

STATE AGRICULTURE DEVELOPMENT COMMITTEE

REGULAR MEETING

January 25, 2024

Mr. Joe Atchison called the meeting to order at 9:05 a.m.

Ms. Payne read the notice stating that the meeting was being held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

Roll call indicated the following:

Members Present

Joseph Atchison, III (Acting Chairman)

Martin Bullock

Scott Ellis

Pete Johnson

Richard Norz

Tiffany Bohlin

Julie Krause

Lauren Procida

Brian Schilling

Members Absent

Charles Rosen

Gina Fischetti

Susan Payne, SADC Executive Director

Jason Stypinski, Esq., Deputy Attorney General

Minutes

SADC Regular Meeting of December 7, 2023 (Open and Closed Session)

It was moved by Mr. Ellis and seconded by Mr. Bullock to approve the Open and Closed session minutes of the SADC regular meeting of December 7, 2023. Mr. Johnson, Ms. Bohlin and Mr. Schilling abstained from the vote. The motion was approved.

Report of the Chairman

Mr. Atchison reported that the department is prepared for the State Agricultural Convention which takes place in February.

Mr. Atchison also informed the committee that the search for the new Secretary continues with the State Board of Agriculture.

Report of the Executive Director

Ms. Payne reported that she and Mr. Roohr will be attending the State Agricultural Convention.

Executive Director Payne reported that the Deer Fencing Bill was signed into law earlier this month. The bill amended both the SADC Deer Fencing program on preserved farms and the Department of Agriculture's Deer Fencing program on unpreserved farms.

She reported that the Formula Based Value Bill, A4729, was signed into law. The bill allows SADC to adopt a formula to establish easement values. This legislation will change how land is valued and will hopefully have a profound impact on landowner participation. The future program subcommittee of the SADC will meet next week. The first issue it will work on is formula value. The subcommittee will bring back its recommendations to the committee for process and procedures.

Ms. Payne stated that the State Board of Agriculture has asked for a continued conversation with the SADC regarding the proposed Soil Protection Standards. The SADC subcommittee met earlier this month to review the public comments and summarize the main topics.

The Executive Director reviewed the following periodic delegation reports with the committee: Term Preservation Program (Quarterly), Certified Market Values (Monthly), Stewardship Delegation (Semiannual), Deer Fencing Program Delegation (Semiannual) and Soil and Water Cost Share Program (Semi-Annual). The litigation spreadsheet report is attached.

Mr. Norz asked for an update on the Soil Protection Standards (SPS) subcommittee findings. Ms. Payne stated that the subcommittee reviewed the approximate 250 public comments received thus far and a summary of the main topics. The subcommittee will attend a listening session with the State Board of Ag's subcommittee next week. A presentation will be made to the full committee based on the findings of both of those meetings.

The comments have been supplied to the committee members in batches as they were received. Mr. Norz requested the summary of the comments be provided to the committee members as well. Ms. Payne agreed. The Executive Director identified that the major themes of the comments were retroactivity, buy back of

exception areas, grandfathering of some or all of the disturbance that existed at the time of preservation, concerns about the viability of the program, and the economic impacts on farming. There were also a series of comments saying the proposed disturbance allocation is too high or seems like a fair compromise.

Ms. Payne stated that the subcommittee is trying to focus on whether any viable alternatives have been proposed by commenters.

Public Comment

Ms. Patricia Springwell from Hunterdon County expressed her concerns about soil disturbance limits contained in the proposed Soil Protection Standards and its impact on the farmland that has been preserved. She stated the committee needs to implement a restriction on the size of residences built on preserved farmland.

New Business

A. Stewardship

Right to Farm – OAL Final Decision

Raritan Township v. Susan and Allen Funk and West View Vines

Mr. Smith stated that there is a proposed final decision in a Right to Farm case from Hunterdon County. The resolution by the County Agriculture Development Board (CADB) was appealed to the OAL. An initial decision was rendered. SADC needs to adopt, modify, and or reject the initial decision that was rendered by the administrative law judge (ALJ).

Mr. Smith stated that the Hunterdon CADB approved the construction of a 15' x 30' concrete pad in front of an existing 30' x 30' detached garage and use of the garage to facilitate a winemaking operation. The property has several acres of grapes and is also planted in Timothy hay. The decision of the board was appealed by Raritan Township.

Mr. Smith stated that the board approved the SSAMP request by the owners of the property, Susan and Alan Funk. The issues decided at the OAL were whether this farm was a commercial farm, whether the board properly considered the concerns of neighbors who appeared at the public hearing on the SSAMP request, and whether the board considered the objections of Raritan Township.

Mr. Smith advised that the SADC final decision closely examines the factual and legal record. The final decision generally upholds the decision of the Hunterdon CADB and portions of the OAL decision. The SADC final decision

also modifies some of the findings that the OAL made. SADC approval of the SSAMP is for the construction of the 15'x 30' concrete pad and use of the 30'x 30' detached garage for winemaking activities. He then asked the participating attorneys for their comments.

The Executive Director asked Mr. Smith to address the CADB's decision in regard to the winery holding Special Occasion Events (SOEs).

Mr. Smith stated that the Funks' SSAMP request was limited to winemaking and would not include SOEs, public tastings, or retail sales facilities on the premises. The scope of their winery's operation would be limited to making wine for family and friends. Wine will be mailed to customers, picked up on site and/or physically delivered to customers. These conditions were included in the Hunterdon CADB's resolution.

Mr. Smith noted that the final decision conditions SSAMP approval on compliance with relevant federal and state laws, especially compliance with the Division of Alcoholic Beverage Control (ABC) statutes and regulations.

Ms. Payne asked Mr. Smith to review the concerns raised by the neighbors and the township and the CADB's assessment of those concerns.

Mr. Smith stated the neighbors' main concerns were noise, traffic, and runoff. Mr. Funk addressed these concerns at the hearing. Mr. Funk said that there would not be any noticeable noise that could offend neighbors, traffic would be minimal, and deliveries would be via FedEx, USPS, or UPS. Runoff from rinsing the pad would be captured in a trench drain that would be installed by the landowners.

Those concerns and other public comments were presented at the Hunterdon County ag board proceedings, and the board addressed those concerns in its resolution. The ALJ also commented favorably that the board had addressed those issues dealing with the farmer's interests to engage in the activities and the interests of the neighbors' concerns.

Mr. Norz asked Mr. Smith to summarize the modifications to the initial decision made by the SADC. Mr. Smith stated that the SADC adopted the ALJ's decision that this is a commercial farm but modified the decision because the ALJ did not make all the necessary findings evident from the record. The SADC modified the ALJ's decision to include how the commercial farm determination was made, that the farm was farmland assessed, and that the board had adequately considered the neighbors' concerns.

Mr. Smith stated that one of the commercial farm eligibility criteria is that the agricultural operation is conducted as a single enterprise. The final decision includes a finding of single enterprise. The Funks and their LLC are so closely tied together that a single enterprise exists, which is an important factor in commercial farm eligibility.

Executive Director commented that SADC's modification of the ALJ's decision is to correct the judge's decision so that people who read the decision are not misled. For example, the judge made references to the tax assessor confirming commercial farm eligibility. One of SADC's modifications clarifies that tax assessors determine farmland assessment, they do not determine commercial farm eligibility, which is the role of the CADBs.

Mr. Smith stated that counsel for the Hunterdon County ag board, the Raritan ag board, and the Funks were invited to be present today. He then asked them if they would like to speak.

Mr. Steven Gruenberg, the attorney for the Funks, stated that he appreciates the SADC's consideration of this matter. He stated that the Funks have been working through this process with the township, the CADB, and the OAL for a 15' x 30' concrete pad. Under the township's ordinance, construction of the pad was permitted because the processing of grapes is a permitted activity. He reported that the zoning approval was denied.

Attorney Gruenberg explained that the Funks needed the CADB and the SADC to act here to protect this type of agricultural activity.

Mr. Joseph Sordillo, attorney for Raritan Township, appreciated the opportunity to speak. He stated that the township does not agree with the decision from the OAL. Mr. Sordillo does not think the OAL understood the issues of the case, as the board did not allow for the correct hearing analysis. He explained that the township did not contest that the property is a farm. The township contested the activity of commercial winemaking and selling being permitted in this zone.

Mr. Sordillo recounted that before the board, the applicant was allowed to discuss at length commercial winemaking and sales. The township's objectors were prevented from speaking about the winemaking process and sales. The board limited the objectors' comments to runoff, traffic, and other auxiliary issues, incorrectly telling the objectors that commercial winemaking and sales were not the issues at hand. The township is frustrated with ALJ's decision and decided to appeal to the SADC.

Mr. Sordillo stated that the township questioned whether the required acreage is being farmed. With all the evidence presented, no certified surveys were presented showing the total acreage of the property or what areas are being farmed. Acreage amounts submitted on different applications were inconsistent.

He acknowledged that the CADB-imposed conditions were agreed to by the applicant, but questioned whether the applicant could return to the board for relief from those conditions. He asked whether the Division of Alcohol Beverage Control could approve what is beyond the original conditions imposed by the CADB.

Attorney Sordillo stated that the tax assessor had questioned the information the landowners presented. as to whether the required five acres are in agricultural production.

Mr. Sordillo stated that the township is not attacking the farm or its winemaking process. The township was objecting to the appropriateness of winemaking in this zone. He thanked SADC for allowing him to speak today and appreciates its consideration.

Mr. Smith clarified that the Funks are seeking approval to construct a 15' x 30' concrete pad and use of the 30' x 30' detached garage for winemaking activities. Those activities include fermenting, aging, and bottling of the wine, which are processing and packaging the agricultural output of the farm.

Ms. Payne commented that the judge stated, and staff agreed, there was sufficient evidence on the record that the property met the five-acre minimum. The Funks had land in pasture and land dedicated to the vineyard to meet the five-acre minimum. The farm also met the income minimum for farmland assessment. Ms. Payne stated that the township's questioning its own tax assessor's decision seemed disingenuous.

Mr. Bullock commented that all 5 acres do not need to be farmed if the income requirements are met. Mr. Smith clarified that the land needs to be actively devoted to agricultural production. In this case, there were approximately 3 acres of grape production and additional acres in Timothy hay. There were in total over 5 acres of land devoted to agricultural production.

It was moved by Mr. Bullock and seconded by Ms. Bohlin to approve the OAL Final Decision in Raritan Township v. Susan and Allen Funk and West View Vines. The motion was unanimously approved.

B. Resolutions: Final Approval – Direct Easement Purchase Program

Mr. Zaback referred the committee to two requests for final approval under the Direct Easement Purchase program. He reviewed the specifics of the requests with the committee and stated that the staff recommendation is to grant approval.

It was moved by Mr. Schilling and seconded by Mr. Norz to approve Resolutions FY2024R1(1) and FY2024R1(2) granting final approval under the Direct Easement Purchase Program, as presented, subject to any condition of said resolution.

1. Bayboro Equestrian, LLC, SADC ID# 19-0034-DE, FY2024R1(1), Block 30, Lot 4, Frankford Township, Sussex County, 90.5 gross.
2. Eberdale Farms, SADC ID#17-0387-DE, FY2024R1(2), Block 60, Lot 1.01, and Block 62, Lots 5 and 7, Quinton Township, Salem County, 59.6 gross acres.

The motion was unanimously approved. A copy of Resolutions FY2024R1(1) and FY2024R1(2) is attached to and a part of these minutes.

C. Stewardship – Deer Fencing Policy P- 53

Mr. Roohr announced that on January 8, 2024 the Governor signed amendments to the deer fencing bill. Now known as the wildlife fencing bill, the amendments allow changes to the SADC's long-standing deer fencing program and the NJDA's new deer fencing program. Prior comments from the farming community stated that the programs needed to be more flexible. This new wildlife fencing bill allows other animals to be fenced out, such as bear. The bill includes provisions to address other types of wildlife as those issues arise.

Mr. Roohr stated the SADC has updated its policy in accordance with the new bill. Tenant farmers may apply for grants. Previously only landowners could apply. The new policy also has raised the eligibility cap. He explained that previously the cap was \$200 per acre with a maximum of \$20,000. A farm of 100 acres would max out under the former program. The new rule provides 50% of costs up to \$50,000, regardless of the size of the farm. Mr. Schilling commented that this is a nice step forward. Mr. Johnson commented that 50% is not enough.

