

STATE AGRICULTURE DEVELOPMENT COMMITTEE
DEED OF EASEMENT ASSESSMENT SUBCOMMITTEE

INTERPRETING THE PROVISIONS OF THE DEED OF EASEMENT
REPORT NO. 1
GENERAL GUIDANCE

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**STATUTES AND REGULATIONS
PERTINENT TO INTERPRETING
THE
SADC DEED OF EASEMENT**

A. SADC Mission and Statutory Mandate.

It is useful to review the statutes that created the SADC and the powers delegated to it in order to understand and develop a context for interpreting the Deed of Easement (DoE).

Statutory Authority. The SADC was created pursuant to the Right to Farm Act (NJSA 4:1C-1 et seq), hereinafter “RTF Act”. Pertinent excerpts from the Legislative Findings of the RTF Act (NJSA 4:1C-2) include the following (emphasis added):

- ❑ *“The retention of agricultural activities would serve the best interest of all citizens of his State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State”;*
- ❑ *“It is necessary to establish a systematic and continuing effort to examine the effect of governmental regulation on the agricultural industry”;*
- ❑ *All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate”;*
- ❑ *It is the express intention of this act to establish as the policy of this State the protection of commercial farm operations from nuisance actions, where recognized methods and techniques of agricultural production are applied...”*

The RTF Act further identifies the duties of the Committee (NJSA 4:1C-6&7) identified:

- ❑ *“Consider any matter relating to the improvement of farm management practices”;*
- ❑ *“Study, develop and recommend to the appropriate state departments and agencies...a program of agricultural management practices which shall include...air and water control, noise control, pesticide control....”;*
- ❑ *“...recommend to the Governor, the Legislature and the appropriate State departments and agencies thereof any actions which should be taken that recognize the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in the State, minimize unnecessary constraints on essential agricultural activities, and are consistent with the promotion of the public health, safety and welfare”;*
- ❑ *“Generally act as an advocate for and promote the interest of productive agriculture and farmland retention within the administrative processes of State Government.*

The next statute of reference is the Agriculture Retention and Development Act (“ARDA”; NJSA 4:1C-11 et seq) which creates the farmland preservation program.

Legislative findings of the ARDA include:

- ❑ *The strengthening of the agricultural industry and the preservation of farmland are important to the present and future economy of the State and the welfare of the citizens of the State, and that the Legislature and the people have demonstrated recognition of this fact through their approval of the "Farmland Preservation Bond Act of 1981," P.L. 1981, c. 276;*
- ❑ *All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;*
- ❑ *It is necessary to authorize the establishment of State and county organizations to coordinate the development of farmland preservation programs within identified areas where agriculture will be presumed the first priority use of the land and where certain financial, administrative and regulatory benefits will be made available to those landowners who choose to participate, all as hereinafter provided.*

Finally, the Farmland Preservation Bond Act of 1981, as well as subsequent bond acts, the ARDA and the Garden State Preservation Trust Act (“GSPT”) (NJSA 13:8C-1 et seq.) contain definitions of “farmland preservation” that reflect an emphasis on the **first priority use of the land is increased productive agricultural activity**:

*“Farmland preservation program” means any program authorized by law which shall have as its principal purpose the long term preservation of significant masses of contiguous agricultural land and the **maintenance and support of increased agricultural production as the first priority use of that land**” (c.276 P.L. 1981);*

*“Farmland preservation program” or “municipally approved farmland preservation program”...means any voluntary program....which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas... and the **maintenance and support of increased agricultural production as the first priority use of that land**” (NJSA 4:1C-13.h.);*

and

*“Farmland preservation”, “farmland preservation purposes” or “preservation of farmland” means the permanent preservation of farmland **to support agricultural or horticultural production as the first priority use of that land**” (NJSA 13:8C-3).*

Review of this series of statutory references leads us to believe that the SADC was created to promote and protect the viability of New Jersey’s agricultural industry. This was to be accomplished by 1) permanently preserving the farmland base to support agricultural production as the first priority use of the land; 2) establishing accepted agricultural management practices; and 3) helping create a positive business climate by advocating for the agricultural industry through the processes of State government.

