

**STATE AGRICULTURE DEVELOPMENT COMMITTEE**

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

**REGULAR MEETING**

**December 10, 2015**

Acting Chairperson Purcell called the meeting to order at 9:05 a.m. She indicated that Chairman Fisher would be attending the meeting shortly. Ms. Payne read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

The flag salute was conducted at the start of the meeting.

Roll call indicated the following:

**Members Present**

Monique M. Purcell, Acting Chairperson (Left at 9:24 a.m.)  
Douglas H. Fisher, Chairman (Arrived at 9:24 a.m.)  
Brian Schilling (rep. Executive Dean Goodman)  
Pamela Weintraub (rep. DCA Commissioner Richman)  
Cecile Murphy (rep. DEP Commissioner Martin)  
Ralph Siegel (rep. Acting State Treasurer Scudder) (Arrived at 9:11 a.m.)  
Denis C. Germano, Esq. (Arrived at 9:22 a.m.)  
James Waltman  
Jane Brodhecker

**Members Absent**

Alan Danser, Vice Chairman  
Peter Johnson

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

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**Others present as recorded on the attendance sheet:** Heidi Winzinger, Stefanie

Miller, Cindy Roberts, Jessica Uttal, Paul Burns, Richard Martin, Dan Knox, Jeffrey Everett, Hope Gruzlovic, Brian Smith, Esq., David Kimmel, Charles Roohr, Alison Reynolds, Esq., Pat O'Connell, Matthew DiStaulo, Steven Bruder, Hector Weah, Sandy Giambrone and Patricia Riccitello, SADC staff; Michael Collins, Esq., Governor's Authorities Unit; Daniel Pace, Mercer County Agriculture Development Board; Brian Wilson, Burlington County Agriculture Development Board; Tom Beaver, New Jersey Farm Bureau; Donna Rue, Rue Brothers Farm, Warren County; Carrie Lindig, Gail Bartok and Lauren Lapczynski, U.S. Department of Agriculture Natural Resources Conservation Service (USDA, NRCS); Brigitte Sherman, Cape May County Agriculture Development Board; Jacqueline Middleton, Hunterdon Land Trust, Hunterdon County; Harriet Honigfeld and Eric Pierson, Monmouth County Agriculture Development Board; and Scott Ellis, Hamilton Township, Mercer County.

### Minutes

- A. SADC Regular Meeting of November 12, 2015 (Open and Closed Sessions)

It was moved by Ms. Murphy and seconded by Ms. Brodhecker to approve the Open Session and Closed Session minutes of the SADC regular meeting of November 12, 2015. The motion was unanimously approved.

### REPORT OF THE ACTING CHAIRPERSON

Ms. Purcell stated that the State Board of Agriculture will be meeting next Wednesday in Port Morris because it wants to talk about some of the things that are going on in the aquaculture industry, including the Federal listing of the Red Knot bird as a threatened and endangered species. Currently there is a biological assessment process going on between the U.S. Fish and Wildlife Service, the N.J. Department of Environmental Protection (NJDEP) and the Department of Agriculture, which will result in conservation measures that aquaculture operators will have to take to make sure they are being protective of the Red Knot birds during their migration from South America. Aquaculture has been dealing with a lot of issues, permitting issues, and then this Red Knot issue happened earlier this year. There has also been a call for another permit needed from the NJDEP because of some noncompliant issues with the FDA. The State Board membership wanted to be located further south not only for the South Jersey Open Meeting but also so that aquaculturalists could attend the meeting to speak to the board.

## **REPORT OF THE EXECUTIVE DIRECTOR**

Ms. Payne introduced a new SADC staff person to the Committee – Richard Martin. Mr. Martin has been hired as a staff appraiser. The SADC's former staff appraiser, Edward Ireland, retired more than a year ago and it has taken a year to go through the hiring process to replace that position. Mr. Martin is an appraiser from Burlington County and has been one of the SADC's independent review appraisers for several years now so he is well-equipped to step into the position. Mr. Martin thanked Ms. Payne and stated that he is looking forward to working with everyone at the SADC.