Mr. Roohr stated that Mr. Kimmel updated the SADC public guidance document on the new wildlife fencing bill. Mr. Schilling extended the offer to circulate the guidance document to the county ag extension offices.

Ms. Payne stated that SADC is using the existing Department of Environmental Protection (DEP) deer fencing standard. In cases where there is no fencing standard in place, the committee would need to approve what is being proposed.

Mr. Kimmel stated that the updated policy aligns with the new law and includes the deer fencing and electric bear fencing standards. For applicants who are already in the program and received grants for completed projects, those applications are considered closed. No additional funds for those completed projects are available. The cap increase from \$20,000 to \$50,000, however, would create an available balance for additional projects.

Mr. Roohr noted that SADC and the Division of Ag and Natural Resources are working together to ensure consistency of deer and bear fencing criteria and financial eligibility.

Mr. Norz asked if one entity would be eligible for just \$50,000 or could it apply to both programs. Mr. Roohr stated that eligibility is associated with the premises. Each premises could be eligible, regardless of preservation status.

Mr. Norz commented that he is uncomfortable with approving this significant change without further review. Mr. Bullock asked if the committee has the authority to raise the cap. Ms. Payne said the cap was established legislatively. Mr. Norz stated that he would like to review the eligibility timeframe.

Ms. Payne suggested that the committee can adopt this policy today with the caveat that the future program subcommittee could undertake further review. Mr. Norz stated that he will make the motion to approve this draft document as presented with referral back to the future program subcommittee with the option of changing the policy. Mr. Bullock asked if the \$50,000 will cut into the 8-year eligibility for the conservation period. Ms. Payne stated that it will not.

It was moved by Mr. Norz and seconded by Mr. Bullock to approve the amended Policy P-53 as presented with referral back to the future program subcommittee to review the document more closely with the option of changing the policy in the future. The motion was unanimously approved.

Public Comment

Ms. Springwell from Hunterdon County commented that house-size restrictions

need to be put in place on preserved farms. If there is an existing house on the property, any replacement must be done within the original footprint.

CLOSED SESSION

At 10:19 a.m. Executive Director read the following resolution to go into Closed Session:

In accordance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-13, it is hereby resolved that the SADC shall now go into executive session to discuss advice from the Attorney General's Office regarding the Pleasantdale Farms matter; any other matters falling within the attorney-client privilege; and any matters under N.J.S.A. 10:4-12(b) that have arisen during the public portion of the meeting. The minutes of such meeting shall remain confidential until the Committee determines that the need for confidentiality no longer exists.

It was moved by Mr. Schilling and seconded by Mr. Bullock to go into closed session. The motion was unanimously approved.

Action as a Result of Closed Session

Ms. Payne stated that the committee authorized staff to proceed with litigation in the Pleasantdale matter as discussed.

It was moved by Mr. Norz and seconded by Mr. Johnson to approve this motion.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: 9 A.M., February 22, 2023

Location: 200 Riverview Plaza

Trenton, NJ

ADJOURNMENT

The meeting was adjourned at 11:06 a.m.

Respectfully Submitted,



Susan E. Payne, Executive
Director

State Agriculture Development Committee

TERM PRESERVATION PROGRAM QUARTERLY REPORT



To: SADC Members
From: Susan Payne, Executive Director
Date: January 10, 2024

Since the last SADC update on the Term Agreements at the June 2023 SADC meeting:

- The Caltabiano farm (#08-0036-TF) in Mantua Township was permanently preserved by Gloucester County in 2011 and has been enrolled under ARDA for a period of 16 years.
- The W. Kohl Farm (#13-0005-8M) in Middletown Twp., Monmouth Co. has been renewed for another 8 years.

County	Changes since last SADC Update				Active Term Preserved	Term Acres	Grant Eligibility
	New Term Enrollment	Expired Term	Terminated Term	Renewed Term			
Atlantic					13	557	\$243,767
Burlington					6	1551	\$191,144
Gloucester	1				11	431	\$217,533
Hunterdon					3	65.8	\$39,490
Monmouth				1	2	16	\$9,768
Morris					5	92	\$54,366
Grand Total	1			1	40	2,713	\$756,068

Preserved Farms and Active Applications Within Two Miles



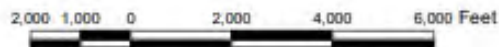
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Application within the (PA4) Rural Area

Nearmap, NJ Department of Environmental Protection, NJ Office of GIS

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Caltabiano, Joseph F & Donna
Block 2 Lots P/O 6 (9.0 ac);
P/O 6-ES (severable exception - 8.5 ac) & 10 (51.9 ac)
Gross Total - 69.4 ac
Mantua Twp., Gloucester County



Source:
NJ Farmland Preservation Program
NJDOT Parcel in from survey data
NJDEP Conservation/Open Space Easement Data
NJDOT Near Map 2022 Digital Aerial Image

NOTE:
The parcel location and boundaries shown on this map are approximate and should not be construed to be a land survey as defined by the New Jersey Board of Professional Engineers and Land Surveyors

Wetlands



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Application within the (PA4) Rural Area

Neemap, NJ Department of Environmental Protection, NJ Office of GIS

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Caltabiano, Joseph F & Donna
Block 2 Lots P/O 6 (9.0 ac);
P/O 6-ES (severable exception - 8.5 ac) & 10 (51.9 ac)
Gross Total - 69.4 ac
Mantua Twp., Gloucester County



Sources:
NJ Farmland Preservation Program
NJOT Parcel edited from survey data
NJDEP Tidelands Claim Line
NJDEP 2015 Landuse/Landcover Data
NJDOT Road Data
NJOT Near Map 2022 Digital Aerial Image

DISCLAIMER: Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user. The configuration and geo-referenced location of parcel polygons in this data layer are approximate and were developed primarily for planning purposes. The geodetic accuracy and precision of the GIS data contained in this file and map shall not be, nor are intended to be, relied upon in matters requiring delineation and location of true ground horizontal and/or vertical controls as would be obtained by an actual ground survey conducted by a licensed Professional Land Surveyor.

	Property In Question
	ES - (Severable) Exception
	Wetlands Boundaries
	Primary - Limited Access
	Federal or State Hwys
	County Roads
	Municipal/Local Roads



Wetlands Legend:
F - Freshwater Wetlands
M - Wetlands Modified for Agriculture
T - Tidal Wetlands
N - Non-Wetlands
B - 300' Buffer
W - Water

STEWARDSHIP SEMI-ANNUAL DELEGATION REPORT



To: SADC Members
From: Susan Payne, Executive Director
Date: January 10, 2024

There were 2 delegated post-closing request approvals since the last Stewardship Delegation Report on July 20, 2023.

<u>Request</u>	<u>Applicant</u>	<u>SADC ID#</u>	<u>Municipality</u>	<u>County</u>	<u>Date of Approval</u>
House Replacement	Louis and Deborah Gattuso	08-0164-PG	East Greenwich and Mantua	Gloucester	11/21/2023
Total:		1			
Solar Approvals	Robert Carabelli	03-0118-EP	Mansfield	Burlington	10/24/2023
Total:		1			
RDSO Exercise					
Total:		0			
Ag Labor Housing					
Total:		0			

Gattuso Farm 08-0164-PG
BI 4, Lot 19 Matua Twp. Gloucester County
BI 1306, Lot 2.09, East Greenwich Twp. Gloucester County
New Jersey Farmland Preservation Program

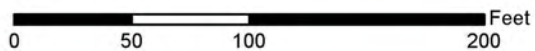


For Planning Purposes Only
Date: 9/11/2023

Carabelli Farm 03-0118-EP
BI 50.01 / Lot 2.01, Mansfield Twp. Burlington County
New Jersey Farmland Preservation Program



For Planning Purposes Only
Date: 10/20/2023



DEER FENCING PROGRAM SEMI-ANNUAL DELEGATION REPORT



To: SADC Members
From: Susan Payne, Executive Director
Date: January 10, 2024

Since the last Deer Fencing Program Delegation Report on July 12, 2023, the following actions have been taken:

- Grant reimbursement payment was issued for a completed deer fence project:
 - o 17-0211-PG-DF1 – Natali Vineyards, LLC

- One-year extensions were granted for two (2) deer fence projects:
 - o 18-0097-EP – umrit, LLC
 - o 18-0096-EP – Axcel Group, LLC

Deer Fencing Grants – One (1) Project Completed and Reimbursed

Natali Vineyards, LLC

17-0211-PG-DF1

36.718 acres

Pittsgrove/Salem County

Completed Project:

~3,300 ft of fencing installed

~13 acres enclosed

Cost Share Grant Paid (8/30/23):

\$7,343.60



Deer Fencing Grants – Two (2) Farms Granted 1-Year Extensions

In October 2023, two (2) farms were granted a one-year extension, providing them an additional year to complete their deer fencing projects.

<u>Applicant</u>	<u>Deer Fencing ID#</u>	<u>Municipality</u>	<u>County</u>	<u>Original Completion Deadline</u>	<u>New Completion Deadline</u>
Umrit, LLC	18-0097-EP-DF1	Hillsborough	Somerset	9/30/23	9/30/24
Axcel Group, LLC	18-0096-EP-DF1	Hillsborough	Somerset	9/30/23	9/30/24

SOIL & WATER COST SHARE PROGRAM SEMI-ANNUAL REPORT



To: SADC Members
From: Susan Payne, Executive Director
Date: January 10, 2024

Since the last SADC update on cost-share grants at the July 2023 SADC meeting, 4 cost-share project requests have been approved and a total of \$66,685.61 was obligated for project implementation.

County	Municipality	Applicant	Application	Project Type	Approved Date	Cost-Share Obligated
Burlington	Chesterfield	Brian D Wilson	03-0011-EP-02	2:90-2.15 - Irrigation system	7/28/2023	\$ 4,245.02
Mercer	Hopewell	John Hart	11-0003-EP-02	2:90-2.15 - Irrigation system	11/21/2023	\$30,400.59
Somerset	Hillsborough	Umrit, LLC.	18-0097-EP-01	2:90-2.15 - Irrigation system	11/21/2023	\$16,020.00
		Shane Doyle Farms,	18-0223-PG-01	2:90-2.19 - Developing facility for livestock water	10/5/2023	\$16,020.00
Grand Total						\$66,685.61

Schedule A - Soil and Water Cost Share Grant

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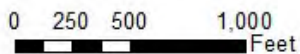


FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Applicant: Brian D. Wilson
 Owner: Wilson, Brian D. and Deborah D.
 Application Number: 03-0011-EP-02
 Municipality: Chesterfield
 County: Burlington

Legend

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|--|-----------|--|-------------|
| | 2.90-2.05 | | 2.90-2.16 |
| | 2.90-2.06 | | 2.90-2.17 |
| | 2.90-2.07 | | 2.90-2.18 |
| | 2.90-2.08 | | 2.90-2.19 |
| | 2.90-2.09 | | 2.90-2.20 |
| | 2.90-2.10 | | 2.90-2.21 |
| | 2.90-2.11 | | 2.90-2.22 |
| | 2.90-2.12 | | 2.90-2.23 |
| | 2.90-2.13 | | 2.90-2.24 |
| | 2.90-2.14 | | SW_Premises |
| | 2.90-2.15 | | |



7/14/2023

Image: NJDEP 2020 Natural Color

Schedule A - Soil and Water Cost Share Grant

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FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Applicant: John Hart
 Owner: John R Hart Jr.
 Application Number: 11-0003-EP-02
 Municipality: Hopewell
 County: Mercer

Legend

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| | 2.90-2.14 | | SW_Premises |
| | 2.90-2.15 | | |



11/20/2023

Image: NJDEP 2020 Natural Color

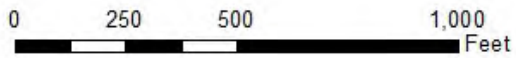
Schedule A - Soil and Water Cost Share Grant

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FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Applicant: Urmit LLC
 Owner: NATURALLY NURTURING, LLC
 Application Number: 18-0097-EP-01
 Municipality: Hillsborough
 County: Somerset



Legend

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| | 2.90-2.12 | | 2.90-2.23 |
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| | 2.90-2.14 | | SW_Premises |
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Schedule A - Soil and Water Cost Share Grant

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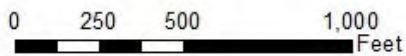


FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Applicant: Shane Doyle Farms, LLC.
 Owner: Mill Lane Farm 1, LLC.
 Application Number: 18-0223-PG-01
 Municipality: Hillsborough
 County: Somerset

Legend

- | | | | |
|--|-----------|--|-------------|
| | 2:90-2.05 | | 2:90-2.16 |
| | 2:90-2.06 | | 2:90-2.17 |
| | 2:90-2.07 | | 2:90-2.18 |
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| | 2:90-2.12 | | 2:90-2.23 |
| | 2:90-2.13 | | 2:90-2.24 |
| | 2:90-2.14 | | SW_Premises |
| | 2:90-2.15 | | |



9/27/2023

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TOWNSHIP OF RARITAN,

STATE AGRICULTURE DEVELOPMENT COMMITTEE

OAL Dkt. No. ADC 00165-23
Agency Dkt. No. SADC ID#1978

Petitioner,

v.

