

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

**REGULAR MEETING**

**August 27, 2015**

Chairman Fisher called the meeting to order at 9:10 a.m. SADC staff person Patricia Riccitello read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Roll call indicated the following:

**Members Present**

Douglas H. Fisher, Chairman  
James Requa (rep. DCA Commissioner Richman)  
Brian Schilling (rep. Executive Dean Goodman)  
Renee Jones (rep. DEP Commissioner Martin)  
Ralph Siegel (rep. Acting State Treasurer Romano)  
Peter Johnson  
James Waltman  
Jane Brodhecker

**Members Absent**

Alan Danser, Vice Chairman  
Denis C. Germano, Esq.

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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, Cindy Roberts, Stefanie Miller, Paul Burns, Dan Knox, Jeffrey Everett, Hope Gruzlovic, Brian Smith, Esq., David Kimmel, Charles Roohr, Alison Reynolds, Esq., Pat O'Connell, Matthew DiStaulo, Hector Weah, Steven Bruder and Patricia

Riccitello, SADC staff; Michael Collins, Esq., Governor's Authorities Unit; Harriet Honigfeld, Linda Brennan and Michaela Kramer, Monmouth County Agriculture Development Board; Daniel Pace, Mercer County Agriculture Development Board; Brian Wilson, Burlington County Agriculture Development Board; Tom Beaver, New Jersey Farm Bureau; Eric Zwerling, Rutgers Noise Technical Assistance Center; Donna Rue, Rue Brothers Farm, Warren County; Bridgitte Sherman, Cape May County Agriculture Development Board; Amy Hansen, New Jersey Conservation Foundation; Jenny Jimenez and Mark Villinger, Ocean County Agriculture Development Board; Glorianne Robbi, Farmland and Open Space Preservation Committee, East Amwell Township, Hunterdon County; and Bill Merkler, Down to Earth Farm, LLC, Upper Freehold Township, Monmouth County.

### **Minutes**

#### A. SADC Regular Meeting of July 23, 2015 (Open and Closed Sessions)

It was moved by Mr. Siegel and seconded by Mr. Schilling to approve the Open Session and Closed Session minutes of the SADC regular meeting of July 23, 2015. The motion was approved. (Mr. Johnson abstained from the vote.)

### **REPORT OF THE CHAIRPERSON**

Secretary Fisher noted that the SADC had a record year in farmland preservation in terms of acreage preserved – 7,500 acres, which is close to the target goal of 8,000 acres.

He stated that fruits and vegetables in New Jersey are having a banner year but other sectors are having difficulty because grain prices are low.

### **REPORT OF THE EXECUTIVE DIRECTOR**

Ms. Payne stated that it had been a good year for farmland preservation, thanks to the efforts of partners and staff. There were 95 closings, and our goal is still to close 100 farms per year. She stated that while the SADC will re-examine its goals in the future once it knows how much funding farmland preservation will be allocated, for now the 8,000-acre and 100-farm goals remain the same since we are still spending down 2007 and 2009 bond funds. She stated that in terms of acreage preserved during FY15, the

County program accounted for 52 percent; the Direct Easement Purchase Program 31 percent; the Municipal PIG Program 13 percent, and the Nonprofit Program 4 percent.

She noted the recent \$100 million appropriation for the Green Acres Program – \$90M of that from its revolving loan fund – and stated that the only place the SADC can obtain funding in the near term is to reprogram some funds that are long in the tooth. Staff will be discussing that with the Committee in the future.

Three bills were signed into law that represent pretty big changes for the apiary industry and a big step forward for beekeepers. The Right to Farm Act requires that farm management units on less than 5 acres must produce agricultural or horticultural products worth at least \$50,000 annually in order to be eligible for Right to Farm protection. One of the bills amended the Act to also provide Right to Farm protection to beekeeping operations on less than 5 acres that produce honey or other agricultural or horticultural apiary products, or provide crop pollination services, worth at least \$10,000 annually. Another bill gives the NJDA (rather than each municipality) exclusive authority to regulate the breeding or keeping of honey bees and other apiary-related activities, and to delegate monitoring and enforcement authority to municipalities under certain circumstances. The third bill establishes a penalty for anyone who intentionally destroys a man-made native bee hive.

