

**STATE AGRICULTURE DEVELOPMENT COMMITTEE**  
**Department of Agriculture**  
**Market and Warren Streets**  
**1<sup>st</sup> Floor Auditorium**  
**Trenton, NJ 08625**

**REGULAR MEETING**

**JUNE 23, 2011**

Chairman Fisher called the meeting to order at 9:13 a.m. Ms. Payne read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Roll call indicated the following:

**Members Present**

Douglas Fisher, Chairperson  
Richard Boornazian (rep. DEP Commissioner Martin) (Left at 11:45 a.m.)  
Fawn McGee (rep. DEP Commissioner Martin) (Arrived at 11:45 a.m.)  
Ralph Siegel (rep. State Treasurer Andrew P. Sidamon-Eristoff)  
James Requa (rep. DCA Commissioner Grifa)  
Alan Danser  
Torrey Reade

**Members Absent**

Brian Schilling (rep. Executive Dean Goodman)  
Jane Brodhecker  
Denis Germano  
James Waltman

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

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**Others present as recorded on the attendance sheet:** Heidi Winzinger, Hope Gruzlovic, Brian Smith, Charles Roohr, Timothy Brill, Daniel Knox, Paul Burns, Steve Bruder, Patricia Riccitello and Sandy Giambrone, SADC staff, Daniel Pace, Mercer County Agriculture Development Board, Nicole Crifo and Alison, Governor's Authorities Unit, Nicole Goger, New Jersey Farm Bureau, Barbara Ernst, Cape May County Agriculture Development Board, Ryan Allen, Ocean County Agriculture Development Board, Katherine Coyle, Morris County Agriculture Development Board,

James and Ann Nawn, Landowners, Montgomery Township, Somerset County, Robert Smith, Landowner, Washington Township, Morris County, James Gregory, Attorney for Washington Township Municipal Utilities Authority, Michael Pucilowski, Executive Director, Washington Township Municipal Utilities Authority, Joseph Fischer, Geoscience Services for Washington Township Municipal Utilities Authority.

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## **Minutes**

A. SADC Regular Meeting of May 26, 2011 (Open Session)

It was moved by Ms. Reade and seconded by Mr. Danser to approve the open session minutes and the closed session minutes of the SADC regular meeting of May 26, 2011. The motion was unanimously approved.

## **REPORT OF THE CHAIRPERSON**

Chairman Fisher deferred his comments to the Report of the Executive Director.

## **REPORT OF THE EXECUTIVE DIRECTOR**

Ms. Payne discussed the following with the Committee:

- Appropriation Bills

Ms. Payne stated that the appropriation bills for the 2009 bond funds have made it through the Senate and are up for a vote in the Assembly. Assuming that they pass today and assuming the Governor signs them in a timely fashion we would anticipate having funding available beginning in August or September so that we can begin doing closings.

- Various Legislation

Ms. Payne stated that staff has spent a lot of time in the last month dealing with various legislation, two of which will be discussed later in the meeting.

- Solar AMP

Ms. Payne stated that staff is working through a technical issue; however staff is confident that the solar AMP will be published in the first week of August. Assuming that publication date occurs, then the solar AMP will be operative and

available to provide right to farm protection.

- Wind AMP and rules for Preserved Farms

Ms. Payne stated that staff is working on the wind AMP and rules for preserved farms. There has been a lot of legislation that deals with wind. Staff is keeping a watchful eye on that trying to understand how it affects the AMP work. Staff will be coming forth with the draft AMP.

- Mercer County Auctions

Ms. Payne stated that Dan Pace from the Mercer County Agriculture Development Committee has provided some brochures on upcoming auctions on July 21<sup>st</sup>. Mercer County will be auctioning off six farms totaling approximately 200 acres.

### **COMMUNICATIONS**

Ms. Payne reminded the Committee to take home the various articles provided in the meeting binders.

### **PUBLIC COMMENT**

None

### **NEW BUSINESS**

#### **A. Eight Year Farmland Preservation Program – Renewals, Terminations and Withdrawals**

Ms. Winzinger referred the Committee to the Eight Year Farmland Preservation Program Activity Report showing six terminations of eight-year programs as follows:

1. John Schleicher (SADC #0808-07M-01/08-0004-8F)  
Harrison Township, Gloucester County, 36 Acres  
Soil and water conservation cost share funds remaining at time of termination: \$ Zero (\$0.00) - expended \$21,600.00
2. George Cassaday, Jr. (SADC #1714-17F-01/17-0017-8F)  
Upper Pittsgrove Township, Salem County, 88 Acres  
Soil and water conservation cost share funds remaining at time of termination: \$28,777.91 (expended \$8,822.09)

3. Torrey Reade (SADC #1705-03F-01)  
Lower Alloways Creek, Salem County, 126 Acres  
Soil and water conservation cost share funds remaining at time of termination: \$42,161.93 (expended \$438.07)
4. Frank Battiato (SADC #1706-12F-01/17-0018-8F)  
Mannington Township, Salem County, 163 Acres  
Soil and water conservation cost share funds remaining at time of termination: \$36,509.45 (expended \$9,790.55)
5. Robert Hluchy (SADC #17-0016-8F/1711-09F-01)  
Pittsgrove Township, Salem County, 116.70 Acres  
Soil and water conservation cost share funds remaining at time of termination: \$36,995.00 (expended \$4,675.00)
6. Carl and Edward Olbrich (SADC # 17-0015-8F/1711-11F-01)  
Pittsgrove Township, Salem County, 101.47 Acres  
Soil and water conservation cost share funds remaining at time of termination: \$35,622.00 (expended \$4,525.00)

Ms. Winzinger stated that there were no renewals of eight year programs and there were no withdrawals of eight year programs. She stated that the activity report was for information purposes and that no Committee action is needed.

**B. Resolution for Final Approval – FY 2009 Planning Incentive Grant Program Municipal Planning Incentive Grant Program Application, Including Comprehensive Farmland Preservation Plan and Project Area Summaries**

**1. Howell Township, Monmouth County**

Mr. Bruder referred the Committee to Resolution FY2011R6(1) for a request for final approval of the Howell Township, Monmouth County Municipal Planning Incentive Grant Program application, including the comprehensive farmland preservation plan and project area summaries. He reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval.

It was moved by Mr. Danser and seconded by Ms. Reade to approve Resolution FY2011R6(1) granting final approval to the Howell Township, Monmouth County Planning Incentive Grant Application, Including Comprehensive Farmland Preservation Plan and Project Area Summaries, as presented and discussed, subject to any conditions of said resolution. The motion was approved. (Mr. Siegel abstained.) (A copy of

Resolution FY2011R6(1) is attached to and is a part of these minutes.)