SUSAN and ALLEN FUNK, and
WEST VIEW VINES,

FINAL DECISION

Respondents.

Overview

Raritan Township (township) appeals a November 10, 2022 resolution of the Hunterdon County Agriculture Development Board (HCADB or board) approving a site specific agricultural management practice (SSAMP).

Background

On April 20, 2022, Susan and Allen Funk, owners and operators of West View Vines, LLC (collectively referred to as the "Funks"), applied to the board for SSAMP approval to construct a 15' x 30' concrete pad adjacent to an existing, 30' x 30' detached garage on their property. The construction would enable the Funks to transition from their existing on-site production and sale of wine grapes to the on-site production of their own wine. The application included use of the detached garage for wine fermentation, aging and bottling.

On June 9, 2022, the HCADB held a public meeting at which, among other matters, the board heard testimony from Mr. Funk and determined that the Funks operated a commercial farm as defined in the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. ("RTFA").

Board staff subsequently inspected the farm property to prepare for the public hearing, scheduled at a later date, on the SSAMP application.¹

According to the application and to the testimony presented to the board by the Funks at the public hearing to consider the

¹Paragraph 4 of the board resolution that is the subject of this appeal recited that the inspection took place on July 7, 2021. Since Funks' SSAMP application was filed in April 2022, the paragraph 4 date appears to be a typographical error, and the inspection likely occurred on July 7, 2022.

SSAMP on October 23, 2022, the pad would replace a portion of an existing crushed stone parking area adjacent to the garage. The Funks testified that the pad would make for a cleaner and more efficient winemaking operation, allowing for grapes, bins and related equipment to be rinsed off.

The application was opposed by the township and by some residents in proximity to the Funks' property. Those residents, as well as the township attorney, questioned the board and the Funks at the public hearing, and residents provided their own testimony expressing concerns. At the conclusion of the hearing, the board passed a motion authorizing the granting of the SSAMP and the preparation of a resolution.

The resolution was adopted by the HCADB at its November 10, 2022 meeting. The resolution concluded that the Funks operated a commercial farm on their property and granted them an SSAMP, subject to various conditions.

The township appealed the resolution to the State Agriculture Development Committee (SADC) on December 8, 2022. The SADC transmitted the township's appeal as a contested case to the Office of Administrative Law (OAL) in January 2023.

The SADC has reviewed the October 2, 2023 Initial Decision by the administrative law judge (ALJ) and the voluminous materials relied on by the ALJ that are listed in the decision's appendix (pp. 10-11). The record includes the briefs filed on behalf of the township, the HCADB and the Funks, and the transcripts of the HCADB's October 23 and November 10, 2022 public hearings. The SADC also obtained a copy of the June 9, 2022 HCADB meeting minutes at which commercial farm eligibility was determined. There was no hearing at the OAL, as "the parties agreed to submit briefs and transcripts of the [HCADB] proceedings . . . and [to] permit a determination without additional testimony." *Initial Decision*, p. 2.

The issues raised in this appeal are: (1) whether the Funks satisfied "commercial farm" eligibility criteria; (2) whether and to what extent the board considered township ordinances and municipal knowledge of local conditions; and (3) the extent to which the board considered health and safety concerns raised by neighbors at the public hearing.

The Final Decision summarizes in the "Background" sections key elements of the testimony and exhibits in the HCADB proceedings, and are included to provide context to our review of

the Initial Decision. When appropriate, the SADC will also take administrative notice of facts set forth in available public records. N.J.S.A. 52:14B-10(b); N.J.A.C. 1:1-15.2; N.J.R.E. 101(a)(3). We **ADOPT, MODIFY** and **REJECT** the Initial Decision as set forth in more detail below.

Commercial farm eligibility

Background.

In 2015 the Funks purchased an approximately 6.53-acre property designated as Block 25, Lot 4 in Raritan Township. They began planting grape vineyards in 2018 by converting an existing hayfield. The property is located in the R-1 Rural Residential zone district in which agriculture is a principal permitted use.

The 2022 FA-1 form, completed in August 2021, recites in the Section 2 "Breakdown of Land Use Classes - Actively Devoted Land", 1.8 acres of cropland harvested and 3.73 acres of cropland pastured, for a total of 5.53 acres. The 5.53 acres are listed under "Fruit Crops (Bearing Acres)" as "grapes" under Section 3 "Current Year Farming Activity". The other 1 acre was assigned to the Funks' residence and curtilage.

The "Supplemental Farmland Assessment Gross Sales Form" attached to the 2022 FA-1 listed "Income Acres" at 1.8 and "Non-Income Acres" at 3.73, for "Total Acres Under Farmland" of 5.53. The income-generated acreage was 1.8 acres of grapes earning \$5,000 in sales. The 2022 FA-1 form and supplemental gross sales form were provided to the HCADB as part of the April 2022 SSAMP application.

The board held a public meeting, advertised in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., on June 9, 2022 to consider whether the Funks were operating a commercial farm.

According to the minutes of the board meeting, Mr. Funk testified that: the current agricultural activities involved growing and selling grapes commercially; the operation now wanted to make wine on-site; the property had been farmland assessed by the township since 2015; the farm was 5 acres and generated more than \$2,500 in annual income "confirmed by submitted receipts for grape sales"; agriculture is a permitted use in the zone in which the property is located; and, to his knowledge, the farm operation was in compliance with federal and state laws.

Commercial farm certification for the Funk property was approved by the board. The ensuing public comment portion of the meeting was comprised of statements from the audience in attendance unrelated to the board's commercial farm eligibility determination.

The 2022 FA-1 acreage amounts differ from the testimony provided by Mr. Funk at the October 23, 2022 public hearing on the SSAMP. According to Mr. Funk, while his original intention was to grow 5 acres of grapes, he realized that the plan was too ambitious, and he instead worked with the Northeast Organic Farming Association to add 1.75 acres of Timothy hay within the farm property. Mr. Funk testified that the hay was in the ground and "lush", but that he was waiting for dry weather to cut it. The testimony also reflected that the area currently available for grape production was 3.4 acres, encompassing approximately 1400 vines in active production and generating about a ton of grapes, and some vacant rows requiring "backfilling". These bare areas of the vineyard were trellised to support an additional 600 vines, on order and partially paid for, to be delivered in April 2023. No written evidence was presented to the HCADB that the vines were on order and/or that partial payment had been made.

The township asserts that at the time of the SSAMP application Funk did not farm the requisite 5 acres required for commercial farm eligibility. It contends that, based on Mr. Funk's admission at the October 23, 2022 hearing, as well as on GIS satellite imagery showing 2.66 acres of vines, the farm had less than 5 acres of agricultural production even counting the 1.75-acre area planted in Timothy hay.

In addition, the township cast doubt on the accuracy of the farmland acreage presented during the SSAMP proceedings by submitting to the OAL a certification from the municipal tax assessor with respect to the 2023 FA-1 form. The form lists 3.5 acres of fruit crops and 2 acres of hay, with the remaining 1 acre ascribed to the residence and curtilage.

The assessor's certification stated that she inspected the property in July 2022 and did not observe "a full five (5) acres of land devoted to agricultural or horticultural activities", that she issued a letter dated August 2, 2022 requiring Funk to devote additional land to such uses by November 1 and that, after receiving "documentation [from Funk] that hay and grapes would be added to the property" to achieve the 5-acre threshold, she approved the 2023 FA-1 form on November 22, 2022. The assessor further advised that she "ha[d] not personally observed five (5)

acres of land on the [p]roperty devoted to agricultural and horticultural uses[] and ha[d] not inspected the [p]roperty since my July [2022] inspection." *Assessor's Certification*, ¶7. The assessor observed that between 2015 to the date of the certification, farmland assessment was granted by the township "based upon visual estimations and representations made by [Funk]", and that actual measurements of farmed areas were not taken. *Assessor's Certification*, ¶9.

Both Funk and the board contended that the farm property exceeded 5 acres of land devoted to agricultural production and satisfied farmland assessment criteria, as evidenced by Mr. Funk's testimony and the municipally-approved 2022 and 2023 FA-1 forms.

Initial Decision.

The ALJ, recognizing that the RTFA furthers the legislative intent to protect legitimate farming operations from unreasonable municipal interference, reviewed the applicable statutes and observed that preemption of local ordinances can only apply when the agricultural or horticultural activities for which protection is sought occur on a "commercial farm" as defined in the RTFA.

N.J.S.A. 4:1C-3 provides that a "commercial farm" is

a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually and satisfying eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964", P.L. 1964, c.48 (C.54:4:23.1 et seq.).

The ALJ found that "there is no dispute that the [Funk] property exceeds five acres" and that "[t]he parties do not dispute that the financial threshold was met by [the Funks]". *Initial Decision*, pp. 4 and 6.

The ALJ placed substantial weight on the township's farmland assessment of the property in finding that Funk "satisfie[d] eligibility criteria for differential property taxation" under the farmland assessment act.

The ALJ stated that a municipal assessor's opinion as to the appropriate assessment of real estate for property tax purposes is entitled to deference based on that official's personal observations, review of supporting documentation, the representations of the property owner, and the exercise of the assessor's professional judgment. The ALJ observed that the types

of complaints that can be filed by a property owner, municipality or county board of taxation about assessments, as set forth in N.J.S.A. 54:51A-7, exclude "matters of valuation involving an assessor's opinion or judgment."

The ALJ agreed that Funks' "backfilling" of vineyard areas did not affect the calculation of 3.4 acres of farmland devoted to grape production and did not undermine the assessor's determination that the property was entitled to farmland assessment. The ALJ reasoned that "[a]lthough there might have been some delays in putting the [backfilling] plan into action, [the Funks] prepared the land so that when the vines were received, they would be able to plant them in the appropriate season." *Initial Decision*, p. 6. The ALJ found no evidence in the record proving that the farmland assessment of the Funks' property was based on error or mistake.

The ALJ also stated "[t]he Municipal Tax assessor approved [Funk's] application for commercial farm status"; "the municipal tax assessor. . .certified the property as a commercial farm"; and "the tax assessor determined that the [Funk] property met the requirements of a commercial farm". *Initial Decision*, pp. 2, 4 and 6, respectively.

In another instance, however, the ALJ concluded that the board appropriately relied on the assessor's determination in order for the HCADB to certif[y] the [Funk] property as a commercial farm in June 2023 [sic]." *Initial Decision*, p. 4. [To the extent the ALJ's statement is a finding, the SADC **MODIFIES** it, as commercial farm eligibility was determined by the board on June 9, 2022]. The board's conclusion that the farm satisfied farmland assessment eligibility criteria was, according to the ALJ, buttressed by HCADB staff's inspection of the property.

SADC determination.

Agricultural and horticultural activities are eligible for protection under the RTFA if they are conducted on a "commercial farm." As set forth in the RTFA definition of the term, *supra* at p. 5, and for the purpose of this case, a commercial farm is a farm management unit of at least five acres producing agricultural or horticultural products with an annual value of at least \$2,500, and the farm management unit must satisfy the criteria for obtaining farmland assessment.

A "farm management unit" is defined in N.J.S.A. 4:1C-3 as "a parcel or parcels of land, whether contiguous or noncontiguous,

together with agricultural or horticultural products, and operated as a single enterprise."

The parties do not dispute, the evidentiary record reflects, and the SADC **FINDS**, that the Funk farm management unit, designated as Block 25, Lot 4 in Raritan Township, totals 5.53 acres and that it produced agricultural products in the form of harvested grapes sold to third parties and Timothy hay.

According to Invoice #2021-01 dated October 11, 2021 and attached as an exhibit to the SSAMP application, 1,365 pounds of grapes were harvested for purchase by Grape Finale, LLC. The invoice recites the following: "1,365 lbs. @ \$4,000/ton (0.683 x \$4,000)[Final weights estimated by juice quantities obtained by Grape Finale] = \$2,730.00.² The invoice broke down the sale into grape varieties and respective weights purchased.