Ms. Payne stated that the Appellate Court upheld the lower court's decision in the Quaker Valley Farms (QVF) case, finding that QVF did violate the deed of easement in cutting, filling and flattening 20 acres of a preserved farm. The landowner has petitioned the Appellate Court for reconsideration of its decision. If that petition is denied, the last court of appeals would be the Supreme Court.

### **COMMUNICATIONS**

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

### **PUBLIC COMMENT**

Therese White from Gladstone stated that she wanted to comment today concerning the duties that the Department of Agriculture has just been given to draft regulations regarding bee and apiary activities. Ms. White stated that she supports the protection of the honey bees and believes that we need them for the crops and things like that. She and her husband have resided in their home for 20 years. They have seven children ranging

from 18 to 4 years old. A few years ago they started to notice honey bees on their property. They never had them before and it became a problem because they couldn't sit out on their deck because the honey bees were there. When they put out the kiddie pool for their children they couldn't play in it because the honey bees were attracted to the water. Then for whatever reason they were attracted to the sandbox so the kids couldn't play in the sandbox either. Then they got swarms in their yard, thousands upon thousands of honey bees. Ms. White stated that she had to pull the kids in and they couldn't play outside and it would take about an hour for the bees to dissipate. She had no idea where these honey bees were coming from and she thought maybe there was a change in the environment.

Ms. White stated that she received a letter in the mail from an attorney that said one of their neighbors two doors down was recently issued violations because he is maintaining honey bees on his property and it is in violation of the town ordinance. In Gladstone they do allow honey bees but only in two zones and this was not one of them. She figured she would go down there, it wouldn't be a big deal and she would explain what she has been experiencing. It turned into a 20-month proceeding. They hired an attorney. The other neighbors, whom she never even knew, they also came down. The person who lived next door had a honey bee infestation in their house and the one across the street had a pool and their kids couldn't use the pool because of all the honey bees.

Ms. White stated that in the course of that hearing it came out that the New Jersey Department of Agriculture had issued guidelines with regard to the maintaining of the honey bees. They recommended three hives per one quarter of an acre. Well, with each hive there are 50,000 to 60,000 honey bees. Ms. White stated that she lives on a plot of land that is a little over an acre – an acre and a quarter to an acre and a third. So that meant that this individual could have 15 hives according to the guidelines, which are about 750,000 to 900,000 honey bees. That is somewhat alarming because he was maintaining that he only had 12 hives on his property, yet it was affecting all of us from using our properties because of what he was doing.

Ms. White stated that it also came about that these bills that were being put forth through the New Jersey Legislature and when she found out about the bill it had already gone through the Assembly and in the Senate Economic Growth Committee. In May she appeared before that Committee, only to say let's protect the honey bees but can you please put in there some protections for the people living in the residential areas? They rescinded the bill at that time and the N.J. Bee Association was there with their attorney. Unbeknownst to her, it came back before the Economic Growth Committee on June 11<sup>th</sup>. She attended that meeting but on the way there she fell and broke both knees and missed

the meeting. The bills got put through. Ms. White stated she did reach out to Judith Gleason, the Department's attorney, and she suggested that they meet with someone from the Bee Association to see if they could come to some happy medium. Ms. White stated she did meet last night with Janet Katz and they did discuss the issues. Her biggest problem is, with the numbers that were chosen, as it stands now and she doesn't know if these will be the regulations, it is 3 hives per quarter of an acre. Even if that number were cut down, what do you do about the residential area because the houses are surrounded by more houses. In this particular case, if you kept the 3 hives per quarter of an acre, say her other neighbors wanted the honey bees as well, are we are surrounded by three neighbors and that could potentially mean 2.25 million bees to 2.7 million bees? She can tell you with just the 12 hives it impacted everyone. She doesn't know if that is the correct approach to take on this. In her town, she knows that they do permit them in the agricultural permitted use zones and in fact, this particular neighbor who had the bees, he said yes, he had his bees on the other farms but he wanted them here and it didn't seem to make a difference that it was affecting his neighbors and the use of their yards.