**C. Resolution for Final Approval – Township Planning Incentive Grant Program**

1. Thomas and Emily Clayton, Howell Township, Monmouth County

Ms. Winzinger referred the Committee to a request for final approval under the Township Planning Incentive Grant Program for the Thomas and Emily Clayton farm, located in Howell Township, Monmouth County. She reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval as presented and discussed. Ms. Winzinger noted that there was an error in the calculations listed on page two of the resolution. She stated that the resolution lists Howell Township's cost share at \$168,800.00. The correct amount should be \$168,000.00. Also, the percentage for Monmouth County was listed at 40%. The correct percentage should read 24%. She stated that staff would make the necessary corrections to the finalized resolution.

It was moved by Mr. Requa and seconded by Mr. Danser to approve Resolution FY2011R6(2), granting final approval to the following landowner as presented and discussed, with the above mentioned corrections being made to the finalized resolution and subject to any conditions of said resolution:

1. Thomas and Emily Clayton  
Block 154, Lot 11, Howell Township, Monmouth County, 28 Acres  
State cost share of \$22,500.00 per acre for an estimated total of \$630,000.00 (60% of the certified market value and purchase price and estimated total cost).

The motion was unanimously approved. (A copy of Resolution FY2011R6(2) is attached to and is a part of these minutes.)

**D. Resolution for Final Approval – County Planning Incentive Grant Program**

Ms. Winzinger referred the Committee to four (4) requests for final approval under the County Planning Incentive Grant Program. She reviewed the specifics of each request with the Committee and stated that staff recommendation is to grant final approvals as presented and discussed.

Ms. Reade stated that the resolution for the Griffin farm indicates the county as Cumberland County. She stated that it should read Burlington County.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolution FY2011R6(3) through Resolution FY2011R6(6), granting final approval to the following landowners as presented and discussed, subject to any conditions of said resolutions and with the above mentioned correction to the Griffin Farm:

1. Clayton Block Company, LLC (Resolution FY2011R6(3))  
Block 7, Lot 2, New Hanover Township, Burlington County, 196.3 Acres  
State cost share of \$1,701.11 per acre (74.37% of the purchase price), subject to the appropriation of SADC FY2011 funding (2009 Bond Referendum Funds) by the Legislature and approval by the Governor and the availability of those funds. Base grant funds will be utilized.
2. Harold C. and Deanna K. Griffin (Resolution FY2011R6(4))  
Block 839, Lots 4.01 and 10, Pemberton Township, Burlington County, 104.073 Acres  
State cost share of \$2,021.50 per acre (73.64% of the certified market value), subject to the appropriation of SADC Fy2011 funding (2009 Bond Referendum Funds) by the Legislature and approval by the Governor and the availability of those funds. Base grant funds will be utilized.

The Griffin property has 4.25 Pinelands Development credits or 16.25 rights, which all but one right will be retired at closing. The one right will be for a future residence within an exception area.

3. Brian A. Krause (Resolution FY2011R6(5))  
Block 402, Lot 1, Chesterfield Township; Block 101, Lot 2, North Hanover Township, Burlington County, 96.075 Total Acres  
State cost share of \$4,250.00 per acre (63.44) of the certified market value and purchase price), subject to the appropriation of SADC FY2011 funding (2009 Bond Referendum Funds) by the Legislature and approval by the Governor and availability of those funds. Base grant funds will be utilized.
4. Kevin A. Coll # 2 (Resolution FY2011R6(6))  
Block 25, Lot 10.02, Stow Creek Township, Cumberland County,

45.32 Acres

State cost share of \$3,450.00 per acre (67.65% of the certified market value and purchase price), subject to the appropriation of SADC FY2011 funding (2009 Bond Referendum Funds) by the Legislature and approval by the Governor and availability of those funds. Both base grant funds and competitive funds will be utilized. Cumberland County has requested to encumber an additional three (3) percent buffer for possible final surveyed acreage increases, therefore, 45.32 acres will be utilized to calculate the grant need.

The motion was unanimously approved. (A copy of Resolution FY2011R6(2) through Resolution FY2011R6(6) is attached to and is a part of these minutes.)

**E. Resolution for Final Approval – State Acquisition Program**

Mr. Knox referred the Committee to three (3) requests for final approval under the State Acquisition Program. He reviewed the specifics of each request with the Committee and stated that staff recommendation is to grant final approvals as presented and discussed.

It was moved by Mr. Danser and seconded by Ms. Reade to approve Resolution FY2011R6(7) through Resolution FY2011R6(9), granting final approval to the following landowners as presented and discussed, subject to any conditions of said resolutions:

1. Robert and Barbara Holcombe (Resolution FY2011R6(7))  
Block 34, Lot 34, East Amwell Township, Hunterdon County, 92 Net Acres  
Direct acquisition of the development easement at a value of \$13,500.00 per acre for a total of approximately \$1,242,000.00.

It is noted that there is an approximate six (6) acre nonseverable exception area containing barns and equine infrastructure. The exception also contains an existing duplex. The exception will be restricted to a duplex or one single family home.

2. Coombs Properties, LLC (Resolution FY2011R6(8))  
Block 103, Lot 4, Upper Deerfield Township, Cumberland County  
Block 79, Lot 7, Upper Pittsgrove Township, Salem County  
Block 1401, Lot 10, Pittsgrove Township, Salem County, 121 Net Acres

Acquisition of the development easement at a value of \$6,400.00 per acre for approximately \$774,400.00, based on 121 acres.

It is noted that there will be one Residual Dwelling Site Opportunity (RDSO) associated with this property.

3. Zoe Sarbanes Pappas (Resolution FY2011R6(9))  
Block 18, Lot 2, Mannington Township, Salem County, 158 Net Acres  
Acquisition of the development easement at a value of \$5,500.00 per acre for approximately \$869,000.00 based on 158 Net Acres.

It is noted that the landowner is not requesting any exception areas or housing opportunities.

The motion was unanimously approved. (A copy of Resolution FY2011R6(7) through Resolution FY2011R6(9) is attached to and is a part of these minutes.)

**F. Farmland Stewardship**

**1. Finding of a Violation**

- a. All Monmouth Landscapes, Manalapan Township, Monmouth County

Mr. Roohr referred the Committee to Resolution FY2011R6(1) regarding All Monmouth Landscaping. This property was originally acquired by the SADC in June 2001 (former Visceglia farm) known as Block 60, Lot 3 and Block 61, Lot 10 in Manalapan Township, Monmouth County, comprising approximately 48 acres. All Monmouth Landscaping and Design, Inc. acquired the property from the SADC through a fee simple auction in April 2002.

Mr. Roohr stated that on various occasions in 2006 through 2011 SADC staff visited the property and met with the representatives of All Monmouth Landscapes including its president, Don Gural. Staff the visits staff had found an approximate one acre are on Block 61, Lot 10 being used as a dumping area for landscape and hardscape debris and an area surrounding the farm office building on Block 60, Lot 3 being used for storage of nonagricultural material, equipment and supplies associated with the owners' landscape construction business. On various occasions the SADC did inform the owner in writing of the potential violations of the Deed of Easement (DOE) (specifically paragraphs 3, 4, 5 and 6).

