Area Summary for Kingwood Township, Hunterdon County, as presented and discussed, subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2010R12(2) is attached to and is a part of these minutes.)

B. Resolution for Approval: FY2010 Planning Incentive Grant Program

1. Final Approval of a County Planning Incentive Grant Program Application including the Comprehensive Farmland Preservation Plan and Project Area Summaries for Cumberland County

Mr. Bruder referred the Committee to Resolution FY2010R12(3) for a request for final approval of Cumberland County's Planning Incentive Grant Program application including its comprehensive farmland preservation plan and project area summaries. He reviewed the specifics of the resolution with the Committee and stated that staff recommendation is to grant final approval.

It was moved by Ms. Reade and seconded by Dr. Dey to approve Resolution FY2010R12(3) granting final approval of the County Planning Incentive Grant Program Application including the Comprehensive Farmland Preservation Plan and Project Area Summaries for Cumberland County, as presented and discussed, subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2010R12(3) is attached to and is a part of

these minutes.)

C. Renewals, Terminations and Withdrawals of Eight Year Programs

Ms. Craft referred the Committee to the Eight Year Program Summary for FY 2010, showing one (1) renewal of an eight year program for Eric M. and Liis Hensel, SADC # 0105-01F-01/01-0069-8F, located in Buena Vista Township, Atlantic County, comprising 40.31 acres with a soil and water conservation cost share eligibility amount of \$24,186.00 and a new expiration date of February 5, 2018. There were no withdrawals of eight year programs. She stated that there were five (two) terminations of eight year programs as follows:

1. Joseph J. and Carolyn Jacobs
SADC # 0105-20F-01/01-0030-8F
Township of Buena Vista, Atlantic County, 21.94 Acres
Soil and water conservation cost share funds remaining at time of termination:
\$8,641.50 (\$4,522.50 expended)
2. Gus H. and Susan Perna
SADC # 0117-28F-01/01-0031-8F
Township of Mullica, Atlantic County, 32.73 Acres
Soil and water conservation cost share funds remaining at time of termination:
\$5,287.74 (\$14,350.26 expended)

Ms. Craft stated that this was for the Committee's information only and that no action is required.

D. Policy: Construction of Storm Water Management Facilities to Service Residential and Agricultural Uses Located on Exception Areas

Ms. Craft referred the Committee to the draft Policy: Construction of Stormwater Management Facilities to Service Residential and Agricultural Uses Located on Exception Areas. She stated that the draft policy is in response to a couple of month's worth of discussions that took place. She stated that last year the SADC adopted a similar policy aimed at how to handle the construction of septic tanks on farms as it related to exception areas. She stated that this is modeled after that. She stated that this is to convey an understanding that all these towns and nonprofits, counties and the SADC itself have to become cognizant of the fact when you are delineating an exception area the development, depending on the extent of development in that exception area, may require the construction of storm water management facilities. Depending on soil types, topography and many other things, we may begin to get requests to put those facilities on

preserved farmland.

Ms. Craft stated that the backdrop to all of this is the continuing dialog between the Department of Agriculture and the NJ DEP to see if they can't help and also be a player in fostering a better way to think about storm water management on farmland. She stated that until we get there, there needs to be consistency with how the Committee reviews applications. She reviewed the specifics of the draft policy with the Committee.

Committee Comments:

1) Mr. Siegel: Makes reference to section III-Policy, item C1 Applicability. He asked about the statement "However, such facilities cannot service agricultural uses that are not associated with agricultural production on the preserved farmland." He asked if that was a direct lift from the septic policy. Ms. Craft responded yes. Mr. Siegel stated that say the landowner has a 3,000 square foot house and they say it is no longer adequate so they want to build a 14,000 square foot house. That is fine but don't come on to a preserved farm with the septic tank. He asked are we doing the same thing with this policy. Ms. Craft responded no but Mr. Siegel's comment is a good point. In the septic policy the SADC did limit the number of bedrooms of such a house if they were looking to bring it on to the preserved farm. Mr. Siegel stated that you could build a bigger house on an exception if you feel like it but just keep the sewage off the preserved farm.

2) Mr. Waltman: We need to acknowledge that the owner of a farm with a severable exception has a decision to make on what they build on that severable exception. There is a threshold under which the storm water rules are not triggered. He would not be very sympathetic if someone wants to cover their severable exception with impervious cover and then say the only place they can put the storm water structure is in the preserved farm. If you keep the footprint of what you're building in the nonseverable exception below the trigger then you will automatically eliminate the need to put storm water facilities on the preserved farm. He stated he wasn't sure that this was fully built into the draft policy.

Ms. Craft stated that staff could set forth under conditions and limitations, add an item "C" something to the extent that talks about one of the things the SADC will have to consider is the extent of the improvements being proposed to get at that self-imposed hardship.

3) Mr. Waltman: He wanted to make sure of the sequencing of who is looking at these proposals. He worries about the Committee looking at proposals before the municipal engineers who have been designated to handle the township's storm water

responsibilities. He stated that in theory you could have a proposal brought to the Committee that the municipality would never approve and then the Committee has wasted its time giving consideration to it.

4) Mr. Siegel: You could also have the reverse where the municipality gives approval and the SADC says no. He worries about what type of a conflict is then opened.

Ms. Craft stated that staff can give that some thought and come back to the Committee. She stated that the draft policy does not have to be adopted today. Staff wanted to provide it to the Committee and then seek county comments. The natural course of things is that the landowners tend to want to get things moving and find out where everyone stands before designs get finalized.

5) Dr. Dey: He stated that he has noticed in severable of the farms that have had preservation occur recently they had no severable exceptions for their really concentrated equine activity area, which is for instance a riding arena that is say 300 x 100. That is a lot of water to get rid of. The other comment is that we have the agency of the NRCS and that means that whatever the trigger point happens to be to start with, using sound best management practices there isn't a.....or there is 25% according to the commercial equine right to farm regulations. However, sitting on another committee he wants as much aquifer recharge as he can get. He doesn't particular care that the aquifer recharge is on preserved ground. He would rather have it on preserved ground than have it running into a stream because he then has lost it. Most of aquifer recharge that they are doing now, doesn't take that farmland out of production. This needs to be and considered and they are being considered between Natural Resources' Committee and the NJ DEP. He felt there should be language regarding this in the draft policy.

Ms. Craft stated that she would need to reach out to the Division of Agriculture and Natural Resources about that point in order to get a better understanding of it and how it can relate to this policy.

6) Ms. Murphy: She stated that it was her understanding from the NRCS presentation last month is that they had a very limited scope of activity that they examine storm water management for.

7) Mr. Waltman: When you look at the farms coming into the program and you look at carving out nonseverable exceptions where there is impervious infrastructure you need to think very carefully about the ramifications of where those are and the ones that have long winding driveways to a remote part far away from an existing state or county road are harmful for many reasons. Its great if you are looking for a preserved farm and have a house way back away from the road but all of that pavement that is put down for that

long drive has an environmental cost that needs to be mitigated. We should be thinking about these things early on.

Ms. Craft stated that staff will develop responses to the Committee's comments and concerns. She stated that she would like to provide this as an informal draft to all of the SADC's partners and get their input before it comes back to the Committee for adoption.

E. Agricultural Mediation Program

1. Certification of New Mediator

Mr. Kimmel referred the Committee to Resolution FY2010R12(4) regarding the certification of a new mediator for the Agricultural Mediation Program. He stated that the new mediator is Paul A. Massaro. He reviewed specifics of the resolution with the Committee and stated that staff recommendation is to certify Mr. Massaro as a new mediator.

It was moved by Mr. Siegel and seconded by Dr. Dey to approve Resolution FY2010R12(4) certifying Paul A. Massaro, Esquire as an agricultural mediator, pursuant to N.J.A.C. 2:P76-18.3, conditioned on his attending a state continuing mediation training course in 2010, and subject to any other conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2010R12(4) is attached to and is a part of these minutes.)

F. Farmland Stewardship

Request for a Division of the Premises

1. Rhyne and Andraya Simpson, Tewksbury Township, Hunterdon County

Mr. Roohr referred the Committee to Resolution FY2010R12(5) for a request by Rhyne and Andraya Simpson, owners of Block 19, Lots 11.05, 11.06 and 11.07 in Tewksbury Township, Hunterdon County to divide the premises. He stated that the owners propose to divide the premises to allow them to sell Parcel "A" to Mr. and Mrs. Breitman (Contract Purchasers) and the owners would retain Parcel "B" to continue an equine operation. He stated that the owners find it necessary to divest themselves of the majority of the premises, which includes the house and agricultural buildings. The owners currently operate the property as a sport horse raising/training facility and a hay farm. He stated that the owners feel that with some fencing, an outdoor training ring and other modest improvements, they could continue a similar sport horse operation on Parcel "B".

Mr. Roohr stated that the owners understand that there are no residential opportunities associated with Parcel "B" and at some point in the future they believe it will be necessary to construct grooms quarters for someone to care for the horses on Parcel "B". The owners have indicated that for financial and business reasons they feel they do not need the entire parcel to run their proposed equine operation. He stated that the Breitmans propose to operate a hunter/jumper raising and training operation and propose to construct an indoor riding arena to allow for year-round training of the horses.

Mr. Roohr stated that regarding agricultural viability, staff makes the following findings:

- 1) Parcel "A" and "B" would be insufficient in size to sustain a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from their agricultural outputs;
- 2) All of the agricultural buildings and infrastructure related to the management of the overall Premises exist on Parcel "A", further reducing the agricultural options on Parcel "B" if they were separated; and
- 3) The development of agricultural infrastructure on Parcel "B" would take additional land out of production on a parcel which already has limited acreage available for agricultural production.

Mr. Roohr stated that regarding agricultural purpose, staff makes the following findings:

- 1) The owners intend to sell Parcel "A" to the contract purchasers who propose to operate an equine raising and training operation on the property;
- 2) The owners propose to keep Parcel "B" and to develop it into a sport horse raising and training operation;
- 3) The proposals for equine operations on Parcels "A" and "B" would result in more horses being raised and trained on the premises; and
- 4) the transfer of Parcel "A" is being prompted by the need of the owners to divest themselves of that parcel, which is not an agricultural purpose.

