

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Department of Agriculture
Market and Warren Streets
1st Floor Auditorium
Trenton, NJ 08625

REGULAR MEETING

May 26, 2011

Chairman Fisher called the meeting to order at 9:05 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 (Left meeting at 12:38 p.m.)
Richard Boornazian (rep. DEP Commissioner Martin)
Ralph Siegel (rep. State Treasurer Andrew P. Sidamon-Eristoff)
Brian Schilling (rep. Executive Dean Goodman)
Alan Danser
Torrey Reade
Jane Brodhecker
Denis Germano (Arrived at 9:10 a.m. and left at 11:42 a.m.)
James Waltman (Arrived at 9:12 a.m.)

Members Absent

James Requa (rep. DCA Commissioner Grifa)

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

Others present as recorded on the attendance sheet: Robert Baumley, Heidi Winzinger, Hope Gruzlovic, Brian Smith, Charles Roohr, Timothy Brill, Cassandra McCloud, Daniel Knox, Paul Burns, David Kimmel, Steve Bruder, Patricia Riccitello and Sandy Giambrone, SADC staff, Daniel Pace, Mercer County Agriculture Development Board, Cliff David, Heritage conservancy, Bucks, PA., Tracy Carluccio, Delaware RiverKeeper Network, Hunterdon County, Glorianne Robbi, East Amwell Township, Hunterdon County, Nicole Crifo, Governor's Authorities Unit, Nicole Goger, New Jersey Farm Bureau, Barbara Ernst, Cape May County Agriculture Development Board, Amy

Hansen, New Jersey Conservation Foundation, Jennifer McCulloch, Morris County Agriculture Development Board, Brian Wilson and Pete Johnson, Burlington County Agriculture Development Board, Harriet Honigfeld, Monmouth County Agriculture Development Board.

Minutes

A. SADC Regular Meeting of April 28, 2011 (Open Session)

It was moved by Ms. Reade and seconded by Ms. Brodhecker to approve the open session minutes of the SADC regular meeting of April 28, 2011. The motion was approved (Mr. Danser abstained from the vote).

B. SADC Regular Meeting of April 28, 2011 (Closed Session)

It was moved by Ms. Reade and seconded by Ms. Brodhecker to approve the closed session minutes of the SADC regular meeting of April 28, 2011. The motion was approved (Mr. Danser abstained from the vote).

REPORT OF THE CHAIRPERSON

Chairman Fisher discussed the following with the Committee:

- Wind/Solar – Bill A3992

Proposed Assembly Bill # A3992 sponsored by Assemblyman Chivukula has to do with wind generation on preserved farmland. Chairman Fisher felt that this bill was a serious threat to preserved farmland. He stated that this is what he feels is energy sprawl in the way that this is being presented and that while we may support alternative energy development generally, suggesting that the SADC should have no oversight at all attacks the program. There are opportunities everywhere but he felt and he hopes the Committee members feel that this is something to spread the word about. He stated that he served on the Committee with Assemblyman Chivukula and he is very dedicated and knowledgeable about the world of energy but sometimes, as with these bills, it goes too far.

Chairman Fisher stated that last month he witnessed an interesting related issue in his own community, which he had no part in so he can discuss it. He stated that he lives in a community of approximately 1,400 people covering 20 square miles, with no industry to speak of and it's a farming community. That is what that area espouses in their master plan and there are agricultural districts but a nine (9)

megawatt private facility was proposed to be located on prime soils. He stated that there was substantial public opposition to the proposal, and despite claims of the use complying with the “inherently beneficial” law, and that that would trump anything that the municipality wanted to do to regulate it, the developer withdrew the application. The township had argued that this was an agricultural community and this is not what they set out to do and they didn’t think that the township should be trumped by “inherently beneficial”.

Ms. Reade stated that she heard the alternative to the solar project was a housing development and that it has already been subdivided. She stated that it was baffling to some observers that the township would prefer a housing development to a solar project. Chairman Fisher indicated that he had not heard that but he wanted the Committee to know the “inherently beneficial” status had some challenges it was facing within agricultural communities.

Chairman Fisher stated that he mentions these issues because the Committee has an enormous responsibility to think about because there are going to be huge projects and what the Committee is concerned about is agricultural development and that is the point he is trying to make. It is not about whether we believe in alternative energy but it is about where it is going to be placed and the magnitude and scope and depth of the “threat” to keep productive operations in the state.

Mr. Siegel stated that the Department of Agriculture has made its position clear. He asked if the SADC would be taking a position on A3992 as a board. Chairman Fisher responded yes. Mr. Siegel stated that he has asked the Department of Treasury what its guidance to him would be on its position on A3992. Chairman Fisher responded that on many areas you will not know until the very end of the legislative process. Mr. Waltman stated that he would like the Committee take a position on this issue and he felt that it should be a very important and pressing policy motion. Chairman Fisher stated that the Committee could discuss that as the meeting progresses if someone wants to forward a motion.

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Payne discussed the following with the Committee:

- Retirement of Robert Baumley, Deputy Executive Director, SADC

Ms. Payne stated that today would be Mr. Baumley’s last SADC meeting of his career as he would be retiring effective June 1st. She stated that he would be recognized later in the meeting.

- Retirement of Robert Resker, Warren County Agriculture Development Board Administrator

Ms. Payne stated that today would be Mr. Resker's last SADC meeting as he will be retiring effective June 1st. She thanked Mr. Resker for his years of service and for getting Warren County's program up and running.

- Appropriation Bill - Status

Ms. Payne stated that staff has worked with one Assembly Committee on Monday and the bills have been referred to the Appropriations Committee. The bills were supposed to be heard in the Senate Appropriations Committee today but that meeting has been cancelled. At this point the bills have sponsors and the Office of Legislative Services could not have been any better to work with and everyone is aware of the desire to get these bills through by the end of legislative session. Staff will keep the Committee informed as to the progress of these bills.

