

**RESOLUTION OF THE  
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD  
IN THE MATTER OF COMPLAINTS  
AGAINST BRICKYARD, LLC**

Mr. Geran offered the following motion and moved its adoption:

WHEREAS, Brickyard, LLC owns the property described as Block 224, Lots 10, 17, 17.01, 17.02, 28, 29, 30, 31, and 32 on the Tax Map of the Township of Howell (hereinafter “the Farm”); and

WHEREAS, Mr. Russell F. Bohlin, residing at \_\_\_\_\_, New Jersey 07727, and sixty-two (62) other individuals, filed a Pro Se Complaint with the Monmouth County Agriculture Development Board (hereinafter the “Board”), dated November 3, 2005, annexed hereto as Exhibit 1, alleging that the clearing of portions of the Farm, including the cutting of trees, and the filling of portions of the Farm with soil were not protected under the Right To Farm Act and that such future activities should be subject to regulations promulgated by the New Jersey Department of Environmental Protection (hereinafter the “DEP”), the Freehold Soil Conservation District (hereinafter the “SCD”), and the Township of Howell (hereinafter “Howell”); and

WHEREAS, the Township of Howell joined the Complainants by alleging numerous violations of its municipal ordinances with respect to the clearing of portions of the Farm, including the cutting of trees, and the filling of portions of the Farm with soil ; and

WHEREAS, the Monmouth County Agriculture Development Board Counsel, Gil Messina, Esq., determined, in consultation with Mr. Bohlin and the Attorney for the Township of Howell, that the Complaints raised issues that involved activities that may not be clearly defined as Generally-Accepted Agriculture Management Practices and that, therefore, the Board was required, by State statute, to refer the entire matter to the State Agriculture Development Committee (hereinafter the “SADC”); and

WHEREAS, during the period from April, 2006 to December, 2006, the SADC conducted a hearing over seven (7) different days and received testimonial and documentary evidence from the involved Parties; and

WHEREAS, on June 25, 2007, the SADC issued its Hearing Report, annexed hereto as Exhibit 2; and

WHEREAS, the Parties appeared before the Board on August 1, 2007, due notice of said meeting having been given in accordance with New Jersey Statutes and the Open Public Meeting Act, and a quorum of the Board being present, the Parties proceeded to present testimony; and

WHEREAS, during such Hearing, the Board Counsel, in consultation with Mr. Bohlin and the Attorneys for the Township of Howell and the landowner, determined that the role of the Board was not clear as various statutes and Administrative Code regulations appeared to be in conflict; and

WHEREAS, on August 2, 2007, the Board Counsel sent a letter to Eileen P. Kelly, Senior Deputy Attorney General, requesting clarification of the functional role of the Board in light of the Findings and Conclusions contained in the SADC Hearing Report, annexed hereto as Exhibit 3; and

WHEREAS, on August 22, 2007, in response to the letter from Mr. Messina requesting clarification concerning the role of the Monmouth County Agriculture Development Board, the Executive Director of the SADC, Ms. Susan E. Craft, wrote to confirm that the role of the Monmouth County Agriculture Development Board is to review and to come to its own independent Findings and Conclusions regarding the issues raised in the Complaints (annexed hereto as Exhibit 4); she stated that the Board may use the Findings and Conclusions contained within the SADC Hearing Report as a resource, but it is, in no way, bound by such SADC determinations and may come to its own Findings and Conclusions, as it deems appropriate; and

WHEREAS, during the period after the SADC Hearing Report was published, all Parties had an opportunity to supplement the record described in the SADC Hearing Report, e.g.,

Additional Complainant Documents, annexed hereto as Exhibit 5; Additional Township Documents, annexed hereto as Exhibit 6; and Additional Landowner Documents, annexed hereto as Exhibit 7; and

WHEREAS, all supplementary documents submitted by the Parties were distributed to the Board for their consideration; and

WHEREAS, no Party objected to the recitation of the factual record contained in the SADC Hearing Report, other than to correct or supplement it with their supplemental documentary evidence; and