Mr. Roohr stated that the information detailing the agricultural purpose is limited. He stated that based on the lack of agricultural viability, SADC staff did not engage in an extensive review of the agricultural purpose and is not making a determination on that aspect of the request. Staff recommendation is to deny the request for a division of the

premises based to the fact that the owner has not demonstrated that the division will result in agriculturally viable parcels such that each parcel is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from the parcel's agricultural output, pursuant to the deed of easement and Policy P-30-A.

Note: Chairman Fisher left the meeting (11:10 a.m.). Acting Chairperson Monique Purcell presided over the meeting at this point.

Mr. Simpson addressed the Committee in support of his request for a division of the premises. He stated that he is a businessman and in reviewing his deed of easement he came across the paragraph that deals with exceptions. He didn't think that the property could be severed so he reviewed it further and he looked up "severable" and it is to be economically viable and available. He stated that it is his position that both of the parcels can be viable. The 44 acres was viable when he bought it in 1998 and it was a stand along viable farm for a couple of years before he then bought the 28 acre piece that was viable in and of itself. They were viable in the past and they can be viable in the future. Mr. Simpson stated that the Committee's approval will do several things. It will produce two viable farms where one now exists. Both have over fifty percent of open land but both have over fifty percent of prime and statewide soils. The twenty-eight acre cut does not have a residual building site. He stated that he feels this is a positive for allowing this to be severed. He stated that they are looking at a house, not even a half of a mile away, that is for sale and they have an offer in for it, subject to completing this request and getting approval for the division. It has a couple of stalls there. He will keep the severed farm for his farming operation and in the future this property will not have an expensive house on it. There are plenty of places to live close by that are a lot less expensive. He stated that they intend to start the improvements slowly, putting in enough for a few horses and will probably put it in the woods. His position is that in the future if you are looking at 100 years from now when people are looking at the property then this parcel will be more economically viable for someone to run as a farm without having an expensive house. He stated that the taxes on the house he is looking at is \$17,000.00 per year and it is a small house. He stated that he would be most grateful if the Committee would give him the opportunity. He stated that the primary agricultural purpose of this is for him to keep making hay and not selling the equipment. He likes doing what he does and would like to continue doing it.

Mr. Waltman asked if these two farms came into the Direct Easement Purchase Program separately, would they have ranked as highly as this farm did as one parcel. Mr. Roohr stated that it being the larger farm with 40 tillable acres gave it a higher score. If it gave it a high enough score that it, if there were farms that we weren't able to fund and this one out-ranked one, he was not sure. However, it would definitely get a higher score

because it is larger and it has more tillable acres as the bigger unit. Ms. Craft stated that the issue on this one is the value. The valuation would have been very different if they were brought in as separate properties. The before and after values would likely to be much different.

Chairperson Purcell stated that the difficulty with these types of issues is that would be situation right now and it is a nice mix of what Mr. Simpson wants to do and what the neighbors want to continue doing. However, one of the challenges of this program is to look at the long-term viability of the farm and we have to look beyond into the next operation and so forth and that is what makes it difficult. If you look at the situation right now it makes sense but when you look long-term, possibly no so much.

Dr. Dey stated that one of the things that is going to happen and is happening is, twenty years ago or even ten years ago there were a lot of farmers that you could contact that would farm that property and give you the information for farmland assessment. Because of the cost of the equipment and the difficulty in running up and down the road with equipment that is labor-saving, these areas are getting to the point that farmers are charging in order to farm properties that we are trying to keep in farmland preservation. One of the things that is happening in the State as far as the equine industry is concerned is that these particular types of farming looks like they are going to say they are going to increase in the base of equine operations. One of the things we need to consider is if you have or you can get owners that can definitely qualify on a farm's viability on twenty acres because of the product they are selling. He felt that the Committee should approve this request.

Mr. Siegel stated that there have been tax assessors who were complaining about what to do when they learned about farmer fee leases, where you are paying the farmer and he keeps all of his produce. That handful is now a very long line. Morris, Somerset, Hunterdon and Eastern Hunterdon, some in Sussex and it has apparently become quite an industry standard, saying yes, I'll maintain you tax assessment for you. He stated that tax assessors are not happy at all with this and they are pressing the Division of Taxation to make a finding on unpaid leases of fee leases. He stated that they have not done anything so far but the assessors have called and said this is happening. He stated that there is a lot of pressure on the Division of Taxation over the legitimacy of farmland assessment on properties where the landowner is paying a farmer to avoid a tax liability. He stated that this is a red flag and it touches the viability standard. If you have to pay someone to keep your farm in produce that in itself seems to be a statement regarding a lack of viability. He stated that he agrees with the staff recommendation regarding agricultural viability.

It was moved by Mr. Siegel and seconded by Ms. Reade to approve Resolution FY2010R12(5) denying a request by Rhyne and Andraya Simpson, owners of Block 19.

Lots 11.05, 11.06 and 11.07, Tewksbury Township, Hunterdon County, approximately 72.71 acres to divide the Premises, as presented and discussed and subject to any conditions of said resolution. A Roll Call Vote was taken as follows:

Cecile Murphy	YES
Jim Requa	YES
Brian Schilling	ABSENT
Alan Danser	ABSENT
James Waltman	YES
Denis Germano	ABSENT
Ralph Siegel	YES
Jane Brodhecker	YES
Torrey Reade	YES
Stephen Dey	OPPOSE
Acting Chair Purcell	YES

Yes Votes: 7 Oppose Votes: 1 The motion carries. (A copy of Resolution FY2010R12(5) is attached to and is a part of these minutes.)

2. Estate of William Mason, Sr., Readington Township, Hunterdon County

Mr. Roohr referred the Committee to Resolution FY2010R12(6) for a request by William Mason, Jr., owner/executor of the Estate of William J. Mason, Sr., to divide the premises known as Block 93, Lots 18, 19 and 20, and Block 95 Lot 13, in Readington Township, Hunterdon County, comprising 244.3 acres. He stated that the property has three residences on it, a ranch style home, a duplex style home and a single family residence. He stated that the original owner William Mason, Sr. passed away and his son, who is the executor of the estate is requesting to divide the premises.

Mr. Roohr stated that the owner proposes to divide the Premises, resulting in the creation of Parcel "A", comprising 231.76 acres and Parcel "B", comprising 12.63 acres in order to allow him to Sell Parcel "B" to Edward Walters who is the contract purchaser of that parcel and who is the grandson of Mr. Mason, Sr. He stated that Mr. Mason, Jr. would retain ownership of Parcel "A" to continue the hay and grain operation and he is considering placing Parcel "A" on the market for resale in the near future. Mr. Walters has indicated that he will continue to raise hay on Parcel "B" and will take over management of this parcel. Mr. Walters has also lived in the single family residence on Parcel "B" for most of his life. This would give him twelve and one half total acres with eleven acres tillable and there would be a ranch house on the property.

Mr. Roohr stated that Parcel "A" would consist of 230 acres, 210 acres would be tillable.

Parcel "A" would include an existing single-family residence, an existing multi-family residence and numerous barns and agricultural outbuildings. He stated that the executor of the estate has not decided what he would be doing with Parcel "A" as yet but one of the options on the table is to put it up for sale. Mr. Roohr stated that staff did not go into an in-depth analysis of what the agricultural proposals would be for these parcels because staff looked at the twelve acres and felt that twelve acres, of which eleven acres are tillable, fell very short of enough acreage to be viable for a variety of uses that would provide a reasonable income solely from the parcel's output, due to the limitations on the acreage, the sloping of the parcel, which is a minor issue but definitely a consideration. He stated that he reviewed previous divisions that the Committee approved and that there are none of this size that are stand-alone parcels. There have been a handful of parcels that were divided off that were smaller, as small as six acres but these had conditions that those five or six acres be permanently attached to an adjacent preserved farm, so essentially it was a lot-line adjustment. He stated that the Hunterdon CADB did approve the request and the rationale for viability was that the parcel would lend itself to hay and also an orchard and, there is a relatively high density area of development and part of their rationale was that if they were to go into a retail type of crop operation there would be a ready customer base close by.

Mr. Walters addressed the Committee in support of the division request. He stated that he wanted to purchase a piece of his grandfather's property. He stated that he has lived there most of his life and he doesn't want to see the property go. He stated that he thought he would try and whatever happens, happens.

Mr. Roohr stated that staff recommendation would be to deny the request for a division for the following reasons:

Regarding agricultural purpose staff finds that:

- 1) The owner has stated that Mr. Mason Sr. always intended to transfer ownership of Parcel "B" to the contract purchaser (Mr. Walters);
2. Transfer of Parcel "B" is being prompted by the need to settle the estate;
3. The Contract Purchaser (Mr. Walters) has assisted the family in agricultural production activities in the past and would take over management of Parcel "B";
4. The Contract Purchaser (Mr. Walters) is not currently engaged in the day-to-day agricultural production activities of the Premises;
5. The division of the premises for the purpose of transferring Parcel "B" to the

Contract Purchaser (Mr. Walters), who will management the existing hay fields does not expand or increase the diversity, intensity of the operation.

Therefore staff has determined that these findings related to whether the division is for an agricultural purpose do not, individually or collectively, constitute a basis for the agricultural purpose test..

Mr. Roohr stated that regarding agricultural viability staff finds that:

1. Parcel "B", consisting of 12.62 acres total, containing eleven (11) tillable acres is insufficient in size to sustain a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from its agricultural output;
2. All of the agricultural buildings and infrastructure related to the management of Parcel "B" exist on Parcel "A", further reducing the agricultural operations on Parcel "B" if it were separated;
3. Development of agricultural infrastructure on Parcel "B" would take additional land out of production on a parcel, which already has limited acreage.

Therefore staff has determined that the division does not meet the test for agricultural viability.