- Hopewell Valley Vineyards

Ms. Payne stated that the Hopewell Valley Vineyards case, for which the SADC issued a preliminary decision a couple of months back, has been referred to the Mercer CADB. The Mercer CADB has had its site visit and its public hearing and rendered an oral decision. It still has to pass a resolution reflecting that decision. She stated that the Mercer CADB essentially upheld the SADC's decision with the one exception of the vitners dinners as they believe that it was closely in line enough with the sale of wine that it should warrant right to farm protection. We will be looking forward to Mercer County's decision by resolution at its next meeting and then we'll see where it goes from there.

- Medical Marijuana

Ms. Payne stated that the issue at hand is that in New Jersey medical marijuana is under very strict limitations and the growing of it is permitted, however it is still not permitted under federal law. It has raised an issue with the USDA/NRCS under the Federal Farm and Ranchlands Protection (FRPP) program and could raise an issue with the Department of Defense projects. The USDA/NRCS has taken the position that violating federal law is not permitted on farms that utilized federal funds and it has requested that the SADC amend its deed of easement for all projects using federal funds going forward to have an explicit statement to that effect in the deed of easement. She stated that the NRCS will not provide funding without that statement. Any activity that is a violation of federal law is not

permitted on a farm preserved with federal funds and they will not allow us to close on any more farms without the language. Ms. Payne stated that staff has a meeting scheduled with the NRCS shortly to get to the bottom of the issue but she wanted to let the partners know that that the SADC cannot close on farms if this provision is not put in place.

Mr. Schilling stated that on a different note he received information the other day on the current Resolution 107 which is a constitutional amendment that essentially opens up farmland assessment again, the same provisions to basically allow differential taxation for preserved lands. He stated that is another issue that should be watched because he feels the question is how will landowners react and how would it affect agriculture. Would it effect leasing of land to farmers if you are getting the tax benefit without having to put it into production? There could be a shift in some of that land. Mr. Boornazian stated that Senator Beck introduced the bill in the Environment and Energy Committee and it got released from that Committee. Ms. Payne stated that her recollection of that bill is that it only applies to properties where the development rights have been donated. It is not a bill that is going to affect property owners who got paid for easements.

COMMUNICATIONS

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

PUBLIC COMMENT

Traci Carluccio, Deputy Director of the Delaware Riverkeeper Network stated that she was before the Committee about a facility that was before it in the past and is involved in litigation at the present time, which is the Quaker Valley Farms, David denHollender property in Franklin Township, Hunterdon County. She stated that there is an application before Franklin Township's Land Use Board that has been filed recently by Quaker Valley Farms (Garden State Growers) and a part of it is addressing the erection of a 100,000 square foot gutter connected greenhouse on Block 37, Lot 35. Her question is, there was a proceeding and the Delaware Riverkeeper Network participated in that, before the CADB in Hunterdon County, that went on for many months and the result of that hearing, which Franklin Township participated in, and it was an effort for them to apply its impervious cover ordinance and its stormwater ordinance to the property, through its municipal regulations. It ended up with a resolution that was voted on and approved by the CADB and it applied to this piece of the property, where this 100,000 square foot greenhouse is supposed to be erected. That resolution required certain storm water requirements and best management

practices to be put in place right away and it was never done. This now dates back a couple of years and now there is an application before Franklin Township. She went to the Franklin Township Committee and asked whether the resolution needs to be enforced? She stated that Franklin Township stated it was not the enforcement arm and she was told after discussions that the SADC may be the enforcement arm. Is the SADC the enforcement entity or who actually enforces resolutions that come out of this sort of proceeding? This is not the preserved piece of property but it is a resolution that came out of the CADB.

Ms. Payne stated that she believed this is a right to farm matter on an unreserved farm. She stated that she knows that right to farm debate that has been going on between the county, the property owner and the town is all subject to litigation and hearings over at the Office of Administrative Law, because there have been several cases that have been filed and they have been consolidated for consideration by the Judge. She does not know what the effect on any of that is of what Ms. Carluccio is speaking about, a new application. The SADC would need to really understand what is going on, and then it would need to communicate with the CADB and go from there. Ms. Carluccio stated that would be helpful to ask the CADB what is going on and are they going to enforce the resolution because her understanding is that the resolution is totally separate from the litigation and it was a resolution of the arguments that have been going on between the facility and the township that led to this resolution. It came out from an order of the Judge that they were supposed to do this negotiation, go through a process and come out with an enforceable resolution by the CADB.

Ms. Payne stated that generally the SADC doesn't enforce a county's right to farm matter. Right to Farm (RTF) is a process where a property owner is seeking relief from either an ordinance or from a nuisance complaint. The CADB makes a decision and sets the parameters by which a property owner must comply in order to get that relief. Even if a CADB adopts a resolution, if the property owner doesn't comply with that then they no longer have right to farm protection and they are then back to being subject to the township/county regulations and nuisance complaints by neighbors. The CADB is not going to go out and file suit to enforce a right to farm decision on a property and the SADC is not going to file suit to force compliance with a right to farm decision.

Chairman Fisher stated that if the SADC were to ask a question he would rather have the Delaware Riverkeeper Network send a letter first directly indicating what its questions are.

Ms. Carluccio stated that there is this on-going litigation related to the preserved property. There is going to be, accordingly to this land use board application,

discussion of what sort of best management practices (BMPs) and storm water management would be put in place for the entire property and it seems that it includes the block and lot number of the preserved land. How does that fit in with what is being negotiated behind closed doors, from the public, through the SADC litigation. She stated that there is a frustration on the part of the public because they have absolutely no idea what is going on in terms of this litigation and stormwater management to protect the creek and aquifer, and in terms of BMPs, because it has all been thrown into this black hole of secret negotiations. This frustration is compounded by now the application to expand this facility. Can the public get a report from the State about what is going on with this property to address these unresolved environmental problems?