Ms. Payne stated that S-2769, which would allocate Corporate Business Tax (CBT) funds to preservation programs, passed the full Senate on Monday. We are not seeing anything scheduled on the Assembly side as yet. That is where we are at the moment.

## **COMMUNICATIONS**

Ms. Payne reminded the Committee to take home the various articles provided in the meeting binders. Ms. Payne stated there is an article in the packet about a poll that the New Jersey Farm Bureau commissioned through Fairleigh Dickinson University that found that about 56 percent of New Jerseyans want open space solely for its intended purposes. She wanted to give the Farm Bureau an opportunity to talk about the poll, however, Mr. Beaver stepped out of the room. Ms. Payne stated that the article would suggest that the public is strongly in favor of using dedicated funds for the intended purposes of preservation. They also talk somewhat about locally grown and Jersey Fresh. There are some very impressive statistics in there about the public's recognition of locally grown, their use of Jersey Fresh and locally grown, particularly in grocery stores and that it is a motivating factor when people are buying products. There was very strong and positive feedback on the whole locally grown and Jersey Fresh programs.

Ms. Payne stated that the next piece of correspondence relates to what we will be talking about today, which is the State of Delaware choosing to no longer use the USDA, NRCS Federal Farm and Ranch Lands Protection Program (FRPP) funding, now called the Agricultural Land Easement (ALE) program. They have had some concerns and difficulties associated with their ability to use the funds. According to the article Delaware is no longer accepting Federal funds.



**PUBLIC COMMENT**

None

**OLD BUSINESS**

**A. Federal Agricultural Land Easement (ALE) Program**

1. New Jersey State Conservationist Carrie Lindig

Ms. Payne thanked Ms. Lindig and her staff Gail Bartok and Lauren Lapczynski for taking the time to attend today's meeting. Ms. Payne stated that these are the people who the SADC works with on a daily basis when processing transactions related to Federal funds. Mr. Clapp also works very closely with them on issues related to soil and water resources on farms.

Ms. Payne stated that the purpose of today's discussion is for the Committee to better understand what is going on with respect to the Federal requirements as they relate to the ALE program. The Farm Bill came out and the NRCS issued an interim final rule. We went through a very lengthy and detailed process to try to hammer out a deed template for New Jersey. That process has stopped based on some of the concerns that the Committee discussed at its last meeting. Ms. Payne stated that the Committee has authorized proceeding on one individual farm under the new farmland program with a deed specific to that farm. At this point in time we are going to be closing on the first farm under this new 2014 ALE program probably sometime in early January 2016 if not by the end of this year.

Ms. Payne stated that at the last meeting we provided and reviewed a bit of a chart that staff developed to help the Committee understand what staff thought were some of the biggest changes from the prior FRPP deed. The Committee raised some major concerns. Staff has invited NRCS staff here today to try to help the Committee understand what is going on and why, and the extent that things are or are not written in stone at the Federal level. She would just say to the Committee that any decisions or deliberations that we have about whether the Committee is going to move forward with ALE funds would be saved for either the Executive Session discussion or a future meeting. This portion of the agenda is really for questions and answers and discussion but no decision will be made at this point.

Ms. Lindig thanked the Committee for the invitation to meet with everyone. She stated her title is State Conservationist. She uses the term State Director more often than not as

her position with the USDA, NRCS. Ms. Bartok is directly under her and she manages all the programs that the NRCS receives out of the Farm Bill. Some of them are easements and some are not easement programs. Ms. Lapczynski is on Ms. Bartok's staff and she gets into the nitty-gritty and works out the fine details. Ms. Lindig stated she hopes she can help with the big picture and if the Committee's questions get really specific Ms. Lapczynski can address those.