It was moved by Dr. Dey and seconded by Mr. Siegel to approve Resolution FY2010R12(6) denying a request by William Mason Jr., Owner/Executive of the Estate of William J. Mason, Sr., owner of Block 93, Lots 18, 19 and 20, and Block 95, Lot 13, Readington Township, Hunterdon County, 244.3 acres to divide the premises for the reasons stated in said resolution and as presented and discussed. The motion was unanimously approved. (A copy of Resolution FY2010R12(6) is attached to and is a part of these minutes.)

Note: Chairman Fisher returned to the meeting (11:59 a.m.) and presided over the meeting.

Request for House Replacement

1. Donald and Wanda Holland, Manalapan Township, Monmouth County

Mr. Roohr referred the Committee to Resolution FY2010R12(7) for a request by Donald and Wanda Holland, owners of Block 49, Lot 1.04, in Manalapan Township, Monmouth County, comprising 21.47 acres, to replace the single family residence on the premises.

Mr. Roohr reviewed the specifics with the Committee, citing numerous significant structural problems with the existing residence, which are compromising the structure, including a deteriorating foundation, continual settling, sagging roof, buckling chimneys and leaning front wall. Also for health related reasons the owners would prefer a single story ranch style residence. They propose to build a modular house with approximately 1,720 square feet of heated living space to replace the original farmhouse, which is approximately 1,680 square feet. The existing house will be removed and that area will be filled, graded and seeded approximately sixty (60) days after the certificate of occupancy is received for the new house which will be build on the opposite side of the existing driveway approximately forty (40) feet west of the existing house. He stated that staff looked into the historic significance of the existing residence and it is not on the New Jersey Historic Listing now or at the time of preservation. Mr. Roohr stated that staff recommendation is to approve this request.

It was moved by Mr. Siegel and seconded by Ms. Brodhecker to approve Resolution FY2010R12(7) granting a request by Donald and Wanda Holland, owners of Block 49, Lot 1.04, in Manalapan Township, Monmouth County, comprising 21.47 acres, to replace the single family residence on the premises, as presented and discussed and subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2010R12(7) is attached to and is a part of these minutes.)

Review of Activities on Preserved Farms

1. Edward and Susan Eivich, Franklin Township, Gloucester County

Mr. Roohr referred the Committee to Resolution FY2010R12(8) regarding a request to conduct a recreational activity on a preserved farm involving a paintball playing field. He stated that the owners perform equine boarding activities and produce hay on the premises. They provide boarding space for approximately twenty (20) horses owned by the Thoroughbred Rescue Foundation. The owners also raise approximately ten to fourteen (10-14) acres of hay, depending on pasture rotation requirements, in support of the equine boarding activities and for sale to off-farm buyers.

Mr. Roohr stated that approximately a year ago staff met with Mr. Eivich regarding another farm and he wanted to know if he could develop a commercial paintball operation on a farm he had hoped to rent somewhere else in Gloucester County. He stated that staff had some discussions with Mr. Eivich and presented his idea. He stated that staff did not say definitely no to him but did express concerns with the things he would need to do such as installing posts and netting and how would people park and affording rest rooms, would there be a structure needed and things of that nature. It was not brought to the Committee but did express staff's concerns and Mr. Eivich did not

pursue that request.

Mr. Roohr stated that in September, 2009 staff received a request from Mr. Eivich to review a personal paintball recreational field. This would be on the new property he just bought. He reviewed the area being proposed with the Committee. He stated that it would be used by his son, nephew and their friends, who would play paintball on the property using portable obstacle type of equipment. He stated that the reason Mr. Eivich needed that determination in writing was because it was brought to the SADC's attention that the Franklin Township Zoning Office had cited the owners for alleged zoning violations related to their development of a paintball playing field in the southwest corner of the premises. The zoning officer explained that it may be possible for the owners to request the necessary variances from the Township to keep this paintball playing field, however the Township is requiring written approval from the SADC that this use is permissible under the farmland preservation deed of easement before it will entertain the variance request.

Mr. Roohr stated that Mr. Eivich submitted the written request to the SADC for approval to use the premises for this purpose. His letter states that the paintball field would not be opened to the general public and that the entire operation was portable with no permanent structures or fixtures. He stated that SADC staff and the Gloucester CADB staff visited the property and met with Mr. Eivich and verified that approximately one (1) acre in the southwest corner is being used for this purpose. He stated that new sod was installed within the sectioned off area for the playing field. A second area next to this field, in an abandoned apple orchard, was under development for paintball use and consisted of stacks of wooden pallets used as obstacles, the apple trees themselves and an incomplete set of tall posts to be used to hang the safety netting. He stated that Mr. Eivich has an insurance policy on the paintball field and the safety netting was considered an acceptable safety measure by the insurance company. Mr. Roohr stated that Mr. Eivich stated that his son and nephew play competitive paintball on a local team and that his primary intent was to provide a location for his son, nephew and their team to practice. It has been used for this purpose since the late summer of 2009. He stated that the owners explained that team members contribute financially to the costs of operating the field (fuel, supplies, etc.) but do not otherwise pay for use of the facility.

Mr. Roohr stated that a metal storage unit, generator and two portable bathrooms were located near the playing fields, which Mr. Eivich described as being used for both the paintball and farm operations. He stated that on September 10, 2009 the owners were cited for violations of township ordinances related to the structures and change of use of the property related to the paintball facility. He stated that the SADC received a copy of a police report which states that approximately 20 cars were on-site for the purpose of playing paintball on September 27, 2009.

Mr. Roohr stated that based on the onsite evaluation on September 22nd it is evident that the owners installed posts, netting and sod to accommodate the paintball field, which is not a use of the premises "in its existing condition" and the area being utilized for paintball is not in agricultural use or production. He stated that while researching paintball related items on the internet, staff observed an online petition containing over one hundred signatures, to allow Tower Farms (the name of the Eivich's farm) to serve the community with a recreational paintball facility. Mr. Roohr stated that this conflicts with the owners' stated intent to utilize the property for personal recreation purposes for the owner's son, nephew and paintball friends.

Mr. Roohr stated that a request to utilize the premises for recreational purposes must be evaluated on its potential to "interfere with the actual use of the land for agricultural production" as described in Paragraph 9 of the Deed of Easement. In the absence of agricultural production in the area where the facility is located, there is no basis to evaluate the degree to which it interferes with agricultural production because the recreational activity is the primary use of that area of the property.

Mr. Roohr stated that this issue was brought to the Deed of Easement Subcommittee in November and it had a lengthy discussion. What came from that discussion was a belief that the use of the paintball facility as it is, would be considered as a violation of the deed of easement. The recreational use paragraph allows you to use the property for recreational uses in its "existing" condition. Posts, netting, port-o-potties, storage units, sod, are not existing conditions. He stated that the most obvious violation would be the posts in the ground with netting placed in between cannot be considered as an existing condition. Another concept that came out of the subcommittee meeting was the idea of whether or not dedicating a portion of a preserved farm for solely a nonagricultural or solely a recreational use was acceptable. It was determined that it was not acceptable. The rationale for that is language in the Garden State Preservation Trust Act as well as the Agriculture Retention and Development Act, which gives definitions that say that agricultural production shall be the primary use of the property. Therefore if you have a piece of your farm that is primarily or only recreational you cannot make a case that it is primarily agricultural, wherein the examples in the deed of easement of acceptable recreational uses include things like hunting, cross-country skiing, which could be done on top of a crop or through a crop, in the case of hunting.

Mr. Roohr stated that staff finds that the existing and proposed private paintball facility is a violation of the deed of easement and is not a recreational use compliant with the terms of the deed of easement and gave the following reasons:

- 1) The lack of agricultural production in the area dedicated to the recreational use violates the statutory requirement that agriculture or horticulture production shall be the first priority use of the premises;
- 2) It does not utilize the property in its existing condition due to the installation and placement of structures, materials and facilities in support of the recreational use;
- 3) The use of the premises as presented by the owners for a paintball facility inhibits the use of that portion of the premises for agricultural use as defined in the deed of easement such that common farm site activities necessary for agricultural production cannot be readily conducted in the area being dedicated to the recreational infrastructure and occupancy by the players and observers;
- 4) Sectioning off a portion of the premises and installing turf for a playing field is tantamount to developing an athletic field, which is prohibited by the deed of easement.

Staff also finds that the posts, netting, wooden pallets and any other structures that have been installed for recreational purposes are a violation of the deed of easement and must be removed within thirty (30) days of the effective date of this resolution. Any items stored on the premises used to service the paintball operation, which may include the metal storage unit, generator, portable bathrooms, inflatable obstacles and any other items which are related to the paintball facility, shall be removed within thirty (30) days of the effective date of this resolution. The Gloucester CADB shall be responsible for monitoring the progress of the removal of all materials directly related to the paintball operation and it shall keep the SADC informed on the remediation of the premises and confirm that the premises is returned to its original condition and available for agricultural use and production by the end of the thirty (30) day period.

Ms. Craft stated that it was important when discussing this issue that we were looking at the paragraph in the deed of easement (listed on page 3 of resolution) because it was specific to recreational uses but also taking into consideration everything the deed of easement says. She stated that the paragraph in the deed that talks about recreational uses states that the Grantor may use the premises..... “only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the premises in its existing condition”. She stated that it was found that this use was violating both of these provisions, interfering with the ability to farm that ground, planting sod and dedicating it to that recreational use. Also because of all the improvements that were made it was in violation of that other provision.

Mr. Roohr stated that same paragraph about recreational uses that are allowed specifically does stated that athletic fields and golf courses are not allowed. While this is not a golf course, it was brought to staff's attention that sectioning off a portion of the property and creating a sod playing field and marking it out wasn't, in some people's opinion, not far off from a athletic field. Ms. Craft stated that it was written to say you can do recreation as long as it is not interfering with the agricultural use and she thinks that we are going to get a defense from some folks that say its not in agriculture so how could it be interfering? She stated that the subcommittee found that to be a nonsensical defense in that you cannot claim you are not farming anything so therefore the recreational uses that are being done are not interfering. That would frustrate the whole intention of the Agriculture Retention and Development Act and the Garden State Preservation Trust Act. The subcommittee is going to be sensitive to that point.