Ms. Payne stated that the SADC can take those questions under advisement with its attorney as it is in litigation with the property owner and staff will be briefing the Committee today on the status of the litigation. As a result of that discussion, staff can talk about what can and should be made available for the public to understand. Chairman Fisher added that the SADC makes every attempt to be as transparent as it is allowed to be. There is no attempt here to not disclose, it is just a matter of what it is allowed to disclose. Ms. Carluccio stated that some sort of report would go a long way to gaining back the public confidence because this operator is suing the neighbors for making reports of violations and it is a terrible situation.

Amy Hansen from the New Jersey Conservation Foundation stated that she is glad that Ms. Carluccio brought up this issue because it has been very long and no one has heard anything about what is happening with the issues on the denHollender property. The New Jersey Conservation Foundation would greatly appreciate some limits on the amount of greenhouses that you could put up on preserved farms because it is very concerned about soils going forward, and with all due respect to Secretary Fisher, soil is a natural resource and how do you protect that and also setting some limits, some impervious cover limits. She asked what the status is of the study on the whole issue of soil resource. Ms. Payne stated that it is active and that the SADC has a recent meeting with the Deed of Easement Subcommittee. Staff is doing an extensive amount of GIS analysis state-wide to really understand the extent of infrastructure on farms is. She stated that it hired Rutgers to conduct a few studies and to help educate it about the different types of cover on farms. The Subcommittee is working hard to get a perspective or a position solidified so it can bring it back to the Committee for discussion.

Jay Woldorf addressed the Committee regarding an application and situation in trying to preserve his farm, which began over three years ago. He stated that he recently spoke to Mr. Stypinski and the SADC intends to file a complaint against

him for breach of contract to not go through with preservation of his property. The reason that he didn't go through with it was because once he got a hold of the appraisals, which were done by the SADC, there were a lot of problems, one of which is very clear to him. It's a letter he received from Ms. Payne in reference to highest and best use. He stated that the definition is clear and he got that from the appraisal and her explanation of that is absolutely 180 degrees from the definition of highest and best use. He stated that the SADC breached the contract prior to him deciding to not preserve. He believed there was a breach by the SADC. He wants to make sure that everyone in the room understands that and they are welcome to see it. There are other issues, to him some of them are black and white, some are grey. He proposed to Mr. Stypinski, but he has not heard from him prior to today, so he said he would be here today and every month thereafter until this gets resolved. His proposal to resolve it was to allow the SADC to do its job, which is to preserve the farm. Another piece of pertinent information is, since then, about two months ago, he preserved a portion of it, which was a separate lot and block through the County of Camden for quite a bit more, approximately \$5,000.00 per acre more. To him that is additional proof and documentation that what he was offered was completely wrong. Also the SADC appraised it prior to the economic disaster in September of 2008. They appraised it after that, which the values are down so how are they \$5,000.00 an acre higher than what the SADC did before that? It makes no sense.

Mr. Woldorf stated that the SADC didn't follow its own rules. He doesn't want to go to court and he doesn't want to fight so he is going to sit here in front of whoever can help him, who is interested in taking information to resolve this by preserving the property. He stated that Ms. Payne didn't care for the idea and he tried to speak to her about it and she hung up on him. That is his proposal. If you would like to do this easy fine and if you want to pursue the complaint, that last thing he left Mr. Stypinski with is hurry up, sue him so he can counter-sue the SADC and show the people in black and white the definition of highest and best use, which is absolutely essential versus the explanation that Ms. Payne gives, which is opposite of the definition.

Chairman Fisher stated that it is pending litigation. Mr. Woldorf stated that it is not pending litigation because it's pending meaning you may get to it in six months to a year, you told him that he was understaffed and he has not gotten to it. Pending is what? He has not received anything. What does pending mean.

Chairman Fisher asked Mr. Stypinski that if it is pending is there anything that we can discuss any further than this right now? Mr. Stypinski responded no. Chairman Fisher stated that the SADC cannot discuss this and if he could he would be more than happy to do so. He doesn't know all the details exactly but

we also have legal constraints. He stated that Mr. Woldorf made his statements and he is being told that it is pending litigation and the Committee and staff will have to take under advisement what that all means and how we can best deal with it.

Mr. Woldorf asked what does pending mean. He has not received anything and a complaint has not been filed unless it was done in the last few days. Mr. Stypinski stated that pending means that we are contemplating litigation and a complaint has been drafted and has not yet been filed. Chairman Fisher stated that the best thing at this juncture would be to stop at this point and that he is sure Mr. Woldorf will have more dealings with counsel on this issue and we'll see where that goes. He doesn't want to do anything to taint the process that we are in at this point. Mr. Woldorf stated that he is not a lawyer but if there is not complaint filed he doesn't know what pending means and he feels that means to still be discussed. If you don't want to discuss it and he is going to advise you, that is fine. Chairman Fisher stated he is going to ask Mr. Stypinski to take the call from Mr. Woldorf after this meeting, within the next week or two and the two of you can discuss the issues. Mr. Stypinski stated that would be fine. Mr. Woldorf stated that as a citizen of this State and interested in all the good things the SADC is trying to do, he doesn't want to see the state waste time and money so before you file a complaint a bad settlement is better than a good court case.