Mr. Roohr stated that after a 2009 site visit, Mr. Gural explained that the brick, stone and concrete being stockpiled on Block 61, Lot 10 was intended to be used for the

development of a driveway to service the future house (one RDSO allocated to the property) that they intend to construct on this lot. In July 2009 the SADC advised the owner that stockpiling of such materials for purposes of creating a driveway was a violation of the DOE, until such time as the potential RDSO unit received approval from the SADC.

Mr. Roohr stated that in March 2011 during an annual monitoring site visit of the property it was found that all of the items previously identified as violations still remained. On June 15<sup>th</sup> the owner was notified that staff would be taking the matter of potential violations to the Committee for review at today's meeting. On June 16<sup>th</sup> the SADC received correspondence from the owner explaining that the concrete pieces were being stockpiled for use as base for an access road they intend to construct some time in the future.

Mr. Roohr stated that staff finds the following violations of the DOE:

- 1) Use of the Premises as a staging area for the dumping/storage of vegetative (sod, brush, tree branches, soil, mulch and compost) and hardscape materials (paving stone, concrete, wood, wire, metal) derived from a landscaping business run by the owner;
- 2) Use of the Premises to store materials, equipment and supplies for a nonagricultural business.

Staff recommends that the owners shall have 30 days from the effective date of this resolution, if approved by the Committee, to restore the property to a condition which is not in violation of the DOE or the associated approval resolutions and that staff also requests authorization for the SADC Executive Director, through the Office of the Attorney General to seek legal resolution to the violations of the DOE on this property, if necessary.

Chairman Fisher asked if the landowner is aware that the SADC may be seeking legal action regarding this issue. Mr. Roohr responded they were aware. Chairman Fisher asked that if the Committee decides that the SADC can go forward with legal action would staff notify the landowner first so that they would have another opportunity to take care of the matter. Mr. Roohr stated that it would be the prerogative of the SADC Executive Director but the SADC would attempt to resolve the issue without legal action but staff has been trying to do that for a few years now.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve resolution FY2011R6(10) finding the following violations of the Deed of Easement on the property known as Block 60, lot 3 and Block 61, Lot 10, owned by All Monmouth Landscaping and Design, Inc.:

- 1) Use of the Premises as staging area for the dumping/storage of vegetative (sod, brush, tree branches soil, mulch and compost) and hardscape materials (paving stone, concrete, wood, wire, metal) derived from a landscaping business run by the Owner; and
- 2) Use of the Premises to store materials, equipment and supplies for a non-agricultural business.

The Owners shall have 30 days from the effective date of this resolution to restore the Premises to a condition which is not in violation of the Deed of Easement or the associated approval resolutions. The SADC authorizes the Executive Director, through the Office of the Attorney General, to seek legal resolution to the violations of the Deed of Easement on this property, if necessary. The motion was unanimously approved. (A copy of Resolution FY2011R6(10) is attached to and is a part of these minutes.)

Mr. Danser asked if Deputy Attorney General Stypinski if he would be more comfortable if the owner was given sixty days rather than thirty days so that the owner can't come back and say they started clean up but didn't have enough time. Mr. Stypinski stated that would be fine. He questioned if the property was for sale. Mr. Roohr stated that it was but he didn't know if it was still up for sale. Mr. Stypinski stated that you would not want to have the property sell and then bring up violations to the new owners. Ms. Payne stated that staff is trying to resolve this prior to it being sold. Chairman Fisher asked if thirty days would be enough time to have the debris removed. Mr. Roohr responded yes. The Resolution was left at thirty days.

## **2. Solar Installation on Existing Rooftops (3 requests)**

Mr. Roohr referred the Committee to three requests for solar installations on preserved farms. He stated that having reviewed these first three applications for solar energy generation facilities on existing structures, staff has come to a realization that the process is somewhat burdensome and feels that the process can be better streamlined in various areas going forward. He stated that staff will be reaching out to the county boards of agriculture (CADB) administrators to see if they would be willing to let their landowners come to the CADB offices and obtain most of the required documents there, if they aren't available from the SADC. Some of the administrators that he has spoken to already are comfortable with the idea.

Chairman Fisher stated that prior to this new legislation you didn't need approval by the SADC to do what these three applicants are doing. The legislation changed all that and caused the SADC to provide approval. Now there is this process that is somewhat cumbersome but staff will be streamlining that process. However, this relates only to

existing buildings. Ms. Payne stated that the statute states that on preserved farms, the SADC has to approve all applications, whether they are on the exception area or if they are on the preserved farm, prior to the start of construction of these facilities. The SADC is required to adopt regulations governing its review of these facilities, and must confine its review to the statutory provisions indicated. However, the legislation also states that the SADC has to work with the NJ DEP to adopt regulations dealing with impervious cover. She stated that the Office of the Attorney General reviewed the legislation and has indicated its support of the SADC's ability to accept the applications for roof tops because it is not creating any new impervious cover, which the legislation directed there be rules on. Anything dealing with new impervious cover will have to be dealt with under our rules. Chairman Fisher stated that he wants to make sure the word gets out correctly, based on these first three applications. We want to make sure that everyone absolutely understands what they can and cannot do regarding roof top installations.

a. Garrison Farm, Pittsgrove Township, Salem County

Mr. Roohr referred the Committee to Resolution FY2011R6(11) for a request by Donald and Louise Garrison, owners of Block 1403, Lot 3; Block 1404, Lot 4; block 1405, Lots 25, 29, 31, 32, located in Pittsgrove Township, Salem County, 144 Acres to construct a photovoltaic solar energy generation facility on a portion of the roof top of an existing building that is located on the property. The building is an equipment barn that was constructed in 2002 and the roof top is approximately 4,200 square feet in size. Mr. Roohr reviewed the specifics of the request with the Committee as outlined in Resolution FY2011R6(11). Staff finds that the owner has complied with all of the provisions of NJSA 4:1C-32.4 concerning the installation of a photovoltaic solar energy generation facility, structures and equipment on the property and recommends approval of the construction, installation, operation and maintenance of the photovoltaic energy generation facility, structures and equipment consisting of approximately 2,100 square feet and having a rated capacity of 16.9 kW of energy to be located on the roof top of an existing building as identified in said resolution.