Mr. Siegel asked why are they applying for a variance? Mr. Roohr stated that at this point they have not applied for one.

J.R. Powell, attorney for the Eivichs addressed the Committee. He stated that they have already been to court and the citation has been dismissed. He stated that this is a cutting-edge issue and paintball is not in most people's mind a farming operation. He stated that in the New Jersey Farm a couple of issues back, the headline had a paintball situation and the second speaker in that article talked about other uses for farms that could generate revenue to keep farms in business. He stated that he knows of preserved farms that are having very difficult times maintaining viable operations. He stated that every farm that we saw pictures of, including the Willis Farm, the Simpson Farm, the last part of the Holland Farm, had large sections of the farm that are not being farmed, just like this farm has a wooded area. He stated that if you could see the area in question today, all the netting is down, all the obstacles are deflated, all are moveable. The storage area, port-o-potties and the generator, prior to the paintball field, they were there as part of the horse operation. There is no electric on the property and the generator manages the water to feed the horses. It is a disconnect to say that those things are not part of the viable farming operation. He stated that if you do a little internet research you will see some articles from farmers that say paintball saved their farm. Chairman Fisher asked, forgetting that this is on a preserved farm, is this something that is permissible in that township, because the zoning officer went there and said that you could have it but you have to get something from the SADC. Mr. Powell stated that the way they left it with the zoning officer was that if this Committee approves it as a use on a preserved farm, they would abide by that. Chairman Fisher asked again if it would be permissible, setting aside the issue of it being a preserved farm. Mr. Powell stated that he felt it was no different than hunting.

Mr. Eivich addressed the Committee in support of his request. He stated that regarding Chairman Fisher's question whether it would be a permitted use whether it was a preserved farm or not, absolutely. The zoning requires in an AR zone, which is residential/agricultural, specifically the language in their zoning states that if you have fifteen acres or more, then you are allowed to have a private recreational facility. That means his next door neighbor who has sixty acres on one side and the neighbor on the other side has twenty acres, etc. everyone one of them would be allowed to do that it is a permitted use. He stated that he has a letter stating that from Franklin Township, but unfortunately he did not bring it with him. He stated that regarding the commercial questions, this is not a commercial operation. They have played a few practice rounds there and no outsiders are allowed there because he doesn't want kids just walking on there. In regards to the two pieces of this or that put together as a structure, that is a township issue and a hurdle that he has to address which he will address them. He stated he is here to address whether paintball is a recreational activity that can be permitted on a farm.

Mr. Siegel stated that from his perspective and also he thinks for the rest of the Committee as well, paintball for personal recreation or lawn tennis, or whatever, or anything that resembles a commercial enterprise are two separate decisions. There are commercial tourism enterprises on all sorts of farms, there are mazes, etc. that are not directly part of the agricultural production, that is not the argument here. He stated that the issue is and the question he asked, and your counsel proceed to say no it is not commercial and then went on to say why it should be, ...if you are trying bring up a commercial operation that is one set of facts the Committee has to deal with. If this is entirely a recreational amateur type of issue and your are not making any revenue from it, that would be a separate consideration. He stated that he is having a difficult time understanding which issue is being brought up. He stated that you keep bringing up other farms, you seeing the ads, even though they are not preserved farms, etc.

Mr. Powell stated that paintball is not something you can play in someone's back yard. It is played all over the country and is played almost exclusively on farm operations. It is an accessory use to many farms across the country. Mr. Eivich stated that he is not the first person to do this and he won't be the last and that regarding the structure, it is something that can be taken down in two hours. It is not a permanent fixture structure, like the deed says, it is a post in the ground and the netting is like a shower curtain and it is used in greenhouses. He stated that there is nothing there that would be considered a violation in his opinion. Chairman Fisher commented that what Mr. Eivich has done is spent a significant amount of money for something that he is doing recreational that gives the appearance that it could be commercial. Mr. Eivich stated that it could give that appearance but it is not commercial, it is for their own personal use. He stated that he doesn't have to put up netting but it is there to protect bystanders and people walking

through the area and to keep the paintballs within the area. If you don't use the netting you have to use much more room. He stated that he would put it in his 14-acre hay field and he wouldn't need the netting but he doesn't want to mess up his hay field.

Ms. Craft commented that there was internet information that was available that staff located indicates that you have a petition looking for public support for this activity on the farm and it says how you would like to serve your community with this recreational facility for the use of paintball play and practice and it goes on to say that you approach this as a private recreational paintball club on a farm in New Jersey. She stated that assuming that you are not charging for admission, are you going to charge admission? Mr. Eivich stated that he does not charge admission. Both Mr. Eivich and Mr. Powell commented that they did not do that internet site and that it was a friend just "trying to help out" but they are not the ones that generated that.

Chairman Fisher commented that one of the things that concerns him is that if you are taking in money for expenses, it could give the appearance of taking in money but not calling it a price to participate but cutting costs. He stated that he doesn't know what the Committee action will be but that Mr. Eivich should be careful about that. Ms. Reade stated that in talking about what is being paid for, taxpayers have paid for farmland and they paid for lands to be kept for agricultural purposes and they paid a lot of money for it. The primary purpose of these farms is supposed to be agriculture and the taxpayers paid for all of the acreage on these farms.

Mr. Siegel stated that he is uncomfortable with the last two "Whereas" statements on the bottom of page three (3) of the resolution referring to the on-line petition and then the next paragraph makes reference to the on-line petition. He stated that a resolution that is negative denying an application sites the fact that people express their opinion in the form of a petition. He realized it was used evidentiary, but he doesn't think that the resolution requires those two paragraphs and that someone raising a petition should not hurt your application one way or another. Mr. Siegel stated that he doesn't agree that there is any kind of impact on agricultural property here, the land is available for agriculture and the test that he thinks always works the best is that if I buy this farm can I fix everything in thirty days, which makes a difference in a concrete pad and a hoop house and makes a difference between a riding arena and a riding stable. Is it available for agriculture. He thinks that it is. We see a variety of implements on this issue that we would see in any farm for other uses that are not agricultural. Jumping horses is not agricultural production, it is ancillary. He stated that when he saw this application in the advance notice he thought that somehow the denial doesn't pass the silliness test, except for the fact that the municipal zoning officer asked for a variance. He stated that he would suggest that the Committee get more information about that and table this issue. He is not making it as motion, just a suggestion. The whole right to farm act is based on the

premised on the fact that we have municipal officials who don't know that they are doing, that we have to protect farmers from over zealous municipal officials or misread their own regulations. That being said, we need to give the benefit of the doubt to a fellow public officer that he felt a variance was needed on this property. He would like to know why. Ms. Craft stated that whether it is commercial or not the deed says you can use certain recreational activities as long as they don't interfere with using the land for agricultural production. How do you lay sod down and then have horses trample all over it or run a combine through it or do anything to it. You aren't going to, you are going to let that sit there as a recreational use. You are not going to farm it because that would interfere with the paintball use. The deed also does not say everything is ok as long as you can pull it out in thirty days. Ms. Craft stated that the reason the deed of easement subcommittee was set up was to afford the opportunity to hash out, get data and really think issues through. She would prefer not to speculate about what might be, or could be permitted. The application before us and staff made a recommendation.

It was moved by Mr. Waltman and seconded by Dr. Dey to approve Resolution FY2010R12(8) finding that the existing and proposed private paintball facility is not a recreational use compliant with the terms of the deed of easement for reasons listed in said resolution and as presented and discussed. The SADC further finds that the posts, netting, wooden pallets and any other structures that have been installed for recreational purposes are a violation of the deed of easement and must be removed within thirty (30) days of the effective date of this resolution. The SADC further finds that any items stored on the premises used to service the paintball operation, which may include the metal storage unit, generator, portable bathrooms, inflatable obstacles and any other items, which are related to the paintball facility, shall be removed within thirty (30) days of the effective date of this resolution. The SADC further finds that the Gloucester CDAB shall be responsible for monitoring the progress of the removal of all materials directly related to the paintball operation and that the Gloucester CADB shall keep the SADC informed on the remediation of the premises and confirm that the premises is returned to its original condition and available for agricultural use and production by the end of the thirty-day (30) period and is subject to any other conditions of said resolution. The SADC also approves the removal from said resolution of "Whereas" paragraphs # 8 and 9 on page three of said resolution dealing with a petition available on the internet. A roll call vote was taken as follows:

Cecile Murphy	YES
James Requa	YES
Brian Schilling	ABSENT
Alan Danser	ABSENT
James Waltman	YES
Denis Germano	ABSENT

Ralph Siegel	YES
Jane Brodhecker	YES
Torrey Reade	YES
Stephen Dey	YES
Chairman Fisher	YES

Yes Votes: 8 **Opposed Votes: Zero (0)** **The motion carries.** (A copy of Resolution FY2010R12(8) is attached to and is a part of these minutes.)

2. Mario and Carol Mazza, Hamilton Township, Mercer County

Mr. Roohr referred the Committee to Resolution FY2010R12(9) regarding potential violations of the deed of easement on the Mario and Carol Mazza property, which was purchased in fee simple by the SADC in December 2001 (formerly known as the Lengyen Farm). At the time of preservation there was one existing single family residence that could be replaced with a residence of up to 3,500 square feet of heated living space, with SADC approval. The existing residence could not be re-designated as an agricultural labor housing unit per the deed of easement. He stated that almost immediately after the Massas purchased the property they requested to replace the single family residence, which was a very old and turns out to be historic farmhouse. When the property was sold by the SADC there were a few items in the deed of easement, one being that the property was resold with a clause that had a maximum square footage for any new or replacement residence, which was 3,500 square feet of heated living space and that the existing residence could not be redesignated as agricultural labor.