Ms. White stated that she understands that these three bills that were passed were packaged together and one of them involved the Right to Farm Act, and people who own these farms, they need these bees. She understands that completely so you cannot move into those areas and then say they can't do that. But the flip side should also be true and valid that she moved into a residential neighborhood not expecting this type of agricultural activity because the bees don't stay on the property – they leave. In some of the guidelines it says to put up a 6-foot barrier. Ms. White stated she brought a picture for the Committee. There are huge trees and you cannot even see into your neighbor's property but that didn't stop the bees from coming over and swarming and always being on her property. She is hoping that when these regulations are made that you can keep the public in mind with regard to that. When you put a number in there for what you are allowed to have in a residential area, you are surrounded by neighbors. What do you do in those circumstances? When she spoke with Ms. Katz last evening, she told her that she gets that you need these for farms and she is for it. Ms. Katz responded by that saying ... to be honest, 85 percent of beekeepers in New Jersey do it for a hobby. Ms. White stated that it's not even that you are giving the bees to the farms for them to use to pollinate the crops; it's because it's a hobby. If she had a hobby of horseback riding, she wouldn't be able to just take a horse and put it in her back yard because she is in a residential area so the same should be true for the bees that don't stay on their property. There are places where people can conduct their hobby and she hopes the Committee will be cognizant of this and also the danger you are posing to so many people who are allergic to bees.

Chairman Fisher thanked Ms. White for her comments, saying that this is good

information to add into the totality of what will take place when these rules are written by the Department. Chairman Fisher stated that Ms. White could leave her name and address so that the Department could use her as a resource in terms of putting a face to an issue that you are bringing up about where bees are in close quarters of neighborhoods. Chairman Fisher stated that when beekeepers say it is their hobby, what the bees do is not their hobby, so the bees are out there doing their work but it just happens to be the owner's hobby to have honey and to raise bees.

### **OLD BUSINESS**

#### **A. Pilot Program for Special Occasion Events on Preserved Farmland – Amendment thereto and Delegation of Review Authority for Events Conducted on Certain Days to CADBs**

Ms. Payne stated that the special occasion events law was passed. The Committee has adopted a pilot program and it was adopted formally by resolution in March. It was established back in October. The law gives the County Agriculture Development Boards (CADBs) specific authorities, the biggest of which is to define what a special occasion event means in their county. It gave municipalities power over site plan review and certain development approvals and ordinances and it gave the SADC authority to approve special occasion events on days other than Friday, Saturday and Sunday and State and federal holidays. If a winery on a preserved farm is having an event on any of the days she just mentioned they do not have to come to the SADC for approval. But if they are having it on, say a Monday through Thursday, the statute says that the SADC needs to approve that. The statute also says that we can delegate that review to the CADBs if we choose.

Ms. Payne stated that in June staff drafted a resolution to discuss the delegation of that authority. Staff worked with the Governor's Office to look a little closer at that, with the goal being, first of all that property owners who are having special occasion events under the provisions of that law, we need to make sure that they are aware of the provisions of the law. Staff has done a lot of work to do outreach and meet with any winery owner who would meet with us to explain it. The goal here is kind of black and white, in writing, to get a certification from landowners that they understand what the provisions of the law are. The reason for that is that this is a pilot program and we are trying to learn what works and what doesn't work. What we don't want at the end of this 44-month pilot program is landowners/winery owners saying, "Oh I didn't know that or I didn't know we had to do that, etc." So one of the goals that was discussed was to make sure that people understand the law.