It was moved by Mr. Danser and seconded by Mr. Siegel to approve Resolution FY2011R6(11), as presented and discussed and subject to any conditions of said resolution. The motion was approved. (Ms. Reade abstained.) (A copy of Resolution FY2011R6(11) is attached to and is a part of these minutes.)

b. Mildred Kessel, Chesterfield Township, Burlington County

Mr. Roohr referred the Committee to Resolution FY2011R6(12) for a request by Mildred Kessel, owner of Block 1002, Lot 11, in Chesterfield Township, Burlington County, 118 acres to construct a solar energy generation facility, structures and equipment on an existing structure located on her property. The owner is seeking SADC approval for the

construction of a photovoltaic solar energy generation facility on a portion of the roof top of two existing buildings located on the property. The buildings that will support the solar energy generation facility are the farm equipment storage and garage buildings that were constructed prior to 1990 and their total roof tops are approximately 3,500 square feet in size. Mr. Roohr reviewed the specifics of the request with the Committee as outlined in Resolution FY2011R6(12). Staff finds that the owner has complied with all of the provisions of NJSA 4:1C-32.4 concerning the installation of a photovoltaic solar energy generation facility, structures and equipment on the property and recommends approval of the construction, installation, operation and maintenance of the photovoltaic energy generation facility, structures and equipment consisting of approximately 1,750 square feet and having a rated capacity of 17.3 kW of energy to be located on the roof tops of two existing buildings as identified in said resolution.

It was moved by Mr. Danser and seconded by Ms. Reade to approve Resolution FY2011R6(12), as presented and discussed and subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2011R6(12) is attached to and is a part of these minutes.)

c. Everett and Eva McLaren, Springfield Township, Burlington County

Mr. Roohr referred the Committee to Resolution FY2011R6(13) for a request by Everett and Eva McLaren, owners of Block 802, Lots 2 and 5.01, located in Springfield Township, Burlington County, consisting of 91 acres, to construct a photovoltaic solar energy generation facility on a portion of the roof top of an existing building that is located on the property within a nonseverable exception. The building is an equine stable that was constructed in 2001 and the roof top is approximately 5,800 square feet in size. Mr. Roohr reviewed the specifics of the request with the Committee as outlined in Resolution FY2011R6(12). Staff finds that the owner has complied with all of the provisions of NJSA 4:1C-32.4 concerning the installation of a photovoltaic solar energy generation facility, structures and equipment on the property and recommends approval of the construction, installation, operation and maintenance of the photovoltaic energy generation facility, structures and equipment consisting of approximately 2,900 square feet and having a rated capacity of 40.2 kW of energy to be located on the roof top of an existing building as identified in said resolution.

It was moved by Mr. Danser and seconded by Ms. Reade to approve Resolution FY2011R6(13) as presented and discussed and subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2011R6(13) is attached to and is a part of these minutes.)

**3. Request for Agricultural Labor Units**

- a. Christopher Emmet – Black River Farm, Tewksbury Township and Readington Township, Hunterdon County

Mr. Roohr referred the Committee to Resolution FY2011R6(14) for a request by Christopher Emmet, owner of Block 48, Lot 5 in Tewksbury Township and Block 12.01, Lot 15 in Readington Township, Hunterdon County, comprising 134.1 total acres to construct an agricultural labor unit on the property. At the present time, the property has a single family residence, a two unit dormitory style residence and a single room efficiency apartment above a garage, all used for housing of farm employees, as well as the owner's single family residence, a 30-stall stable, a 20-stall stable, indoor riding arena and several agricultural outbuildings. The entire infrastructure on the property is located within two nonseverable exception areas totaling approximately ten acres. The owner proposes to build a four bedroom single family residence of approximately 2,200 square feet, in a wooded location just south of the 9.4 acre nonseverable exception area and the owner's proposal is for two or three individuals to live in the new unit.

Mr. Roohr stated that the SADC's practice on agricultural labor unit requests have been to allow them in cases where the agricultural labor unit is needed to house laborers required to support the agricultural production aspects of the farm, where there was an existing need for that production labor and there were not other viable housing options, either on the farm or near the farm.

Mr. Roohr reviewed the specifics of the request as outlined in Resolution FY2011R6(14). He stated that Mr. Emmet, Sr. bred and raised thoroughbred race horses in the 1980's and that after getting out of that business in the late 1980's the farm transitioned to a boarding operation. The main activity of the farm is currently equine boarding and there is currently no breeding taking place onsite. Mr. Emmet, Sr. would like to reestablish a breeding operation and proposes to breed, raise and train hunter/jumper horses and that the proposed breeding operation would consist of two or three foals per year. The stated intent for constructing additional agricultural labor housing is to provide additional onsite laborers to assist in the proposed breeding operation and to provide additional help for the expansion of the boarding operation. He stated that the SADC considers equine boarding and training of people to be an ancillary activity, which is not part of the production activities of an equine farm and makes the following findings related to its determination of whether this application meets the requirements for the construction of agricultural labor housing:

- 1) Requests for agricultural labor housing to house agricultural labor employed on the Premises must be based on the agricultural production needs on the Premises;

- 2) Boarding and training services are not considered agricultural production activities;
- 3) Based on information provided by the Owner, agricultural production activities consist of:
  - a. The 2 horses owned in whole or in part by the Owner or the farm;
  - b. Raising and harvesting of the existing 18-acre hay field;
- 4) Based on the information provided by the Owner a majority of the current agricultural activities and labor required on the Premises are associated with the equine boarding activities; and
- 5) The description of daily duties for the proposed residents of the new agricultural labor unit include:
  - a. Assistance with the anticipated hunter/jumper breeding & raising operation;
  - b. Assistance with the expanded equine boarding operation;
- 6) Four employee housing units currently exists on the Premises, which serve as housing for farm employees;
- 7) The farm includes approximately 10-acres of non-severable exception areas.

Mr. Roohr stated that based on current analysis of this farm, the equine operation on the property consists mainly of non-production service activities of equine boarding and training for clients, with only a two of the animals belonging to the Owner or the farm. The labor required for the hay production is minimal in comparison to the labor required to operate the equine facility. The Hunterdon CADB considered and approved the request for the agricultural labor unit at its March 10, 2011, meeting based on testimony provided to the record that the farm was currently breeding 40 horses with plans to expand to 60 (see attached Schedule "C"). He stated that the owner has indicated that there is presently no breeding taking place on the farm.

Mr. Roohr stated that staff recommendation is that the Owner has not demonstrated the need for additional agricultural labor residences to support agricultural production activities on the Premises and requests denial of the request for an agricultural labor residential unit.

Mr. Siegel questioned the last "Whereas" in the draft resolution that stated the Hunterdon CADB considered and approved the request for the agricultural labor unit based on testimony provided to the record that the farm was currently breeding 40 horses with pans to expand to sixty. Mr. Roohr stated that was the resolution that came down from the Hunterdon CADB. Mr. Siegel felt that was in conflict with that Mr. Roohr indicated to the Committee in his presentation. He asked why then it would be a whereas in the resolution because normally a "whereas" is a statement of a fact. He suggested rephrasing it to indicate that it was something that was stated to the CADB and that we

have a different set of facts. Chairman Fisher indicated that staff can clarify the language.

Mr. Emmet Jr. and Mr. Emmet Sr. addressed the Committee. Mr. Emmet Jr. stated that they are not currently breeding horses nor did he represent that to the Hunterdon CADB that there was breeding taking place on the property. He indicated that the Hunterdon CADB was incorrect in its resolution that was passed by its board and that information was some sort of typographical error. Mr. Emmet Sr. explained to the Committee his proposed plans to reestablish a breeding operation.

