

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Department of Agriculture
Market and Warren Streets
1st Floor Auditorium
Trenton, NJ 08625

REGULAR MEETING

September 23, 2010

Chairman Fisher called the meeting to order at 9:15 a.m. In compliance with the “Open Public Meetings Notice”, the following statement was read:

“Pursuant to N.J.S.A. 10:4-6 et seq., adequate public notice of this meeting has been provided by giving written notice of the time, date, location and, to the extent known, the agenda. At least 48 hours in advance, this notice has been posted on the public announcement board, third floor, Health/Agriculture building, John Fitch Plaza, Trenton, NJ, mailed and/or faxed to the Newark Star Ledger, the Times of Trenton, the Camden Courier Post, and filed with the Office of the Secretary of State.”

Roll call indicated the following:

Members Present

Douglas H. Fisher, Chairperson
Richard Boornazian (rep. DEP Commissioner Martin)
Ralph Siegel (rep. State Treasurer Andrew P. Sidamon-Eristoff) (Arrived at 9:17 a.m.)
Brian Schilling (rep. Executive Dean Goodman) (Arrived at 10:03 a.m.)
Torrey Reade
Stephen P. Dey
Jane Brodhecker
James Waltman

Members Absent

Donna Rendeiro (rep. DCA Commissioner Grifa)
Denis C. Germano, Esq.
Alan Danser

Susan E. Craft, Executive Director
Jason Stypinski, Deputy Attorney General

Others present as recorded on the attendance sheet: Robert Baumley, Heidi Winzinger, Charles Roohr, Paul Burns, Ed Ireland, Timothy Brill, Cassandra McCloud, Daniel Knox, Bryan Lofberg, Dave Kimmel, Patricia Riccitello and Sandy Giambrone, SADC staff, Daniel Pace, Mercer County Agriculture Development Board, Thomas Hower, Governor's Authorities Unit, Harriet Honigfeld and Amanda Brockwell, Monmouth County Agriculture Development Board, Barbara Ernst, Cape May County Agriculture Development Board, Danielle Dobisch, Burlington County Agriculture Development Board, Katherine Coyle, Morris County Agriculture Development Board, Robert Resker, Warren County Agriculture Development Board, James A. Britt, Bernard T. Britt and Anne M. Britt, Landowners, Mansfield Township, Warren County, Glorianne Robbi, East Amwell Township, Hunterdon county, Nicki Goger, New Jersey Farm Bureau, William Millette, Hunterdon County Agriculture Development Board, Donna Traylor, Sussex County Agriculture Development Board, Ryan Allen Ocean County Agriculture Development Board, Lisa MacCollum, New Jersey Conservation Foundation, Christine Landuyt, Celtic Charms Farm, Howell Township, Monmouth County.

Minutes

- A. SADC Regular Meeting of July 22, 2010 (Open Session and Closed Session)

It was moved by Ms. Reade and seconded by Ms. Brodhecker to approve the open session minutes and the closed session minutes of the SADC regular meeting of July 22, 2010. The motion was approved (Mr. Waltman abstained.)

REPORT OF THE CHAIRPERSON

Chairman Fisher stated that as he mentioned at the last meeting everyone is getting interested in solar and everyone wants to do a project now. He stated that yesterday he was informed of a net metering project that the landowner wants to install on a preserved farm but could not move forward on that project because they were waiting for SADC rules to be adopted. He stated that we will be hearing more about these types of concerns. He stated that SADC staff is working feverishly with the DEP, the Board of Public Utilities and the Division of Taxation in drafting rules.

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Craft discussed the following with the Committee:

- Warren County Farmland Preservation Event

Ms. Craft congratulated Warren County on its upcoming farmland preservation event, celebrating 20,000 acres being preserved under the farmland preservation program. The event will take place at the Demeter farm in White Township.

- Dual Appraisal Provision in the Highlands

Ms. Craft stated that the bill passed the legislature and was signed by the Governor extending the dual appraisal provision for properties in the Highlands Region only. That closes the issue of whether the dual appraisal provision was going to continue on all lands. It extends the dual appraisal treatment for Highlands properties through June 30, 2014, or five years from the 2009 deadline. Staff will be sending a memo to all the counties, nonprofits and towns so we can begin to clarify the appraisal process. At this time, the SADC would advise not to conduct dual appraisals any longer outside the Highlands because there is no legislative authority.

- Right to Farm Case

Ms. Craft stated that the SADC has just concluded its third day of public hearings on the Hopewell Valley Vineyards, located in Hopewell Township, Mercer County. The Township and residents, both for and against operations at the vineyard were present. The winery industry is an evolving industry in New Jersey and this will be a very important case to try to identify what aspects of winery operations are protected under the Right to Farm Act. The submission deadline is about a week or two for any further documents from those that attended the hearing. SADC staff will digest all materials and then draft a hearing report for the Committee's consideration. The target date is the December SADC meeting.

