

Special Occasion Events at Wineries on Preserved Farmland SADC's Pilot Program Pursuant to P.L. 2014, ch. 16

S837 was signed into law on July 2, 2014. It permits wineries on preserved farms to conduct special occasion events (SOEs) under certain conditions as part of a pilot program, which expires in 44 months (3/1/2018). SADC staff has reviewed the law in consultation with an SADC subcommittee to discuss the SADC's role in implementation and procedures for moving forward.

Applicability – The law applies to special occasion event conducted at wineries on preserved farms and on farms enrolled in eight-year programs. It applies only to special occasion events on the premises, not in exception areas. The SADC has compiled the attached list of 18 wineries on preserved farms, which will be distributed to county agriculture development boards (CADBs). The list is not necessarily comprehensive but rather represents staff's best knowledge at this time. We expect to refine this list as we receive more information under the pilot program.

Pilot Program Overview – The SADC's major responsibility is establishment of a pilot program. While the law does not state the purpose of the pilot program, a pilot program generally is intended to provide a period of study and assessment of changes or measures that have been implemented in order to determine future action. Therefore, the SADC's efforts in this regard largely will focus on identifying what information we need to collect in order to be in a position to make recommendations to the Legislature at the program's conclusion. The SADC is proposing to annually send a questionnaire to owners of wineries on preserved farms and municipal officials regarding special occasion events on these farms and the impacts of the law. For example, the SADC may want to assess what all of the applicable municipal regulations are today, how they evolve over the 44-month period, and to what extent winery operators feel the regulations are burdensome.

It is important to note that the pilot program is not a voluntary program. All wineries that hold special occasion events on preserved farmland outside of an exception area are subject to the requirements of the law. There are no "opt in" or "opt out" provisions. The SADC will contact each winery on a preserved farm, municipalities and County Agriculture Development Boards to make them aware of the provisions of the law. The SADC considers the date S837 was enacted – July 2, 2014 – to be the start date of the pilot program. The SADC, as discussed below, sees a limited need for regulations to implement the pilot program. Therefore, as the law provides the SADC, CADBs and municipalities with independent responsibilities, these entities all should be moving forward on parallel tracks to carry out their individual roles now.

Regulations – The SADC does not anticipate promulgating regulations to implement the majority of the pilot program. The law already specifies the criteria wineries must meet in order to hold special occasion events and delineates SADC, CADB and local government responsibilities. As the purpose of the pilot program is to gather information, the SADC believes that can be accomplished by requesting information on a voluntary basis. However, the SADC will need to develop regulations to implement the provision of the law allowing for the SADC or CADBs to request an audit, in order to ensure uniform SADC audit procedures that CADBs may also choose to use. The SADC intends to contract with a certified public accountant who has experience with wineries to assist in drafting rules that establish audit protocols.

CADB Role – Major CADB responsibilities are detailed on the attached summary of the law. They include that each CADB is required to define what constitutes a special occasion event in their county. This is a county-by-county decision, and SADC staff will be available to offer any assistance if requested. CADB responsibilities also include obtaining certifications every year from affected wineries, verifying that they are complying with the gross income requirement in the law. The SADC can assist with that process by developing a standard certification form that CADBs may distribute to wineries for completion.

Special Occasion Events at Wineries on Preserved Farmland Summary of Responsibilities (P.L. 2014, ch. 16)

SADC RESPONSIBILITIES

- Establish a pilot program.
 - Notify wineries on preserved farms, municipalities and county agriculture development boards (CADBs) to make them aware of the law's provisions;
 - Assist CADBs in identifying affected farms and relevant data to be collected;
 - Annually collect required information regarding wineries' compliance with the law's gross income requirement;
 - Collect additional information related to pilot program issues, including feedback from wineries and municipalities on successes and challenges of the pilot program;
 - Promulgate rules to establish SADC audit procedures; and
 - Provide any other assistance in implementation of the law as requested or required.
- Approve (or delegate approval authority to CADBs) any special occasion event (SOE) that will be held on any day of the week other than a Friday, Saturday, Sunday or federal or State holiday;
- May order audit of winery (and request additional information) if necessary to determine compliance with the gross income requirement; and
- Approve CPA conducting the audit or may establish a list of approved CPAs for conducting audits; and
- May undertake legal action to collect penalties and to suspend wineries from conducting SOEs after repeat violations.

CADB RESPONSIBILITIES

- Determine what constitutes an SOE (county-by-county determination). The law defines an SOE as a "wedding, lifetime milestone event, or other cultural or social event as defined by the appropriate county agriculture development board";
- May order audit of winery (and request additional information) if necessary to determine compliance with the gross income requirement;
- Approve CPA conducting the audit or may establish a list of approved CPAs for conducting audits; and
- Forward wineries' annual certifications of meeting gross income requirements to the SADC.

MUNICIPAL RESPONSIBILITIES

- Exercise authority over site plan review and applicable development approvals; and
- Exercise ordinances related to litter, solid waste, traffic, the protection of public health and safety, the playing or performing of music outside of winery structures and curfews.