Mr. Mazza requested approval to replace the existing residence with a new residence at a different location in May 2003, that the SADC approved that request in June 2003 subject to the conditions that the construction of the new residence be in conformance with all applicable municipal buildings codes and that the 4,700 square foot residence be removed from the premises within thirty (30) days of the issuance of a temporary Certificate of Occupancy (CO) or prior to the issuance of the Final CO, whichever occurred earlier, all land within and around the demolished structures on the existing home site shall be put back into agricultural production; and the owner shall contact the local historical society prior to the demolition of structures to ascertain their interest in the structures.

Mr. Roohr indicated that just prior to demolishing the existing residence Mr. Mazza was approached by the local historical society regarding the historical significance of the residence and on February y13, 2004 the SADC received a letter regarding the existing residence from the State Historic Preservation Office indicating that the Historic Preservation Office stating that protection has not been extended to the farmhouse itself, perhaps in large part because the historic preservation community itself has been slow to

recognize the architectural importance of the house. It went on to state that it would be a regrettable loss especially to the architectural history of central New Jersey if the house could not be preserved. In May 2004 Mr. Mazza contacted the SADC after reviewing the historic nature of the original home and requested to retain it for agricultural labor housing. Mr. Roohr stated that based on advice from the Office of the Attorney General, the SADC could remove the deed restriction that prohibits the redesignation of the residence to an agricultural labor unit, and in June 2004 the SADC approved an amendment to the deed restriction to remove paragraph 12 iv. In January 2006 the SADC approved the redesignation of the existing single family residence as an agricultural labor unit.

Mr. Roohr stated that in October the SADC received a brochure from the Max Spann Real Estate and Auction Company advertising the Mazza property for sale. However there were a number of representations in that brochure that were in conflict with the deed of easement or the conditions of approval resolutions for this property. He stated that an area of concern also is the garage space, which staff discovered during a site visit. He stated that the space for that might be inconsistent with what was approved by the SADC. However, it might not be as big an issue as the other concerns. The reason being is that there is garage space with the main house, which appears to be exactly the square footage number as what was approved, but then there is a guest room with a one-car garage and the one-care garage is mention in the resolution previously approved but the square footage is not mentioned. Therefore technically any additional garage space could be considered a violation but it is on the original plans that Mr. Mazza submitted showing "a garage" but that staff may not have calculated the garage square footage. SADC staff met with the owner and Mr. Spann and following the following:

- 1) The basement of the new residence, which was not included in the original architectural plans submitted to the SADC in 2003, has been finished to heated living space consisting of a home theater, a game room and an exercise room; and
- 2) The agricultural labor unit has been converted to a duplex and is being rented to two families who are not involved with the agricultural operation on the property; and
- 3) A portion of the winery structure, referred to as the "executive clubhouse" in the brochure, was sectioned off with partial walls to create rooms furnished with a bedroom set, an office, couches and a television, but it was not being used at the time; and
- 4) The amount of the garage space associated with the new residence may be in excess of what was previously approved by the SADC; and

- 5) The owners no longer keep their own horses on the property and a majority of the farm is now being rented to a nonprofit organization that takes in retired standard bred race horses and attempts to retain them for personal use and find them new homes; and
- 6) The nonprofit organization manages the property with its own staff, so the owners no longer employ an onsite farm manager.

Mr. Roohr stated that in November 2009 staff informed the owners of these potential violations of the deed of easement and previous approved resolutions and suggested that the owners reconsider auctioning the property. He stated that staff has had a very good relationship with Mr. Mazza and Mr. White and they have been very prompt in getting information to the SADC as requested and also coming up with some solutions to these problems. They have agreed that the agricultural labor unit as a tenant house is a violation and to resolve that issue they will be removing the tenants within forty-five (45) days. The winery building with the bedrooms in it, described possibly as overkill on the part of people marketing the property and that they would redo a brochure, which did not advertise it as two bedrooms. Mr. Mazza stated that the personal items would be removed from that area. The garage space, as he mentioned earlier can be worked out. Typically the SADC does not have a garage space limitation and the deed does not limit garage space. The only reason it is an issue is because it is referenced in one of the approval resolutions at a certain square footage but he doesn't think that Mr. Mazza built that he didn't originally show to the SADC, it just didn't present correctly in the resolution.

Mr. Roohr stated that the remaining issue yet to be resolved is the finished basement. Mr. Mazza and his attorney are present at today's meeting. He stated that they are marketing the property. They had postponed a December 3rd auction but would like to put it back on the market as soon as possible and hold the auction. Staff is asking the Committee to determine if they are violations and if so, that staff then work with Mr. Mazza and his attorney to come up with some resolution the remaining issues.

Mr. Roohr stated that SADC staff finds the following violations of the deed of easement and previously approved resolutions:

- 1) Any heated living space associated with the new residence in excess of the 3,436 square feet, as described in SADC Resolution FY03R6(18); and
- 2) Any garage space associated with the new residence in excess of 847 square feet, as described in SADC Resolution FY03R6(18); and
- 3) Use of the agricultural labor unit for two households where at least one member is not

engaged, full-time, in production agriculture on the property; and

4) Conversion or use of a portion of an agricultural structure for residential purposes without the approval of the SADC.

Mr. White addressed the Committee. He stated that he and Mr. Mazza have been working with Mr. Roohr, Brian Smith and Jason Stypinski regarding trying to find a resolution and clarifying some of the misunderstandings related to the property. He stated that the marketing agency that put together these brochures had no knowledge of the restrictions on the property and they put together those brochures in the most aggressive way that they could to get the right people to show up to bid on the auction. On the advise of the Office of the Attorney General they postponed that auction in order to clear up these issues. He stated that regarding the majority of the issues, he felt that they have come to some understanding with SADC staff as far as how they stand. The finished basement was a result of a misunderstanding on behalf of Mr. Mazza. He understood when he bought the property that there was a certain footprint to the original house that had 4,700 square feet of living space that he was bound to stay within. When the SADC approved the ability to build the new house he was under the misunderstanding that the footprint of the house was what was important to him and he wanted to stay within that, since it is the SADC's objective to maximize the amount of agricultural land that is available on the property. He stated that the basement was finished and heated and it is their hope to sell the property via auction within the next forty-five (45) days or so. He stated they are trying to seek resolution rather than, as was previously discussed with as an option between him and the Office of the Attorney General, disclose the issues to potential buyers. He stated that Mr. Mazza, even when he wrote to the SADC regarding the historical preservation of the house back in 2004, referenced the importance of keeping within the footprint of the original house so in his mind the basement was of no effect to the ultimate usage of the property by putting in some carpet, a ceiling, some lighting and some heat in the basement.

Mr. Waltman wanted to point out, and possibly Mr. Mazza is not aware of this, that it is an ongoing concern on ensuring that farmland stays affordable for the next generation of farmers so maybe it didn't look like a bigger impact on the land space but there are reasons for capping the size of the footprint and the square footage, so that someone that actually wants to farm and can farm in the future can actually afford to buy a farm. He stated that the comment was made earlier that you wanted to make sure the "right people" show up at the auction. He stated that is the problem, in that the "right people" that show up at these auctions are often times not farmers because they cannot afford to buy the land. He stated that this hurts the long-term viability of agriculture in this state.

Mr. White stated that Mr. Mazza wanted to build a house for him and his wife to grow

old in. His intent was not to build it as a potential investment or potential sale down the road. Mr. Siegel stated that he passes this property many times and he feels that the house would not be affordable for any of the farmers that are the neighbors.

Chairman Fisher stated that the question comes down to square footage. Mr. White stated that the question is square footage of heated living space, which is a restriction in the deed of easement. There is a basement that is finished that was not in the original plans. Chairman Fisher stated that there is a remedy for that, and the question comes down to whether it will be allowed to be maintained or will it have to be removed. Mr. White stated that they would ask that it would be a substantial hardship in the next forty-five days to remove the entire basement. He understands the concerns that have been expressed but it would be quite hard to accomplish in that timeframe. Chairman Fisher stated that not counting the timeframe issue, it comes down to whether the Committee will insist on that or not.

Ms. Craft stated that there was some discussion at the time of the planning of this house that there was a real recognition that it was a 3,500 square foot heated living space limitation. There was dialog back and forth on the issue and it states it in the resolution. She stated that she didn't want to leave the Committee with the impression, which is that they may have misinterpreted in Mr. White's statement, which was that the landowner only thought this was a footprint limitation because she doesn't think that is the case based on what is in the record. Mr. White stated that there was an erroneous assumption from his client's perspective that 3,500 square foot...the footprint was the house and from his perspective and from what he was explained by the people he was dealing with at that time was that the SADC purposes of the land was to maximize the actual acreage of land available to be used for agricultural purposes. In his client's mind he references the footprint of the house as minimizing the amount of space that he is using and taking out of agricultural use.

Ms. Craft stated that there had been specific dialog back and forth as to whether the hallway going to the basement should be counted or not because that was going to put them over the limitation and an acknowledgement that that wasn't part of the heated living space. Therefore she feels it is fair to say that the landowner understood what 3,500 square feet of heated living space meant when that house was built based on what is in the record, not just what the property owner sent in a letter.

Mr. White stated that it is their hope that they could leave the property as it stands so they could go through the sale process and if there is some sort of resolution in the middle ground that would be acceptable they would be interested in discussing that. Chairman Fisher asked what are the two extremes? Mr. White responded 1) it stays the way it is and the property gets sold to the new owner and we move on. The other extreme is that

they make an effort to remove the basement walls, etc. Chairman Fisher responded, not remove the basement but remove the living conditions. Mr. Roohr stated that the issue is not the fact that they have a basement. The way that the deed reads and the area that is the issue is the 3,500 square feet of heated living space. If it was an unfinished basement there would be no issues. The fact that they finished the basement put them over the square footage limitation. Ms. Reade asked what is the square footage of heated living space now, including the basement? Mr. Roohr stated that the top floors are 3,436 square feet, and the basement, even though he didn't measure it, he would guess to be in the area of 1,500 square feet of additional space. Ms. Reade stated that was significant and it is not that we are just trying to preserve farmland, we are also trying to preserve farmland accessibility and affordability to local agriculture.