Ms. Payne stated that the first thing that the resolution before the Committee today does, is state that any winery operating under this special occasion events law would submit a registration once a year to the SADC. This is basically a brief description of the winery. We can provide a copy of the survey to them to show us where the special occasion events occur generally, and then there's the certification that they understand the provisions of the law. The second thing that the resolution proposes to do is to delegate our review authority from Monday through Thursday, conditioned on the CADBs doing a review. Right now what is going on is that some of the counties are passing resolutions that say here is what a special occasion event is and kind of just go ahead – very hands off. Other counties are taking a more detailed approach and saying, OK, if you would like to have a special occasion event you need to submit something to the CADB for review. So there are a variety of approaches out there. What this is intended to do is, if we are going to delegate our authority, and that is "if," then we are requesting that the counties do that review on our behalf. If we are going to delegate the authority to them then they should step into our shoes and take a look at things like, so this is a concert on a Tuesday night. Well, they need to take a look at that. Ms. Payne stated that staff suggested that there be two areas of focus of their review – one is what are the traffic impacts? Is someone having a very large event on a Tuesday during rush hour? The other one is what are the noise impacts of the event, say at 11 p.m. on a Tuesday night during September? We think that the legislation specifically called out SADC review for those mid-week events for a reason and the only reason that she could fathom is that we are trying to make sure they are not disturbing the neighborhood so to speak on a work night and school night, and they are not jamming up traffic where school buses cannot get through and the like. She thinks they are the things that the SADC would be looking at. That is what the resolution today does.

Ms. Payne stated that staff has provided Exhibit A – the registration form – which is pretty light. We ask the landowners to give a general description of the winery, how many years it has been in operation, how many acres of grapes are grown and how their wine is marketed, so it isn't a very detailed form. Then on the next page, if someone wants to have these special occasion events, we give them an example such as what is the name of the event and give a description, how often do you have it and then the dates. Then on the next page is the certification of compliance. This is just a checklist of all the statutory provisions. The goal is to make sure the winery operators are acknowledging that they understand what the law says. Ms. Payne stated that Exhibit B is just a little more detailed to pay attention to traffic and noise questions.

Ms. Payne stated that is what staff is proposing to augment the existing pilot program to

respond to the concern that has been raised that the pilot program be conducted in a manner consistent with the Governor's conditional veto.

Mr. Johnson asked about financial monitoring. Ms. Payne stated that under the law, in terms of financial monitoring, each winery has to submit a separate annual certification regarding their income. The law requires that and then the law allows the county or the SADC to audit farmers' operations to ensure compliance. What we are doing is drafting those audit regulations. This is more acknowledgment and disclosure on the part of the landowner; this is not asking for a lot of financial information or anything else. Ms. Brodhecker asked if staff had any discussions or input from any of the CADBs. Ms. Payne stated no and that staff wanted to share it with the Committee first. Ms. Payne stated that the Committee could adopt this today or if it is not comfortable with that then it could give staff alternative directives.

Chairman Fisher stated that this is a culmination of working back and forth with the Governor's Office, trying to figure out how to proceed on Monday through Thursday and how that would work and whether the SADC would delegate that to the counties. The counties have said different things in different parts of the state. This is the best that we could come up with because if it doesn't seem to be working according to the SADC's liking, he thinks there is a provision in the draft resolution. Ms. Payne stated that it says if the delegation isn't working out the SADC can revoke the delegation. Mr. Siegel asked if the delegation would be revoked entirely. We are delegating our authority to 18 CADBs. If we decide there is noncompliance, we are withdrawing our delegation to all 18 CADBs? Ms. Payne stated that she believes we could withdraw it individually county by county, not all 18 counties. Mr. Siegel stated that if we see something bad happening in a particular county, we're not taking a dramatic step of withdrawing the delegation to the counties that are doing OK. If we are not happy with the way one county is handling the delegation of authority we can reacquire our authority in that case and it wouldn't apply to the other counties. Ms. Payne stated that is correct.