- Special Meeting of the SADC

Ms. Craft stated that the Committee held a special meeting last Friday to conclude its work on the Washington Township Municipal Utilities Authority (WTMUA) well case. It has been an issue before the SADC for a while now. The SADC previously found that the proposed taking on the Smith and Searles farm would cause an unreasonably adverse effect and then at the special meeting the

Committee concluded its work on that by approving a report that sets forth the SADC's recommendations. The recommendations essentially were 1) the SADC was not convinced that there were no alternative sources to be used to supply this water, particularly because it is in the Highlands Preservation Area. Recommendation # 1 was to exhaust all other options before drilling wells on these farms; and 2) Coordinate with the DEP to incorporate the ADA review process in to the DEP permit procedures. Ms. Craft reiterated what happened in this case, the WTMUA expended money to drill a well and the ADA process had not even been initiated. The WTMUA was supposed to provide proper notice before spending money on drilling the wells. SADC staff will work with the DEP to see what can be accomplished to ensure that the ADA process is more meaningful. The case is before the Judge on October 1st or 2nd. The application is pending preservation so this condemnation is delaying the process.

- Comments on the Deed of Easement Guidance Documents

Ms. Craft stated that the SADC has received comments on its deed of easement guidance documents. The deadline for comments was extended to August 30th. The Committee has been provided today with a copy of the comments received. Staff will summarize the comments and as soon as possible, reconvene the Deed of Easement subcommittee. Staff will keep the Committee updated.

COMMUNICATIONS

Ms. Craft reminded the Committee to take home the various articles provided in the meeting binders regarding the WTMUA and solar issues. She stated that Rowen University recently released a study on land use changes in New Jersey and there are some articles provided on that subject. She will summarize the recommendations to report back to the SADC at a later date. She would encourage everyone to read the articles on the land use study.

PUBLIC COMMENT

Robert Resker, Warren County Agriculture Development Board Administrator stated that regarding the dual appraisal issue, it was stated earlier that it is usable in the Highlands. Would that be usable in just the Preservation Area or both the Preservation Area and the Planning Area? Ms. Craft responded it states it would be usable in the Highlands region, so it would be both the Planning and Preservation Areas.

Ms. Reade stated that she received a letter from Nick Cassetta of the Cape-Atlantic Soil Conservation District who also administers the Atlantic CADB in response to the SADC's budget that was approved at the last meeting. He raised this issue previously

and she wasn't sure if there was anything that could be done. The issue is that there is no administrative funding for the farmland preservation obligations of the soil conservation districts. With the decrease in the construction activity in the state there is not as much Section 251 funding coming into the districts so they do not have the available funding to conduct stewardship activities that they are required to conduct on behalf of the SADC. He is making another plea for some kind of acknowledgement that there ought to be some type of administrative funding for the districts. She stated that she would forward Mr. Cassetta's letter to SADC staff for review.

Ms. Craft stated that the SADC would need statutory authority to spend GSPT and bond monies to provide administrative costs for staff at the county level. At this time, there is no authority for the SADC to use its funds for those purposes. She stated that staff will review the letter and provide a response.

NEW BUSINESS

**A. Proposed New Rules: Draft
N.J.A.C. 2:76-2A.12 Agricultural Management Practice for the Construction,
Installation and Operation of Solar Energy Generation Facilities, Structures
and Equipment on Farms**

Ms. Craft referred the Committee to the draft agricultural management practice (AMP) for the construction, installation and operation of solar energy generation facilities, structures and equipment on commercial farms. She stated that rules must be developed to provide right to farm protection involving solar, wind and biomass facilities. The SADC also has to adopt regulations dealing with construction of these facilities on preserved farms. Today's discussion will focus on right to farm standards for the construction of solar facilities only.

There has been an interagency Task Group meeting, which is comprised of the NJ DEP, the SADC, the Department of Agriculture, The Division of Taxation and the Board of Public Utilities (BPU). It has been a very helpful and productive process to get everyone's perspective at one time to try and construct a rule. SADC staff has met with solar providers, wind developers, municipal officials, and representatives of the League of Municipalities to obtain input prior to a rule being introduced to the Committee. Staff would like to review the draft and receive comments from the Committee. Staff will make this draft available to the public on an informal basis and would welcome comments from the public. The goal being to come back to the Committee at its next meeting with a rule that the SADC could approve for publication in the NJ Register for public comment. She stated that if the public would like to comment in the interim, staff would need those comments within the next two weeks so that staff can prepare a final draft to present to the Committee in November.

Ms. Craft stated that this draft AMP comes from a law that was passed earlier this year, PL 2009 Chapter 213. That law defined the extent of solar, wind and biomass energy generation that is considered agricultural in scale. She stated that projects that exceed those limits would not be subject to the SADC and the Department of Agriculture's rules. The law identifies energy generation limits for preserved farms and created parameters for farmland assessment and how much solar/wind can be installed on a farm to retain farmland assessment and to extend right to farm protection.

Ms. Craft reviewed the main provisions of the statute with the Committee. She stated that for preserved farms they cannot interfere with the use of the land for agricultural and horticultural production, as determined by the Committee. The language "as determined by the Committee" is the essence of why the Committee needs to adopt regulations.