Ms. Craft stated that the basement would need to be unfinished, it cannot be living space. She stated that heat can be flowing into a basement but once you finish it, it becomes living space and you are adding substantially to the value of the house. That is the whole point of the limitation in the first place. This was not part of the record and there was specific dialog between the landowner and the SADC specifically about what heated living space meant at the time. She is not convinced that the landowner did not understand that finishing the basement violates the deed. She stated that if the Committee says, well we understand you are in a jam...there is no footing it has for every other farm being preserved with this limitation on it. The next person comes in and says, well we didn't know and we didn't understand and we finished it. She stated that this is why it is such an important point and if the Committee is not willing to enforce limitations on house size then it should never have them in the program. Mr. Mazza stated that they could take the heater out.

Chairman Fisher stated that you either need to table this, resolve it and he either needs a motion to do it and you are either talking about removing the living space or your not. Dr. Dey asked that if it is a deed violation how can they sell it, which is what they want to do? Mr. White stated that the SADC staff significantly impaired Mr. Mazza's ability to sell the property by notifying him that they didn't want him to sell it, which caused him a significant delay and cost. Ms. Craft stated that the SADC was very concerned about being aware of violations of the deed, an impending sale to a buyer that doesn't understand that, and advertising the property that was not reflective that what was actually legal. She stated that staff notified your client and recommended that he hold off. However, the owner was free to do what he wanted. Mr. Mazza stated that he held off the auction so that he could straighten the issues up. He stated that if the SADC wants him to take the theater out, keep the ceiling in, take the rugs out he would be willing to do that. Mr. White stated that the question that was addressed by Ms. Craft was that the deed restriction references the heat. With the removal of the furnace for the downstairs, he is wondering if that is the resolution or the solution. Ms. Craft stated that

you would then have a theater and a bar and the next owner will come in and say, well there is not heat lets get that fixed and then we are back again with the next landowner.

Chairman Fisher stated that what he is hearing is to take it to the square footage requirement. How you get there is up to Mr. Mazza. He stated that the Committee is not telling you how to do it. Ms. Craft stated that staff drafted a resolution that is defining the violations as set forth and that is what staff wanted to get the Committee very clear on. Staff thought that the landowner would want the opportunity to suggest different alternatives to compliance and staff wanted to give that opportunity. What is important to the Committee is to let the world know that the property is in violation. Chairman Fisher stated that it is regrettable about the amount of money that Mr. Mazza spent to put the property into such beautiful shape because it is magnificent too look at. Unfortunately it doesn't allow itself to meet the square footage requirement restriction cap.

Mr. Mazza stated that he would like the Committee to be more defined in what he has to remove. Ms. Craft advised Mr. Mazza that what the SADC would ask is for him to speak to his attorney after this meeting and come back to the SADC with a description of what he intends to do and see if that would be amenable to the SADC. Mr. Mazza asked why he couldn't make that decision now? Ms. Craft responded because he didn't have a concrete plan. Ms. Reade asked Mr. Mazza to take up the issue with staff after the meeting and the Committee will take action on the resolution before it now. Mr. Stypinski stated that the resolution is to notice the violation. Chairman Fisher stated that the Committee will take action on the resolution before it and then if Mr. Mazza has a plan that he would like to try and discuss with staff about that can happen. He stated that the Committee has instructed staff to figure out a solution for Mr. Mazza to be able to have this workable.

It was moved by Mr. Siegel and seconded by Ms. Reade to approve Resolution FY2010R12(9) finding the following violations of the Deed of Easement and previously approved resolution relating to the Mario and Carol Mazza farm, known as Block 2732, Lot 39, consisting of 133 acres, in Hamilton Township, Mercer County:

- 1) Any heated living space associated with the new residence in excess of the 3,436 square feet, as described in SADC Resolution FY03R6(18); and
- 2) Any garage space associated with the new residence in excess of 847 square feet, as described in SADC Resolution FY03R6(18); and
- 3) Use of the agricultural labor unit for two households where at least one member is not engaged, full-time, in production agriculture on the property; and

4) Conversion or use of a portion of an agricultural structure for residential purposes without the approval of the SADC.

The motion was unanimously approved. (A copy of Resolution FY2010R12(9) is attached to and is a part of these minutes.)

Ms. Craft stated that if Mr. Mazza is looking for a clear answer, staff would suggest to unfinish the basement. She stated that she is uncomfortable being put in a position to make quick answers at a Committee meeting. She stated that if Mr. Mazza would like her to come out to the property to look at it she would be happy to do so. Mr. White asked can they determine how they are going to solve this problem, either through the staff or will they need to come back next month? Mr. Siegel stated that the resolution gives staff direction. Chairman Fisher stated that staff will work as expeditiously as it can once they receive a plan from the landowner.

G. Request for Final Approval – Former Rule Planning Incentive Grant Program

1. Christopher Farm, Delaware Township, Hunterdon County (Amended)

Ms. Winzinger referred the Committee to Resolution FY2010R12(10) for a request for amended final approval of the Armand Christopher Farm, known as Block 58, Lot 9, Delaware Township, Hunterdon County, consisting of approximately fifty (50) acres. There were two adjacent lots, known as Lot 9.01 and 9.02, that had been subdivided in 1999 and were not part of the application but were owned by Mr. Christopher. There was also a conservation and drainage easement along Alexauken Creek that was recorded as a condition of final subdivision approval for Lot 9.01 and 9.02. The SADC granted final approval in February 2005. Subsequent to that final approval the landowner discovered that upgrading and expanding the current septic system to accommodate a planned addition to the existing single-family residence (within the one (1) acre exception area) was not possible within the exception area or anywhere on the property near the exception. The landowner requested to amend the application to include Lots 9.01 and 9.02 to reconfigure and increase the size of the no severable exception area so as to accommodate lands suitable for septic improvements.

Ms. Winzinger stated that during staff evaluation of the application it became clear that the impact of the conservation/drainage easement was not fully understood during the original application review and certification of value. After further review it was determined that the conservation/drainage easement

significantly impacted access to the most northern part of Lot 9 and therefore the development potential of the property. Mr. Christopher applied to the New Jersey State Superior Court to rescind the conservation/drainage easement and to vacate the subdivision of Lots 9.01 and 9.02. The easement was rescinded via an order of declaratory judgment in December 2008 which required Mr. Christopher to prepare and record a Deed of Consolidation and Merger of former Lots 9.01 and 9.02, restoring his property to a single lot designated as Block 58, Lot 9, and supplying the property with the area needed to build expanded septic fields to service buildings in the exception area.

In February 2009 the SADC agreed to accept an amended application with certain conditions set forth in a letter dated February 28th and in April 09 Delaware Township submitted a revised application for 56.188 acres along with the Deed of Consolidation and Merger for formers Lots 9.01 and 9.02. Ms. Winzinger stated that updated appraisal reports were submitted by the two independent appraisers and the SADC certified a value per acre for the development easement based on zoning and environmental regulations in place as of January 2, 2004 and June 4, 2009 and the landowner has accepted the per acre value. She stated that staff recommendation is to grant amended final approval to this property as presented and discussed.

It was moved by Dr. Dey and seconded by Ms. Brodhecker to approve Resolution FY2010R12(10) granting amended final approval of the Armand Christopher Farm, known as Block 48, Lot 9, Delaware Township, Hunterdon County, 56.188 acres, at a State cost share of \$6,300.00 per acre for an estimated total of \$353,984.40 (60% of the certified market value and purchase price), as presented and discussed and subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2010R12(10) is attached to and is a part of these minutes.)

2. Edward and Andrea Mulligan, Pilesgrove Township, Salem County

Ms. Winzinger referred the Committee to Resolution FY2010R12(11) for a request for final approval for the Edward and Andrea Mulligan Farm, located in Pilesgrove Township, Salem County. She reviewed the specifics with the Committee. She stated that the New Jersey Conservation Foundation (NJCF) and Pilesgrove Township will be assisting each other in funding farms where they have a mutual interest within their PIG areas in order to further leverage the Township's available funding for preservation efforts. The NJCF agreed to utilize FY 2005 Federal Farm and Ranch Lands Protection Program funding to cover the

Township's cost-share of the easement purchase for this farm and that the landowners have agreed to the additional restrictions associated with the use of FRPP funds, including a three (3) percent impervious cover restriction equal to approximately one (1) acre of land available for the construction of agricultural infrastructure outside of the exception area. She stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Dr. Dey and seconded by Ms. Brodhecker to approve Resolution FY2010R12(11) granting final approval of the Edward and Andrea Mulligan Farm, Block 12, Lot 7.04, Pilesgrove Township, Salem County, totaling approximately 32 net acres, as presented and discussed, at a State cost share of \$8,940.00 per acre for an estimated total of \$286,080.00 (60% of the certified market value and 60% of the purchase price and estimated total cost), utilizing New Jersey Conservation Foundation Federal Farm and Ranch Lands Protection Program funding, which includes a three (3) percent impervious cover restriction equal to approximately one (1) acre of land available for the construction of agricultural infrastructure outside of the exception area. Approval is subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2010R12(11) is attached to and is a part of these minutes.)

H. Request for Final Approval – New Rule Planning Incentive Grant Program

Ms. Winzinger stated that the next six applicant resolutions are before the Committee for final approval. She reviewed the specifics of each resolution with the Committee and stated that staff recommendation is to grant final approval for each of the following landowners:

It was moved by Dr. Dey and seconded by Ms. Reade to approve Resolution FY2010R12(12) through Resolution FY2010R12(17) granting final approval to the following landowners as presented and discussed, subject to any conditions of said resolutions:

1. Burlington County/Julia Gattini (Resolution FY2010R12(12))
Block 201, Lot 3.04, North Hanover Township, Burlington County, 19.944 Acres
State cost share of \$8,850.00 per acre (59% of the certified market value and 60% of the purchase price) for a total grant of approximately \$176,504.40, utilizing competitive grant funds.

2. Burlington County/Ashmore Farm * (Resolution FY2010R12(13))
Block 171.01, Lot 4.01
Florence Township, Burlington County, 35.242 Net Acres
State cost share of \$6,488.76 per acre (60% of the adjusted easement purchase price, \$10,814.60 per acre) for a total grant of \$228,676.88, utilizing base grant funds only.