WHEREAS, the Board Counsel, citing a scheduling conflict, requested a substitute Board Counsel for the balance of the Hearings in this matter and William M. Kinney, Esq., Assistant County Counsel was duly appointed; and

WHEREAS, a Hearing that was scheduled for September 5, 2007 was adjourned at the request of Counsel for Brickyard, LLC; and

WHEREAS, Mr. Kinney, with the permission of the Board, requested that the Monmouth County Agriculture Development Board Program Director, Ms. Harriet Honigfeld, conduct a Site Review to supplement the record set forth in the SADC Hearing Report to determine whether the alleged clearing of land, including the cutting of trees, was within the Riparian Buffer Zones promulgated by the NJ DEP; and

WHEREAS, Ms. Honigfeld, accompanied by two staff members from the County Engineering Department, conducted a Site Review on September 25, 2007 and recorded various Riparian Buffer Zone measurements, annexed hereto as Exhibit 8; and

WHEREAS, the Final Hearing was held on October 3, 2007, due notice of said meeting having been given in accordance with New Jersey Statutes and the Open Public Meeting Act, and a quorum of the Board being present; and

WHEREAS, the Board received into evidence the SADC Hearing Report; the Additional Complainant Documents, annexed hereto as Exhibit 5; the Additional Township Documents,

annexed hereto as Exhibit 6; the Additional Landowner Documents, annexed hereto as Exhibit 7; and the Site Review Report, annexed hereto as Exhibit 8; and

WHEREAS, the Board has considered the Complaint, the SADC Hearing Report, the Supplementary documents submitted by the Parties, and the Site Review Report.

NOW, THEREFORE, the Board makes the following independent findings with reference to the SADC Hearing Report:

**Qualification as a Commercial Farm**

**1. The SADC found that Brickyard, LLC qualified as a commercial farm.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**Whether the Disputed Activities Are Eligible for the protections of the Right To Farm Act**

**2. On Page 17 of the SADC Hearing Report, the SADC found “that the disputed activities are agricultural and hence eligible for right-to-farm protection if they meet the eligibility criteria of the Act discussed herein.”**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**3. On Page 17 of the SADC Hearing Report, the SADC found that agricultural activities conducted while a landowner is seeking subdivision approval are still protected under the Right To Farm Act.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**Harvesting Trees**

**4. On Page 17 of the SADC Hearing Report, the SADC found that the Right To Farm Act protects the production of trees and forest products, the processing of the agricultural output of the farm, and clearing woodlands using open burning and other techniques.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**5. On Page 18 of the SADC Hearing Report, the SADC found that the clearing of the interior of the racetrack was done in conformance with Generally-Accepted Agricultural Management Practices.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**6. On Page 18 of the SADC Hearing Report, the SADC found that, although Brickyard, LLC did not obtain a Forest Management Plan until after the clearing of the interior of the horse track, the SADC doubted the usefulness of such a plan as Brickyard, LLC did not intend to manage a forest in the interior of the horse track.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

Furthermore, the Board finds that, by implication, the SADC, to be consistent, appears to be saying that, in its opinion, a Forest Management Plan is only appropriate in cases where the farmer's intent is to cultivate a forest and to engage in a timber or tree cultivation crop. If this is the case, then the Board unanimously agrees with this implied portion of the Finding of the SADC and hereby incorporates it into this Resolution.

Indeed, the Board further finds that, if a Forest Management Plan was not required because Brickyard, LLC was not going to actively manage forest lands inside of the interior of

the horse track, the Board can see no logical or legal reason why that same rationale would not apply to the land outside of the horse track.