Chairman Fisher stated that this is really about timing. The landowners have a very well run boarding operation. However because of the way the deed of easement works there is a production value that has to support a certain amount of agricultural labor in these facilities and at the present time this operation does not meet that criteria. He stated that there is no breeding taking place on the farm at this time. He asked why wouldn't the landowners go into production now, knowing that based on the standards that are presented to them and that with a certain amount of production they could meet the criteria for agricultural labor housing for this purpose. Mr. Emmet Sr. stated that this is a very long-term, slow process to choose the brood-mares that you want and the stallions that you want. If he felt that the Committee was favorable toward his application, but that it wanted to see that the breeding operation was going...he wouldn't be building this labor house until 2012 at the earliest. Mr. Emmet Jr. asked if the Committee is saying that it would look upon the application more favorably if they were already in production. He stated that one of their fears is that they will go into production and then won't be able to get the unit they are looking for, which would be very detrimental to that operation.

Ms. Payne stated that the Committee has to be convinced that the amount of production going on warrants the amount of agricultural labor housing being requested. It goes to the number of horses, the nature of the work, the size of the unit, how many people are you proposing to house. Mr. Siegel stated that when this Committee is satisfied and when staff indicates to the Committee that it is satisfied that it is a production operation, the Committee almost never denies a request for agricultural labor, if warranted. Chairman Fisher indicated that the Committee would take a vote, based on staff recommendations and after that happens, possibly staff could provide some guidance.

Mr. Emmet Sr. asked if they reapply would they have to go back through the Hunterdon CADB or just to the SADC. Mr. Siegel stated that possibly we could just table action, what would be the difference between voting no and tabling the item and then looking at it in 18 months or so. Ms. Payne stated that at this point in time staff's understanding is that the CADB has a very inaccurate understanding of the operation. She felt that the application has to go back through the Hunterdon CADB and it will need to have the right to reexamine its decision and then we would go from there. She stated that she does

not want to speculate as to what Hunterdon County is going to do if the landowners come back to it with an application that says three mares. The CADB has to approve it before it comes to the SADC. It is very dangerous for the Committee to make representations about what is or isn't acceptable because it is not the only party to the approval. She stated that at this point with the facts before us the Committee is saying there is insufficient production for it to approve the request for agricultural labor housing. If the landowners want to go back to the county and reopen the discussion about an amended application with different circumstances it would be treated as a "clean slate". Mr. Stypinski agreed that the applicants would have to go back to the Hunterdon CADB first.

Mr. Emmet, Jr. asked if the Committee feels that the production that Mr. Emmet, Sr. is proposing is adequate for an agricultural labor housing unit. Ms. Payne responded that she would prefer the Committee not be asked to render any kind of decision today that would affect a future application. What the SADC could do on the staff level is go back and look at approvals for agricultural labor housing related to equine operations that have been approved by the Committee and provide the Emmets some understanding of how the Committee has acted on these requests in the past. She stated that if the Emmets want to meet with staff after receiving the information, staff would be happy to do so. Mr. Emmet stated that would be very helpful in assisting them in making a decision.

It was moved by Mr. Danser and seconded by Ms. Reade to approve Resolution FY2011R6(14) denying a request by Christopher Emmet, owner of Block 48, Lot 5, Tewksbury Township, and Block 12.01, Lot 14, in Readington Township, Hunterdon County, 134.10 acres, to construct an agricultural labor unit on the property, as presented and discussed.

Ms. Payne suggested changing the language in the last "Whereas" on page three, as requested by Mr. Siegel to read as follows:

"Whereas the Hunterdon CADB considered and approved the request for the agricultural labor unit at its March 10, 2011, meeting **based on a belief** that the farm was currently breeding 40 horses with plans to expand to sixty horses." It was the consensus of the Committee to accept that revised language in the resolution.

The motion was unanimously approved with the amended language described above. (A copy of Resolution FY2011R6(14) is attached to and is a part of these minutes.)

b. James and Ann Nawn, Montgomery Township, Somerset County

Mr. Roohr referred the Committee to Resolution FY2011R6(16) for a request by James and Anna Nawn, owners of Block 32001, Lot 1, Montgomery Township, Somerset County for an agricultural labor housing unit. In May 2007 the SADC received an

application to exercise a residual dwelling site opportunity (RDSO) and to construct an agricultural labor unit. At that time there were no improvements on the property and the owners proposed to build a completely new farm operation. Based on the type of operation that was proposed the SADC requested a more detailed plan. In January 2008 the SADC approved a request to construct the RDSO but denied a request to construct agricultural labor housing due to the lack of existing need for labor at that time.

Mr. Roohr stated that since that time the owners have developed the farm and have begun production activities in accordance with their original plan that was submitted. Mr. Roohr reviewed the specifics of the resolution with the Committee. The owners have improved the property with a 12-stall stable, indoor training barn, numerous fenced paddocks, 18 acres of hay and 12 acres of oats to accommodate the equine operations. The owners have improved the property with a packing/cooling barn, irrigation well and mains, 6 acres of deer fencing for vegetables and 9 acres of fenced pasture for beef cattle. Mrs. Nawn has formal training in equine related activities and is regularly engaged in the day-to-day agricultural production and training of horses on the farm on a full-time basis. One aspect of the existing equine operation is the breeding of Olympic quality hunter/jumper horses and the other is retraining older horses to be used in therapeutic riding programs either on site or sold to other riding programs. There are currently 13 horses on site consisting of four mares (two in foal), two offspring, five older horses being retrained for therapeutic riding. Three of the horses onsite that have been retrained are currently being marketed for sale. In April of this year the owners requested to revisit their agricultural labor housing unit request, proposing to construct an agricultural labor apartment within an existing equipment building, consisting of approximately 1,000 square feet for Tracy Wagner and her husband Bill Wagner. Ms. Wagner would be employed full-time, year round on the property and would be primarily engaged in assisting in the daily management of the equine breeding and training activities of the farm. The owners believe it is essential to have onsite labor in order to supplement their own work related to the farm and to provide 24-hour observation, security and care of the animals onsite. Mr. Wagner has, and will continue to provide part-time assistance in the grain and hay operations on the property as well as off season support of farm related maintenance. Staff recommendation is to approve the request for agricultural labor housing as presented and discussed, subject to any conditions of the resolution.

It was moved by Siegel and seconded by Mr. Danser to approve Resolution FY2011R6(15) granting a request by James and Ann Nawn, owners of Block 32001, Lot 5, Montgomery Township, Somerset County, 111.89 acres, to construct an apartment above a proposed equipment barn, approximately 1,000 square feet in size, as identified in Schedule "A" of said Resolution to house one full-time agricultural laborer and her husband, subject to any conditions of said resolution. The motion was unanimously approved. A copy of Resolution FY2011R6(15) is attached to and is a part of these minutes.)