No explanation for this invoice is in the minutes of the HCADB's June 9, 2022 meeting at which commercial farm eligibility was approved. Instead, the minutes state that Mr. Funk:

- o Testified regarding the income and acreage criteria to be considered a commercial farm. The farm is 5 acres and income is \$2,500 or greater, confirmed by submitted receipts for grape sales.

No "submitted receipts for grape sales" are in the record but, as the Initial Decision determined and the SADC **FINDS**, there was no dispute during the HCADB and OAL proceedings that the Funks annually produced at least \$2,500 in agricultural products evidenced by the October 11, 2021 invoice of grape sales to Grape Finale, LLC totaling \$2,730.00.

The farm management unit must also satisfy the eligibility criteria for farmland assessment. N.J.S.A. 54:4-23.2 provides:

For general property tax purposes, the value of land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use and which has been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, on application of the owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural or horticultural

²The invoice also included a charge for a "VINE 2 WINE Experience" which appears to be grape-growing educational sessions charged on a per class basis. The total income is recited as "13 shares (or couples) x 5 vineyard visits x \$25.50 = \$1,657.50. The SADC does not count this portion of the invoice as agricultural production value or income for commercial farm eligibility.

purposes.

The amount of gross sales of agricultural or horticultural products produced must average \$1,000 on the five acres during each of the relevant tax years. N.J.A.C. 18:15-6.1(a)1. Property "actively devoted" to agricultural or horticultural use includes, in accordance with N.J.A.C. 18:15-6.2(a), land: "on which crops are produced, harvested, and sold, either at retail or wholesale" [(a)3]; and "kept fallow during a growing season using cultivation or chemical control to eradicate or reduce weeds for future agricultural or horticultural production" [(a)7].

In addition, courts have held that land is "actively devoted" to agriculture under the "dominant use" test. Brighton v. Borough of Rumson, 22 N.J. Tax 39, 52-54 (Tax 2005), aff'd, 23 N.J. Tax 60 (App. Div. 2006) held that, in evaluating the propriety of farmland assessment, "although there can be multiple uses of land, one use is generally dominant [citations omitted]".

The record reflects that the township tax assessor approved the Funk property for farmland assessment in 2022 and 2023. The assessor's approval is presumed valid. Miele v. Jackson Tp., 11 N.J. Tax 97, 99 (Tax 1989). The SADC in this case will not question the official acts of the assessor, who has specialized knowledge and expertise, whose judgment is overseen by the New Jersey Division of Taxation and the appropriate county board of taxation, and who acts independent of municipal interference. See, e.g., N.J.S.A. 40A:9-146; N.J.S.A. 54:1-35.25; N.J.S.A. 54:3-16; McMahon v. City of Newark, 196 N.J. 526, 541 (2008).

We also note that the township had two opportunities to present documentary evidence and witness testimony to the HCADB at publicly-advertised meetings regarding the Funk property's farmland assessment: once at the June 9, 2022 board meeting at which commercial farm eligibility was determined; and once at the HCADB's October 23, 2022 meeting at which the SSAMP was determined. The minutes of the June 9 meeting do not reflect, if the township was in attendance, Raritan's questioning or comments concerning commercial farm eligibility. The transcript of the October 23, 2022 meeting indicates that the municipal attorney appeared on behalf of the township to question the Funks about farmland acreage.³

³The SADC makes no finding concerning Funk's failure to provide the HCADB with a copy of the tax assessor's August 2, 2022 letter, *supra*, p. 4, at the October 23, 2022 meeting, as the agency would be called upon to speculate on whether and how the board would have responded.

Commercial farm eligibility is a determination made by the appropriate county agriculture development board (CADB), or by the SADC in counties with no CADB, because those entities have primary jurisdiction over SSAMP applications and nuisance complaints against farm owners. N.J.S.A. 4:1C-9 and 10.1; Township of Franklin v. den Hollander, 338 N.J.Super. 373, 375 (App.Div. 2001), aff'd, 172 N.J. 147 (2002). We **REJECT** any finding, whether explicit or inferred in the Initial Decision, that the municipal tax assessor had any decision-making authority over the Funks' commercial farm eligibility.

The statutory, regulatory and case authorities make clear that not every square inch of a five acre area must be growing a product in order to be farmland assessed. The SADC **MODIFIES** the Initial Decision and **FINDS**, based on the record, that the 6.53-acre Funk property satisfied the eligibility criteria for farmland assessment at the time of the SSAMP application because the dominant use of the property comprised 3.4 acres of land devoted to vineyards, including areas trellised for "backfilling", and 1.75 acres of Timothy hay, whether growing or in a fallow area of the farm, generating income of at least \$1,000. N.J.A.C. 18:15-6.1(a)1 and 6.2(a)3 and (a)7. The SADC also **MODIFIES** the Initial Decision and **FINDS** that the Funks' 5.53-acre farm management unit produced agricultural products worth \$2,500 or more annually. N.J.S.A. 4:1C-3.

The remaining issue, which neither the HCADB nor the OAL addressed, is whether the Funks' commercial farm operated as a single enterprise.

A "Form B" supplement attached to the SSAMP application lists West View Vines, LLC as the "farm operator" and the Funks as the "landowner". Since no testimony or documentary evidence was elicited by the board or OAL on this issue, the SADC will take administrative notice of filings with the New Jersey Department of Treasury, Division of Revenue and Enterprise Services (DORES) to assist us in the single enterprise analysis.

"West View Vines, LLC" filed a certificate of formation with DORES on December 18, 2017. The certificate lists Susan Adler Funk as the registered agent, with a registered office and main business address at "7 West View Vines [sic], Flemington, New Jersey 08822". The member/manager is Allen B. Funk and the business purpose is "To Grow Grapes For Sale To Local Wineries."

Mr. Funk filed an amendment to the certificate of formation on February 17, 2022 amending the company's business purpose to: "To grow grapes and manufacture wine as a farm winery".

On May 17, 2023, Susan Funk, in her capacity as company secretary, filed an alternate name certificate by which West View Vines, LLC would also be known as "Slippery Slope Vineyard".

In Sipos, et al. v. Hunterdon County Agriculture Development Board, OAL Dkt. No. ADC 5173-11, SADC ID #1272, the SADC observed that

[p]roof of a 'single enterprise' enabling a commercial farm's entitlement to the strong protections of the RTFA, and particularly in light of. . . disparate individual and business interests or ownerships. . . , requires reasonably sufficient evidence that includes, but is not limited to, LLC certificates of formation and operating agreements; property tax records; business tax returns; integrated business resources; centralized accounting; a showing of allocation of profits and losses; whether or not the entities have separate bank accounts; and how the entities cover their expenses. (Id. at pp. 15-16).

We reiterated the Sipos holding in respect to the "single enterprise" criterion in M. Ville, LLC and Don Vona v. Monmouth County Agriculture Development Board, OAL Dkt. No. ADC 06183-16 and 06269-16, SADC ID #1727 and #1727A, stating:

The "single enterprise" criterion in the "farm management unit" definition is designed to ensure that individuals and business entities engaging in legitimate agricultural activities are eligible for the strong protections of the RTFA, and not that individuals and entities divorced from those activities can be eligible. The degree to which different businesses and individuals occupy, operate and engage in agricultural and/or horticultural activities on the same farm property is fact sensitive and will need to be analyzed on a case-by-case basis. . . (Id. at p. 13).

Sipos involved two distinct LLCs, each owning and operating a different property in adjoining counties; M. Ville engaged in a landscaping business on one of two adjoining parcels, both of which were owned by M. Ville, with the other lot leased to a third party for farming activities.

The only element shared by Sipos, M. Ville and this case is the wholly inadequate record developed on the single enterprise prong of the commercial farm determination. However, after careful consideration, the SADC will not exercise its discretion to remand the matter to the OAL for further findings on whether a single enterprise existed in order to conserve administrative and judicial resources and to save the parties the time, expense and uncertainty associated with another legal outcome in the distant future.

While it is likely that the Funks, as individuals, kept their income, expenses and tax filing records distinct from those of the LLC, the record reflects that they actively and individually engaged in the agricultural activities listed as the LLC's business purposes in the certificate of formation and amended certificate. The SADC **MODIFIES** the Initial Decision and **FINDS** that where, as here, individual owners of a farm management unit who also are the named managers/members of the LLC, and who actively and individually perform the LLC's agricultural activities on that farm management unit, sufficient unity of ownership and control exists to satisfy the single enterprise criterion.

In sum, the SADC **FINDS** that the Funk property was a commercial farm as defined in N.J.S.A. 4:1C-3 because it was a farm management unit of more than 5 acres, producing agricultural products worth at least \$2,500 annually, satisfied the eligibility criteria for farmland assessment, and was operated as a single enterprise.

SSAMP approval

Background.

On March 31, 2022 the Funks applied for but were denied a zoning permit by Raritan Township for: (1) the use of an existing detached garage for winemaking from grapes grown in the Funks' vineyard; (2) the installation of an air conditioner in the garage to maintain inside temperatures; (3) the construction of an approximately 15' x 30' concrete pad next to the garage, replacing an existing portion of a gravel driveway, to facilitate winemaking.

The zoning application proposed that grapes would be sold to other vineyards and that the Funks would make their own wine for "family and friends"; accordingly, "[a]pplicants have no intention of opening a public tasting room or retail facility [or] hosting public events on the property. . .[n]o retail sale of wine, wine tasting events, weddings, etc., are proposed on the premises."

The permit application was denied by the township zoning officer in a letter dated April 1, 2022, which stated that winemaking was not a permitted, accessory or conditional use in Raritan's R-1 zoning district. The zoning officer also advised that the Funks could apply to the HCADB "[i]f you claim wine making [is] protected under the Right to Farm Act. . ."

The Funks applied to the board on April 22, 2022 for an SSAMP for "wine making" and "adding a winery (wine-making) to an existing wine growing operation." The farm operator was identified as West View Vines, LLC (WVV).

An explanatory section annexed to the SSAMP application stated that WVV wanted to apply for a Class A (Manufacturer) Farm Winery license which requires that the licensee make the wine on or adjacent to a vineyard occupying at least 3 acres. The addendum explained the proposed winemaking process to be undertaken on the Funk property: the production (fermentation, aging and bottling) would take place within an existing, detached garage; an outdoor, concrete pad ("crush pad"), 15' x 30', would be constructed upon which the grapes would be crushed and destemmed, with cleanup on the pad being done with a hose. The Funks' current grape production yielded 40 cases of wine and they anticipated production of 200 cases if 5 acres of the vineyard reached maturity.

The SSAMP application stated that the zoning permit for the concrete pad had been denied, repeated that there would be no tasting room or public events, and that the only activities would be those associated with a "normal vineyard and winery": planting, harvesting and bottling.

The annex to the SSAMP application summarized the history of the Funks' zoning permit denial, reviewed applicable zoning ordinances, and explained why the proposed winemaking activities should be allowed in the township's R-1 zone. The annex included links to websites about the increasing importance of winemaking as an agricultural industry in New Jersey.

The HCADB's October 23, 2022 hearing on the SSAMP application consisted largely of testimony by the Funks and neighboring residents, and questioning from board members, neighbors and the municipal attorney, on the Funks' anticipated wine production; on details about the concrete pad and handling of rinse water; and on neighborhood traffic impacts, as the Funks' property is accessed from the end of a cul-de-sac.

While this Final Decision will not describe all of the questioning and testimony in further detail, we observe that of the 102-page transcript of the October 23, 2022 hearing, 30 pages were devoted to questioning the Funks and another 25 pages were comprised of neighbor testimony opposed to and in favor of the application. The record also reflects that pre-hearing written comments were submitted to the board by local residents.

Mr. Funk reiterated that the winemaking would not be for on-site public consumption and there would be no public tasting room, retail sales facility, signage, weddings, or other special occasion events, on the property. Fifty or 60 cases of wine would ultimately be produced, and the wine would be picked-up at the farm by customers, physically delivered to customers' homes, or mailed to them.