**7. On Page 18 of the SADC Hearing Report, the SADC found that a Forest Management Plan was not required to qualify for farmland assessment under the Farmland Assessment Act of 1964.**

The Board finds that, although this Finding by the SADC is irrelevant to any of the issues before the Board, the Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

The Board further finds that, if the SADC was trying to draw an analogy between Farmland Assessment criteria and the Right To Farm criteria to make the point that a Forest Management Plan is not necessarily required for the clearing of any trees in order to be considered a Generally-Accepted Agricultural Management Practice, the Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**8. On Page 18 of the SADC Hearing Report, the SADC did not address the assertions of Brickyard, LLC that a Forest Management Plan (for land outside of the interior of the horse track) was not required because the forested areas are deemed appurtenant woodlands.**

The Board finds that, apparently, the SADC summarily refused to address the issue of forested areas outside of the interior of the horse track because it had previously determined, without any rationale, that such cutting in such areas was not a Generally-Accepted Agricultural Management Practice.

The Board further finds that there would appear to be no real practical or legal difference between land within the confines of the interior of the horse track and other lands throughout the Brickyard, LLC farm.

The Board further finds that the forested areas are properly considered appurtenant woodlands given the fact that Brickyard, LLC appears to be singularly involved in the equine agricultural industry, and not in the tree cultivation or timber industry.

The Board further finds that it agrees with the contention made by Brickyard, LLC that a Forest Management Plan was not required because the forested areas are appurtenant woodlands based upon the fact that Brickyard, LLC was not in the tree cultivation or timber industry.

The Board further finds that clearing of appurtenant woodlands is a Generally-Accepted Agricultural Management Practice in this case and is protected by the Right To Farm Act.

**9. On Page 18 of the SADC Hearing Report, the SADC found that “a forest management plan is the most reliable method for determining whether trees are being cut in a responsible manner and in conformance with generally accepted practices. A forest management plan ensures the proper care and cultivation of forest trees.”**

The Board unanimously agrees with this rather generic Finding of the SADC and hereby incorporates it into this Resolution, with the clear admonition that such a Forest Management Plan is not required in this case because there is no cultivation of forest trees on the Brickyard, LLC farm.

**10. On Page 18 of the SADC Hearing Report, the SADC noted that Brickyard, LLC did not intend to manage a forest: “Mr. Skudera [of Brickyard, LLC] testified that trees were removed to clear the area to grow pasture grass, enable horseback riding, or to satisfy the Township’s requirement to perform septic suitability soil testing.”**

The Board unanimously agrees with this Finding of the SADC that Brickyard, LLC did not intend to cultivate and manage a forest and hereby incorporates it into this Resolution.

The Board further finds that cutting trees to grow pasture grass is a Generally-Accepted Agricultural Management Practice.

The Board further finds that cutting trees to enable horseback riding is a Generally-Accepted Agricultural Management Practice.

The Board further finds that cutting trees to satisfy required municipal septic suitability soil testing is a Generally-Accepted Agricultural Management Practice.

**11. On Page 19 of the SADC Hearing Report, the SADC found that there was “insufficient testimony to establish that [Brickyard] cut trees for the purpose of caring and cultivating forest trees.”**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

To be clear, the Board finds that, if the SADC is saying that it found, based upon the lack of any contrary evidence or testimony, that Brickyard was not cutting trees for the purpose of caring and cultivating forest trees, then the Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

The Board further finds that, based upon the unrefuted testimony of Mr. Skudera contained in the record, there was more than sufficient testimony to establish that Brickyard, LLC did not intend to cultivate forest trees.

Given that situation, the Board further finds that no Forest Management Plan was required and that such cutting of trees and clearing of the land is a Generally-Accepted Agricultural Management Practice.

**12. On Page 19 of the SADC Hearing Report, the SADC found “that the cutting of trees outside of the track area was not done in conformance with generally accepted practices, as there was insufficient evidence to establish otherwise.”**

The Board must respectfully disagree with this Finding of the SADC.

The Board finds that, previously, the SADC found that cutting trees to make room for different crops and/or agricultural activity is a Generally Accepted Agricultural Management Practice. That would appear to be the only “evidence” required under the Right To Farm Act.

The Board further finds that it is apparent that, because the SADC determined that cutting trees outside of the horse track required a Forest Management Plan, and Brickyard, LLC didn't



have such a Plan, that, therefore, the exterior cutting was not a Generally-Approved Agricultural Management Practice.