Ms. Lindig stated that if you are not familiar with the Natural Resources Conservation Service (NRCS), it is one of 17 agencies under the U.S. Department of Agriculture. They have been around since the 1930s. In the early days they were called the Soil Conservation Service and in 1994 that changed because they were dealing with more issues than just soil. Here in New Jersey they have 6 offices across the state. They are a non-regulatory agency. The premise of the NRCS is to work on a voluntary basis. They have been given the carrot to motivate and incentivize people to do the right thing for conservation – not the hammer as those are other agencies within the Federal government. Ms. Lindig stated they are very fortunate as since the 1990s their funding has continued to go up while funding for other Federal agencies has decreased. The reason for that is the Farm Bill. The Farm Bill is re-authorized every five years and if you watch the news and are concerned with agriculture you know that the Farm Bill is a big deal. There are all kinds of things in it like food stamps and other things that all agriculture deals with. In there is a conservation title, Title 2, where Congress comes up with concepts and ideas that they would like to see done by the Department of Agriculture. There are certain programs in there that are very political and very specific. If you agree to do something they will pay for part of it and the landowner will pay for the other part of it. Some of them are easement programs. We are here to talk about ALE, the Agricultural Land Easement program, but we have other easement programs as well dealing with restoring wetlands and things like that.

Ms. Lindig stated that the program they are here to talk about today originated in the early 1990s. It was called the Farm and Ranch Lands Protection Program (FRPP). Congress came up with this saying we are losing too much farmland so they would like to have a program to preserve all the great farmland in the United States. The Secretary of Agriculture charged NRCS with implementing it. The agency had never done easements before and we are still somewhat catching up. Ms. Lindig stated that the premise of the program since its inception was identifying prime, unique soils and keeping them available for farming in perpetuity. As we talk about this and we discuss some of your issues here today, that is still the premise of the Federal program – it is to protect the soils and make them available for farming into the future. As she stated earlier, the Farm Bill is reauthorized every five years. That means that someone has a chance to get in there



and tweak it or make changes. Sometimes things show up that we can't explain and don't necessarily agree with and sometimes they stay the same. They are here today to talk about, she believes, the last issue of the Farm Bill, which was in 2014. People were complaining that there were too many programs in the Farm Bill and it was too confusing so Congress said they would consolidate some of them. They changed the name; it is no longer the FRPP, it is the Agricultural Conservation Easement Program (ACEP), which has the farmland preservation piece (ALE) and the wetlands preservation piece.

Ms. Lindig stated there were some changes to it and she appreciates staff coming up with the outline of things the SADC saw as different between the old program and the new one. From their perspective they are not that different – there weren't a whole lot of changes. There was the name change, the added opportunity to accept grasslands more so now because they rolled the Grasslands Reserve Program into the ACEP, ALE. Then in the old FRPP you didn't have to have a whole conservation plan, you just had to address the soil component and now you are supposed to have a whole conservation plan before the easement closes. The other thing she would mention is that the program has evolved. When she was doing Ms. Bartok's job in another state the NRCS was negotiating all deeds individually across the country. Every deed went to a couple of attorneys in Washington D.C. and they looked at all of them. As you can imagine that became too onerous and difficult. The premise now is to use a template, that these are the basic minimum requirements that are required in any ALE easement that is going to have Federal dollars tied to it, and that they can be tweaked and made more restrictive but the basic premise of the template cannot change. That is kind of where they are right now.

Ms. Lapczynski stated that the big thing with the change of the minimum deed terms that Ms. Lindig talked about is that that template language had to be included verbatim because some of those changes happened across the country and different states were modifying that language and changing the intent that Congress had with that original language. So now the big major change is we have to include that template language verbatim so that the intent does not get altered in any way. That is one of the major changes. You can still negotiate individual deeds for each parcel. There are three different options – you can attach, incorporate or create a template that they use for each one. Attaching is very simple but also very complicated for explaining to a landowner because you have two separate documents – the state deed and then you would attach their minimum deed terms, and it would create a little bit of complexity in reviewing anything that might be different. Ms. Payne stated that on that point – at the administrative level you dismiss that as an option. To have a landowner sign a deed with the State but then there is an attachment 15 pages long or whatever, it is like you have to deal with two deeds and try to reconcile terms. Staff felt no, we want the landowners to

be clear on what is permitted and what is not permitted. Ms. Lapczynski stated that since this is national, it might work for other states that don't have established farmland preservation programs where they are just getting started and they can just pull our deed terms and have their easement transaction included separately. The other options are really to develop an individual template that they would use for every transaction that would include their additional clarifying language that would include state laws and things to that, and also you will have the option to go on a case-by-case basis. The Lobell deed they pushed through because originally it started as a template and it actually is approved as a template even though we are only using it for this property.