On preserved farms the capacity is either 110 percent of the previous calendar year's demand or up to one (1) percent of the farm, whichever is greater. The one percent includes exception areas. Ms. Craft stated that the SADC will have to clarify how to address severable and nonseverable exception areas

Regarding farmland assessment, no more than ten acres can be used and there is a 1-5 ratio so for every acre of land being used for solar or wind facilities you would need five acres in agricultural or horticultural production. There is an absolute upper limit of two megawatts of power being generated. Property owners are to use the land under the solar panels to the extent practicable for farming or pasture. The owner/operator has to have a conservation plan that is approved by the district that addresses certain criteria. Ms. Reade stated that she has never seen a conservation plan that addresses aesthetic impacts. Ms. Craft stated that Ms. Purcell is present today to address the Committee. Ms. Purcell has been working with staff on her end to try and define for us what the conservation plan would actually have to include and then it will be clarified in the new rule. These are the basic farmland assessment components and then the third item in the statute gave right to farm protection to those facilities that comply with the farmland assessment provision.

Ms. Craft stated that projects can be classified as small scale projects that provide power to the farm and the house and large scale projects that involve providers that are interested in providing power to the grid. The proposed regulations are separated into small and large scale projects. Staff is proposing to identify small projects as facilities up to an acre in size. Large scale projects would be over an acre in size and up to the maximum of ten acres and not to exceed the maximum of two megawatts of power.

Ms. Craft referred the Committee to a power point presentation showing small scale and large scale solar projects for comparison purposes. The types of boxes and facilities as shown in the examples were the highest voltages and are the most dangerous so the draft

rules are recommending that any of these kinds of transformers, inverters are contained in a locked shed, cabinet or building or enclosed within a steel fence, which seems to be the practice on all systems. Ms. Reade stated that these types of facilities come with many types of shut-off mechanisms. They are set up so that you don't electrocute anyone. All of the net metering systems are set up so that you are not feeding the grid, except when the grid is feeding electricity into the system. Ms. Craft stated that these are not all going to be net-metering systems. Dr. Dey stated that the solar panels won't work if you do not have a small amount of electricity coming into the system. That is the only way the inverters will work. Chairman Fisher asked if this would be the pervue of the electrical codes. Ms. Craft stated that for the most part the Department of Community Affairs (DCA) representatives were suggesting that the UCC code is all you need to require in terms of compliance but that is not what we heard entirely from the solar developers. Some were saying it is not specific with respect to areas like fencing so it is one of those questions whether the Committee wants to impose a standard. One or two providers advised staff that they would advocate putting an eight foot chain link fence around the entire facility. Mr. Siegel stated that if we are going to make rules about facilities they should be oriented towards the preservation of agriculture and they must be for an agricultural reason. Mr. Siegel stated that PSEG or the Board of Public Utilities should dictate if a facility requires fencing. Ms. Reade felt that on the small systems a fence is not necessary and it adds a financial burden to the farmer.

Chairman Fisher asked what the need was for the SADC to require a fence. Mr. Siegel stated there should be an agricultural reason, not a technological reason. Ms. Craft stated that the right to farm standards have the power of overriding municipal zoning ordinances. Municipal zoning ordinances are generally intended to protect health and safety of the public in many different ways. That is the balance we are trying to achieve. For every right to farm case, the Committee is obligated to balance the public interest and safety and agricultural aspects. This statute identifies that a ten-acre energy facility is agricultural in nature and the SADC's standards are trying to deal with appropriate setbacks, screens and noise standards. This is what zoning ordinances do in trying to protect the public.

Ms. Reade stated that there is an electrical code and she can see for a system like the one shown today, which probably doesn't have people on it often and which is generating massive amounts of electricity where you would want to have some sort of security around the inverters. She felt that you would add substantially and unnecessarily to the cost of a small farm's installation by insisting that they construct a building around their inverters. She felt that it may not be a necessary requirement for small systems. Chairman Fisher felt this was something that the Committee should not have to address.

Mr. Waltman stated that if the SADC is silent on this issue and a municipality tried to require a fence around a solar facility on farms, what would happen? Would it be

deemed a right to farm case and because the SADC doesn't address the issue does the municipality have a right to regulate the need for a fence? Ms. Craft stated that if the matter is regulated by another state or federal law or regulation compliance is mandatory. She stated that would be the first question. If not, and it becomes an issue, and a town adopts an ordinance that requires a fence around a facility and a farmer doesn't comply, since it is not addressed in our AMP, it would become a site specific AMP issue. A farmer could come in and seek relief from some aspect of the ordinance that they have to prove is onerous to comply with. She stated that anything that is not in the AMP would be addressed on a case by case basis.