**G. Review of Recent legislation: A3460 and S2887**

Ms. Payne referred the Committee to the SADC Concerns summary regarding Legislation A3460 dealing with ag-tourism on preserved farms and S2887 dealing with amendments to the Solar, Wind and Biomass Act (P.L. 2009,c.213). She stated that she wanted to make sure she was accurately representing the Committee's concerns on an on-going basis.

Ms. Payne stated that regarding A3460, what is before the Committee is an outline of her testimony to the Assembly Tourism and Arts Committee, which is where this bill was heard. She stated that the first thing that this bill says is that agricultural tourism can be conducted on preserved farmland provided the farm is part of a functioning farm operation engaged in agricultural/horticultural production. One of the concerns she raised was that a lot of terms in the legislation are not defined, such as what does a "functioning farm" mean? Is it full time, profitable, etc. The second aspect of the bill (1b) states that the CADBs as part of its annual inspections of preserved farms, shall monitor and confirm compliance with the provisions of this act. This has stripped the SADC out of any role dealing with interpreting or enforcing this provision. That was particularly concerning to staff, given how inconsistent CADB's interpretations are on various issues across the state. The last item, 1c, tries to define agricultural tourism as meaning "affordable, recreational and educational activities and opportunities", which was actually amended. It further states that agricultural tourism may include, but need not be limited to, hayrides, corn mazes, pick your own operations, farm markets, school tours, agricultural fairs, farm festivals, weddings, winery tours and horseback riding.

Ms. Payne stated that she recognizes the importance of agricultural tourism in the industry and that they occur on preserved farms all the time and that in fact most of the activities included in the bill's definition of agri-tourism occur on farms regularly. However, the broad nature of language in the bill leaves many unanswered questions. For example, can a landowner build a building to have weddings in, or construct large parking areas? She stated that it is really introducing the opportunity to do nonagricultural activities on a preserved farm and that is her primary concern. The second concern was the elimination of the SADC having any role in interpreting or overseeing these activities, and the third concern was the lack of clear definitions for terms like farm festivals and weddings and there was no connection made to what the output of the farm was. There is nothing in the legislation that would link your ability to have a wedding to your ability or need to market your product. There was a lot of testimony by the sponsor that the intent is to allow people to market their output but staff pointed out that was not what the bill language says. She stated that there is a fifth point that is not identified in the summary, which is that this legislation jumps right to preserved farmland and doesn't address these issues in the context of right to farm protection. The bill would allow agricultural tourism on a preserved farm but then the

question remains, does that mean those activities should get right to farm protection. The statute doesn't address right to farm impacts whatsoever.

Ms. Payne stated those were the concerns. There was testimony both in favor of and against from various corners, including the League of Municipalities. She stated that the sponsor, Assemblyman Danser committed to working on the bill to address a lot of these concerns. That is where it is now. She stated that staff will continue to advocate these points with the sponsor as the legislation moves forward.

Mr. Siegel asked if this was the Agricultural Department's position on the bill. Ms. Payne responded it was the SADC's position. Mr. Siegel asked if the SADC as a board is taking a position on a piece of legislation. Ms. Payne responded yes. Mr. Siegel commented that never in his recollection has a Committee taken a position on a piece of legislation, either for or against. Ms. Payne stated that we are being asked to participate in meetings about what the concerns are. Mr. Siegel responded that he is talking about this entity as an eleven-member Committee saying this is a good bill or a bad bill, etc. Chairman Fisher stated that was not Ms. Payne's intent when she went over to address staff's concerns. She merely provided an explanation of what the impact would be. Mr. Siegel felt that would be fine. Ms. Payne stated that she wants to make sure that she is representing the concerns of the Committee properly in the discussions. Mr. Siegel stated that he feels the Committee should rely on the guidance of the Governor's Office as to what their position is on legislation and you speak to the executive branch on that. He stated that the Treasury Department has a full time legislative liaison whose job it is to determine what Treasury's opinion is about legislation and then he represents that opinion to the Legislature. Mr. Requa stated that the Division of Community Affairs also follows that.

Ms. Payne stated that she worked with the Office of the Secretary and its legislative liaison and the Governor's Office and they were fine with the SADC coming to express its concerns. Her question is whether she is properly representing the concerns of the SADC. Chairman Fisher commented that Ms. Payne explained some of the ramifications and caveats of what this could be. He indicated that she was very careful in not stating something like.....this is why the SADC does not support.....or does support..... However, he would say that there are times when we can inform and we have a role. Ms. Reade felt that the concerns listed were right on.

Regarding Bill 2887, Ms. Payne stated that the bill allows wind turbine development statewide, under various specific provisions, and does not distinguish between preserved and unpreserved farmland. It is basically allowing the development of not more than one wind turbine for every 33 contiguous acres of farmland, as long as there is a 750 foot setback from residences and property lines and 55 decibel noise standard. She stated that she was prepared to testify on this coming Monday on this bill, however the bill has been

pulled by the sponsor from the Senate Environment Committee and we don't see any other activity scheduled for this session. The Secretary did submit testimony to the Assembly when it was heard there and staff shared a copy of that testimony with everyone so our comments here are consistent with that.

Ms. Payne stated that many entities, including SADC staff, have concerns about the complete exemption from any state or county review of these projects, including the SADC, and limits municipal review to minor site plans. It basically says that wind turbine development in compliance with the three standards is a permitted use under this bill. She stated that she is representing the SADC's general support of alternative energy to supply agricultural needs but we are pointing out a concern about opening up preserved farmland to industrial grid scale energy generation. The bill has no limits on soil disturbance of any kind and that was another concern. Also we raised a concern that we don't think that the public had an expectation of seeing industrial wind turbine development on preserved farmland. We were concerned about the impacts on the public support of the farmland preservation program to see development of that occur. She stated that staff is making those points known and that is where we are on that bill. Mr. Siegel suggested that staff could meet with the sponsors of the bill so that they are better informed about the SADC concerns. Ms. Payne stated that her fundamental concern here is that if the bill goes through we are going to have a use on a preserved farm that renders the farm ineligible for farmland assessment, because the law that was passed in the beginning of 2010 set an absolute cap of 2 megawatts of power for farmland assessment. It amended the Farmland Assessment Act. If you go over 2 megawatts you are no longer farmland assessed and this bill does not amend that. We are getting to a point where the predominant economic use of the property is not agriculture anymore and to her that is a concern. That is where all of this is heading. It's an inexpensive land base for the utility company to occupy for their facility and it has nothing to do with agriculture and she is not convinced that the revenues are forever going to flow to the owner of those properties and she is not sure she buys the argument that it is good for agricultural viability and keeping farmers on the land. Mr. Siegel stated that the SADC really should meet with Assemblyman Chivakula to discuss these various issues.