Ms. Lindig stated that you might be asking if you are not familiar, what kind of dollars are we talking about here. What does NRCS bring to New Jersey in the form of these easement dollars? Again it is a national program and every state receives an allocation. In New Jersey her understanding is that the average amount that they get every year is somewhere around \$5 or \$6 million and has gone as high as \$9 million per year. The 2014 Farm Bill de-emphasized agricultural preservation easements so right now the FRPP used to be the most funding they received of all their programs and now it has shifted, just because of the national emphasis, and she couldn't tell you why it was de-emphasized in the Farm Bill. Ms. Payne asked if the money is allocated to both programs as a group, ALE and WRE. Ms. Lindig responded yes. Ms. Payne asked is it one pot of money that you can use or was there a specific allocation you could use? Ms. Lindig stated it was specific. Ms. Payne asked how much money is allocated nationally to ALE annually? Ms. Lindig stated she didn't know.

Ms. Payne stated that one of the SADC's concerns, particularly at the staff level, is in reading what the Farm Bill says, which isn't a lot, about the ALE program, and then reading the rule, the draft rule, which hasn't been adopted yet. The draft rule is what everyone gets to review and comment on, but the rule refers to minimum standards that the NRCS is going to come up with. Part of her concern, just from a due process standpoint, is there doesn't seem to be an opportunity for real debate and real public comment and review on minimum terms because the rules kind of just say that the NRCS is going to come up with them. She thinks that is part of the problem of what is going on at the national level, that you can comment on the rule if you like it or not but the terms of the minimum standards will not be subject to that same public review process. She thinks some of the states are feeling like it is take it or leave it time with the minimum terms and you have said here today that nothing can change from those minimum standards. Ms. Payne stated that she feels it is an incredibly inflexible position for the Federal government to take when you are trying to make one program work and 28 states have farmland preservation programs. Staff has gone through six months of very detailed



back and forth on this deed and most of the answers were sorry, that is in the minimum terms and it must be that way. Ms. Payne stated that is not a partnership kind of position. That is our frustration. Ms. Lindig stated she can understand that. When you look at it from the national perspective too, they were looking for ways and opportunities to streamline also. Basically they are saying from their perspective these are the minimum guidelines and if you are willing to accept these you can just go – no further discussion needed – or if you want to make them more restrictive they will take a look at them and you can go, instead of having to negotiate each and every one every time. She thinks that she told staff that if they get to that point that is something they can certainly do. Some of the issues that are at issue, that have come up when they dealt with the Lobell farm, that are now spelled out in the template – when they discussed it with their national office, basically the response she got was that intent has always been there, it just hasn't necessarily been spelled out in the deed. Ms. Payne stated that the SADC is perceiving a much bigger change than the NRCS is. The SADC compared the NRCS-approved deed from the last FRPP round to what the Lobell deed looks like and it is substantially different. So the NRCS can take the position that nothing much has changed but from the user's perspective and from the landowner's perspective a lot has changed.