Mr. Schilling stated that one of the things the law was trying to do was establish a pilot program for the purpose of getting information that was lacking. The way he reads this and from his memory, he doesn't think this is necessarily imposing any new criteria to the counties. The counties still retain the right to define special occasion events how they see it. A lot of this to him is meeting the legislative intent to collect data and information on the types and scope of activities that are going on. The certification of compliance he as almost like an educational outreach tool to help people be reminded of the types of things they have to comply with if they are going to participate under the pilot program.



Chairman Fisher stated that if you do this, it is essentially following the provisions of the legislation plus the Governor's conditional veto. He suggested that the Committee at least motion it, discuss it and then decide whether to pass it or not.

Mr. Johnson stated that as a farmer who does direct marketing and agri-tourism, he sees a lot of overlap or some overlap with the direct marketing/agri-tourism AMP that was developed by this Committee a couple of years ago. He knows that special occasion events specifically were not given Right to Farm protection. He hopes that we don't wait 44 months until we discuss this. He hopes that as this process goes along we can be gathering information. He is sure there will be complaints but he hopes we don't just talk about them after 44 months. He hopes that we're also monitoring the positive economic impact that these things have on neighborhoods and communities.

Mr. Waltman stated that there is a reference to the Noise Control Act in the law. He asked if he was correct that municipalities can enact noise standards that are different than the state. Mr. Waltman stated that he knows people complain about the noise of farm machinery and that is one of the reasons we needed the Right to Farm Act but in this case the noise that could be a problem isn't from the farm machinery; it could be a winery that has a band playing. Ms. Payne stated that we happen to have a noise expert in the audience today, Eric Zwerling, Director of the Rutgers Noise Technical Assistance Center, who could address this question. Mr. Zwerling stated that municipalities can adopt noise ordinances; however an ordinance contains a sound level limit decibel-denominated performance standard, then it must be consistent with the statewide scheme of noise regulation, which means essentially that you have to adopt the verbatim model ordinance that has been promulgated for local adoption by the New Jersey Department of Environmental Protection. So the standards are statewide. A simple solution to this would be to say that any amplified sound sources must adhere to the State noise standard, period. Obviously, agricultural activities such as, if you have to dry your corn at night to prevent the development of aflatoxins, that corn must be dried and that dryer can and should be allowed to exceed the permissible limits in the State code. If you need to bring in the hay before it rains and you have to do that in the middle of the night that should be and is properly exempt. However an amplified sound source, if it's part of the sale of agricultural productions and that is the definition in the State noise code of agriculture, is exempted. It includes the sale of agricultural products. So as long as you are engaged in the sale of the product it is exempt. For example, he got a call last fall about a farm that had a fright fest. The neighbors were complaining because they had someone in the cornstalks with a chainsaw, with the chain removed, chasing people through the maze. The neighbor stated that this was not an agricultural activity. Mr. Zwerling responded that if they are selling donuts made with apple cider from that farm inside the building or

if they are selling cornstalks or any other agricultural product, it is part of the sale of that. All that being said, like any other restaurant or any other wedding venue or the like, it would be very reasonable to state that any source of amplified sound must adhere to the State noise regulation and remove the exemption from that.

Ms. Payne stated to her it is very much a farm setting and a zoning issue and the law tried to provide municipalities with certain jurisdictions. But whether you are marketing wine or not, if you had a rock concert next to a residential property every night of the week, it becomes a zoning issue. She thinks that is what we are trying to grapple with. Municipalities say, OK, here is the agricultural zone, here are the residential zone and commercial zones, and we are talking about inserting what can be a substantial commercial activity into the middle of an agricultural zone potentially next to a residential zone. She stated that it goes a little bit beyond the noise regulations; it is a land use question. That is the essence of municipal land use laws, municipalities are tasked with trying to set a land use pattern to try to minimize conflicting land use. She thinks that is what the statute was trying to get at with this. This is a conflicting land use and whether it meets a State noise code or not it's like the honey bee conversation – there are conflicts, and we are trying to, through this pilot, understand what the conflicts are and how can they get resolved.