Ms. Craft further reviewed the draft AMP with the Committee. She stated that under definitions the first one is "conservation plan". This is language that the Division of Agriculture and Natural Resources helped SADC staff develop. Ms. Purcell gave a brief presentation regarding conservation plans. Ms. Reade commented on the section of the draft AMP dealing with erosion (page five of draft AMP, item "r") where it states that the installer shall take appropriate measures to minimize dust and wind erosion, and on the last paragraph on page six, item "I" regarding the conservation plan requiring that all energy generation facilities, structures and equipment, including any subsurface wires, footings or other structures, shall be removed from the property and the restoration of the land shall be done in accordance with the conservation plan to achieve as much agricultural productivity of the land as practicable. She stated that would require inspections and she knows that on some of the megawatt facilities that her district has seen come in, they say they are too small to qualify for the 251 plan so how are the districts supposed to get paid, unless there is an explicit requirement to comply with 251 standards and paying a 251 fee. Ms. Purcell stated that this is a huge issue and that they are addressing this in the 251 program specifically. She stated that there are going to be times where they will need both a 251 plan and a conservation plan as defined in the farmland assessment component of the statute. The 5,000 square feet of disturbance will require a 251 plan. Ms. Reade stated that if the districts are the ones that are going to be responsible for the oversight then they should get paid somehow. She commented that she cannot see how we can rely on them to do that work unless they can be compensated. Ms. Purcell stated that there are issues on the 251 side, one of which is clearly defining what disturbance is. The Department will be very clear and explicit about what disturbance is. She stated that they will be giving districts direct guidance about solar installations specifically as it relates to 251. She stated that they will also be clear about the impervious cover issue, that solar is not considered impervious. She stated that they are doing that with a waiver to expressly say, that although solar panels are not being defined as impervious cover we still have to deal with hydrologic impacts that result from these types of installations. She stated that they are working with the DEP to resolve these issues.

Ms. Craft stated that in the draft AMP everyone is reminded regarding the definition of

“commercial farm” and what it means. Therefore, if you are going to comply with this AMP, the definition of “commercial farm” requires compliance with farmland assessment.

Ms. Craft stated that regarding the definition “energy generation facilities, structures and equipment” that is the language that is used in the statute but is not defined in the statute. Here staff is laying out a proposed definition that basically means everything related to a facility.

Ms. Craft directed the Committee to pay particular attention to the definition of “occupy” on page two. Mr. Baumley stated that the statute requires that on a preserved farm, you cannot occupy more than one percent of the land with the energy generation facilities. However, the reference here for farmland assessment purposes is that it cannot exceed ten acres in size. He stated that there is some correlation as to what is encompassed in the ten acres. Mr. Baumley stated that staff is clarifying that, besides the physical structure of the equipment, there are other areas such as roadways, inverter boxes and land in between the rows that may not be farmed. Ms. Craft stated that the approach we are taking here is that “occupy” means that the agricultural activity has been limited because of the presence of the facility. A question for the Committee will be the issue of buffers. If you have a buffer standard and we are requiring someone to plant nonagricultural trees to create a screen, should that be counting towards the ten acres that are being occupied. This definition is important and staff asks that the Committee provides feed back to staff. She stated that staff’s position is that the strips of land in between the solar panels are incidental and may or may not be farmed.

Ms. Craft discussed the definition of “solar energy” with the Committee. She stated that definition is pretty broad for the purpose of allowing technology to change over time.

Ms. Craft reviewed item “C” on page two regarding the mounting of solar panels. Ms. Reade and Mr. Siegel stated they were confused by the way that section read and suggested that staff revisits that language to clarify its intent to allow concrete footings under certain conditions. Mr. Waltman stated that if there is a way to impact less farmland but it may require putting the facilities on pillars, possibly that is a good idea. He felt that he didn’t know enough to say whether this provision helps farmland or not. Ms. Reade commented that what staff is trying to get at in this provision is that you would only permit more elaborate mountings in the instance of an engineer saying it is necessary. Ms. Craft stated that the language could be simplified. She stated that the concept is that after the Rutgers report that we went through, the worst impact that was identified was soil covered in concrete. So staff was approaching it as that option should only be used if it is absolutely necessary from an engineering standpoint, otherwise we would prefer to see the structure driven into the ground without concrete supports. Chairman Fisher stated that the goal is to not disturb the soil. Mr. Boornazian stated that

you wouldn't need that paragraph if you say drive it and conserve the land as much as possible as a broad statement. He stated that you cannot second guess the engineering companies. Mr. Siegel stated that the idea of this section is that we want the preference to be solar panel systems that involve the least ground destruction as possible. That is a legitimate preference.

Mr. Boornazian stated that he had a different problem with this section. He didn't think that buildings with solar facilities on their rooftops should be included here. He felt that the intent of the law was tillable acres that you are taking away from farming, and that is where the one percent and ten acres are addressed. He felt that if they have separate facilities on their buildings and their barns that is a separate generation issue. Ms. Reade stated that you need to do that because otherwise people will build buildings specifically to put install panels.

Mr. Siegel felt the word structure under item C-1 was too broad. Ms. Craft stated that she understands Mr. Siegel's concerns and that it may be advisable to strike the word "structures" on buildings. She stated that staff was trying to incorporate items like the car port that was shown in the presentation to the Committee or say an animal feed lot and someone constructs a cover with solar panels. She stated that it is not on a building so she was trying to open the door to other structures that could support these facilities that are not buildings. Mr. Siegel suggested the word "facilities". Ms. Craft stated staff would simplify that language and clarify the rationale for the preference in the beginning of that provision.

Mr. Siegel stated that there should be a clear statement in the definition under section "d" regarding farmland assessment eligibility to the applicant that says if your energy project has jeopardized your standing in farmland assessment, that is not an issue that can be addressed in the AMP so that there is a legal warning to resolve farmland assessment issues independently and not use right to farm for that purpose. Ms. Craft stated that additional language can be added to clarify that issue.