Ms. Payne stated that one of the big issues for some of the states is the ALE plan. As Ms. Lindig mentioned, under the FRPP the landowner only had to do the highly erodible lands plan and now it is an ALE plan, and we are not quite sure what the requirements of the ALE plan are going to be. That is not entirely fleshed out by the NRCS. Ms. Lindig stated correct. Ms. Payne stated that this deed is full of requiring compliance with an ALE plan and yet none of us understand what is going to be required yet so that is causing unease. The other big piece that she knows some states are struggling with is the grantee, i.e. the county, state or nonprofit, is obligated to enforce that ALE plan. Ms. Payne stated that she isn't a soils scientist, she is a planner, but she has discussed this with the SADC's soil scientist, Mr. Clapp, asking how would you actually go about enforcing this plan. Her concern is that counties may not have the ability to go out and say, for instance, has the rotation been properly accomplished or can you show us the pH test. She doesn't know how invasive that is going to be. Possibly Ms. Lindig could help us understand what the NRCS is contemplating in terms of what looks like a compliant farm in its mind to an ALE plan. Ms. Lindig stated that in the chart that Ms. Payne provided, it is correct, so the HEL plan, or the highly erodible lands plan – in 1985 Congress passed another law that said if you are getting USDA benefits you cannot be farming in an erosive manner. Across the country there were a lot of people who were sod-busting rangeland just to get into the Conservation Reserve Program, farming land that never should have been farmed to begin with, farming land to get the disaster payments. So the Food Security Act brought about this HEL plan through the NRCS in



an almost borderline regulatory way where they had to go out and say if you are getting crop insurance or you are getting FSA benefits and you're farming at four times the level of soil loss than you really should be, you need to do something now or you don't get the USDA benefits anymore. So it was just looking at the soil, just to say that if you are getting Federal benefits you cannot be farming in an irresponsible way. That is all that was about, it was just soil. When NRCS does a conservation plan they look at more than just the soil. They look at the plants, they look at what they call the SWAPA – soil, water, air plants, animals; they look at everything. This change in moving from just the basic minimum, which you have to do anyway because with HEL you cannot be farming erosively, to looking at more, it is her thinking it is a nod toward there is a lot of money going into these easements and they would like to see this land taken care of and they are going to develop a conservation plan with you beyond what you have to do. They are going to address some other things in there but conservation plans are voluntary. That is what a lot of people don't understand. The whole thing about NRCS, what they do is voluntary. When she talked to the head of her agency who runs this program, she asked what really are we asking the entities to do for these conservation plans in monitoring because really none of us have the staff to do the level of detail that we would like to do. Basically, as far as what they would be asking is that because you all, the partners, are out looking at these parcels every year, if you see a black eye, if you see something that looks really bad, what you would do is notify the NRCS and they will take care of the conservation plan and they will work with them to do as much as they can. If the landowner would choose not to then the NRCS would work with the agency and decide how far they want to take it with enforcement, but it is really more of keeping the program in good faith, protecting the Federal investment and the state and partnership's investment. There were a lot of taxpayer dollars that went toward this land and it should be taken care of.

Mr. Sigel stated that assuming that this all happens already, which it does, and the NRCS office should find for some reason a violation of an easement, what happens? Ms. Lindig asked a conservation plan violation? Mr. Siegel stated, well the ALE plan is required as part of a farmland preservation easement so you look at a farmland tract and you conclude that it is in violation, there is an activity on the farm that is in violation of the easement, what happens then under ALE that didn't happen under FRPP? What is the difference? Ms. Lapczynski stated that the process would still be the same, that the Grantee would be the one ultimately responsible for enforcing the violation. The NRCS still doesn't step in unless the Grantee isn't doing their job or not enforcing the easement. As far as the ALE plan specifically, it wouldn't necessarily be a violation of the plan unless it was a violation of an HEL requirement, which is still the same as under the FRPP. It wasn't new under ALE. If they have a conservation plan where there is an issue,