* Burlington County purchased this farm in fee simple and it was sold at auction at a cost of \$283,500.00 (\$7,822.42 per acre). Pursuant to N.J.A.C. 2:76-6.23(c), where the county has acquired land in fee simple title and is requesting an SADC cost share for the purchase of a development easement and the county resold the restricted premises prior to the SADC providing its cost share grant, the SADC's cost share grant shall be based on the development easement value determined pursuant to N.J.A.C. 2:76-10 and certified by the SADC, on the purchase price of the premises paid by the county minus the certified "after" value of the restricted premises or on the purchase price paid by the county less the payment received for resale of the restricted premises, whichever is less. It has been determined that the development easement value of \$10,814.60 (\$19,314.60 purchase price minus \$8,500.00 SADC certified "after" value) is the lower of the development easement values.

3. Burlington County/Adams Farm (Resolution FY2010R12(14))
Block 4102, Lot 3.01
Medford Township, Burlington County, 47.7 Acres
State cost share of \$6,000.00 per acre (60% of the certified market value and 60% of the purchase price) for a total grant of \$286,200.00, utilizing \$79,508.58 in remaining base grant funds and \$206,691.42 in competitive grant funds.
4. Sallie Toscano (Resolution FY2010R12(15))
Block 25, Lots 42.01 and 42.02
Cranbury Township, Middlesex County, 42 Net Acres
State cost share of \$18,000.00 per acre (60% of the certified market value and 60% of the purchase price) for a total grant of approximately \$778,680.00, utilizing base grant funds and utilizing a three (3) percent buffer for possible final surveyed acreage increases. Therefore 43.26 acres will be utilized to calculate the grant need.

Discussion: There is a very small exception area of 0.1 acre, which is a non severable exception and it is around and existing woodworking business.

Chairman Fisher stated that it seems like a small exception area to take and as we have seen landowners take out small areas and then come back to the SADC later and ask why can't we do this or that. Ms. Winzinger stated that staff can make sure that it is reiterated again to the landowner that there is a concern of the Committee before we send the final approval letters out. She stated that SADC staff have not spoken to the landowner and that staff is relying on the CADB to do all of that work. She stated that staff can make a strong advisory statement to make sure that this issue has been thoroughly gone over with the landowner.

5. Kin F. and Shao Ling Lum (Resolution FY2010R12(16))
Block 22, Lot 10
Cranbury Township, Middlesex County, 49.271 Net Acres
State cost share of \$11,400.00 per acre (60% of the certified market value and 60% of the purchase price) for a total grant of approximately \$578,538.60, utilizing base grant funds and utilizing a three (3) percent buffer for possible final surveyed acreage increases. Therefore 50.749 acres will be utilized to calculate the grant need.

Discussion: Dr. Dey had a concern that this meets the SADC's minimum standards based on the information supplied under Schedule "B" of the resolution. Ms. Winzinger stated that staff would double check the information to make sure everything checks out.

6. Estate of Jack R. Hansell/Greenway Flowers Farm
(Resolution FY2010R12(17))
Block 19, Lots 3 and 4, Washington Township, Morris County, 26 Acres
State cost share of \$52,750.00 per acre (60.58% of the certified market value and 55.53% of the purchase price) for a total grant of approximately \$1,412,645.00, utilizing remaining base grant funds of \$1,365,905.65 and competitive grant funds of 46,739.35, and utilizing a three (3) percent buffer for possible final surveyed acreage increases. Therefore 26.780 acres will be utilized to calculate the grant need.

The motion was unanimously approved. (A copy of Resolution FY2010R12(12) through Resolution FY2010R12(17) is attached to and is a part of these minutes.)

Note: Mr. Siegel left the meeting at this time (3:02 p.m.)

I. Request for Final Approval: Municipal Planning Incentive Grant Program

1. Santini Farm, Franklin Township, Warren County (FRPP)

This agenda item was forward to the Governor's Authorities Unit via substantive minutes for review and approval on December 15, 2009.

Ms. Winzinger referred the Committee to Resolution FY2010R12(18) for a request for final approval of the Clara Santini and Santino J. Santini Testament Trust Municipal Planning Incentive Grant Program application, known as Block 41, Lot 9, Franklin Township, Warren County, approximately 102 acres.

Ms. Winzinger stated that SADC staff is anticipating closing on this farm by the end of this year and that the SADC is utilizing Federal Farm and Ranch Lands Protection (FRPP) funds for this property, which requires its use by no later than March 31, 2010. If the FRPP grant funds are not utilized by that date, the funds will be lost. The landowner has agreed to the additional restrictions involved with the use of federal funds, including a maximum impervious coverage restriction of three (3) percent, equal to approximately 3.15 acres on the land being preserved. The Township as requested that the SADC use 100% of the FRPP grant (estimated at \$204,000.00) towards the SADC cost share. Staff recommendation is to grant final approval.

It was moved by Dr. Dey and seconded by Ms. Brodhecker to approve Resolution FY2010R12(18) granting final approval to the Clara Santini and Santino J. Santini Testament Trust application, known as Block 41, Lot 9, Franklin Township, Warren County, approximately 102 acres at a State cost share of \$3,800.00 per acre for an estimated total of \$387,600.00 (65.25% of the certified market value and 63.34% of the estimated total cost) and that the SADC cost share grant shall utilize an approximately total of \$183,600.00 from Franklin Township's Planning Incentive Grant funds and \$204,000.00 from the USDA, NRCS, Federal Farm and Ranch Lands Protection Program Fiscal Year 2008 grant funds, which includes a three (3) percent impervious coverage limitation, equal to approximately 3.15 acres on the land being preserved, as presented and discussed, subject to any conditions of said resolution. The motion approved. (Mr. Siegel was absent for this vote.) (A copy of Resolution FY2010R12(18) is attached to and is a part of these minutes.)

J. Request for Final Approval: Nonprofit Grant Program

1. New Jersey Conservation Foundation/D'Angelo-Palapoli Farm, Kingwood Township, Hunterdon County, 2008 Round

(FRPP)

This agenda item was forward to the Governor's Authorities Unit for review and approval via substantive minutes on December 15, 2009.

Mr. Knox referred the Committee to Resolution FY2010R12(19) for a request for final approval of the New Jersey Conservation Foundation (NJCF)/D'Angelo-Palapoli farm, Block 12, Lot 31 (p/o), Kingwood Township, Hunterdon County, approximately 45 acres.

Mr. Knox stated that the NJCF is utilizing Federal Farm and Ranch Lands Protection (FRPP) funds for this property, which requires its use by no later than March 31, 2010. The closing on this farm is part of a larger transaction, with Green Acres also participating for a portion of the land for open space purposes. A simultaneous closing by the SADC and Green Acres is desirable by the end of this year or no later than January, 2010. The landowner has agreed to the additional restrictions involved with the use of federal funds, including an impervious coverage restriction of five (5) percent, equal to approximately 2.25 acres available for the construction of agriculture related structures. Staff recommendation is to grant final approval.

It was moved by Mr. Waltman and seconded by Ms. Reade to approve Resolution FY2010R12(19) granting final approval to the New Jersey Conservation Foundation/D'Angelo-Palapoli farm, Block 12, Lot 31 (p/o), Kingwood Township, Hunterdon County, approximately 45 acres at a State cost share not to exceed \$10,384.00 per acre (total of approximately \$467,258.00 based on 45 acres) and that the SADC approves the New Jersey Conservation Foundation's use of its Federal Farm and Ranch Lands Protection funds, which includes an impervious coverage limitation of five (5) percent, as presented and discussed, subject to any conditions of said resolution. The motion approved. (Mr. Siegel was absent for this vote.) (A copy of Resolution FY2010R12(19) is attached to and is a part of these minutes.)

2. New Jersey Conservation Foundation/Fichera Farm, Mannington Township, Salem County - 2009 Round (Resolution FY2010R12(20))

Mr. Knox referred the Committee to Resolution FY2010R12(20) for a request for final approval of the New Jersey Conservation Foundation/Fichera Farm, located in Mannington Township, Salem County. He reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Mr. Waltman and seconded by Ms. Reade to approve Resolution FY2010R12(20) granting final approval to the following landowner as presented and discussed, and that if it is permissible by the Office of the Attorney General, this action would be included in the draft substantive minutes before the Committee.

1. New Jersey Conservation Foundation/Fichera Farm (Resolution FY2010R12(20))
Block 31, Lot 4; Block 32, Lot 9; Block 34, Lots 3 and 12; Block 35, Lot 1; Block 36, Lots 7 and 9
Mannington Township, Salem County, 273 Acres
State cost share grant not to exceed \$4,074.50 per acre, and utilizing New Jersey Conservation Foundation Federal Farm and Ranch Land Protection Program funds, which will include an impervious coverage limitation of two (2) percent (approximately five (5) acres) and other restrictions required under that program

The motion was approved. (Mr. Siegel was absent for this vote.) (A copy of Resolution FY2010R12(20) is attached to and is a part of these minutes.)

K. Request for Final Approval - Direct Easement Purchase Program - 2006 Round

1. B&B Farms, Galloway Township, Atlantic County

Mr. Knox referred the Committee to Resolution FY2010R12(21) for a request for final approval of the B&B Farms, Arthur R. Brown Jr. and Carolyn Brown, located in Galloway Township, Atlantic County. He reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Ms. Brodhecker and seconded by Ms. Reade to approve Resolution FY2010R12(21) granting final approval to B and B Farms - Carolyn and Arthur R. Brown, Jr., known as Block 472, Lot 3, Galloway Township, Atlantic County, 18 Net Acres, for the direct acquisition of the development easement at a value of \$4,900.00 per acre for a total of approximately \$88,200.00, as presented and discussed, and subject to any conditions of said resolution: The motion was approved. (Mr. Siegel was absent for this vote.) (A copy of Resolution FY2010R12(21) is attached to and is a part of these minutes.)