Rinse water from cleaning winemaking equipment on the concrete pad would, according to Mr. Funk in answer to a question, "flow into a retention area onsite." [Transcript, 10/23/2022, p. 20, lines 5-6]. He further explained

[W]e're going to put [the retention area] next to the garage and next to the driveway. . . If you're looking at the detached garage, there's kind of a flat area there. Water wants to run there anyway. And I think with a little bit of sculpting, maybe just kind of trap the water there. There could be some stones and dig a little bit of a trench drain kind of thing. . . [W]e haven't finalized that part of the plan, but we're having a contractor come out tomorrow to look at the driveway area, and that's going to be part of the discussion. [Transcript, 10/23/2022, p. 29, lines 1-11].

Mr. Funk responded to a question from a neighbor that about 500 gallons of rinse water would be generated by the winemaking operation. Mr. Funk stated that the rinsing would occur after each "crush" (3 times a year) and after bottling (2 times a year), and equated water usage and runoff as not much different than "washing cars". [Transcript, 10/23/2022, p. 32, lines 22-25; p. 33, lines 2-3 and 11-12].

In response to several questions and the testimony from neighbors about increased vehicular traffic, Mr. Funk stated there would be minimal traffic impacts from his proposed operation due to the absence of retail sales and public events at the winery; and that, with supplies for the operation being delivered by the USPS, FedEx or UPS, there would be no significant increase in neighborhood traffic beyond that already existing from those types of private delivery carriers [Transcript, 10/23/2022, p. 18, lines

15-23; p. 52, line 11; p. 63, lines 3-10; p. 78, line 16]. One individual who formerly worked at a nearby winery testified that "you get one truck a year bringing your bulk supplies. If you're replacing large posts, if you're getting large amounts of ties and clips, steel wire." (Transcript, 10/23/2022, p. 80, lines 3-5].

Mr. Funk assured the board that noise emanating from the property would be almost nonexistent because of the absence of special occasion events and on-site public consumption. He said "[w]inemaking, it's pretty quiet. Wine kind of bubbles and ferments. . .[W]e use the crushing equipment. . .basically three times for about an hour each time, that's it. We don't use cooling fans." [Transcript, 10/23/2022, p. 18, line 25, to p. 19, line 8].

At the conclusion of the hearing, a motion and a second were made by board members "to let [Funk] have his pad. . .to process grapes to improve their value. . . he's producing a crop and he wants to process it." [Transcript, 10/23/2022, p. 90, lines 9-11 and 22-25; p. 91, lines 1-4]. The board's deliberations included a statement that the memorializing resolution would contain "conditions that [Funk] volunteered to"; that Funk did not have the right to sell wine "until he gets a license", and that "we [the HCADB] certified him as a commercial farm, not as a winemaker." [Transcript, 10/23/2022, p. 92, lines 13-19; p. 93, lines 14-15].

The November 10, 2022 board resolution determined, in pertinent part, that:

1. The Funks operate a commercial farm as defined in N.J.S.A. 4:1C-3 and engage in activities permitted by N.J.S.A. 4:1C-9;
2. The Funks' property is located in the R-1 district, where agriculture is a permitted use.
3. The HCADB approved an SSAMP for the construction of a 15' x 30' concrete pad for winemaking and related agricultural activities;
4. The board approval was conditioned on the Funks' compliance with conditions detailed elsewhere in the resolution, including "work[ing] with a contractor to provide a runoff retention area to collect run-off from the pad after rinsing the wine making equipment"; limiting winemaking to the grapes grown on the farm, with no ability to import grapes; the operation would be precluded from holding public events, public tastings, on-site sales and public signage; compliance with the NJ Division of Alcoholic Beverage Control (ABC) was required; the pad could be used by the Funks, prior to obtaining an ABC license, for rinsing grapes and

grape bins after harvesting; any deviations from the conditions listed elsewhere in the resolution would require the Funks to reappear before the board for RTFA protection.

5. There was a legitimate, farm-based reason for not complying with the township zoning ordinance, "as the proposed use is a reasonable agricultural activity";
6. No health, safety and welfare issues were implicated;
7. The HCADB retained jurisdiction.

Initial decision.

The ALJ reviewed the testimony of the witnesses at the HCADB's October 23, 2022 hearing and found that traffic, runoff, noise and water usage issues related to the proposed concrete pad and for winemaking operations had been adequately responded to by Funk, considered by the HCADB and satisfactorily addressed in the board's resolution. The ALJ stated

There was no expert testimony or evidence of a substantial risk of danger in the foreseeable future associated with the construction of the concrete pad at issue. [The township] only speculated about public health or safety issues with the construction of a concrete pad. . . The [Right to Farm] Act requires consideration of these issues, which indeed occurred and was addressed at the [board] hearing and several such concerns were incorporated into the resolution approving the application. [*Initial Decision*, p. 8].

In conclusion, the ALJ determined that Funk operated a commercial farm and "that the production and sale of wine [was] a generally accepted farm-management practice. . . **IT IS HEREBY ORDERED** that SADC [sic] approval of the SSAMP application is **AFFIRMED** and the appeal is **DISMISSED**." [Emphasis in original].

No exceptions to the Initial Decision were filed by any party.

SADC determination.

We initially note the burden of proof in SSAMP cases to provide appropriate context to the review of the legal issues surrounding the HCADB resolution and OAL initial decision.

In Casola v. Monmouth County Agriculture Development Board, OAL Dkt. No. ADC 06462-00, Agency Dkt. No. SADC ID #1318-01, the SADC held that

[o]nce the determination has been made by the CADB that the applicant has met his or her burden of proof, in this case with the issuance of a site-specific agricultural management practice, the burden then shifts to the party or parties contesting the CADB's action. At that point the governmental action is presumed valid unless and until the contrary is determined, with the burden of proof thereof on the attacking party. [*Interlocutory Order*, September 26, 2001].

See also, Hampton Township, et al. v. Sussex County Agriculture Development Board, et al., OAL Dkt. No. ADC 03248-2010, Agency Dkt. No. SADC ID #852, aff'd, 2016 WL 6156202.

Hampton Township, at p. 20, stated that:

The presumption of validity that attaches to a CADB determination is based on the board's special expertise. 'What continues is the quasi-judicial [OAL] review of the allegations of the objector, namely[,] that the site-specific determination was improperly issued [citing Casola].

The SADC **FINDS** that the township did not meet its burden.

N.J.S.A. 4:1C-9 provides that an eligible commercial farm may preempt municipal ordinances if the farm is located in a zone in which agriculture is a permitted use and engages in one or more of the permitted activities listed in subsections a. through k.

The board and SADC have found that the Funks operated a commercial farm in a zoning district in which agriculture is a principal permitted use, *supra*, pp. 3, 11 and 14. Based on the record, the SADC **MODIFIES** the Initial Decision and further **FINDS** that the Funks produce agricultural crops in the form of grapes from their vineyard (subsection a.) and that the proposed 15' x 30' concrete pad and use of the 30' x 30' detached garage facilitate the production and processing of the grapes into wine and the packaging of the wine into bottles (subsection b.).

After the above section 9 criteria are met, a CADB is required to "balance the interests" of the farmer, the municipality and/or affected persons when considering an SSAMP request. Township of Franklin, supra, 172 N.J. at 151-53; Curzi v. Raub, 415 N.J. Super. 1, 22 (App.Div. 2010); In the Matter of CLC, LLC, OAL Dkt. No. ADC 20659-16, Agency Dkt. No. SADC ID #1580, p. 10.

We first observe that the record is devoid of any documentary evidence from municipal officials relevant to the SSAMP

application aside from the April 1, 2022 letter denying the Funks' application for a zoning permit and the assessor's September 8, 2023 certification submitted long after the conclusion of the HCADB proceedings. Although the township attorney appeared at the board's October 23, 2022 hearing and directed questions to the Funks, no witnesses were called and no other documents were introduced on the municipality's behalf. The SADC cannot give credence to the township's position that the HCADB "wrongfully disregarded the Township's . . . particular knowledge of local conditions" (*Petition of Appeal*, December 8, 2022, p. 3) when no local knowledge by township officials was imparted to the board at the October 23, 2022 hearing.

The SADC also does not agree with the township's contention in the petition of appeal that the board "wrongfully dissuaded public comment". Our review of the record, summarized on pp. 12-14, *supra*, reflects that the board considered a wide variety of questions and comments from the public at the SSAMP hearing. There is no indication in the hearing transcript that the board improperly cut-off commenters. The record shows that the Funks, the township attorney and those providing public comments and posing questions were treated fairly and openly.

The issue is whether, after listening to the parties and the public at the hearing regarding the proposed SSAMP, the winery operation's scope, and traffic, noise and water runoff concerns, the HCADB conducted the required "balancing of interests."

The board resolution states that the HCADB "carefully considered the testimony of [the Funks], Raritan Township Attorney, members of the public and the written comments submitted in making its determination." (*Resolution*, ¶14). The resolution limits the scope of the Funks' winemaking operation to the use of only farm-grown grapes and that there will be no public events, public tastings, on-site sales or public signage in connection with the winemaking; the protection of water resources is addressed by requiring Funk to "work with a contractor to provide a retention area to collect run-off from the pad after rinsing wine making equipment"⁴; and the SSAMP approval is subject to state ABC regulations (*Resolution*, ¶15). The resolution also accommodates the public's concerns by providing that if there is any deviation from paragraph 15 conditions, then the Funks must reapply to the board for RTFA protection, and that the HCADB retains jurisdiction (*Resolution*, p. 6, ¶¶3 and 4). Any person aggrieved by the

⁴The New Jersey Department of Agriculture, Division of Agricultural and Natural Resources, can assist the Funks with the preparation of a conservation plan for the beneficial reuse of rinse water from winemaking activities.

operation of a commercial farm, including a commercial farm that has received an SSAMP approval, can file a complaint in accordance with N.J.S.A. 4:1C-10.1a. The SADC **ADOPTS** the ALJ's determination that "any legitimate issues concerning safety and public welfare were addressed in the resolution. . .[and] that the [H]CADB considered these issues. . ." *Initial Decision*, p. 8. In the future, we encourage the HCADB and all other county agriculture development boards to make more robust and clear explanations of farmer, municipal and neighbor interests and how those interests were balanced.

N.J.S.A. 4:1C-9 also requires that a commercial farm seeking preemption of local ordinances comply with "relevant federal or state statutes or rules and regulations. . ." *Id.* The production of fermented beverages such as wine is heavily regulated by the ABC. See, e.g., N.J.S.A. 33:1-10.2b ("Farm winery license"); N.J.A.C. 13:2-10.1, et seq. In that regard, the HCADB's October 23, 2022 hearing included statements from board members that Funk did not have the right to sell wine "until he gets a license", and that "we [the HCADB] certified him as a commercial farm, not as a winemaker." [Transcript, 10/23/2022, p. 92, lines 13-19; p. 93, lines 14-15]. Consistent with those statements, paragraph 15 of the board's resolution approving the SSAMP includes a provision that "[a]ll winemaking activities are governed by the New Jersey Division of Alcoholic Beverage Control." The SADC **MODIFIES** the Initial Decision and **FINDS** that the SSAMP determination is for the construction of the concrete pad and use of the detached garage for existing grape production and proposed winemaking in compliance with the conditions set forth in the HCADB's November 10, 2022 resolution; the SADC also **MODIFIES** the Initial Decision and **FINDS** that the SSAMP approval is conditioned upon advance and continuing compliance with all relevant federal and state laws and regulations, including those of the New Jersey Division of Alcoholic Beverage Control.

Finally, the Initial Decision orders that the SSAMP application is "affirmed" and the township's appeal is "dismissed." The SADC respectfully reminds the OAL that appeals of RTFA cases transmitted by the agency and arising from county agriculture development board proceedings are the subject of *de novo* hearings by administrative law judges who make their own independent findings of fact and conclusions of law addressing the parties' dispute irrespective of a board's decision. I/M/O Monmouth County Agriculture Development Board Resolution No. 2017-10-1, Helmlinger's Meadow Hill Farm, LLC, OAL Dkt. No1 ADC 18798-17, Agency Dkt. No. SADC ID #1815; Borough of Glassboro v.

Conclusion

Based on the findings in this Final Decision, the SADC:

- **ADOPTS** the finding in the Initial Decision that any legitimate issues concerning public health, safety and welfare were appropriately considered by the HCADB and addressed in the board's November 10, 2022 resolution approving the SSAMP.

- **MODIFIES** the Initial Decision as follows:
 - The Funks' commercial farm eligibility was determined by the board on June 9, 2022.