B. Interpreting the SADC Deed of Easement

From this place of statutory reference, the SADC developed and published, in the form of regulation, the State Farmland Preservation Program Deed of Easement (DoE) at N.J.A.C. 2:76-6.15(a). The goal of that document is to further the SADC’s mission of permanently preserving the agricultural land base for agricultural use and production so that the agricultural industry can be sustained into the future.

It is particularly important to keep in mind that the easement must be read, and interpreted, in its *entirety*, so that the interpretation of each individual provision is consistent with the overall intent of the document and the interpretation of all other provisions.

Furthermore, N.J.A.C. 2:76-6.15(c) states, “The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276 and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., c.32”.

As summarized above, the Agriculture Retention and Development Act, the Garden State Preservation Bond Act and all bond acts providing funding for farmland preservation purposes subsequent to the Farmland Preservation Bond Act of 1981 all recognize that agricultural or horticultural production is the first priority use of the land. This is consistent with the language contained in paragraph 2 below which requires the Premises be retained for agricultural use and production in compliance with the Agriculture Retention and Development Act and all other rules promulgated by the SADC.

Following are key provisions of the DoE. Pursuant to SADC’s regulations, the word “**Premises**” means the property under easement which is defined by the legal metes and bounds description contained in the deed of easement.

Paragraph 1: Any development of the Premises for nonagricultural purposes is expressly prohibited.

Paragraph 2: The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of the premises for common farm site activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

Paragraph 3: Grantor certifies that at the time of the application to sell the development easement to the Grantee and at the time of the execution of this Deed of Easement the nonagricultural uses indicated on attached Schedule (b) existing on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Deed of Easement.

Paragraph 7: No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

i. Grantor shall obtain within one year of the date of this Deed of Easement a farm conservation plan approved by the local soil conservation district.

ii. Grantor’s long term objectives shall conform with the provisions of the farm conservation plan.

Paragraph 9: Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

Paragraph 10: Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this Deed of Easement.

Paragraph 17: This Deed of Easement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this Deed of Easement.

PRINCIPLES FOR INTERPRETING THE DEED OF EASEMENT

The SADC's rules at N.J.A.C. 2:76-6.15 can be amended to provide principles for interpreting the Deed of Easement to help guide SADC, CADBs and other easement holders in their decision making as follows:

2:76-6.2 Definitions

“Deed of Easement” means the instrument restricting the Premises for agricultural purposes that is recorded with the county clerk’s office pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40). For land acquired in fee simple title for farmland preservation purposes, the deed transferring the restricted fee ownership of the land by the Committee or other entity is considered the Deed of Easement.

2:76-6.15 Deed restrictions

(a) - (b) (No change.)

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c. 276, and **all subsequent bond acts or legislation enacted for the purpose of providing funding for farmland preservation purposes**, the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, **and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq.**

(d) As used in this subchapter, the following words and terms shall have the following meanings:

1. “The Premises shall be retained for agricultural use and production,” pursuant to (a) (2) above, means that no portion of the Premises shall be dedicated, in whole or in part, for a purpose other than maintaining and supporting agricultural or horticultural use and production.

i. “Dedication” pursuant to (d)1 above means a use, activity or management of the land that restricts, interferes with or inhibits the potential to utilize the Premises for the primary purpose of agricultural or horticultural use and production at the present time or in the future.

(e) When interpreting the deed restrictions contained in the Deed of Easement, the Committee shall apply the following principles:

1. The deed restrictions shall apply uniformly to all areas within the Premises including all buildings, structures and the land itself;

2. The provisions of the Deed of Easement shall be read and interpreted in their entirety and in context with all other applicable statutes and regulations; and

3. Any use, activity or treatment of the land that is prohibited by the Deed of Easement is prohibited at all times, regardless of duration or frequency.