The Board further finds that there are only two areas in which trees were cut outside of the track: **the Soil Test Area and the Filter Strip Area.**

The Board further finds that the **Soil Test Area** is well-removed from any waterway and such clearing was required by the Township in order to do septic suitability soil testing.

The Board further finds that the SADC Hearing Report states that Mr. Skudera testified that the Soil Test Area was to be subsequently used to grow pasture grass and to facilitate horseback riding.

The Board further finds that cutting trees in the Soil Test Area was a Generally-Accepted Agricultural Management Practice given that, after the soil tests were complete, the undisputed intention of the farmer was to grow pasture grass and to facilitate horseback riding.

The Board further finds that the other area in which trees were cut outside of the horse track area is the **Filter Strip**. This, apparently, involved removing trees and scrub brush.

The Board further finds that creating a Filter Strip is recognized as a Generally-Accepted Agricultural Management Practice in this instance.

The Board further finds that cutting trees and scrub brush in the Filter Strip Area was a Generally-Accepted Agricultural Management Practice given that, after the creation of the Filter Strip, the undisputed intention of Brickyard, LLC was to grow pasture grass and to facilitate horseback riding.

**13. On Page 19 of the SADC Hearing Report, the SADC relied upon the opinion in Joseph P. Arno (Appeal of Resolution Issued by the Monmouth County Agriculture Development Board), SADC ID# 1328-02, OAL Docket No. ADC 4748-03 (February 25, 2004), to support the proposition that a Forest Management Plan is required before any trees can be cut.**

The Board must respectfully disagree with this Finding of the SADC.

The Board finds that the Arno Opinion of the Office of Administrative Law merely upheld a SADC requirement for a Forest Management Plan to establish that there were sufficient trees ready to be harvested immediately in order to meet the minimum production requirements to qualify as a commercial farm, which requires a specified minimum annual dollar amount of production, in order to seek protection under the Right To Farm Act.

The Board further finds that the “commercial farm” issue has already been resolved by the SADC in its finding that Brickyard, LLC meets the criteria as a commercial farm and is entitled to the Right To Farm Act protection. See Paragraph 1.

The Board further finds that the Arno opinion does not stand for the proposition that a Forest Management Plan is required, in every case, in order to clear trees for other crops and/or agricultural activities.

The Board further finds that the SADC’s reliance on the Arno Opinion is misplaced and that a Forest Management Plan was not required under the facts presented in the SADC Hearing Report.

**Importation of Fill, Re-Grading of Interior of Track**

**14. On Page 19 of the SADC Hearing Report, the SADC found that the “Right To Farm Act protects replenishment of soil nutrients, improving soil tilth, and installing and maintaining vegetative and terrain alterations for water and soil conservation and surface water control in wetland areas.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**15. On Page 19 of the SADC Hearing Report, the SADC found that “the importation of fill and re-grading of land is eligible for the protections of the Right To Farm Act.”**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

16. On Page 19 of the SADC Hearing Report, the SADC found that “Brickyard failed to establish that it conducted these activities [the filling and restoration of the interior of the horse track area] in conformance with generally accepted practices.”

The SADC bases its opinion on the following facts:

- In late 2004, Mr. Skudera began restoring the track area.
- He did not obtain a Farm Conservation Plan until February 2006.
- The Freehold Soil Conservation District (SCD) notified Mr. Skudera that his restoration of the track area was subject to the Soil Erosion and Sediment Control Act, but that this application could be waived if he obtained a “cooperator’s agreement.”
- Mr. Skudera proceeded with the track restoration work allegedly knowing that there was a “possibility” that he needed some kind of approval from the SCD.
- The SCD subsequently waived the requirement for a Certified Soil Erosion and Sediment Control Plan, albeit over one year after the track work had been done.
- Without a Farm Conservation Plan addressing the restoration work, the SADC could not conclude that the disputed activities conform with generally accepted practices.
- The SADC found that a sentence in the Rutgers Cooperative Research and Extension report - “The material in question on your farm may also be acceptable for land application.” - showed that Rutgers was unwilling to conclude that the material placed on the track area was acceptable for land application.