OLD BUSINESS

A. Deed of easement Subcommittee: Interpreting the Deed of Easement – Report # 1

1. Summary of Public Comments/Responses
2. Recommendations for Adoption

Ms. Payne referred the Committee to a revised version of the document the Committee reviewed last year when it reviewed two reports provided by the SADC Deed of Easement Subcommittee, which were intended to provide guidance for how the SADC interprets the Deed of Easement. The reports were Report # 1: General Guidance and Report # 2 was Recreational Uses on Preserved Farms. At that time the Committee directed that the reports be distributed to farmland preservation partners for comment. The documents before the Committee today reflect the comments that staff received and the general responses to each of the primary categories of issues.

She stated that of the two documents one was dealing with general guidance issues, how we generally look at the deed of easement and the second one was

specific to recreational uses because the deed of easement has a provision in it that does allow recreational uses. With the issue of soil disturbances that is why the subcommittee was set up, to help create this kind of level of consistency of interpretation.

Ms. Payne stated the comments break down into a couple basic categories. On the first page of the document is the general comment that these guidelines should be adopted through rule-making and not issued as guidance documents. That was a substantial comment that repeated. The response was that staff recommendation was that we do go through the rule-making process. She stated that going through the rule-making process puts things down in black and white so we were hoping to use these as guidance documents for a while to make sure that everything was considered and correct before going through the rule-making. However, it is staff recommendation, with the support of the Attorney General's Office, that if the Committee wants to adopt these we should go through the rule-making process.

Mr. Siegel commented, for clarification purposes, that staff is advising that it thought the guidelines was a better idea but the comments indicate that we should do this by rule-making and the subcommittee's recommendation is that we should do this by rule-making. Ms. Payne responded that was correct. She stated that if the agricultural community is more comfortable with the SADC going through the rule-making process we can do that. Mr. Germano stated that he felt it was very important for this Committee to maintain a constant view of what that document means for everyone that will be signing it over the long-term.

Ms. Payne stated that the goal is to create consistency over time. We cannot have a program that has an interpretation on a question that is one way today and then after you change a couple of Committee members two years from than now it is something different. Mr. Siegel stated that he understands that but these are all very fact-sensitive area and these pieces of properties are all different, the farms are all different. He stated that if we cannot just make a guideline on how we interpret something then we'll never have a guideline and everything will have to be through rule-making. There will be nothing like an interpretative statement to help board members understand how we interpret the deed of easement.

Ms. Payne stated that this doesn't address in detail every fathomable question that is going to be put before the SADC but it is trying to address a general approach the Committee will take. Almost every interpretation the SADC will have will be on a case-by-case basis but we are trying to create a stronger foundation reference point for decision-making as those cases arise.

Ms. Payne stated that in looking at this we looked at all the statutes that

authorized the creation of the Farmland Preservation Program, the Committee, the Acquisition Program and all of the funding sources. The wording that keeps coming up in all of the statutes is that agricultural production should be the “first priority use of the land”. So in the original draft it was suggested that be language that we use to test whether something is compliant with the deed or not. There was a lot of concern raised through the public comment about using a term from statute that did not appear in the deed itself. We appreciated that point so the proposed amendments don’t use the language that is in the statute but rather uses specifically, and focuses in on the language in paragraph 2 of the deed, which says that the “land must be retained for agricultural use and production”.

The third area of comment was sort of a misimpression that we were somehow trying to compel property owners to use every square inch of their property. Clearly the SADC recognizes that steep slopes and wetlands and all kinds of land that are either unfit for agricultural production or illegal in some cases, such as a wetland. So we tried to clarify that by saying that no one is forced to use every square inch for production but what we are saying is that just because you have a rocky out-crop that you cannot use for traditional production doesn’t mean that you can then use that out-crop to do something nonagricultural. The point we are trying to make here is that the deed applies to the entire property, all of the premises.

The last major issue was size and scale of the activity. We were trying to indicate that if an activity is prohibited, it is prohibited whether you do it a lot or a little. If it is a prohibited activity under the deed it is prohibited, regardless of frequency. With respect to recreation, a lot of folks said the SADC is in the middle of a lot of work on developing an AMP that deals with agri-tourism with recreational uses related to that. There was concern that this would muddy the water so to speak. So the recommendation after reflecting on that is to agree to hold off on any specific recommendation on interpreting recreational uses until such time as the AMP process is complete. We understand from a right to farm perspective, how we are looking at those sort of activities and then from there we can take a look and say is there a difference between that and preserved farms. We are tabling any specific recommendations on recreational uses at this time.

Ms. Payne stated that the second document in the meeting packet is the revised version of what will be a future rule proposal, if the Committee is comfortable with it. She revised the specifics with the Committee. She stated that the most important part of this document can be found on pages six and seven. She stated that we are proposing add the definition of “deed of easement” (page 6). Under the deed restrictions, item “C” was designed to expand the language to reflect all the funding sources that have been approved by the voters, because every one of

those acts sets forth why public funds are being provided for the program.

Ms. Payne stated that page 7 reflects new definitions and language that staff is proposing as an amended rule on interpreting the deed generally. She reviewed the specifics of that with the Committee. Mr. Siegel questioned item "I" on page seven under item # 1 where it states.....for the primary purpose of agricultural or horticultural use and production at the present time or in the future." He stated that he was not on the subcommittee but he feels that would prohibit the construction of anything involving concrete on any preserved farm. He doesn't know how else you could read that. He stated he feels it is a good idea but he wonders if that is the intent. Ms. Payne stated that it is not intended to mean that. Mr. Schilling stated that one of the things discussed earlier on was that these need to be read in their entirety. Sub-item 1 "i" is defining "dedication" in the context of doing things under item # 1, meaning meeting and supporting agricultural and horticultural use so long as that nexus is clear that the structure, even if it is concrete or permanent. He stated that no language is going to be perfect but if you look at item # 1 "for the purpose of maintaining and supporting agricultural or horticultural production...." He could make the argument that when marketing infrastructure that I feel would be supporting his agricultural production, without it I have no market and I won't produce so you then circle back to the range of activities that you find would be marketing his products.