there is current erosion that they had said they would take care of under the plan, they would go through the normal planning process to maybe modify that plan. If they really can't do that anymore, their planning process continues. They don't just have a plan and say this is the plan and now we are done and go forth and do that plan. It wouldn't really be a violation in that case. It would be come back to the office and let's redo that plan again. Mr. Siegel stated let's say it's a violation and there is a perception that under the ALE plan there was a change in Federal procedure concerning dealing with a nonperforming monitor – the person holding the easement is not monitoring adequately. There is a perception that ALE has changed from FRPP as to what the Federal response might be if they see an easement violation occurring that the easement holder is not acting on. Is that correct or has it always been within the realm of the NRCS to come after a non-performing easement holder? Ms. Lapczynski stated yes, that has always been part of the program and has always been included in their cooperative agreements, which the Grantees have all signed and approved when they sign the deeds. She thinks that the change is that some of that language is now included in the deed but that language has always been included in their regulation and in the cooperative agreements. None of that monitoring policy has changed. Mr. Siegel commented that also includes there has always been a potential for the Federal agencies to seek financial recovery. Ms. Lapczynski stated yes. Ms. Payne stated that she would have to look at the SADC's cooperative agreements because that doesn't seem right to her. She stated she knows the counties – the people on the ground who are using this money, – they never have had an expectation or an understanding that the Grantee or the nonprofit was going to be responsible to pay back the Federal government for its cost of reinforcement. Ms. Payne stated that Ms. Lapczynski just said that has always been in the cooperative agreement. Ms. Lapczynski stated it has been in either the cooperative agreement or in their regulation. Ms. Payne stated that is part of what is going on here. She thinks that maybe the Federal government may have had regulations or whatever but the deeds that got negotiated that the landowners and the counties are all reading and saying, yes we can enforce these terms, that language has never been in those deeds and so we could argue about what was in the regulation but it was never in the deeds.

Mr. Siegel asked why has this happened do you think? Is it because there is a feeling at the Federal level that people were ignoring easement enforcement? Ms. Lindig stated when she asked that question, the response she got was that in other parts of the country, even though it was the expectation that the entity was responsible for monitoring, if they missed something, weren't doing it or there was a violation they were saying well, it's not on us, we are not going to take care of it, even though that was the expectation and she was told it was spelled out in the regulations already. So to make it clearer they moved that language to the deed. Mr. Siegel stated that essentially you had easement



holders in some jurisdictions who were putting the easement into a folder and saying well, it isn't our responsibility to litigate for instance. Mr. Lindig stated she doesn't know that it went that far. Mr. Siegel stated there was nothing happening and they were not doing anything. Ms. Lindig stated correct and that violations would occur. She stated that she thinks that two things are being mixed a little bit. There is language in there now for ALE and being in violation with your ALE plan, and depending on how severe the action is she cannot see the agricultural activity necessarily being in violation or something we would go after for enforcement. If it is blatant, then maybe but if you are talking about boundary violations or other building violations, all these kinds of things and we haven't seen it in a while and then we go out there and there is a strip mall.... Ms. Payne stated that those things, erosion, buildings, those are all things that were already regulated in the deed. That is so clear and we have never questioned that and the SADC is a pretty rigorous agency in terms of monitoring and enforcement. What is creating a cloud is this deed is explicit that we are obligated as the Grantee to enforce the ALE plans and you are saying that the ALE plan may include plants, animals and threatened and endangered species she is assuming. We are not saying we are worried about if someone goes out and has a gully because we would go after them today anyway because they would have to clean it up because that would violate the basic provisions of the deed. Now we are getting into something that we cannot define and we are being required to enforce it. Ms. Payne stated she tried sitting down with counties to try to explain here are the changes to the ALE plan and these are the questions that need to be clearly answered.

Ms. Lindig stated that for the ALE plan itself, if you see a violation, say a gully or whatever the situation, NRCS doesn't expect you to know and understand crop rotations that they might include in the plan because what they do with the farmer depends on what their objectives are. If they are wanting to not just keep the land in place but maybe make it better, like build up the soil health or something, NRCS doesn't expect you to know that and it wouldn't be a violation if they weren't. Any violation would be anything that would put the resource in jeopardy that we have all bought into to protect. If you see something she would ask that you let NRCS know and they will work with it or work with the agency to do it. She doesn't expect the agency or its people to handle that. Chairman Fisher stated that conversations between agencies and agents and players and participants are one thing. Pretty much you are saying it will all work out if we know what the objectives are and what we expect them to be and you'll take care of it. But they are worried about this whole black-and-white line that says you have to indemnify us if your agency says there is a problem, and you are just saying that this has always been there but it was never in black and white.

Ms. Payne stated that the states collectively have said that they are sovereign entities and