The Board respectfully disagrees with this Finding of the SADC.

The Board finds that this Finding by the SADC appears to turn on the single issue of whether a Farm Conservation Plan was required before any filling of the interior of the horse track took place. The Board notes that, in the absence of a Farm Conservation Plan, the SADC “could not conclude that the disputed activities conform[ed] with generally accepted practices.”

The Board further finds that even the Soil Conservation District waived its requirement for a Soil Erosion and Sediment Control Plan.

The Board further finds that Brickyard, LLC did obtain a Farm Conservation Plan in early 2006, which Plan did not take issue with the restoration of the interior of the horse track.

The Board further finds that, while a Farm Conservation Plan is perhaps a good thing to have, it was not an absolute requirement for the filling/re-grading of the interior of the horse track in this case.

The Board further finds that it agrees with the SADC’s finding that “[f]illing a seven to 11 acre area [the interior of the horse track] with various materials and re-grading the area to restore the land for the growth of pasture grasses, cover crops, and flowers certainly can be deemed agricultural activities.”

The Board further finds that the track clearing and filling was a Generally-Accepted Agricultural Management Practice.

The Board further finds that they respectfully disagree with the SADC’s hyper-technical and erroneous interpretation of the Rutgers Cooperative Research and Extension report, in which the SADC took the word “may” completely out of context; the Board finds that they agree with the actual finding of the Rutgers report that the fill material placed on the interior of the track area was acceptable for land application.

**17. The SADC did not address the filling and re-grading of the rest of the farm in detail other than to conclude, without explanation, that it was not a generally accepted practice.**

The Board finds that no filling has occurred outside of the horse track area while this dispute was pending due to a Stop Work Order issued by Howell Township, and, therefore, there has been no violation of any State regulation or Howell Township Ordinance yet.

The Board further finds that, as a general rule, the filling and re-grading of the rest of the farm outside of the horse track area is a Generally-Accepted Agricultural Management Practice in this case.

However, the Board further finds that, before any further filling of the lands outside of the horse track can be initiated, a current Farm Conservation Plan must be obtained along with any relevant plans required by the Freehold Soil Conservation District.

#### **Compliance With Relevant State and Federal Law**

**18. On Page 20 of the SADC Hearing Report, the SADC found that there was no indication that Brickyard was in violation of any relevant State or Federal Law.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**19. On Page 20 of the SADC Hearing Report, the SADC found that the Bureau of Coastal and Land Use Compliance and Enforcement inspected the property on eight (8) separate occasions, after the 2004 Stormwater Act was in effect, and they found “no activities under the regulatory purview of this Bureau.”**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

The Board further finds that this Finding alone should have disposed of all of the Riparian Buffer Zone issues.

**Threat to Public Health and Safety**

**20. On Page 21 of the SADC Hearing Report, the SADC found that “[t]here is nothing in the record to suggest that the cutting of trees or importation of fill and re-grading of land pose a direct threat to public health or safety.”**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**21. On Page 21 of the SADC Hearing Report, the SADC left open the remote possibility that there might be a threat to public health and safety with respect to the cutting of trees of the importation of soil within the Riparian Buffer Zones.**

The Board finds that, in its review of the letter from the Township of Howell, dated April 2004, finding no such violations, or the reports from the Bureau of Coastal and Land Use Compliance and Enforcement, based upon their eight (8) inspections of the property, after the adoption of the more stringent 2004 Stormwater Management rules, all of which inspections found no violations, the reports from those two (2) independent agencies should have sufficed to end the discussion on the Riparian Buffer Zone issue, and any potential threats to public health and safety.

The Board further finds that it is both reasonable and prudent to give great weight to the findings of the Township of Howell and the Bureau of Coastal and Land Use Compliance and Enforcement as they are the responsible agencies chartered with such oversight.

The Board notes that the issues of cutting trees within the Riparian Buffer Zones is covered in more detail in its Findings set forth in Paragraph 24.

The Board further notes that no importation of soil has occurred in the areas within the Riparian Buffer Zone.