Mr. Siegel stated that he raised objections to this back in June, after seeing the definition by the Cape May County CADB as to what they would permit on wineries. We are going to have other issues he assumes but we have a hot issue already in Cape May so that is where the blow-up is going to be. There is a winery at odds with the township and the county is taking different sides. It's not an abstract down there, it is a real fight. He understands that we have minor violations that occur all the time, which we would call little offenses. His problem with this policy is we are putting it in writing that we are accepting a CADB policy that violates the easement. Mr. Siegel stated that he is concerned with the Securities and Exchange Commission and the Internal Revenue Service, which have never given us clear guidance, particularly the Internal Revenue Service (IRS), on how much marketing really counts as agricultural activity. There have been tax findings around the country that have not permitted any. The Securities and Exchange Commission is of importance because the taxpayers in this room are paying for the preserved farmland today. They haven't paid for it, they're paying for it every time we buy something and we pay sales tax, because the preserved farmland in this state was preserved with bond funds that were issued that are still being paid – almost \$700 million in bonds. His concern here is that we are putting in writing, and we have one CADB that has already acknowledged that its policy, its definition of special occasion, is any occasion. They are going to permit wineries to do absolutely anything they please and our

jurisdiction over the other four days of the week we are handing over to them to give them seven-day jurisdiction of a policy that to him is a clear violation of the easement and is actually a violation of the statute because it says special occasion, not anything you can think of.

Mr. Siegel stated that he is glad that we are going to document and track these activities. But he is concerned that putting in writing accepting a policy of extreme permissiveness in one specific county, which is the county where we will have the blow-up.... Ms. Payne stated it isn't just one county – several counties have adopted the same or more lenient definitions. Mr. Siegel stated that he is concerned with noncompliance and that someday we are going to be in for a really rude surprise and that someone from the federal government is going to show up in New Jersey and say they cannot believe what we are permitting on preserved property. Your easement is fine but what you are allowing to occur we don't think is eligible for bond funding and the bond funds have to be cancelled and the tax has to be applied.

Chairman Fisher stated that doing nothing right now, if something like this is not adopted, then every winery that is on a preserved farm would have to come in for their Monday through Thursday activity to discuss with the Committee things like zoning, traffic flow and noise. And if they don't and they are still doing these types of events then there are violations that have to be issued that have what kind of teeth? Ms. Payne stated that the SADC is given authority to enforce the law by filing a complaint in Superior Court. We would go before a judge and say the property owners are violating this statute. The first offense is \$1,000, then we would take them to court again and the second offense would be \$2,000 and suspension from conducting special occasion events for up to 6 months, the third violation is \$3,000 and a suspension of up to a year and then for a fourth violation you can suspend the winery from conducting special occasion events for up to two years. The only implementation mechanism is the SADC going to court with farmers and we are trying to avoid that if we can.

Mr. Siegel stated that he wanted to be clear that he was giving his personal opinion. He communicated with Mr. Collins from the Governor's Office and they have approved what staff has come up with. He isn't sure that the Treasurer would object to this either. Ms. Payne stated that the SADC has gone through this conversation with Treasury. The SADC annually issues a bond compliance report. We have to go through every appropriation, highlighting changes to statutes, etc. So we have this disclosure conversation with the bond counsel every year. At some point in time we have executed an agreement with them. Mr. O'Connell will be preparing the FY2015 bond compliance report so it is all out on the table. She doesn't know what else the Committee can do at