Ms. Payne stated that with this language we are trying to clarify for everyone that a piece of preserved farmland is not an open space piece of ground and this is trying to get to that saying you cannot dedicate portions of the property to something other than agriculture. Ms. Payne stated that these documents reflect the recommendations of staff and the subcommittee.

Mr. Waltman stated that the subcommittee discussed at its last meeting the question of NRCS programs that are conservation in nature that could be construed by some as a violation of this. He wanted clarification that it was not the intent. Ms. Payne responded that if you look at the first document provided to the Committee under Summary of Comments.....and we get a question....whether landowners can implement certain USDA conservation programs on a preserved farmland. Staff has done quite a bit of work to try and understand that wide range of programs and met with the NRCS and continue to do so and it was discussed in the subcommittee meetings that by and large, almost all the USDA programs are likely to be permitted, but there are a few that do raise concerns, one being the creation of wetlands because once you do that there is no taking it back out of wetlands status. Some require recording of a permanent easement and that couldn't be permitted because the SADC's easement can't be subordinated. What we are trying to do with the USDA NRCS is identify those programs that we

don't think would be permitted. Staff will provide some clarity on going forward with more specific direction on that issue.

Mr. Siegel asked if the idea about making a statement concerning how the deed is to be interpreted on the use of energy facilities was discussed by the subcommittee? Ms. Payne stated that the SADC is going to have to adopt rules as it was directed to in the statute for the solar, wind and biomass bill that was passed to deal with alternative energy on preserved farms. Therefore because we will be adopting separate rules for that there is no need to put it in these documents.

Mr. Siegel stated that he thought that the primary objective was to clarify areas that seemed unclear. He stated that these regulations as proposed do not add any clarity to the deed of easement. Mr. Germano stated that they do add something. They do have in black and white that the deed covers every inch of the property, that the deed covers an activity, now matter how long or how short you do it for. There are things in there that are not concrete but they are a step forward and they do give this Committee the opportunity when people come before it, the right to say this was part of f the program when you came in.

It was moved by Mr. Danser and seconded by Mr. Germano to accept the documents prepared by the Deed of Easement Subcommittee, as presented and discussed, as drafted, which will come back to the Committee as a formal rule proposal.

Chairman Fisher provided an opportunity for public comment as follows:

Brian Wilson, Burlington CADB: Mr. Wilson stated that he is concerned that the adoption of these documents, through the rule making process or just as guidance documents, he is not sure adds to the providing clarity issue. There are a host of comments that he had and even the words in these proposed potential rules....what does it mean "to support" or "maintaining and supporting the agricultural operation", there have been questions of what is that? There was discussion today among the Committee of what does some of this mean. He felt that when you get into the rulemaking process you really will be putting yourselves in a box. The issues of these guidance documents even being adopted altogether there is a lot of concern expressed not just doing it through the rule process but how about not doing it at all. He is concerned that we all know that there are things that happen on very small scales on almost very preserved farm. Depending on who is out there and what they think these terms mean that there is or isn't a violation of the deed of easement. He doesn't think it is fair to the partners because you are almost asking them to turn their heads on little things. If

you were to adopt a document that says this, everything, no matter how small, if it is not agricultural production or not supporting or maintaining.....it's a violation. That puts people in a very tough position and it puts staff members who want to give answers, it makes them avoid the questions. He also thinks that landowners are unwilling to call the CADB or the SADC to ask if something is ok. He stated that in a practical sense we all know that there are some things that the deed of easement just doesn't account for. He isn't sure that these documents get us the answers to those questions and it leaves a very bad taste in everyone's mouth. He does not think the rule making process is the way to go.

Pete Johnson from Johnson Corner Farms stated that he preserved his farm in 2002 and he is an agri-tourism operation. He stated that he is glad to hear that the SADC is holding back on the agri-tourism end and he wants to make sure that what is adopted here still leaves an opening for that AMP committee to do their work. Ms. Payne responded that it does.

Nicki Goger from the New Jersey Farm Bureau stated that she would echo Mr. Wilson's comments and add that the New Jersey Farm Bureau did not recommend that you adopt these through the rule making process but asked that you not adopt them at all because it has concerns about this putting the SADC in a box and not being able to look at properties on a case-by-case basis and if you look at the Allen Farm for example, how would that sort of activity be impacted and farmers who preserved their farms certainly didn't expect that every aspect would be so scrutinized to a certain level and then not be able to do everything that they thought they would be able to do. She stated that they still have concerns and would want more flexibility.

Mr. Schilling stated that Mr. Wilson's comments were very good in a sense that there is a very desperate need for clarification. He just thinks that we are trying to clarify things that we cannot even contemplate right now in terms of the range of activities that we have to make determinations on. He stated that an interested party that comes before the SADC saying that the activity that is, let's say, being hypothetically being prohibited under our interpretation, they are going to argue that they are doing it to maintain and support their agricultural production. He stated that as good a job as we are trying to do and as much need as there is, its not going to provide a lot of clarity and that "maintaining and supporting" that is what we are talking about and farmers are out there trying to adopt a range of activities and they are doing it for a purpose so that they can maintain their farming operations. He stated that even if this is adopted through the rule making process, he feels there will be a lot of challenges before the SADC trying to figure out does an activity maintain the agricultural or horticultural production.

Mr. Dancer stated that we should remember that if one person were doing it across the whole state, we probably would have more uniformity than right now. One of the main issues was to try and create more uniformity among the various counties so that what was permitted in Burlington or wasn't permitted in Burlington was the same for Hunterdon or another county. We know that different CADB's interpret these things differently right now and it is frustrating when someone says that well they are allowed to do it in this county or that county.