**Preemption of Municipal Ordinances**

**22. On Page 22 of the SADC Hearing Report, the SADC found that “[i]t is clear that the Township does not view any of the disputed activities as agricultural and that it would not be alleging ordinance violations against Brickyard if Brickyard was not pursuing development of the property.”**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

The Board further finds that this Finding by the SADC is troubling in that it implies that the Complainants are using allegations of violations of municipal ordinances to prevent the disputed activities of Brickyard, LLC, which allegations they would not pursue if they thought that such activities were farm-related. The Board notes that this type of harassment is what the Right To Farm Act was designed to preclude.

The Board further finds that, to the extent that the Board finds that a disputed activity is a Generally-Accepted Management Practice, all of the allegations in the Complaint associated with such an activity being in violation of a Howell Township Municipal Ordinance should be summarily dismissed.

**23. On Page 22 of the SADC Hearing Report, the SADC found that, “with respect to the tree cutting activities inside the track area, I conclude that the activities may preempt the [Howell] Woodlands Ordinance (Chapter XXII).”**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

**24. On Page 23 of the SADC Hearing Report, the SADC found that there is a dispute of fact as to whether Brickyard, LLC cut trees in the riparian buffer areas, but then the SADC proceeded to render several hypothetical advisory opinions that attempted to cover all possible scenarios.**

The Board interpreted this portion of the SADC Hearing Report as a remand to the Board to ascertain the relevant facts concerning any clearing within the Riparian Buffer Zones.

Accordingly, the Board authorized Harriet Honigfeld, the Board's Program Coordinator, to conduct a Site Visit of the Brickyard, LLC property to measure the tree-cutting areas to provide the Board with factual evidence of the alleged clearing of wetlands or riparian buffers. Ms. Honigfeld's report is annexed hereto as Exhibit 8.

Of the five (5) measurements taken by Ms. Honigfeld, three (3) were from the interior of the track to the closest Category 1 stream. Those 3 measurements show that there was clearing within 150 feet of the closest stream.

The Board notes, however, that these measurements were taken from the interior of the horse track, which clearing has already been found by the SADC to be a Generally-Accepted Agricultural Management Practice, a Finding with which the Board has agreed and adopts into this Resolution.

The Board further finds that, given the fact that the horse track pre-dated any State Statute or Local Ordinance concerning riparian buffer zones, and that the interior of the track was, undoubtedly, cleared when the track was in active use, the re-clearing of the inside of the track should be viewed as both "grandfathered" and/or a Generally-Accepted Agricultural Management Practice in order to restore the track to active use.

Therefore, the Board further finds that the clearing of the interior of the horse track, albeit technically within 150 feet of the Category 1 stream, is a Generally-Accepted Agricultural Management Practice and is not violative of the Riparian Buffer Zone requirements.

The Soil Test Area, another area in which tree-cutting occurred, was not measured by Ms. Honigfeld because that area is far removed from any Category 1 stream, and would be inapplicable to the Riparian Buffer Zone issue.

The other two (2) measurements made by Ms. Honigfeld were of the northern and southern boundaries of the Filter Strip Area in relation to the pond.



The Board further finds that the creation of the Filter Strip Area involved cutting trees and scrub brush within 150 feet of the Pree Swamp Brook. The Board notes, however, vegetation in the form of grass in that area was replanted by Brickyard to grow pasture grass and to facilitate horseback riding. Indeed, there is an old bridal path along the southeastern boundary of the Filter Strip.

The Board further finds that it would be prudent and reasonable to defer to the reports from the Bureau of Coastal and Land Use Compliance and Enforcement, based upon their eight (8) inspections of the property, after the adoption of the more stringent 2004 Stormwater Management rules, all of which inspections found no violations, to conclude that the creation of the Filter Strip Area is a Generally-Accepted Agricultural Management Practice and that one form of ground cover has been substituted for another, thereby meeting the spirit and intent of the Riparian Buffer Zone requirements.