Mr. Boornazian stated that the NJ DEP had issues with this bill and it was very happy to see that it has been pulled. He stated that somewhere on its plate for the SADC is doing an agricultural management practice (AMP) for wind and what happened with this bill was that it preempted the local experts in the field coming up with the AMP and you get legislated. In preparing to testify he would submit that the experts are sitting here in this building and in this bill they are sort of saying if you are not moving fast enough on your AMP we're going to legislate you. He stated that there are also permitting issues related to this and it took the State completely out of the formula. Mr. Danser felt that the impact on agriculture would be minimal.

Chairman Fisher stated that we have to be clear on what direction we think this takes agriculture and agricultural lands in New Jersey. We hear from Mr. Danser that he doesn't think it has that affect and we have heard from others that possibly they won't be in production after this. He stated that he doesn't know the economic model of how much money a landowner gets from the construction of one of these turbines for 35 acres, and whether the farmer ever will need to farm anymore. For him, what he looks at in those ads he sees on TV regarding natural gas drilling in Pennsylvania with farmers talking about how they don't have to farm anymore, they just sit on the porch and they are glad because they have income coming in. Somewhere in-between those extremes is what we are trying to figure out. We didn't think we should be shut out of the entire process.

Ms. Payne stated that we are not going to see just one turbine on a farm, as Mr. Danser mentioned earlier. The plans that she has seen are a network of 24 and they are all interconnected and they are going to put as many in as small an area as the wind will support. We are seeing big projects, where part is preserved and part is not so they want to be able to do it on the whole thing. She felt that we will be seeing large scale facilities on preserved farmland if with this legislation goes through.

#### **H. SADC Approved Appraiser List (Recertification/Additions/Deletions)**

Mr. Burns referred the Committee to Resolution FY2011R6(16), including Schedule "A" and "B", listing those appraisers who attended the annual appraisal conference held in June and who are being recertified (Schedule "A"). The resolution also reflects those appraisers who did not attend the appraisal conference for two years and are being removed for that reason (Schedule "B"). He stated that Schedule "C" reflects appraisers requesting inclusion on the Approved Appraiser List. He stated that there are four appraisers listed that were previously removed from the list due to non-attendance at the appraisers conference. He stated that they have attended this year's conference and are being placed on the Approved Appraiser List. He stated that there are also three (3) new appraisers requesting inclusion on the Approved Appraiser List. He stated that staff recommendation is to approve Resolution FY2011R6(16) to reflect the recertifications, deletions and new inclusions to the Approved Appraiser List as presented and discussed.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolution FY2011R6(16) recertifying the list of appraisers as presented and discussed to the Approved Appraiser List (Schedule "A") and deleting those appraisers on the Deleted Appraiser List (Schedule "B"), and approving the new and previously removed appraisers to the Approved Appraiser List (Schedule "C"), as presented

and discussed and subject to any conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2011R6(16) is attached to and is a part of these minutes.)

## **PUBLIC COMMENT**

Ms. Payne stated that the issue of the Washington Township Municipal Utilities Authority/Smith Farm will be discussed in closed session. The Committee will come out of closed session and discuss the issue openly. She asked if there was anything that the representative from the Washington Township Municipal Utilities Authority wanted to say prior to going into closed session.

Mr. Gregory, Attorney for the Washington Township Municipal Utilities Authority stated that he is present today with Joe Fisher who is the professional engineer for WTMUA and Mike Pucilewski, who is the Executive Director of the WTMUA. They are here to support Mr. Smith's application and are available to answer any questions the Committee may have. He stated that Mr. Fisher has submitted a letter and that he has submitted a letter also. Mr. Fisher has discussed the potential for impacts of the farm affecting their well. It was concluded that it was a very unlikely event. Their board has passed a resolution in support of Mr. Smith, their application process with the NJ DEP for the well permit is moving forward. They have acquired the land through a condemnation procedure. They are here to bring the Committee up to date and to let it know that they think their use of the well on the farm is very compatible. They have one in the Valley on a preserved farm that has been there for fifteen years. That well is twice the output of this will and the geology is not as protected as the well they are proposing on the Smith farm. They recognize that the SADC has a very important valid public purpose of preserving farms and they think they have an equally important public purpose of supplying safe and adequate water to the residents. They want to do whatever they can to live in harmony with the preserved farm. He stated that they have recently been issued a notice from the NJ DEP that their water supply in the Mountain is not sufficient, it's a firm capacity issue, a regulatory issue having to do with the size of your wells and how much you have been pumping. We knew we needed water before the NJ DEP made it official but we are doing whatever we can to come into compliance as well as protect their citizens.

**Note: Mr. Boornazian left the meeting at this point. Ms. McGee presided at the meeting.**

Ms. Payne asked the date of the notice from the NJ DEP. Mr. Gregory responded February 17, 2011 and they received it on February 22<sup>nd</sup>. He supplied Ms. Payne with a copy of the letter. She stated that her understanding from the NJ DEP is that the first step for the WTMUA is to make application with the NJ Highlands Council for a

determination of compatibility with the Highlands comprehensive management plan and then if the Highlands voted to support the application then it would be entertained by the NJ DEP from a technical permit standpoint. She asked if that was the MUA's understanding. Mr. Gregory responded no, it was not, but it is also not his understanding that it is not the case. They submitted their application to the NJ DEP and the first thing that the NJ DEP does is they approve the test well sites. They have been told by the NJ DEP that the sites have not been transferred over to the group that approves test well sites and are in the process of doing that. Ms. Payne stated that the last she knew was that the NJ DEP rescinded the well drilling permit because of issues regarding whether the landowner had properly supported the application. What is the status of that? Mr. Gregory stated that they are confirming the location of the test well permits and those locations have changed so as soon as those locations are confirmed they are going to request.....two of those locations they made particularly in their easement area and we believe they can sign off as the owner of the easement on those well permits. However, they are still going to ask Mr. Smith to sign off on those two permits as well as the public water supply permit. These are just the permits to construct and are not the permits to use, which is the allocation permit and that will not come for a long time. The other two test wells they are going to submit as Mr. Smith signs off. Ms. Payne wanted to clarify that there is a main well, which is where you hope to have the public water supply well located and that is contained within the fifty foot area of the taking and then outside that fifty foot area you are proposing two new monitoring wells? Mr. Gregory stated that it is just one test well and it is the whole area of the easement is more than fifty foot. All it is is a test well to confirm that the public well they are proposing is not going to affect anyone in the area. So they drill the well, do pump tests and make sure the water levels around this well are not going to be affected by their well. Once that well is drilled and tested it will then be sealed and covered over and you wouldn't know it ever existed.

Mr. Fisher stated that there is one well that has been preliminarily tested, which is the main well and it is a good well. The final testing is to pump that well at the desired capacity and monitor at a minimum of three locations designated by the NJ DEP/New Jersey Geological Service. Two of those monitoring wells are in the easement area. The other one has been tentatively placed as far out of any working area on the farm out near the edge of the hedgerow, but it is more of a greater distance than the NJ DEP normally allows. We have to wait to see if they want to move it back more into the farmland or if they are content to put it on the edge of the farm. Ms. Payne clarified that the third well would be on the property owned by Mr. Smith. Mr. Fisher responded yes. Then you would abandon that well and someone could plow over it. The casing comes out completely and then you would probably put cement down deep but you can stop that cement any place you want. They would want to know how deep the farmer would worry about having some obstruction and you make sure there is no obstruction in that depth.