Secretary Fisher asked for a roll call vote to approve the amended Guidance document as presented by staff. The roll call vote was taken as follows:

Douglas H. Fisher, Chairperson	YES
Richard Boornazian (rep. DEP Commissioner Martin)	YES
James Requa (rep. DCA Commissioner Grifa)	ABSENT
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)	OPPOSE
Brian Schilling (rep. Executive Dean Goodman)	YES
Jane R. Brodhecker	YES
Alan A. Danser	YES
James Waltman	YES
Denis C. Germano	YES
Torrey Reade	YES

Yes Votes: 8 Oppose Votes: 1 Absent: 1

The motion was approved. (A copy of the Deed of Easement Subcommittee: Interpreting the Deed of Easement: Report # 1 – Summary of Public Comments/Responses and Recommendations for Adoption is attached to and is a part of these minutes.)

B. Adoption of Proposed New rule: Agricultural Management Practice for the Construction, Installation, Operation or Maintenance of a Solar Energy Generation Facility (N.J.A.C. 2:76-2A.12)

Note: Ms. Brodhecker recused herself from any discussion/action pertaining to the agenda item on the advice of the SADC Ethics Liaison Officer, to avoid the appearance of a conflict of interest.

Ms. Payne stated that this is the proposed adoption of the SADC's published proposed rule on agricultural management practices (AMP) for the construction, installation, operation or maintenance of a solar energy generation facility. What was provided to the Committee was a document encapsulating all of the public

comments received, along with a comment response document, which are also recommending some very minor editorial changes to the document for clarification purposes.

Ms. Payne reviewed the specifics of the comments received with the Committee as outlined in the provided documentation. She stated that the documentation has been reviewed by the Attorney General's Office, the Governor's Office and the Governor's Council's Office and they are supportive of this having been placed on the agenda today.

Ms. Payne referred the Committee to page 48 of the document, where the actual rule begins. She reviewed the specifics of the technical changes with the Committee. She stated that she gives enormous credit to Mr. Baumley who was the primary author and researcher for this document, along with Ms. Gruzlovic, who also did an enormous amount of work on the document. She thanked Mr. Smith, who also contributed substantially.

Ms. Payne stated that if this is approved today by the Committee it will be published as a final rule, depending on the next deadline date for submission to the New Jersey Register, which will be approximately a month or so, and then it becomes effective. She stated that this document is only giving right to farm protection to solar projects that qualify for farmland assessment. This does not apply to preserved farms. Mr. Boornazian inquired as to why it wouldn't apply to preserved farms. Ms. Payne stated that because the solar statute distinguished it and it set very different limits on construction of solar and wind energy facilities on preserved than on unpreserved farms. Mr. Siegel stated that he has seen NJ Register listings with little statements in the front that state something is not part of the proposed rule. He felt that it should be pointed out. Ms. Payne stated that staff was explicitly clear on the response document and she stated that staff can make it perfectly clear when staff sends notice to all the partners that it does not apply to preserved farms.

It was moved by Mr. Sigel and seconded by Mr. Germano to adopt the Proposed New Rule: Agricultural Management Practice for the Construction, Installation, Operation or Maintenance of a Solar Energy Generation Facility (N.J.A.C. 2:76-2A.12), as presented and discussed, for publication in the New Jersey Register as a final rule. The motion was approved. (Ms. Brodhecker recused herself from the vote.) (A copy of Proposed New Rule: Agricultural Management Practice for the Construction, Installation, Operation or Maintenance of a Solar Energy Generation Facility (N.J.A.C. 2:76-2A.12))

NEW BUSINESS

A. Soil and Water Conservation Cost Share Grant Extension Request

Mr. Lofberg referred the Committee to the Extension of Project Approvals Summary listing one request for an extension of a soil and water conservation cost share grant that was approved by the Committee in June 2008. He reviewed the specifics with the Committee and stated that staff recommendation is to grant an extension of the cost share grant for a period of twelve months, as presented and discussed.

It was moved by Mr. Danser and seconded by Ms. Reade to approve Resolution FY2011R5(1), granting an extension of a soil and water conservation cost share grant to the following landowners, as presented and discussed and subject to any conditions of said Resolution:

1. Charles and Lucia Huebner (SADC #11-0096-EP)
Hopewell Township, Mercer County
Cost Share Grant Extension Amount: \$4,800.00
Expiration Date of Extension Period: June 26, 2012 (12 month extension period)

The motion was unanimously approved. (A copy of the Extension of Project Approvals Summary and Resolution FY2011R5(1) is attached to and is a part of these minutes.)

B. Resolution for Final Approval – County Planning Incentive Grant Program

1. Darren Kinney, Harmony Township, Warren County

Ms. Winzinger referred the Committee to a request for final approval under the County Planning Incentive Grant Program for the Darren Kinney farm, located in Harmony Township, Warren County. She 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. Siegel and seconded by Mr. Danser to approve Resolution FY2011R5(2), granting final approval to the following landowner as presented and discussed, subject to any conditions of said resolution:

1. Darren Kinney (Resolution FY2011R5(2))
Block 34, Lot 16
Harmony Township, Warren County, 124 Acres
State cost share of \$2,980.00 per acre (69.3 percent of the certified

market value) for a total grant of approximately \$380,605.60; the SADC grant will be funded from the competitive grant fund and no additional SADC competitive grant funds can be sought for this property resulting from any increase in final surveyed acreage above the estimated \$380,605.60 identified in this final approval; the County has requested to encumber an additional three (3) percent buffer for possible final surveyed acreage increases, therefore 127.72 acres will be utilized to calculate the grant need.

The motion was unanimously approved. (A copy of Resolution FY2011R5(2) is attached to and is a part of these minutes.)