 - The 6.53-acre Funk property satisfied the eligibility criteria for farmland assessment by having 3.4 acres of land devoted to vineyards, including areas trellised for "backfilling", and 1.75 acres of Timothy hay, whether growing or in a fallow area of the farm, generating income of at least \$1,000.

 - The Funks' 5.53-acre farm management unit produced agricultural products worth \$2,500 or more annually.

 - The Funks' 5.53-acre farm management unit was operated as a single enterprise because the Funks were the individual owners of the parcel of land comprising the unit, were the named managers/members of the LLC engaging in agricultural operations on the unit, and they individually and actively performed those agricultural activities for the LLC, thus demonstrating sufficient unity of ownership and control between themselves and the LLC.

 - The Funks produced agricultural crops in the form of grapes from their vineyard, and the proposed 15' x 30' concrete pad and use of the 30' x 30' detached garage constitute the production, processing and packaging of grapes and wine.

 - The SSAMP approval in this case is for the construction of the 15' x 30' concrete pad and use of the 30' x 30' detached garage to facilitate existing grape growing and proposed winemaking activities in compliance with the conditions set forth in the HCADB resolution; the SSAMP approval is also conditioned upon advance and continuing compliance with all

relevant federal and state laws and regulations, including those of the New Jersey Division of Alcoholic Beverage Control.

- **REJECTS** any finding, whether explicit or inferred in the Initial Decision, that the municipal tax assessor had any decision-making authority over the Funks' commercial farm eligibility.

IT IS SO ORDERED.

Dated: January 25, 2024



Joseph A. Atchison, III
Acting Chairman

**STATE AGRICULTURE DEVELOPMENT COMMITTEE
RESOLUTION #FY2024R1(1)
FINAL REVIEW AND APPROVAL OF AN SADC EASEMENT PURCHASE**

On the Property of Bayboro Equestrian, LLC

JANUARY 25, 2024

Subject Property: **Bayboro Equestrian, LLC**
Block 30, Lot 4 - Frankford Township, Sussex County
SADC ID#: 19-0034-DE

WHEREAS, on April 24, 2023, the State Agriculture Development Committee (“SADC”) received a development easement sale application from Bayboro Equestrian, LLC, hereinafter “Owner,” identified as Block 30, Lot 4, Frankford Township, Sussex County, hereinafter “the Property,” totaling approximately 90.5 gross acres, identified in (Schedule A); and

WHEREAS, the SADC is authorized under the Garden State Preservation Trust Act, pursuant to N.J.S.A. 13:8C-1 et seq., to purchase development easements directly from landowners; and

WHEREAS, the Owners received the SADC Guidance Documents regarding Exceptions, Division of the Premises, and Non-Agricultural Uses; and

WHEREAS, the Property includes:

- one (1), approximately 4.1-acre non-severable exception area to afford future flexibility for nonagricultural uses and restricted to zero (0) residential units; and
- one (1) approximately 15.7-acre and one (1) approximately 18.8-acre non-severable conservation exception areas (CEA) for and limited to conservation purposes with zero (0) residential opportunities,

resulting in approximately 52.1 net acres to be preserved, hereinafter referred to as “the Premises”; and

WHEREAS, the 4.1-acre non-severable exception area:

- 1) Shall not be moved to another portion of the Premises and shall not be swapped with other land,
- 2) Shall not be severed or subdivided from the Premises from the Premises,
- 3) Shall be limited to zero (0) single family residential unit,
- 4) Right-to-Farm language will be included in the Deed of Easement; and

WHEREAS, the 15.7 and 18.8-acre CEA:

- 1) Shall not be moved to another portion of the Premises and shall not be swapped with other land,
- 2) Shall not be severed or subdivided from the Premises,
- 3) Shall be restricted to zero (0) residential opportunities; and

WHEREAS, the CEAs on the Property has been approved for preservation through the Natural Resource Conservation Service (NRCS) Wetland Reserve Easement (WRE) program; and

WHEREAS, the Owner's rights under the Farmland Preservation Deed of Easement may be affected by certain terms and conditions of the WRE (including, but not limited to, fencing and drainage features that impact the wetlands easement area within the non-severable exception area); and

WHEREAS, a similar provision containing the foregoing shall be included in the Farmland Preservation Deed of Easement; and

WHEREAS, the final acreage of the exception areas shall be subject to onsite confirmation, and the Executive Director may approve final size and location of the exception area such that the size does not increase more than one (1) acre and the location remains within the substantially same footprint as the herein-approved exception, so long as there is no impact on the SADC certified value; and

WHEREAS, the action set forth in the preceding paragraph may be taken without the further approval of the SADC unless deemed necessary or appropriate by the Executive Director; and

WHEREAS, the Premises includes:

- 1) One (1) existing single family residential unit
- 2) Zero (0) Residual Dwelling Site Opportunity (RDSO)
- 3) Zero (0) agricultural labor units
- 4) No pre-existing non-agricultural uses; and

WHEREAS, the Property is currently an equine operation with approximately 34.7 acres in production as hay and pasture; and

WHEREAS, the majority of equine service activities (boarding services, lessons, and riding ring) take place within the 4-acre non-severable exception along with a 13-acre outdoor cross-country course on the property to be preserved; and

WHEREAS, a specialized "Equine Schedule B" (Schedule B) and an equine map (Schedule B1) will be recorded with the Deed of Easement; and

WHEREAS, staff evaluated this application for the sale of development easement in accordance with SADC Policy P-14-E, Prioritization criteria, N.J.A.C. 2:76-6.16 and the State Acquisition Selection Criteria approved by the SADC on September 14, 2022 which categorized applications into "Priority", "Alternate" and "Other"; and

WHEREAS, SADC staff determined that the Property meets the SADC's "Priority" category for Sussex County (minimum acreage of 44 and minimum quality score of 42) because it is approximately 90.5 acres and has a quality score of 67.32;

WHEREAS, in accordance with Resolution #FY2022R12(10) which delegated certain routine Acquisition Program approval actions to the Executive Director, the Property was granted SADC preliminary approval by the Executive Director on May 30, 2023, because the farm's quality score is over 70% of the County's average quality score; and

WHEREAS, pursuant to N.J.A.C. 2:76-11.8, on November 13, 2023, in accordance with Resolution #FY2020R4(14), Executive Director Payne and Acting Chairman Atchison certified the Development Easement value of \$4,400 per acre based on zoning and environmental regulations in place as of the current valuation date September 7, 2023; and

WHEREAS, the Owners accepted the SADC's offer of \$4,400 acre for the purchase of the development easement on the Premises; and

WHEREAS, to proceed with the SADC's purchase of the development easement it is recognized that various professional services will be necessary including but not limited to contracts, survey, title search and insurance and closing documents; and


WHEREAS, contracts and closing documents for the acquisition of the development easement will be prepared and shall be subject to review by the Office of the Attorney General;

NOW THEREFORE BE IT RESOLVED:

1. The WHEREAS paragraphs are incorporated herein by reference.
2. The SADC grants final approval for its acquisition of the development easement at a value of \$4,400 per acre for a total of approximately \$229,200 subject to the conditions contained in (Schedule C).
3. The SADC's purchase price of a development easement on the approved application shall be based on the final surveyed acreage of the Premises, adjusted for proposed road rights-of-way, other rights-of-way, easements, encroachments, and streams or water bodies on the boundaries of the Premises as identified in Policy P-3-B Supplement or other superior interests (recorded or otherwise granted) in the property that conflict with the terms of the Deed of Easement or otherwise restrict the affected area's availability for a variety of agricultural uses.
4. The final acreage of the non-severable exception areas shall be subject to onsite confirmation, and the Executive Director may approve final size and location of the exception area such that the size does not increase more than one (1) acre and the location remains within the substantially same footprint as the herein-approved exception, so long as there is no impact on the SADC certified value.
5. Contracts and closing documents shall be prepared subject to review by the Office of the Attorney General.
6. The SADC authorizes Acting Chairman Joseph A. Atchison, III or Executive Director Susan E. Payne, to execute an Agreement to Sell Development Easement and all necessary documents to contract for the professional services necessary to acquire said development easement including, but not limited to, a survey and title search and to execute all necessary documents required to acquire the development easement.
7. This approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey.

8. This action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

1/25/2024
Date



Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Martin Bullock	YES
Scott Ellis	YES
Pete Johnson	YES
Richard Norz	YES
Charles Rosen	ABSENT
Tiffany Bohlin	YES
Gina Fischetti (rep. DCA Commissioner Suarez)	ABSENT
Lauren Procida (rep. DEP Commissioner LaTourette)	YES
Julie Krause (rep. State Treasurer Muoio)	YES
Brian Schilling (rep. Executive Dean Lawson)	YES
Joseph A. Atchison, III, Acting Chairperson	YES

Preserved Farms and Active Applications Within Two Miles



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Application within the (PA4) Rural Area

Keamap, NJ Department of Environmental Protection, NJ Office of GIS

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Bayboro Equestrian, LLC
Block 30 Lots P/O 4 (52.1 ac) &
P/O 4-EN (non-severable exceptions - 15.7, 18.6 & 4.1 ac)
Gross Total = 90.5 ac
Frankford Twp., Sussex County



	Property In Question
	Exceptions
	Preserved Easements
	Transfer Development Rights (TDR) Preserved: Highlands, Pinelands and Municipal
	Active Applications
	County Boundaries
	Municipal Boundaries
	Municipal, County, Pinelands & Non-Profit Preserved Open Space, State Owned Conservation Easements, & State Owned O/S & Recreation Easements



Source:
NJ Farmland Preservation Program
NJDOT Parcel Data
NJDEP Conservation/Open Space Easement Data
NJ2017river Map 2021 Digital Aerial Image

NOTE:
The parcel location and boundaries shown on this map are approximate and should not be construed to be a land survey as defined by the New Jersey Board of Professional Engineers and Land Surveyors.

SCHEDULE B

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 following uses occur on the Premises:

Horseback riding lessons, training and schooling horses in the approximately 13-acre cross-country course as depicted on the attached aerial photograph identified as Schedule B1.

Grantor further certifies that the above uses (hereinafter "equine service activities") are currently ancillary to equine-related production, **including pasturing and hay production.** "Ancillary" means that the area of land on which equine service activities are conducted is subordinate, secondary and auxiliary in comparison to the area of the farm devoted to equine production activities.

Grantor understands and agrees that because the equine service activities are ancillary to equine-related production, the said equine service activities are deemed agricultural uses and are not currently subject to the restrictions placed on non-agricultural uses in Paragraphs 3 and 4 of the Deed of Easement. The areas occupied by equine service activities and equine production activities are depicted in **Schedule B1.**

Grantor also understands and agrees that if, in the future, equine service activities are no longer "ancillary" as defined above, then the equine service activities will be deemed non-agricultural and will be subject to the restrictions contained in Paragraphs 3 and 4 of the Deed of Easement.

Equine Areas



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**FARMLAND PRESERVATION PROGRAM
NJ State Agriculture Development Committee**

Bayboro Equestrian, LLC
Block 30 Lots P/O 4 (52.1 ac) &
P/O 4-EN (non-severable exceptions - 15.7, 18.6 & 4.1 ac)
Gross Total = 90.5 ac
Frankford Twp., Sussex County

	Property In Question
	EN - (Non-Severable) Exception
	Equine Production - 34.7 ac
	Equine Service - 13.0 ac



DISCLAIMER: Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user. The configuration and geo-referenced location of parcel polygons in this data layer are appropriate and were developed primarily for planning purposes. The geodetic accuracy and precision of the GIS data contained in this file and map shall not be relied upon in matters requiring definition and location of true ground horizontal and/or vertical controls as would be obtained by an actual ground survey conducted by a Licensed Professional Land Surveyor.