WINERY RESPONSIBILITIES

- Annually certify to the CADB that SOEs account for less than 50 percent of the winery's gross income for the prior calendar year;
- Pay reasonable costs for an audit if determined necessary to verify compliance with gross income requirement;
- Use "the agricultural output of the winery, to the maximum extent practicable, to promote agricultural tourism and advance the agricultural or horticultural output of the winery";

- Seek and obtain approval of any SOE to be held any day other than a Friday, Saturday, Sunday or federal or State holiday.
- Not knowingly result in a significant and direct impact to an adjacent property;
- Conform with State and federal requirements regarding the legal drinking age; and
- Hold SOEs in a tent or other temporary or portable structure in place only long enough to accommodate the SOE; in an existing permanent agricultural building; in a farm or open air pavilion; or in another structure used in the normal course of winery operations and activities.

EXHIBIT 10

REVISED March 2015
To include 80 wineries

ABC-Licensed Wineries With Preserved Farmland, March 2015 - Attachment B										
Winery	Preservation App. Name	Block/Lot	Town	County	Preservation Status	Preservation Program	Preservation Acreage	Winery License		
1	Alba Winery	110/13, 13.02, 13.04	Pohatcong	Warren	Preserved	Easement Purchase	69	Plenary Farm		
2	Brook Hollow Winery	11/10	Knowlton	Warren	Preserved	Municipal PIG	7	Plenary Farm		
3	Cape May Winery	499.01/10	Lower	Cape May	Preserved	Easement Purchase	6	Plenary Farm		
4	Cedarvale Family LLP	901/13	Logan	Gloucester	Preserved	Easement Purchase	46	Plenary Farm		
5	Chestnut Run Farm	41/3.02	Pilesgrove	Salem	Preserved	Direct Easement	22	Plenary Farm		
6	DIBella Winery, LLC	43/6	Woodwich	Gloucester	Preserved	Easement Purchase	164	Plenary Farm		
7	Fox Hollow Vineyards, LLC	11/32.01	Holmdel	Monmouth	Preserved	Fee Simple	94	Plenary Farm		
8	Heritage Vineyards of Richwood, LLC	20/1	Harrison	Gloucester	Preserved	County PIG	43	Plenary Farm		
9	Hopewell Valley Vineyards	48/2	Hopewell	Mercer	Preserved	Non-Profit Application	17	Plenary Farm		
10	Laurita Winery, LLC	75/4.5	Plumsted	Ocean	Preserved	Easement Purchase	177	Plenary Farm		
11	Old York Cellars	17/16.03	East Amwell	Hunterdon	Preserved	Easement Purchase	25	Plenary Farm		
12	Southwind Vineyard & Winery	79/86	Deerfield	Cumberland	Preserved	Direct Easement	86	Plenary Farm		
13	Swansea Vineyards (Solavista, LLC)	64/1	Hopewell	Cumberland	Preserved	Easement Purchase	124	Plenary Farm		
14	Terhune Orchards	7301/51.01	Lawrence	Mercer	Preserved	Easement Purchase	52	Plenary Farm		
15	Tomasello Winery	7604/4, 7703/4, 8304/2	Winslow	Camden	8-Year	8-year	56	Plenary Farm		
16	Unionville Vineyards	32/1	East Amwell	Hunterdon	Preserved	Easement Purchase	88	Plenary Farm		
17	Villa Millagro Vineyards	113/25	Pohatcong	Warren	Preserved	Direct Easement	100	Plenary Farm		
18	Westfall Winery	4/48, 8/7, 7.06	Montague	Sussex	Preserved	Easement Purchase	332	Plenary Farm		
19	Working Dog Winery (Silver Decoy)	42/2	East Windsor	Mercer	Preserved	Fee Simple	95	Plenary Farm		
20	Willow Creek Winery	73/9, 74/2	West Cape May	Cape May	Preserved	Easement Purchase	36	Plenary Farm		
Totals				11			1,639			

CHAPTER 16
(CORRECTED COPY)

AN ACT concerning special occasion events conducted at wineries on preserved farmland that promote agricultural tourism activities and events, and supplementing Title 4 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.4:1C-32.7 Definitions relative to special occasion events conducted at certain wineries.

1. As used in P.L.2014, c.16 (C.4:1C-32.7 et seq.):

"Preserved farmland" means land on which a development easement was conveyed to, or retained by, the State Agriculture Development Committee, a county agriculture development board, a county, a municipality, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes.

"Special occasion event" means a wedding, lifetime milestone event, or other cultural or social event as defined by the appropriate county agriculture development board, and conducted pursuant to the requirements set forth in subsection a. of section 2 of P.L.2014, c.16 (C.4:1C-32.8).

"Winery" means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to R.S.33:1-10.

C.4:1C-32.8 Pilot program permitting special occasion events.