C. Farmland Stewardship

1. House Replacement Request

- a. Budrewicz Farm, Monroe Township, Middlesex County (Amended Location)

Mr. Danser recused himself from any discussion/action pertaining to this agenda item to avoid the appearance of a conflict of interest. Mr. Danser is the Chairman of the Middlesex County Agriculture Development Board.

Mr. Roohr referred the Committee to Resolution FY2011R5(3) for a request by Joseph, Edward and Michael Budrewicz, owners of Block 31, Lot 13.02 in Monroe township, Middlesex County, totaling approximately 28.64 acres to amend the location of a new residence that they propose to build. Joseph Budrewicz manages and operates the hay farm on the property and the owners have removed the previously existing residence from the premises and did request to replace that residence with a new home for Joseph Budrewicz who would reside in the new house with his family. The SADC approved the request at its April 23, 2010 meeting. After evaluating the originally proposed home site it was determined that the location would not comply with the NJ DEP wetlands rules and was also not ideal for septic system design. The owners would like to amend the location of the new residence to an area, which is isn't impacted by the NJ DEP rules, is suitable for construction of septic system and does not impact the tillable acreage. The design and size of the new house will not change from what was previously approved and the new house will utilize the existing farm lane as the driveway. Staff recommendation is to approve the amendment to the location for the new residence, as presented and discussed.

It was moved by Ms. Brodhecker and seconded by Mr. Germano to approve Resolution FY2011R5(3) approving a request by Joseph, Edward and Michael Budrewicz, owners of Block 31, Lot 13.02, located in Monroe Township, Middlesex County, comprising approximately 28.64 acres to amend the previously SADC approved location of a new

single family residence to be constructed, consisting of approximately 2,700 to 3,000 square feet of heated living space, and approximately 1,400 square feet of basement space, in the new location shown in Schedule "A" of said Resolution, subject to any conditions of said Resolution. This approval is valid for a period of three (3) years from the date of this Resolution and is non-transferable. The motion was approved. (Mr. Danser recused himself from the vote.) (A copy of Resolution FY2011R5(3) is attached to and is a part of these minutes.)

D. Appraisal Handbook Amendments (Adoption)

Mr. Burns referred the Committee to the Summary of Changes to the SADC Appraisal Handbook-2011. He stated that the Committee approved the draft changes at its last meeting in order to send the draft summary of changes and handbook out for public comment and return back to the Committee with any changes as a result of public comments to adopt the 2011 Handbook. He stated that there was only one comment received about the appraisal order checklist with an appraiser commenting that he liked the changes to that. Staff recommendation is to adopt the summary of changes to the handbook as presented and discussed.

It was moved by Mr. Germano and seconded by Mr. Boornazian to accept the Summary of Changes to the SADC Appraisal Handbook-2011, as presented and discussed. The motion was unanimously approved. (A copy of the Summary of Changes to the SADC Appraisal Handbook-2011 and the Appraisal Handbook is attached to and is a part of these minutes.)

E. FY2012 Administrative Budget

Mr. Lofberg referred the Committee to the Farmland Preservation FY2012 Administrative Budget Summary. He reviewed the specifics with the Committee. He stated that the FY2012 budget is approximately \$108,000.00 more than for FY2011. The major increase is in salaries, which is approximately \$67,000.00 more this year and that is based upon the present staff. The other area that showed in increase is in the area of professional and technical services. That is mostly because everything that has been happening with the solar energy bill. There will be come contracts in the IT area to develop a database. He stated that staff recommendation is to approve the FY2012 Administrative Budget as presented and discussed.

It was moved by Mr. Germano and seconded by Mr. Siegel to approve the Farmland Preservation FY2012 Administrative Budget as presented and discussed. The motion was unanimously approved. (A copy of the Farmland Preservation FY2012 Administrative Budget Summary is attached to and is a part of these minutes.)

F. Resolutions of Appreciation

- 1. Robert Baumley, Deputy Executive Director, SADC (Retirement)**
- 2. William Schnurr, Deputy Attorney General (Retirement)**

Ms. Payne stated that SADC Deputy Executive Director Robert Baumley has announced his retirement from state service effective June 1, 2011. She stated that this would be his last SADC meeting and his last workday would be May 31st. She stated that she reached out the American Farmland Trust to let them know that Mr. Baumley would be retiring and they sent to us to present to him a Certificate of Appreciation, which thanked him for more than two decades of commitment to preserving farmland, his dedication to the SADC. She indicated that a Resolution of Appreciation has been prepared for Mr. Baumley that Secretary Fisher has signed. She asked Mr. Baumley to come forward for presentation of that resolution. The resolution stated that Mr. Baumley has served the State of New Jersey for 34 years, first with the Department of Agriculture and then with the SADC and that he has been with the SADC since its inception in 1983. It further stated that Mr. Baumley has always had the highest ethical standards and has been the staunchest protector of the integrity of the Farmland Preservation Program. Mr. Baumley leaves behind a remarkable legacy of 2,014 farms covering 191,789 acres that have been preserved under a Farmland Preservation Program that – due in no small part to his efforts – is nationally recognized as among the best in the nation. She stated that she would like to have a motion by the Committee to memorialize the resolution, both for Mr. Baumley and Mr. Schnurr, who is on his way to the meeting.

Ms. Payne stated that on behalf of the Committee and staff, she wished the very best to Mr. Baumley and his family in their future endeavors.

Mr. Baumley thanked Ms. Payne, staff and the Committee for their kind words. He expressed his appreciation to everyone and he wished everyone the very best. He appreciated the opportunity to serve the SADC. He stated that working with the SADC staff has been an awesome experience and you don't get that very often.