## **TIME AND PLACE OF NEXT MEETING**

SADC Regular Meeting: Thursday, July 28, 2011, beginning at 9:00 a.m. Location: Health/Agriculture Building, First Floor Auditorium.

## **CLOSED SESSION**

At 11:58 a.m. Mr. Danser moved the following resolution to go into Closed Session. The motion was seconded by Mr. Siegel and unanimously approved.

“Be it resolved, in order to protect the public interest in matters involving minutes, real estate, attorney-client matters, pursuant to N.J.S.A. 10:4-12, the NJ State Agriculture Development Committee declares the next one half 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. Attorney/Client Matters**

#### **1. Consideration for Amended Final Approval**

##### **a. Smith Farm, Washington Township, Morris County**

Ms. Payne stated that the SADC, when it gave final approval to this property last year, reserved the right to reevaluate the application in light of the results of the condemnation action. The SADC understands that the judge did approve the condemnation of the fifty-foot radius around the proposed well, along with an access easement to get to the well. Since that time the SADC has spent considerable time and energy trying to understand what the impacts of this proposed water supply well on this farm are. The SADC has reviewed the NJ DEP regulations with respect to the wells to understand the factors that go into determining how big a buffer may be required. The SADC has concerns related to the fact that in those regulations major pollutant sources are considered, including livestock operations and so the Committee has a few basic areas of concern, one is the ultimate size and location of this buffer. The SADC's understanding is that the MUA has submitted documentation to the NJ DEP as recently as last week, reinforcing its belief that fifty feet is all that is going to be required. However, the SADC continues to understand from the NJ DEP that until such time as full application is made and the testing is done, and the analysis is performed, it cannot tell us and no one can guarantee that the fifty feet is all that is going to be affected. Secondly, the area of staff concern is the impact of this public water supply well, if approved, on the agricultural use of the

property. It continues to be unclear to the SADC as to whether it is necessary to constrain the agricultural use surrounding the well beyond the buffer and if so, how is that accomplished, whether that is through agreement, through an easement, through condemnation, what are the mechanisms that the MUA would employ to manage the use of the land surrounding its area of taking. Secondly, the SADC is also unclear on the impacts of the ability of the farmland owner to ever get an irrigation well in this property, in light of the public water supply well, that is another unknown at the moment.

Ms. Payne stated that the lack of ability of the SADC to answer those questions makes it unclear whether the value of the development rights that are being proposed to be purchased are going to be affected. From a perspective of protecting taxpayer funding the SADC needs to make sure that the money that the SADC spends is appropriately spent. She stated that the potential impact on the SADC's easement value is of main concern to it. A fourth point is that the SADC has spent a tremendous amount of staff time and resources dealing with the MUA proposed condemnation of the ADA, reevaluating the impact of the easement value and the like, and we don't want to waste any more staff resources on this transaction, it would really like to understand what are the impacts of the well, deal with them up front and then be able to make an informed decision about can we proceed, and if so, is there any impact on value. Those are the four areas of concern. Staff has outlined three options for the Committee from staff's perspective. One is to proceed to closings and assume all those risks. Two is to hit the hold button on the transaction, giving the MUA some defined period of time to obtain these permits and obtain the answers to the SADC's questions. Three would be to rescind the final approval all together, given the number of risk factors that the SADC perceives.

Ms. Payne stated that staff recommendation is to pursue the second option, which would be to not proceed to closing for a period of one year, to give the MUA enough time to apply for and secure its permits so that the SADC can understand what the impacts are and make an informed decision at that point in time. She stated that the SADC also understands that 365 days is not a magic number and if it would take somewhat longer than that period the Committee would be open to the option to extending that one-year period of time, if additional time was needed by the MUA, as long as due diligence was taking place to secure the permits.

Mr. Gregory stated that the staff analysis is reasonable and intelligent. He thinks they are on the verge of taking a critical test, which he thinks will answer, in concert with the NJ DEP, most if not all of the questions and that is the 72-hour pump test and the test wells to be approved by the NJ DEP. All of that might happen within 30-90 days. The one-year time period, while he appreciates it, because it gives the MUA some extra time, they may be able to answer all of that much quicker. He is assuming that this Committee, if they get a higher sense of confidence on the issues raised, it may be more inclined to

approve Mr. Smith's application. What he can represent to the Committee is that as soon as the MUA gets its test site approved from the NJ DEP, which might be within a week or two, they already have their well driller lined up and he will do those pump tests and they will submit them to the NJ DEP immediately with the understanding that part of what the NJ DEP is doing, hopefully, is providing some answers to the good issues that the SADC staff brings up. Possibly this can be resolved much quicker than the one year period. They will do everything on their part to get the SADC that kind of information.

Chairman Fisher stated that the SADC would like to have this done sooner, once it gets the assurances that we know that the closing allows effective farming of that parcel. Ms. Payne commented to the MUA to please find out the role of the NJ Highlands is, if it doesn't already know it because the SADC has been told repeatedly that it will not consider a water allocation permit until such time as the Highlands Council has signed off on this. She doesn't know if it is true or not but she would reiterate that to the MUA. Second, to the county, we know that our regulations determine your future base grant in the farmland preservation program, based on past performance and because this hold up is no doing by the county or the landowner, the Committee would hold the county harmless from any impacts of delay of closing on this farm associated with the MUA matter. There would be no financial penalties to the county in any way.

Mr. Danser asked if staff needed a motion to that effect or would staff prepare a resolution for next month? Ms. Payne stated that staff would prepare a resolution for next month's meeting, summarized by this conversation, so if there is anything else the Committee would like to see in that resolution now would be the time. Mr. Siegel suggested getting an update from the MUA by staff by the time of the presentation of that resolution next month. Ms. Payne asked Mr. Gregory that if there is any additional information that it has between now and next month should be forwarded to the SADC staff if it wants it taken into consideration in the resolution for the Committee's regular meeting next month.

Mr. Gregory stated he wants to be up front with the Committee. He stated that they have before the NJ DEP now proposed three test well sites that the NJ DEP has to approve. Two of them are within the NJ DEP regulations. One is slightly out of their guidelines and it is out of their guidelines so that the MUA can put it further out of the farming area so we did what they thought to be to helping the farming. If the NJ DEP approves those well sites then the well driller is lined up to drill. If the NJ DEP comes back and says well you can have two but not the one then the MUA will have to change it, resubmit it etc.

## **ADJOURNMENT**

There being no further business, it was moved by Mr. Danser and seconded by Ms. Reade

and unanimously approved to adjourn the meeting at 1:27 p.m.

Respectfully Submitted,

Susan E. Payne, Executive Director  
State Agriculture Development Committee

Attachments

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