Ms. Craft stated that regarding item "h" on page three deals with sound. The towns are very concerned with noise impacts on surrounding properties. She stated that in speaking with some of the installers of these facilities they advised that if you put inverters back far enough sound wouldn't be a problem but you should have a sound standard so that everyone understands the standard. She stated that what is being proposed in the draft AMP is a sound standard of 30 decibels attributable to the solar facilities at any point of the property line. She stated that the amount of 30 decibels was suggested by one of the installers. That would allow them to choose where to place the inverters, how many and what units of size. Mr. Waltman stated that if we are going to make a statement about this we should not be taking the suggestion from the installers. Ms. Craft stated that public comment will be taken on this draft and then staff will come back to the

Committee with a final draft and if it is approved by the Committee it will then be published in the NJ Register and then it will go through the formal rule making process. She stated that if we are trying to expedite adoption of this and the availability of right to farm protection, we want this standard to be good when it goes to the NJ Register.

Mr. Waltman stated that he is uncomfortable with picking a number based on what the industry is telling staff is a good number. Ms. Craft stated to give the Committee a better sense of what 30 decibels would be is that the research that staff has on sound is that a bedroom at night is 35 decibels, background noise in a home is 55 decibels, falling leaves is 15 decibels, whispering is 25 decibels. Mr. Siegel felt that section "h" should be eliminated. He felt that there are local laws to handle sound. Ms. Craft stated that this is for right to farm protection and the farmer may want relief from the local noise standard. She stated that we are being asked to give protection to a technology that we do not understand. We are trying to make this so that if it is done appropriately the public is not going to object. Ms. Craft stated that if we remove this item then the landowner will come in for a site specific AMP to override the municipal sound ordinance. She stated that the SADC is going to get this question and it is going to be one of the first questions that come in if we don't deal with it in this AMP.

Ms. Craft asked if the Committee wanted to remove this item from the draft AMP and defer to whatever the State regulation is on sound. She stated that the State standard for noise, she believed, was around 50-55 decibels. Mr. Schilling stated he would like to know what the State code for noise would be. He felt however that dealing with this head on makes sense. Mr. Boornazian stated that if you agree with the state standards, that would override any local noise ordinance. Mr. Waltman felt that the Committee should stay out of the way on this issue. If a town has an ordinance and the authority to regulate quiet in part of its town and a solar installation exceeds that ordinance he didn't think that the SADC should have authority. Mr. Shilling stated that it has been proven that right to farm is not card blanche for farmers, it protects responsible activities. He felt that putting some parameter on what responsible activities means in this case would be helpful. Ms. Craft stated that the reason for putting this in is because 1) to protect the public but also she thought that the installers and the designers should know about this before the installation occurs because if you installed ten acres of solar panels and the neighbors complain about the humming noise it's too late to reconfigure the facility. The installers should know the standards and avoid the conflict. Mr. Waltman felt that he would not override those ordinances based on sound. He stated that the SADC's charge is to preserve agriculture in the state and to protect agriculture from regulations at municipal levels.

Mr. Siegel asked if municipalities have the authority to pass municipal ordinances setting

acceptable sound levels. Mr. Kimmel stated that in a right to farm case that was one of the issues and he thought it was that the municipality could adopt local ordinances as long as they fell within parameters set by State statute. He stated that he thought there were some agricultural exemptions. Ms. Craft stated that staff will do more research on that issue.

Ms. Reade stated that regarding item “g” dealing with the interconnection, she felt that could be problematic because you can have small farms that are forestalled from having an allocation of grid interconnection by larger projects. She stated that potentially you could have small farm installations and large farm installations conflicting and it could be a right to farm issue. She stated that there is a twenty percent allocation on the utility lines for renewables and there are already communities in the southern part of the state where communities are already turning down the opportunity to interconnect. She stated that you could have someone come in with a two megawatt project that would preclude other farms from coming in and interconnecting. Ms. Craft stated that they are very aware, in the discussions with the Board of Public Utilities and the installers that there is a big race going on among the small projects and the big projects to lock up line capacity, substation capacity, etc. However, that is far beyond the SADC and she doesn’t think that it is ever a municipal decision. It is PJM and BPU who would be making the decision about who gets the line first and how capacity is being reserved.

Ms. Craft discussed provision “i” dealing with security with the Committee. She stated that this section deals with securing inverters and other system components by a locked structure, whether it is a building, steel cabinet, etc. It was the consensus of the Committee to remove item “i” from the draft AMP.

Ms. Craft discussed provision “k” Treatment of Land within the Occupied Area with the Committee. She stated that this deals with what are you allowed to do on the soils surrounding the solar panels. She stated that regarding item # 2 regarding the use of gravel within a contained area for the purpose of providing ballast, staff is still trying to get more information on that however, the BPU representative suggested during discussions that gravel is used for ballast.

Dr. Dey commented on section “o” regarding setbacks and buffering. He stated that regarding item # 3 dealing with energy generation facilities, structures and equipment that are installed on the ground and occupy one acre or less of the commercial farm complying with the setbacks as listed in the draft document. He asked if existing projects would be grandfathered in. He stated that he knew of a few units that were on farms for legitimate reasons that are closer than 150 feet to the road. Ms. Craft stated that this is a question that has come up with the SADC’s deputy attorney general on a different case. She asked if she could hold that question until after there is a discussion regarding the whole concept of grandfathering and whether it has a role in right to farm or not.