Chairman Fisher stated that the mission of the SADC has always been clear in Mr. Baumley's mind and he has always stayed true to that. It is a treasure to see someone with that type of passion and ability in a career such as his and he has done a remarkable job. He leaves the job with a tremendous amount of pride. He stated that preservation is going to be something so special moving forward that people will appreciate even more just what happened here in New Jersey in the most densely populated state and that Mr. Baumley has been the guiding light in all of that.

It was moved by Mr. Germano and seconded by Mr. Schilling to approve the Resolution of Appreciation for SADC Deputy Executive Director Robert Baumley in recognition of his years of State service and contributions to the SADC. The motion was unanimously

approved.

Ms. Payne stated that Deputy Attorney General William Schnurr, who has represented the SADC's land acquisition program for many years. He has also been the lead attorney in the den Hollander litigation as well as several other cases. He will also be retiring effective June 1st and that his last day was also May 31st. She stated that staff had prepared a resolution of appreciation for Mr. Schnurr as well and read it to the Committee. The resolution indicated that that Mr. Schnurr was a member of the US Coast Guard Reserves and that he represented the SADC on numerous and wide-ranging legal matters, from hundreds of farmland preservation closings to complex and lengthy legal actions. Mr. Schnurr successfully advocated for the SADC in landmark cases in which the SADC halted extensive soil destruction and prevented a farm enrolled in an eight year preservation program from being sold for development, resulting in the eventual preservation of that farm. Ms. Payne stated that on behalf of the committee and staff, she wished the very best to him and his family in their future endeavors.

Mr. Schnurr stated that it has been a pleasure working with the SADC and he felt that the program is a very worthwhile program. He thanked the Committee and staff for the opportunity to be a part of the preservation process and he thanked everyone for the honor today.

It was moved by Mr. Danser and seconded by Mr. Waltman to approve the Resolution of Appreciation for Deputy Attorney General William Schnurr in recognition of his years of service and contributions to the SADC. The motion was unanimously approved.

Ms. Payne stated that another change in the SADC office will be the resignation of Cassandra McCloud, who has been the in-house attorney for the SADC, responsible for reviewing all of the county closings that come through the office, and the municipal PIG program. She has accepted a position with the State Comptroller's Office and will be leaving shortly. She wished Ms. McCloud the best in her new position and thanked her for her service to the SADC.

Ms. Payne introduced Alison Reynolds, who will be the Deputy Attorney General taking Mr. Schnurr's place. She also introduced Deputy Attorney General Lisa Deglis, who will be taking over the litigation cases that Mr. Schnurr was handling.

PUBLIC COMMENT

Jennifer McCullough stated that in terms of the solar generation she felt it would be very helpful to differentiate between nonpreserved and preserved farms. Speaking as someone who has done a lot of acquisition work, someone who has a nonpreserved farm right now could say that puts in a solar facility may not realize that they are limiting their ability to

preserve because it is going to be more restrictive for preserved farms than nonpreserved.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Thursday, June 23, 2011, beginning at 9:00 a.m. Location: **Health/Agriculture Building, First Floor Auditorium.**

CLOSED SESSION

At 11:32 a.m. Mr. Danser moved the following resolution to go into Closed Session. The motion was seconded by Ms. Reade 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. Real Estate Matters - Certification of Values

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

County Planning Incentive Grant Program

1. Claire Bartholomew
SADC #08-0097-PG
Block 5, Lot 6
Harrison Township, Gloucester County, 21 Acres
2. Alfio and Mary T. Patane
SADC #08-0110-PG
Block 252, Lot 2
Greenwich Township, Gloucester County, 126 Acres
3. Santo John Maccherone
SADC #08-0108-PG
Block 45.28, Lots 1 and 3, Harrison Township, Gloucester County
Block 1205, Lot 1, East Greenwich Township, Gloucester County

76 Total Acres

4. Ocean County/Grant Farm North
SADC #15-0016-PG
Block 81, Lot p/o 2
Plumsted Township, Ocean County, 122 Acres
5. Ocean County/Grant Farm South
Block 81, Lot p/o 2
Plumsted Township, Ocean County, 116 Acres

Nonprofit Grant Program

1. Hunterdon Land Trust Alliance/Gordeuk Trust (Moody)
SADC #10-0056-NP
Block 23, Lots 17 and 17.03
Kingwood Township, Hunterdon County, 26 Acres
2. Hunterdon Land Trust Alliance/Harder
SADC # 10-0057-NP
Block 11, Lots 2 and 2.06
Holland Township, Hunterdon County, 112 Acres

State Acquisition (Easement)

1. Zoe Sarbanes Pappas
SADC #17-0205-DE
Block 18, Lot 2
Mannington Township, Salem County, 153.68 Acres
2. Coombs Properties, LLC
SADC #06-0062-DE
Block 79, Lot 7, Upper Pittsgrove Township, Salem County
Block 1401, Lot 10, Pittsgrove Township, Salem County
Block 103, Lot 4, Upper Deerfield Township, Cumberland County
121 Total Acres
3. Robert and Barbara Holcombe
SADC #10-0193-DE
Block 34, Lot 34
East Amwell Township, Hunterdon County, 92 Acres

Municipal Planning Incentive Grant Program

1. Peppadew Fresh, LLC
SADC #13-0422-PG
Block 170, Lot 8.01
Marlboro Township, Monmouth County, 14 Acres

The motion was approved. (Chairman Fisher and Mr. Germano were absent for the vote.)
(Copies of the Certification of Value Reports are attached to and are a part of the closed session minutes.)

ADJOURNMENT

There being no further business, it was moved by Ms. Reade and seconded by Ms. Brodhecker and unanimously approved to adjourn the meeting at 1:00 p.m.

Respectfully Submitted,

Susan E. Payne, Executive Director
State Agriculture Development Committee

Attachments

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