SOURCE:
NJ Farmland Preservation Program
NJDOT Parcel Data
NJDOT Road Data
NJDOT/Esri Map 2021 Digital Aerial Image

May 4, 2023

State Agriculture Development Committee
SADC Final Review: Development Easement Purchase

Bayboro Equestrian, LLC
Easement Purchase - SADC
52 Acres

Block 30	Lot 4	Frankford Twp.	Sussex County	
SOILS:		Other	81% * 0 =	.00
		Prime	19% * .15 =	2.85
				SOIL SCORE: 2.85
TILLABLE SOILS:		Cropland Harvested	88% * .15 =	13.20
		Wetlands/Water	.5% * 0 =	.00
		Woodlands	11.5% * 0 =	.00
				TILLABLE SOILS SCORE: 13.20
FARM USE:	Hay		10 acres	

This final approval is subject to the following:

1. Available funding.
2. The allocation of 0 Residual Dwelling Site Opportunity(ties) on the Premises subject to confirmation of acreage by survey.
3. Compliance with all applicable statutes, rules and policies.
4. Other:
 - a. Pre-existing Nonagricultural Use: No Nonagricultural Uses
 - b. Exceptions:
 - 1st (15.7) acres for WRE/Conservation
Exception is not to be severable from Premises
Exception is to be limited to zero existing single family residential unit(s) and zero future single family residential unit(s)
 - 2nd (18.6) acres for WRE/Conservation
Exception is not to be severable from Premises
Exception is to be limited to zero existing single family residential unit(s) and zero future single family residential unit(s)
 - 3rd (4.1) acres for For existing barn and arena
Exception is not to be severable from Premises
Exception is to be limited to zero existing single family residential unit(s) and zero future single family residential unit(s)
 - c. Additional Restrictions: No Additional Restrictions
 - d. Additional Conditions: No Additional Conditions
 - e. Dwelling Units on Premises:
Standard Single Family
 - f. Agricultural Labor Housing Units on Premises: No Ag Labor Housing
5. Review and approval by the Office of the Attorney General for compliance with legal requirements.

**STATE AGRICULTURE DEVELOPMENT COMMITTEE
RESOLUTION #FY2024R1(2)
FINAL REVIEW AND APPROVAL OF AN SADC EASEMENT PURCHASE**

On the Property of Eberdale Farms

JANUARY 25, 2024

Subject Property: **Eberdale Farms**
Block 60, Lot 1.01, Block 62, Lot 5 and 7
Quinton Township, Salem County
SADC ID# 17-0387-DE

WHEREAS, on May 15, 2023, the State Agriculture Development Committee (“SADC”) received a development easement sale application from Eberdale Farms, hereinafter “Owner,” identified as Block 60, Lot 1.01, Block 62, Lot 5 and 7, Quinton Township, Salem County, hereinafter “the Property,” totaling approximately 59.6 gross acres, identified in (Schedule A); and

WHEREAS, the SADC is authorized under the Garden State Preservation Trust Act, pursuant to N.J.S.A. 13:8C-1 et seq., to purchase development easements directly from landowners; and

WHEREAS, the Owner received the SADC Guidance Documents regarding Exceptions, Division of the Premises, and Non-Agricultural Uses; and

WHEREAS, the Property includes no exception areas, resulting in approximately 59.6 net acres to be preserved, hereinafter referred to as “the Premises”; and

WHEREAS, the Premises includes:

- 1) Zero (0) exceptions,
- 2) Zero (0) housing opportunities
- 3) Zero (0) agricultural labor units
- 4) No pre-existing non-agricultural uses; and

WHEREAS, at the time of application, the Property was in soy production; and

WHEREAS, staff evaluated this application for the sale of development easement in accordance with SADC Policy P-14-E, Prioritization criteria, N.J.A.C. 2:76-6.16 and the State Acquisition Selection Criteria approved by the SADC on September 14, 2022, which categorized applications into “Priority”, “Alternate” and “Other”; and

WHEREAS, the Property has a quality score of 62.45, which is higher than the minimum quality score of needed for a “Priority” farm designation in Salem County, however at approximately 61 acres, it does not meet the minimum acreage criteria for the “Priority” or “Alternate” categories which require at least 94 or 69 acres respectively, therefore, this farm is categorized as an “Other” farm, requiring SADC preliminary approval; and

WHEREAS, on June 22, 2022, the SADC granted Preliminary Approval to this Application; and

WHEREAS, the certification of easement value and this final approval are conditioned Block 62, Lot 5 and Lot 7 being consolidated simultaneously with the easement closing, a draft lot consolidation deed being reviewed and approved in advance by the SADC, and the approved lot consolidation deed being recorded subsequent to and contemporaneously with the deed of easement; and

WHEREAS, pursuant to N.J.A.C. 2:76-11.8, on November 13, 2023, in accordance with Resolution #FY2020R4(14), Executive Director Payne and Acting Chairman Atchison certified the Development Easement value of \$4,500 per acre based on zoning and environmental regulations in place as of the current valuation date September 27, 2023; and

WHEREAS, the Owners accepted the SADC's offer of \$4,500 acre for the purchase of the development easement on the Premises; and

WHEREAS, to proceed with the SADC's purchase of the development easement it is recognized that various professional services will be necessary including but not limited to contracts, survey, title search and insurance and closing documents; and


WHEREAS, contracts and closing documents for the acquisition of the development easement will be prepared and shall be subject to review by the Office of the Attorney General;

NOW THEREFORE BE IT RESOLVED:

1. The WHEREAS paragraphs are incorporated herein by reference.
2. The SADC grants final approval for its acquisition of the development easement at a value of \$4,500 per acre for a total of approximately \$268,200 subject to the conditions contained in (Schedule C).
3. This final approval is conditioned on Block 62, Lot 5 and Lot 7 being consolidated simultaneously with the easement closing, a draft lot consolidation deed being reviewed and approved in advance by the SADC, and the approved lot consolidation deed being recorded subsequent to and contemporaneously with the deed of easement.
4. The SADC's purchase price of a development easement on the approved application shall be based on the final surveyed acreage of the Premises adjusted for proposed road rights-of-way, other rights-of-way, easements, encroachments, and streams or water bodies on the boundaries of the Premises as identified in Policy P-3-B Supplement or other superior interests (recorded or otherwise granted) in the property that conflict with the terms of the Deed of Easement or otherwise restrict the affected area's availability for a variety of agricultural uses.
5. Contracts and closing documents shall be prepared subject to review by the Office of the Attorney General.

6. The SADC authorizes Acting Chairman Joseph A. Atchison, III or Executive Director Susan E. Payne, to execute an Agreement to Sell Development Easement and all necessary documents to contract for the professional services necessary to acquire said development easement including, but not limited to, a survey and title search and to execute all necessary documents required to acquire the development easement.
7. This approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey.
8. This action is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

1/25/2024
Date


Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Martin Bullock	YES
Scott Ellis	YES
Pete Johnson	YES
Richard Norz	YES
Charles Rosen	ABSENT
Tiffany Bohlin	YES
Gina Fischetti (rep. DCA Commissioner Suarez)	ABSENT
Lauren Procida (rep. DEP Commissioner LaTourette)	YES
Julie Krause (rep. State Treasurer Muoio)	YES
Brian Schilling (rep. Executive Dean Lawson)	YES
Joseph A. Atchison, III, Acting Chairperson	YES

Wetlands



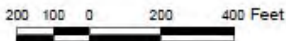
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Application within the (PA4) Rural Area

Nearmap, NJ Department of Environmental Protection, NJ Office of GIS

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Eberdale Farms, Inc.
Block 60 Lot 1.01 (39.8 ac) &
Block 62 Lots 5 (14.0 ac) & 7 (5.8 ac)
Gross Total = 59.6 ac
Quinton Twp., Salem County



Sources:
NJ Farmland Preservation Program
NJOT Parcels edited to adjacent survey data
NJDOT Road Data
NJOT Near Map 2021 Digital Aerial Image

DISCLAIMER: Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user. The configuration and geo-referenced location of parcel polygons in this data layer are approximate and were developed primarily for planning purposes. The geodetic accuracy and precision of the GIS data contained in this file and map shall not be, nor are intended to be, relied upon in matters requiring delineation and location of true ground horizontal and/or vertical controls as would be obtained by an actual ground survey conducted by a licensed Professional Land Surveyor.

	Property In Question
	Wetlands Boundaries
	Primary - Limited Access
	Federal or State Hwys
	County Roads
	Municipal/Local Roads



Wetlands Legend:
F - Freshwater Wetlands
M - Wetlands Modified for Agriculture
T - Tidal Wetlands
N - Non-Wetlands
B - 300' Buffer
W - Water

Preserved Farms and Active Applications Within Two Miles

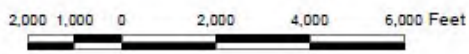


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Nearmap, NJ Department of Environmental Protection, NJ Office of GIS

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Eberdale Farms, Inc.
Block 60 Lot 1.01 (39.8 ac) &
Block 62 Lots 5 (14.0 ac) & 7 (5.8 ac)
Gross Total = 59.6 ac
Quinton Twp., Salem County



	Property In Question
	Preserved Easements
	Transfer Development Rights (TDR) Preserved: Highlands, Pinelands and Municipal
	Active Applications
	County Boundaries
	Municipal Boundaries
	Municipal, County, Pinelands & Non-Profit Preserved Open Space, State Owned Conservation Easements, & State Owned O/S & Recreation Easements



Sources:
NJ Farmland Preservation Program
NJOT Parcels edited to adjacent survey data
NJDEP Conservation/Open Space Easement Data
NJOT/Near Map 2021 Digital Aerial Image

NOTE:
The parcel location and boundaries shown on this map are approximate and should not be construed to be a land survey as defined by the New Jersey Board of Professional Engineers and Land Surveyors

May 17, 2023

State Agriculture Development Committee
SADC Final Review: Development Easement Purchase

Eberdale Farms
Easement Purchase - SADC
60 Acres

Block 60	Lot 1.01	Quinton Twp.	Salem County		
Block 62	Lot 7	Quinton Twp.	Salem County		
Block 62	Lot 5	Quinton Twp.	Salem County		
SOILS:		Statewide	93% *	.1	= 9.30
		Unique zero	7% *	0	= .00
					SOIL SCORE: 9.30
TILLABLE SOILS:		Cropland Harvested	86% *	.15	= 12.90
		Wetlands/Water	4% *	0	= .00
		Woodlands	10% *	0	= .00
					TILLABLE SOILS SCORE: 12.90
FARM USE:	Soybeans-Cash Grain			51 acres	

This final approval is subject to the following:

1. Available funding.
2. The allocation of 0 Residual Dwelling Site Opportunity(ties) on the Premises subject to confirmation of acreage by survey.
3. Compliance with all applicable statutes, rules and policies.
4. Other:
 - a. Pre-existing Nonagricultural Use: No Nonagricultural Uses
 - b. Exceptions: No Exceptions Requested
 - c. Additional Restrictions: No Additional Restrictions
 - d. Additional Conditions: No Additional Conditions
 - e. Dwelling Units on Premises: No Dwelling Units
 - f. Agricultural Labor Housing Units on Premises: No Ag Labor Housing
5. Review and approval by the Office of the Attorney General for compliance with legal requirements.

**STATE AGRICULTURE DEVELOPMENT COMMITTEE
POLICY**

Farmland Stewardship Wildlife Fencing Program

I. Purpose

To make Farmland Stewardship Program cost-share grants available for the installation of wildlife fencing (high-tensile woven wire deer fencing, electric bear fencing, or other fencing) on farms enrolled in a permanent farmland preservation program as described herein.

II. Authority

N.J.S.A. 4:1C-11 et seq. – Agriculture Retention and Development Act

N.J.S.A. 13:8C-43 et seq. – Preserve New Jersey Act

N.J.S.A. 40:55D-39.1 – Municipal Land Use Law

N.J.S.A. 40:55D-113 et seq. – Burlington County Transfer of Development Rights Demonstration Act

N.J.S.A. 40:55D-137 et set. – State Transfer of Development Rights Act

N.J.A.C. 2:76-20.1 et seq. – Farmland Stewardship Program

P.L.2023, c.233

III. Definitions

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Commence" or "commence the implementation project" means purchasing a majority (greater than fifty percent) of the materials necessary to install a feasibility plan's wildlife fencing project and providing the Committee with satisfactory written proof of purchase. If the wildlife fencing is to be installed by a contractor, "commence" means providing the Committee with copies of the signed contract and any required contract deposit.

"Common deed ownership" means the premises.

"Eligible applicant" means an owner, operator, or lessee of permanently preserved farmland who regularly engages in the operation and management of the farming operation on the preserved farmland, provided that an applicant who is an operator or lessee has written approval to install wildlife fencing from the owner of the land on which the wildlife fencing is to be installed.

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"Permanent farmland preservation program" means any permanent program as developed pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-1 et seq., the Garden State Preservation Trust Act, P.L. 1999, c.180, N.J.S.A. 4:1C-43.1, N.J.S.A. 4:1C-31.1 and which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within the agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and the maintenance and support of increased agricultural production as the first priority use of that land from which a permanent development easement has been acquired or retained for farmland preservation purposes and which land is eligible for the benefits of the farmland preservation program. Highlands preserved farmland, municipal cluster preserved farmland, pinelands preserved farmland, and TDR preserved farmland, as defined herein, are considered to be permanently preserved farmland enrolled in a farmland preservation program.