Ms. Craft discussed the remainder of the draft AMP with the Committee. She stated that the document will be circulated to all the counties, towns, nonprofit organizations and the partners, along with everyone that staff has met with and corresponded with in getting to this point for informal comment. We will be asking for comments within a two-week period so that it keeps moving forward. Once the SADC has received comments it will be redrafted and presented to the Committee at its next meeting, hopefully for its approval.

B. Soil and Water Conservation Cost Share Grant Requests

Mr. Lofberg referred the Committee to the Status of FY 2009, FY 2010 and FY 2011 Funds for the Soil and Water conservation Project Grants Program. He stated that there is \$186,940.09 available for soil and water conservation cost share grant projects as outlined on the Status Report. He referred the Committee to the Projects for Funding Summary showing two (2) requests for soil and water costs share grants under Priority # 1. He indicated that if the Committee approves today's grant requests the remaining balance will be \$158,255.09.

Mr. Lofberg reviewed the soil and water cost share grant requests with the Committee. He stated that staff recommendation is to grant approval to the two cost share grant requests as presented and discussed. Ms. Reade stated that she would be recusing from the discussion and vote for the Salem County cost share grant request. She stated that she is a supervisor for the Salem Soil Conservation District.

It was moved by Ms. Brodhecker and seconded by Mr. Siegel to approve Resolution FY2011R9(1), granting a soil and water conservation cost share grant to the following landowner, as presented and discussed and subject to any conditions of said Resolution:

PRIORITY # 1

MORRIS COUNTY

1. Centenary College (Resolution FY2011R9(1))
SADC #14-0059-EP
Washington Township, Morris County, 58.758 Acres
Cost Share Grant Amount: \$17,872.50 under Obligation # 1

The motion was unanimously approved. (A copy of Resolution FY2011R9(1) is attached to and is a part of these minutes.)

Ms. Reade recused herself from any discussion and action pertaining to the soil and

water conservation cost share grant request for Salem County to avoid the appearance of a conflict of interest. Ms. Reade is a supervisor for the Salem Soil Conservation District.

It was moved by Mr. Siegel to approve Resolution FY2011R9(2), granting a soil and water conservation cost share grant to the following landowner, as presented and discussed and subject to any conditions of said Resolution:

PRIORITY # 1

SALEM COUNTY

1. Wayde D. and Margaret A. Allen (Resolution FY2011R9(2))
SADC #17-0009-EP, Quinton Township, Salem County, 198.270 Acres
SADC #17-0038-EP, Quinton Township, Salem County, 365.450 Acres
SADC #17-0039-EP, Quinton Township, Salem County, 102.902 Acres
Cost Share Grant Amount: \$10,812.50 under Obligation # 1

Discussion: Dr. Dey asked if the landowner will be able to secure a water certification for this project. He stated that he sits on the Water Supply Advisory Board and there is no water available at the present time for these certifications. He stated that he knows of a few instances where the landowners are coming to the Advisory Board for water allocation, where they have already drilled wells and there is no water there.

There was no second to the motion.

Chairman Fisher stated that he would leave the motion on the floor for now and come back to the discussion.

C. Request for Final Approval – New Rule Municipal Planning Incentive Grant Program

1. Zeugner Farm, East Amwell Township, Hunterdon County

Ms. Winzinger referred the Committee to Resolution FY2011R9(2) for a request for final approval on the Louis and Jeanne Zuegner farm, located in East Amwell Township, Hunterdon County, comprising 7.55 acres. She reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval.

It was moved by Mr. Waltman and seconded by Dr. Dey to approve Resolution FY2011R9(2) granting final approval to the following landowners:

1. Louis and Jeanne Zuegner
Block 17, Lot 34, East
Amwell Township, Hunterdon County, 77.5 Acres
State cost share grant at \$7,800.00 per acre for an estimated total of \$604,500.00 (60% of the certified market value and purchase price and estimated total cost.)

The motion was unanimously approved. (A copy of Resolution FY2011R9(2) is attached to and is a part of these minutes.)

D. Request for Final Approval – New Rule County Planning Incentive Grant Program

Ms. Winzinger stated that there are twelve (12) requests for final approval before the Committee under the new rule County Planning Incentive Grant Program. She reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval as presented and discussed. Ms. Brodhecker asked that the two Sussex County farms be discussed and voted upon separately as she would be recusing from the discussion/action for those applicants.

It was moved by Mr. Waltman and seconded by Dr. Dey to approve Resolution FY2011R9(3) through Resolution FY2011R9(11) granting final approval to the following landowners, as presented and discussed and subject to any conditions of said resolutions.

HUNTERDON COUNTY

1. Robert and Linda Runge and Charles and Rose Runge (Runge # 2 Farm) (Resolution FY2011R9(3))
Block 19, Lot 13, Alexandria Township, Hunterdon County, 77 Acres
State cost share grant at \$4,900.00 per acre (61.25% of the certified market value) for a total grant need of approximately \$388,619.00, with an additional three (3) percent buffer for possible final surveyed acreage increases, therefore 79.310 acres will be utilized to calculate the grant need.

