

STATE AGRICULTURE DEVELOPMENT COMMITTEE

POLICY

**SADC COST SHARE FUNDING ON INTEREST IN LAND ACQUIRED THROUGH
THE USE OF CONDEMNATION**

I. PURPOSE

To provide a clear understanding to all Farmland Preservation Program funding partners that the SADC will not provide cost share funding toward the acquisition of farmland preservation easements acquired through the use of eminent domain. As such, local governments that pursue the acquisition of farms, or farmland preservation easements, through the use of eminent domain do so with the expectation that no state Farmland Preservation Program funding from the Garden State Farmland Preservation Trust Fund will be made available to apply toward the cost of acquiring any such interest in land.

II. AUTHORITY

N.J.S.A. 13:8C-37

III. BACKGROUND

One of the founding principles of New Jersey's Farmland Preservation Program is that the Program is limited to the voluntary participation of farmland owners. Farmland owners are encouraged to sell their development easements in exchange for fair market value compensation, through which a permanent farmland resource base is maintained.

The condemnation of land for purposes of farmland preservation is, to date, an untested use of the police power by New Jersey's local governments. However, the legislature has, through the provisions of the Garden State Preservation Trust Act (N.J.S.A. 13:8C-37a(4)), required that the SADC acquire fee simple title to farmland "from willing sellers only," and further requires the same "willing seller" condition when the SADC provides a grant to a local government unit to help fund a fee simple purchase. N.J.S.A. 13:8C-37a(2).

Further, the SADC has received advice from the New Jersey Attorney General that concludes that the "willing seller" requirements imposed under the Garden State Preservation Trust Act ("GSPT Act") also has the effect of precluding the SADC from

providing cost share grants to local government units to cover the cost of an easement on land acquired through condemnation. The SADC believes that it is appropriate to apply this advice also to its own purchase of easements from local government units under the SADC's Direct Easement Purchase Program, in those cases where the local government unit has acquired an easement through condemnation. More specifically, such acquisitions would, in effect, result in the SADC making acquisitions from unwilling sellers, which otherwise would be prohibited by the Act..

The SADC believes that the intent of the legislature as expressed through the GSPT Act is clear, and wishes to clarify and resolve the issue of whether Farmland Preservation Program funds may be used toward the acquisition of land, or an interest in land, through condemnation.

IV. POLICY

1. Fee Simple Acquisition of Land: No SADC cost share funding shall be used in any manner to support, or reimburse the costs of, the acquisition of fee simple interest in land by any local government through the use of condemnation.
2. Acquisition of Farmland Preservation Easements: No SADC cost share funding shall be used in any manner to support, or reimburse the cost of, the acquisition of a development easement acquired by any local government for farmland preservation purposes through the use of condemnation.