2. a. The State Agriculture Development Committee shall establish a pilot program permitting special occasion events to be conducted on preserved farmland at a winery provided that:

(1) the gross income generated by the winery from all special occasion events conducted for the calendar year together account for less than 50 percent of the annual gross income of the winery;

(2) the special occasion event uses the agricultural output of the winery, to the maximum extent practicable, to promote agricultural tourism and advance the agricultural or horticultural output of the winery;

(3) the special occasion event is conducted on a Friday, Saturday, Sunday, or federal or State holiday, except that a special occasion event may be conducted on any other day of the week with the approval of the State Agriculture Development Committee. The committee may delegate its authority in that regard to a county agriculture development board;

(4) the special occasion event is conducted in: (a) a temporary structure, such as an enclosed or open canopy or tent or other portable structure or facility, and any temporary structure would be put in place for only the minimum amount of time reasonably necessary to accommodate the special occasion event; (b) an existing permanent agricultural building; (c) a farm or open air pavilion; or (d) another structure used in the normal course of winery operations and activities;

(5) the special occasion event complies with applicable municipal ordinances, resolutions, or regulations concerning litter, solid waste, and traffic and the protection of public health and safety;

(6) the winery shall be subject to a site plan review and any applicable development approvals as may be required under an ordinance adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

(7) the special occasion event is subject to the noise standards set forth pursuant to the "Noise Control Act," P.L.1971, c.418 (C.13:1G-1 et seq.), and the rules and regulations adopted thereto;

(8) the special occasion event complies with any applicable municipal ordinance that restricts performing or playing music inside the winery's buildings and structures;

(9) the special occasion event ends at a specific time, if required pursuant to a curfew established by a municipal ordinance;

(10) the special occasion event would not knowingly result in a significant and direct negative impact to any property adjacent to the winery; and

(11) the winery hosting a special occasion event enforces State and federal requirements concerning the legal drinking age.

b. In determining the annual gross income of a winery pursuant to this section, the gross income received from any special occasion event shall include, but need not be limited to, admission fees; rental fees; setup, breakdown, and cleaning fees; and all other revenue that is not directly related to the agricultural output of the winery but is received by the winery in conjunction with conducting a special occasion event.

C.4:1C-32.9 Audit to determine compliance; certification of annual gross income.

3. a. (1) A county agriculture development board or the State Agriculture Development Committee may order, and specify the scope of, an audit of the owner or operator of any winery engaged in conducting special occasion events on preserved farmland, for the purpose of determining compliance with section 2 of P.L.2014, c.16 (C.4:1C-32.8). The audit shall be conducted by an independent certified public accountant approved by the board or the committee, and the reasonable costs thereof shall be paid by the owner or operator of the winery. A county agriculture development board, or the committee, may establish a list of independent certified public accountants approved for the purposes of conducting an audit pursuant to this paragraph. Copies of the audit shall be submitted to the board and the committee.

(2) An owner or operator of a winery engaged in conducting special occasion events on preserved farmland shall not be subject to an audit authorized pursuant to this section more than once per year without good cause demonstrated by the applicable board or the committee.

b. An owner or operator of a winery engaged in conducting special occasion events on preserved farmland shall annually certify to the county agriculture development board that the special occasion events together account for less than 50 percent of the annual gross income of the winery during the prior calendar year, pursuant to paragraph (1) of subsection a. of section 2 of P.L.2014, c.16 (C.4:1C-32.8). The board shall forward the certification of annual gross income to the committee.

c. In conjunction with an audit ordered pursuant to subsection a. of this section, a board or the committee may request, and the winery shall then submit, additional documentation as may be necessary for the board or committee to verify compliance with paragraph (1) of subsection a. of section 2 of P.L.2014, c.16 (C.4:1C-32.8).

C.4:1C-32.10 Violations, penalties.

4. a. An owner or operator of a winery who violates P.L.2014, c.16 (C.4:1C-32.7 et seq.) shall be liable to a civil penalty of up to \$1,000 for the first offense, up to \$2,000 for the second offense, or up to \$3,000 for a subsequent offense, to be collected in a civil action commenced by the State Agriculture Development Committee.

b. In addition to the penalties established pursuant to subsection a. of this section:

(1) for a second offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of up to six months;

(2) for a third offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of at least six months but not more than one year; and

(3) for a fourth or subsequent offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of at least one year but not more than two years.

c. Any penalty imposed pursuant to this section may be collected, with costs, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L.2014, c.16 (C.4:1C-32.7 et seq.).

C.4:1C-32.11 Rules, regulations.

5. a. The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary for the implementation of P.L.2014, c.16 (C.4:1C-32.7 et seq.).

b. The committee may adopt, as may be necessary and appropriate, agricultural management practices for the implementation of P.L.2014, c.16 (C.4:1C-32.7 et seq.).

6. This act shall take effect immediately and shall expire on the first day of the forty-fourth month after the date of enactment.

Approved July 2, 2014.