2. Frank, Rose and Edward Nemeth (Resolution FY2011R9(4))
Block 14, Lot 15, Alexandria Township, Hunterdon County, 99 Acres
State cost share grant at \$5,200.00 per acre (60.47% of the certified market value) for a total grant need of approximately \$530,244.00, with an additional three (3) percent buffer for possible final surveyed acreage increases, therefore 101.97 acres will be utilized to calculate the grant need.
3. Alice and William Emmons (Resolution FY2011R9(5))
Block 38, Lot 8, Delaware Township, Hunterdon County, 42 Acres
State cost share grant at \$7,200.00 per acre (60% of the certified market value) for a total grant need of approximately \$769,665.00, with an additional three (3) percent buffer for possible final surveyed acreage increases, therefore 43.26 acre will be utilized to calculate the grant need.
4. Gulick III Farm LLC (Resolution FY2011R9(6))
Block 14, Lot 33.05, West Amwell Township, Hunterdon County, 17 Acres
State cost share grant at \$4,700.00 per acre (61.84% of the certified market value) for a total grant need of approximately 82,297.00, with a three (3) percent buffer for possible final surveyed acreage increases, therefore 17.51 acres will be utilized to calculate the grant need.
5. Billie and Donna Gardner (Resolution FY2011R9(7))
Block 6, Lot 48, Holland Township, Hunterdon County, 50 Acres
State cost share grant at \$4,325.00 per acre (63.14% of the certified market value) for a total grant need of approximately \$222,737.50, with an additional three (3) percent buffer for possible final surveyed acreages, therefore 51.5 acres will be utilized to calculate the grant need.
6. Robert, Charles, Linda and Rose Runge (Runge # 1 Farm) (Resolution FY2011R9(8))
Block 23, Lot 1, Alexandria Township, Hunterdon County, 35.92 Acres
State cost share grant at \$5,880.00 per acre (60% of the certified market value) for a total grant need of approximately \$217,545.89, with a three (3) percent buffer for possible final surveyed acreage increases, therefore 36.998 acres will be utilized to calculate the

grant need.

7. Tracey Frick and Stephanie Levik (Resolution FY2011R9(9))
Block 15, Lot 13, Alexandria Township, Hunterdon County, 42 Acres
State cost share grant at \$4,600.00 per acre (62.16% of the certified market value) for a total grant need of approximately \$198,996.00, with a three (3) percent buffer for possible final surveyed acreage increases, therefore 43.26 acres will be utilized to calculate the grant need.
8. Phillip Roerig (Resolution RY2011R9(10))
Block 30, Lot 8, Union Township, Hunterdon County, 61 Acres
State cost share grant at \$5,940.00 per acre (60% of the certified market value) for a total grant of approximately \$373,210.20, with a three (3) percent buffer for possible final surveyed acreage increases, therefore 62.83 acres will be utilized to calculate the grant need.
9. Craig and Leslie Smith (Resolution FY2011R9(11))
Block 21, Lots 3, 3.03 and 12.03, Delaware Township, Hunterdon County, 64 Acres
State cost share grant at \$6,000.00 per acre (60% of the certified value) for a total grant of approximately \$395,520.00, with a three (3) percent buffer for possible final surveyed acreage increases, therefore 65.92 acres will be utilized to calculate the grant need.

The motion was unanimously approved. (A copy of Resolution FY2011R9(3) through Resolution FY2011R9(11) is attached to and is a part of these minutes.)

MONMOUTH COUNTY

It was moved by Ms. Brodhecker and seconded by Dr. Dey to approve Resolution FY2011R9(12) granting final approval to the following landowner, as presented and discussed and subject to any conditions of said resolution:

1. Robert Horzepa (Campusome Farm) (Resolution FY2011R(12)) *
Block 16, Lot 13.01, Upper Freehold Township, Monmouth County, 55 Net Acres
State cost share grant at \$11,820.00 per acre (60% of the certified market value) for a total grant of approximately \$669,603.00, with a three (3) percent buffer for possible final surveyed acreage

increases, therefore 56.65 acres will be utilized to calculate the grant need.

* Discussion: The property had final subdivision approval for ten lots dated 8/28/07 with the stipulation that the approval was subject to imposing a conservation easement along Doctor's Creek, totaling approximately thirty (3) acres. The CADB staff stated that these conservation easements had not been recorded. On August 17, 2009 it was determined that this application for the sale of a development easement was complete and accurate and satisfied the criteria contained in NJAC 2:76-17.9(a) conditioned upon a New Jersey DEP stream encroachment permit impacting the property access being active at the time of closing. Subsequently, the August 17, 2009 approval was amended to allow the required NJ DEP stream encroachment permit to be active only until the time of SADC certification of easement value, not closing. The Monmouth CADB has been advised that if the conservation easement appears as an exception of title the SADC will not provide a cost share grant on that area.

The motion was unanimously approved. (A copy of Resolution FY2011R9(12) is attached to and is a part of these minutes.)

SUSSEX COUNTY

Ms. Brodhecker recused herself from any discussion or action pertaining to the following landowners to avoid the appearance of a conflict of interest. Ms. Brodhecker is the Chairperson of the Sussex County Agriculture Development Board.