L. Fee Simple Program – Authorization for Resale of Fee Simple Farm

1. New Jersey Conservation Foundation/Sigler Farm
Franklin Township, Warren County

Mr. Knox referred the Committee to Resolution FY2010R12(22) dealing with the resale of real property for the New Jersey Conservation Foundation/Sigler Farm. He stated that in September 2007 the SADC granted final approval to the New Jersey Conservation Foundation (NJCF)/Sigler farm as a nonprofit fee simple grant application and the NJCF acquired fee simple title to the property in June 2008 and a deed of easement transferring a development easement from the NJCF to the SADC was recorded in June 2008. The SADC must approve any transfer in writing prior to the nonprofit offering for sale a conveyance of any of its interest in the land, pursuant to N.J.A.C. 2:76-16.1(a)3.ii(3). In June 2008 the SADC authorized the re-sale of the property conditioned upon further SADC approval if the NJCF could not sell the restricted property for more than \$8,000.00 per acre, which is the lowest appraised after value.

Mr. Knox stated that the NJCF has informed the SADC that they marketed the property for six months and received twelve inquiries with seven parties touring the property. The NJCF only received on valid offer to purchase the restricted property in the amount of \$6,000.00 per acre or \$373,044.00 based on 62.174 acres. He stated that the NJCF would like to sell the property for \$6,000.00 per acre, which is \$2,000.00 less per acre than the lowest appraised value and \$2,700.00 per acre less than the certified after value of \$8,700.00. He stated that the NJCF has submitted appraisal work that indicates an after value of \$6,000.00 per acre in support of the tentative sales price and the SADC review appraiser has reviewed that report and finds that it is in conformance with acceptable appraisal practices. He stated that the SADC would receive back 45% of the net proceeds upon the sale of the property. Staff recommendation, based on the NJCF's inability to sell the restricted property for more than \$6,000.00 per acre is to approve NJCF's sale of this farm for \$6,000.00 per acre, or \$373,044.00.

It was moved by Ms. Reade and seconded by Dr. Dey to approve Resolution FY2010R12(22) granting authorization for the resale of the New Jersey Conservation Foundation/Sigler Farm, known as Block 71, Lot 1, Washington Township, and Block 49, Lot 1, Franklin Township, Warren County, 62.174 Acres for \$6,000.00 per acre or \$373,044.00, as presented and discussed, subject to any conditions of said resolution. The motion was approved. (Mr. Siegel was absent for this vote.) (A copy of Resolution FY2010R12(22) is attached to and is a part of these minutes.)

PUBLIC COMMENT

Mr. Romano from the New Jersey Conservation Foundation thanked Mr. Knox and Ms. Craft for expediting some of their projects to meet deadlines. He stated that regarding the Fichera property, the NJCF is under a time limit and the landowner has made it clear that unless they close by January 31st, he will walk away from the deal and withdraw his

application. He stated that the landowner has received an offer from a solar company, which is a significant offer. He stated that the Committee would be reviewing draft substantive minutes today for the Palapoli farm. He stated that the New Jersey Conservation Foundation is requesting that the final approval that the Committee just took action on for the Fichera farm be considered for inclusion in those substantive minutes. He stated that if they waited meeting and then the Governor's fifteen day review period it would be too late. He realized that there could be a question on whether inclusion of this action in the substantive minutes would be allowable since it was not listed that way during public notice of the agenda. He stated that if it is not possible then possibly the SADC could hold a special telephone conference meeting with proper public notice to approve substantive minutes for this item. Deputy Attorney General Stypinski stated that he would have to look into the matter and advise SADC staff. Mr. Romano stated that possibly you could approve it subject to the review and approval of the Attorney General's Office. The Committee was agreeable to adding it to the substantive minutes, subject to the review and approval of the Office of the Attorney General. Ms. Craft stated that when the Committee reviews those substantive minutes, then we will ask for a motion to add this item to those minutes, subject to the review by the Attorney General's Office.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Thursday, January 28, 2010, beginning at 9:00 a.m. Location: **Health/Agriculture Building, First Floor Auditorium**

CLOSED SESSION

At 3:25 p.m. Dr. Dey moved the following resolution to go into Closed Session. The motion was seconded by Mr. Requa and unanimously approved.

“Be it resolved, in order to protect the public interest in matters involving minutes, real estate, attorney-client matters and personnel, pursuant to N.J.S.A. 10:4-12, the NJ State Agriculture Development Committee declares the next one hour to be private to discuss these matters. The minutes will be available one year from the date of this meeting.”

Action as a Result of Closed Session

A. Real Estate Matters – Certification of Values

County Planning Incentive Grant Program

It was moved by Ms. Brodhecker and seconded by Dr. Dey to certify the development easement values for the following landowners as presented and discussed in closed session:

1. Daniel C. and Diane F. Cruzan
Block 11, Lot 6
Hopewell Township, Cumberland County, 93 Acres
2. Jeffrey and Deborah Garton Farm # 2
Block 603, Lots 8 and 9
Upper Deerfield Township, Cumberland County, 38 Acres
3. Heilig Orchards, Inc. (Robert and Linda Heilig) (**Amended Certification of Value**)
Block 265, Lots 3, 6.01, 6.02, 3.01, 9.01 and 10
Mantua Township, Gloucester County, 106 Acres
4. Michael Minch et al Heirs to Estate of Russell P. Minch
Successor to J. P. Minch h/w
Block 17, Lot 1
Hopewell Township, Cumberland County, 11 Acres

The motion was approved. (Mr. Siegel was absent for this vote.) (Copies of the Certification of Value Reports are attached to and are a part of the Closed Session Minutes.)

Note: Ms. Brodhecker recused herself from any discussions/action pertaining to the three (3) Lewisburg Road Acquisitions, LLC farms to avoid the appearance of a conflict of interest. Ms. Brodhecker is the Chairperson of the Sussex County Agriculture Development Board.

It was moved by Ms. Reade and seconded by Dr. Dey to certify the development easement values for the following landowners as presented and discussed in closed session:

1. Sussex County/Lewisburg Road Acquisitions, LLC # 1
Block 16, Lots 3 and 5
Wantage Township, Sussex County, 43 Acres
2. Sussex County/Lewisburg Road Acquisitions, LLC # 2
Block 17, Lot 38

Wantage Township, Sussex County, 104 Acres

3. Sussex County/Lewisburg Road Acquisitions, LLC # 3
Block 17, Lot 1.01
Wantage Township, Sussex County, 153 Acres

The motion was approved. (Mr. Siegel was absent for the vote. Ms. Brodhecker recused herself from the vote.) (Copies of the Certification of Value Reports are attached to and are a part of the Closed Session minutes.)

Municipal Planning Incentive Grant Program

It was moved by Mr. Requa and seconded by Dr. Dey to certify the development easement values for the following landowner as presented and discussed in closed session:

1. RTR New Home Building Contractors, Inc. (Ratko Calukovic)
Block 55, Lot 20.03
Upper Freehold Township, Monmouth County
49 Acres

The motion was approved. (Mr. Siegel was absent for the vote.) (A copy of the certification report is attached to and is a part of the Closed Session minutes.)

Nonprofit Grant Program

It was moved by Dr. Dey and seconded by Mr. Requa to certify the development easement values for the following landowners as presented and discussed in closed session:

1. Joseph, Margaret and Mary Keris/Monmouth Conservation Foundation
Block 12, Lot 8 and 8.05
Upper Freehold Township, Monmouth County, 22 Acres
2. SJLWT/Rosemary Yetneck
Block 230, Lot 6; Block 233, Lot 13
Carneys Point Township, Salem County, 75 Acres
3. SJLWT/Samuel DiGregorio, Jr.
Block 230, Lot 7 and 23

4. Carneys Point Township, Salem County, 67 Acres
The Land Conservancy of New Jersey/S&C Santini
Block 43, Lots 1 and 11
Franklin Township, Warren County, 74 Acres
5. Hunterdon Land Trust Alliance/Stamets Farm
Block 25, Lot 60
Holland Township, Hunterdon County, 182 Acres

The motion was approved. (Mr. Siegel was absent for the vote.) (Copies of the certification reports are attached to and are a part of the Closed Session minutes.)

B. Attorney/Client Matters

None

C. Review/Approval of Substantive Minutes of December 10, 2009

These substantive minutes were forwarded to the Governor's Authorities Unit for review and approval on December 15, 2009.

Ms. Craft stated that a motion is needed to amend and the substantive minutes to include the Committee's action on the NJCF/Fichera farm, subject to the review and approval by the Attorney General's Office to include that item and to approve the substantive minutes as presented and discussed.

1. Final Approval - Municipal Planning Incentive Grant Program
 - a. Santini Farm, Franklin Township, Warren County (FRPP)
2. Final Approval - Nonprofit Grant Program
 - a. New Jersey Conservation Foundation/D'Angelo-Palapoli
Kingwood Township, Hunterdon County (FRPP)
3. Certification of Values - Nonprofit Grant Program
 - a. SJLWT/Yetneck, Carneys Point Township, Salem Co. (FRPP)
 - b. SJLWT/DiGregorio, Carneys Point Township, Salem Co. (FRPP)

Ms. Craft stated that the SADC is anticipating utilizing Federal Farm and Ranch Lands Protection Program (FRPP) funds these properties, which requires its use within a relatively short term. If not utilized by that date, the funds will be lost. Staff

recommendation is to approve the substantive minutes, as presented and discussed.

It was moved by Dr. Dey and seconded by Ms. Reade to approve the Open Session and Closed Session substantive minutes of December 10, 2009 (portions of), as presented and discussed and to include the final approval action taken today by the Committee regarding the New Jersey Conservation Foundation/Fichera farm, subject to review and approval by the Office of the Attorney General regarding whether this action can be added to the substantive minutes. The motion was approved. (Mr. Siegel was absent for the vote.)

ADJOURNMENT

There being no further business, it was moved by Ms. Reade and seconded by Mr. Requa and unanimously approved to adjourn the meeting at 3:54 p.m.

Respectfully Submitted,

Susan E. Craft, Executive Director
State Agriculture Development Committee

Attachments