"Electric bear fencing" or "bear fencing" means bear fencing constructed pursuant to the design and installation specifications prescribed in Exhibit B.

"Feasibility plan" means an application by an eligible applicant for wildlife fencing implementation projects that are necessary and may feasibly result in enhancing the economic viability of the farm operation.

"Highlands preserved farmland" means land on which Highlands Development Credits (HDCs) allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:20-13 and N.J.A.C. 7:70-4.1 et seq., provided the SADC approves the recorded deed restrictions as being consistent with the deed restrictions at N.J.A.C. 2:76-6.15.

"High-tensile woven wire deer fencing" or "deer fencing" means deer fencing constructed pursuant to the design and installation specifications prescribed in Exhibit A.

"Implementation projects" are projects recommended in approved feasibility plans that may feasibly result in enhancing the economic viability of the farm operation.

"Military veteran farmer" means an eligible applicant who served in the active military, naval, or air service anywhere in the world at any time since September 11, 2001, and discharged or released therefrom under conditions other than dishonorable at the time of application.

"Municipal cluster development preserved farmland" means land subject to an agricultural restriction approved by the SADC as part of a municipal cluster development pursuant to N.J.S.A. 40:55D-39.1.

"Other wildlife fencing" means fencing that effectively precludes species of wildlife other than deer and bear, and is constructed pursuant to generally accepted design and installation specifications approved by the Committee.

"Pinelands preserved farmland" means land on which Pinelands Development Credits (PDCs) allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:18A-30, et seq. and N.J.A.C. 7:50-5.41 et seq., provided the SADC approves the recorded deed restrictions as being consistent with the deed restrictions at N.J.A.C. 2:76-6.15.

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“Premises” means the property subject to the deed of easement as defined by the legal metes and bounds description contained in the deed of easement.

“Transfer of development rights (TDR) preserved farmland” means land enrolled in a municipal, county, or state farmland preservation program developed pursuant to N.J.S.A. 40:55D-113 et seq. or N.J.S.A. 40:55D-137 et seq., through which the land’s development credits are severed and agricultural deed restrictions recorded, and the SADC approves the deed restrictions as being consistent with the deed restrictions at N.J.A.C. 2:76-6.15.

“Wildlife fencing” means deer fencing, bear fencing, or other wildlife fencing as defined herein.

IV. Eligibility for Cost-Share Grants

Applicants must meet the following criteria in order to become eligible for cost-share grants to install wildlife fencing:

- a. Applicant must be an eligible applicant as defined herein.
- b. The land on which the fencing is to be constructed is permanently preserved farmland enrolled in a Permanent Farmland Preservation Program approved by the SADC.
- c. If deer fencing is to be installed, applicant must certify that she or he has watched the Committee’s deer fence installation training video or participated in a Committee-approved deer fence installation training session.
- d. Applicant must install wildlife fencing in accordance with the specifications prescribed in this policy document.
- e. Applicant must have, or obtain prior to reimbursement, an approved farm conservation plan that addresses soil and water resources for the area to be fenced.

III. [Word formatting issue – delete “III”]

IV. [Word formatting issue – delete “IV”]

V. Policy Statement

With an estimated \$5-10 million per year in crop losses due to deer densities that exceed in some instances more than ten times the land’s carrying capacity, with additional damage and crop losses due to the expanded presence of bears, and with crop losses from other wildlife, the use of fencing to exclude deer, bear, and/or other wildlife and protect a farmer’s investment in agricultural production is critical to a preserved farm’s economic viability. Effectively precluding deer requires the installation of high-tensile woven wire fencing according to prescribed specifications (Exhibit A), and effectively precluding bears requires the installation of electric fencing according to prescribed specifications (Exhibit B). Wildlife fencing can be cost-prohibitive without any available cost-share. Offering cost-share for wildlife fencing is considered a “Stewardship activity” as defined in N.J.S.A. 13:8C-43 (the “Preserve New Jersey Act”), because such work is beyond routine operation and maintenance, and serves to improve lands that have been preserved for farmland preservation purposes under N.J.S.A. 4:1C-11, et seq. (the Agriculture Retention and Development Act). The installation of such wildlife fencing must be undertaken on preserved farmland in compliance with

the Deed of Easement.

VI. Application Procedure

To be eligible for a Farmland Stewardship Program cost-share grant for wildlife fencing, an eligible applicant must submit a feasibility plan within a program round announced by the Committee that includes the following:

- a. A map showing the proposed location of wildlife fencing, including all gates, corners, posts, and brace assemblies. The fenced area must be completely enclosed by fencing that meets the specifications prescribed in this policy document.
- b. An estimate of the linear feet of fence required.
- c. An estimate of the acreage to be fenced.
- d. A written cost quote for the implementation project, including the cost of materials and labor whether the fencing will be installed by the eligible applicant or someone other than the eligible applicant.
- e. Crops currently grown within the area to be fenced.
- f. Crops planned to be grown within the area to be fenced.
- g. If available, the annual gross dollar loss from deer, bear, or other wildlife damage in the area to be fenced for the previous calendar year, as documented by crop insurance claims or other verifiable documents provided by the eligible applicant.
- h. A description of hunting or other deer, bear, or other wildlife abatement measures, such as DEP deer depredation permits or farmer black bear season permit, that have been used for the land to be fenced.
- i. Documentation of applicant's status as a military veteran farmer, if applicable.
- j. Documentation that applicant meets the definition of an eligible applicant.
- k. Documentation that applicant has an approved farm conservation plan, or that applicant has requested a farm conservation plan from NRCS or an approved technical service provider, for the area to be fenced.
- l. Documentation (if applicant proposes to fence at least five acres of woodland for woodland management purposes) that applicant has a signed Woodland Management Plan or Forest Stewardship Plan with wildlife fencing as a recommended management practice, or that applicant has requested such a Woodland Management Plan or Forest Stewardship plan, from a forester approved pursuant to N.J.A.C. 7:3-2.
- m. A copy of the recorded preservation deed of easement or deed restrictions on the land on which the wildlife fencing is to be constructed.
- n. The applicant's NJSTART Vendor ID# and NJSTART Entity Name.

Proposed fencing design standards, if the applicant is proposing the installation of other wildlife fencing,

VII. Feasibility Plan Determination

The Committee will make grants available for implementation projects subject to available funding. The Committee will undertake an analysis of each feasibility plan to determine if the proposed projects are feasible. Only approved feasibility plans will become eligible for funding as implementation projects. The Committee will approve feasibility plans based on the following criteria:

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- a. A need for wildlife fencing as demonstrated by the deer density within the deer management unit and/or deer management zone(s) where the eligible applicant proposes installing deer fencing, the presence of black bear in the area where the eligible applicant proposes installing bear fencing, the presence of other wildlife contributing to crop losses where fencing is proposed, whether the area is in a no firearm discharge zone, whether the farmer has obtained NJDEP deer depredation permits or farmer black bear season permits, whether the premises is open to hunting, and whether parcels within 200 feet in all directions of the premises are included within state, county, municipal, or non-profit open space where hunting is prohibited.
- b. A need for wildlife fencing as demonstrated by the type of crops grown or planned to be grown in the area to be fenced. No implementation projects will be approved for fencing farmstead complexes unless said complexes contain cropland, pastureland, or woodland. Applicants who propose to fence at least five acres of woodland for woodland management purposes must have a signed Woodland Management Plan or Forest Stewardship Plan with wildlife fencing as a recommended management practice by the completion of the implementation project.
- c. The proposal's compliance with the deed of easement, including, but not limited to, Paragraph 7 (natural resources conservation) and all other applicable laws, rules, and regulations.

VIII. Approval of Implementation Projects

The SADC will grant approval to all projects on a rolling basis in the order in which feasibility plan applications are received, until funding is exhausted. In the event multiple approved feasibility plan applications are received on the same day, and funding is insufficient to fund the feasibility plans' implementation projects, the implementation projects will be ranked in accordance with Section IX. In all cases, any fencing installed before funding is awarded will be ineligible for reimbursement.

IX. Ranking of Applications

Implementation projects will be ranked by means of a numeric rating scale as shown in Exhibit C and funding will be expended for a given program round by rank order (highest to lowest) until available funding has been exhausted. The numeric rating scale shall incorporate the following criteria:

- a. Deer density per square mile.
- b. Presence of black bears.
- c. Type of crop currently grown or planned to be grown.
- d. Status of firearm discharge zones (whether land is located in no discharge zone or not).
- e. Proximity (within 200 feet in all directions of the premises) to state, county, municipal, or non-profit open space where hunting is prohibited.
- f. Status of hunting access (whether premises is actively hunted).
- g. Status of deer depredation permits or farmer black bear season permits (whether applicant has obtained them or not).
- h. Whether owner-operator is a military veteran farmer.

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In the event of a tie score between applications, applications will be prioritized according to the earliest date submitted during a given program round. In the further event of a tie, an eligible applicant may submit documentation of the extent of crop damage from wildlife and associated annual gross dollar loss for the previous calendar year along with a letter of support from Rutgers Cooperative Extension, or alternatively, submit evidence of a crop insurance claim.

X. Reimbursement Procedure

The SADC will provide a cost-share grant in the form of a reimbursement to the eligible applicant for the installed wildlife fencing, as set forth below, only after the implementation project has been completed and all requirements have been satisfied in the reasonable discretion of the SADC:

- a. If deer fencing was installed, an eligible applicant must certify that she or he has watched the SADC's deer fence installation training video or participated in a Committee-approved deer fencing installation training session prior to installing the fence.
- b. Deer fencing must be installed in compliance with the attached design and installation specifications (Exhibit A), which includes fence, gate, corner, post, brace assembly, and other component minimum design and installation specifications. Bear fencing must be installed in compliance with the attached design and installation specifications (Exhibit B). Any eligible applicant wishing to deviate from these specifications must seek and obtain approval from the SADC, in writing, prior to installing the fence.
- c. Fencing for effectively precluding other wildlife must be installed in compliance with generally accepted design and installation specifications approved by the Committee.
- d. The fencing must be installed in compliance with the time-period set forth in N.J.A.C. 2:76-20.18(a), namely, the eligible applicant must commence the implementation project within six months of approval by the Committee and be completed within three years of said approval.
- e. All approved projects shall be implemented and maintained at all times in conformance with the restrictions set forth in the Deed of Easement and for a lifespan of at least 10 years.
- f. An eligible applicant must have an approved conservation plan that addresses soil and water resources for the area to be fenced.
- g. Upon completion of the project, the eligible applicant shall request payment on a form authorized by the SADC. The SADC shall verify the submitted documentation and that the wildlife fencing has been installed satisfactorily in accordance with the design and installation specifications prescribed in this policy document, the Deed of Easement, this Policy, and all other applicable laws, rules and regulations. If all program requirements are met, the SADC shall forward payment of the grant to the eligible applicant.

XI. Reimbursement Amounts and Conditions

The grant amounts available to eligible applicants will be up to 50% of the verified reasonable costs of materials and installation based on the submittal of invoices and field inspection, as determined by the SADC, not to exceed \$50,0000. In-kind services performed by the applicant or applicant's employees (such as labor) shall be permitted to be used as the applicant's matching portion of costs for an implementation project.. Each individual permanently preserved farm (each premises) shall

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not be eligible for more than \$50,000 in Farmland Stewardship Wildlife Fencing Program cost-share grants per eight-year period, with the period beginning on the date of completion of the first approved wildlife fencing implementation project. Once a farm has received its maximum eligibility amount, it shall not be eligible to apply for additional wildlife fencing cost-share grants until the next eight-year period. The cost-share of installed fencing not retained for the requisite 10-year lifespan will be recaptured on a pro-rated basis, rounded to the closest month, determined through annual monitoring visits to the Premises.

[https://sonj.sharepoint.com/sites/AG/SADC/Grants/Farmland Stewardship Grants/DeerFencingGrants/Policy_P53_AndOther/Policy P-53 - Draft Update.docx](https://sonj.sharepoint.com/sites/AG/SADC/Grants/Farmland%20Stewardship%20Grants/DeerFencingGrants/Policy_P53_AndOther/Policy%20P-53%20-%20Draft%20Update.docx)