**25. On Page 23 of the SADC Hearing Report, the SADC found that activities outside of the track area are not entitled to preempt municipal ordinances as they were found by the SADC not to be generally accepted practices.**

The Board respectfully disagrees with this Finding of the SADC for the reasons set forth in Paragraphs 1 through 21 and Paragraph 24.

The Board finds that all such activities outside of the horse track area are Generally-Accepted Agricultural Management Practices, with the single proviso contained in Paragraph 17, in which the Board will require that Brickyard, LLC secure a current Farm Conservation Plan and any plan required by the Freehold Soil Conservation District before any filling of lands outside the horse track can be commenced, in order for Brickyard, LLC to meet Generally-Accepted Agricultural Management Practices.

Accordingly, the Board finds that the disputed activities outside of the horse track area, either those that have been completed or those contemplated in the future, after complying with the requirements of Paragraph 17, do preempt the Howell Township Municipal Ordinances.

**26. On Page 25 of the SADC Hearing Report, the SADC found that the Howell Township Soil Removal Ordinance (Chapter 269) and the soil removal provision of Chapter 188-26 are inapplicable as they only address soil removal, not soil importation.**

The Board respectfully disagrees with the reason underlying this Finding of the SADC based upon the fact that Counsel for Howell Township provided the Board with a copy of the Howell Ordinance that shows that the Soil Removal Ordinance does, in fact, address prohibitions against soil importation. See Exhibit 6.

Nonetheless, the Board finds that the Right To Farm Act protects Brickyard, LLC against the Howell Township Soil Removal Ordinance as such soil importation is a Generally-Accepted Agricultural Management Practice. See Paragraphs 14 and 15, above.

**27. On Page 25 of the SADC Hearing Report, the SADC found that the grading of the track area was protected under the Right To Farm Act and was exempt from the Township's Grading Ordinance.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

However, the Board notes the stark inconsistency of the conflicting Findings of the SADC on this particular point. Specifically, the SADC approved of the clearing of the interior of the horse track, but disapproved of the filling of the interior of the horse track. Now, in this Finding, the SADC approves that the grading of the filling/restoration as a Generally-Accepted Agricultural Management Practice and is, therefore, exempt from the Township's Grading Ordinance.

**28. On Page 25 of the SADC Hearing Report, the SADC found that the activities in the interior of the horse track were exempt from various miscellaneous provisions of the Township's Development/Land Use Ordinance as there was insufficient testimony to show how these ordinances were relevant to agricultural activities.**

The Board unanimously agrees with this Finding of the SADC and hereby incorporates it into this Resolution.

To be consistent, the Board further finds that activities taking place in other areas of Brickyard, LLC, similar to those that occurred within the interior of the horse track, would also be exempt from such various miscellaneous provisions of the Township's Development/Land Use Ordinance for the reason stated by the SADC.

NOW, THEREFORE, BE IT FURTHER RESOLVED that, based upon the aforesaid findings of fact and conclusions of law, the Monmouth County Agriculture Development Board finds that all of the disputed activities, whether inside or outside of the horse track area, are Generally-Accepted Agricultural Management Practices in this case, with the single proviso contained in Paragraph 17, in which the Board will require that Brickyard, LLC secure a current Farm Conservation Plan and any plan required by the Freehold Soil Conservation District before any filling of lands outside the horse track can be commenced, in order for Brickyard, LLC to meet the standards of Generally-Accepted Agricultural Management Practices.

Seconded by Mr. Stuart and adopted on a roll call by the following vote:

	YES	NO	ABSTAIN	ABSENT
Mr. Bullock				X
Mr. Buscaglia				X
Mr. DeFelice				X
Mr. Geran	X			
Mr. Giambrone	X			
Mr. Halka	X			
Mr. McCarthy	X			
Mr. Potter	X			
Mr. Puglisi	X			
Mr. Stuart	X			

I certify that foregoing is a true copy of the Resolution of the Monmouth County Agriculture Development Board duly adopted at a regular meeting of the Board on October 3, 2007, and memorialized on November 7, 2007.

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Richard Obal, Secretary