It was moved by Dr. Dey and seconded by Mr. Schilling to approve Resolution FY2011R9(13) and Resolution FY2011R9(14) granting final approval to the following landowners, as presented and discussed and subject to any conditions of said resolutions:

1. James Chirip (Resolution FY2011R9(13))
Block 19, Lot 1908
Green Township, Sussex County, 18.008 Net Acres
State cost share grant at \$3,850.00 per acre (65.25% of the certified market value) for a total grant of approximately \$69,330.80. (No buffer for final surveyed acreage is needed.)

2. Hautau # 2 Farm (Resolution FY2011R9(14)) *
Block 25, Lot 15.02 and Block 28, Lot 1.04, Frankford Township,
Sussex County, 36.634 Net Acres
State cost share grant at \$5,940.00 per acre (60% of the certified
market value) for a total grant of approximately \$217,605.96. (No
buffer for final surveyed acreage is needed.)

* Discussion: There is a pre-existing nonagricultural use, which consists of hardscape materials (stone, gravel, soil, compost, fill, mulch, concrete products and building materials) along with softscape materials (plant materials, sod and straw) used to support the existing landscape company, totaling approximately 1.3 acres. The owners were further advised of the various restrictions associated with describing the nonagricultural use in the Deed of Easement but have declined to elect an exception. There is a one (1) acre nonseverable exception for one (1) future single family residence associated with this property.

The motion was approved. (Ms. Brodhecker recused herself from the vote.) (A copy of Resolution FY2011R9(13) and FY2011R9(14) is attached to and is a part of these minutes.)

E. Request for Final Approval – State Acquisition (Easement)

1. Bonaccurso Farm, Quinton Township, Salem County

Mr. Knox referred the Committee to Resolution FY2011R9(15) for a request for final approval on the Bonaccurso farm, located in Quinton Township, Salem County. He reviewed the specifics with the Committee. He noted that the property has a three-acre severable exception area containing a slaughter house operation and this exception will be restricted to nonresidential use. The property also has an approximate ¼ acre nonseverable exception area surrounding a cell tower, which cannot be severed from the preserved farm and will be restricted to nonresidential use. Mr. Knox stated that staff recommendation is to grant final approval as presented and discussed and subject to any conditions of the resolution.

It was moved by Mr. Siegel and seconded by Dr. Dey to approve Resolution FY2011R9(15) granting final approval to the Josephine Bonaccurso farm, known as Block 3, Lots 36, 37; Block 10, Lots 10, 13, Quinton Township, Salem County, 112 Net Acres, at a value of \$4,000.00 per acre for approximately \$448,000.00 based on 112 acres and subject to conditions contained in Schedule B of said resolution. The motion was unanimously approved. (A copy of Resolution FY2011R9(15) is attached to and is a part of these minutes.)

F. Requests for Preliminary Approval – Nonprofit Grant Program

Mr. Knox referred the Committee to three resolutions for preliminary approval for the New Jersey Conservation Foundation/Lovero farm in Hopewell Township, Mercer County, the Senti LLC farm in Hopewell Township, Mercer County and the Hopewell Valley Enterprises farm, in Hopewell Township, Mercer County. He reviewed the specifics of each applicant with the Committee. He indicated that USDA Federal Farm and Ranch Lands Protection Program funding would be utilized on all three farms, which will include impervious coverage restrictions. He stated that staff recommendation is to grant preliminary approval to all three farms as presented and discussed.

It was moved by Mr. Waltman and seconded by Mr. Siegel to approve Resolution FY2011R9(16), Resolution FY2011R9(17) and Resolution FY2011R9(18) granting preliminary approval to the following landowners as presented and discussed and subject to any conditions of said resolutions:

1. New Jersey Conservation Foundation/Lovero (Resolution Y2011R9(16))
Block 62, Lot 26.041
Hopewell Township, Mercer County, 73 Acres
The SADC approves the use of the New Jersey Conservation Foundation's Federal Farm and Ranch Land Protection Program funds to the fullest extent possible for this farm, which will include an impervious coverage limitation of approximately two percent and other restrictions required under the Federal Farm and Ranch Land Protection Program.
2. New Jersey Conservation Foundation/Senti LLC *
(Resolution FY2011R(17))
Block 48, Lot 2
Hopewell Township, Mercer County, 16.5 Acres
The SADC approves the use of the New Jersey Conservation Foundation's Federal Farm and Ranch Land Protection Program funds to the fullest extent possible for this farm, which will include a one-acre impervious coverage limitation and other restrictions required under the Federal Farm and Ranch Land Protection Program. **Preliminary approval conditioned upon the preservation of the adjacent Hopewell Valley Enterprises farm identified as Block 48, Lot 3.02.**

* Discussion: Mr. Knox stated that the landowner has indicated that the preservation of this farm is contingent upon the preservation of an adjacent farm owned by Hopewell Valley Enterprises (Block 48, Lot 3.02).

3. New Jersey Conservation Foundation/Hopewell Valley Enterprises
(Resolution FY2011R9(18)) *
Block 48, Lot 3.02
Hopewell Township, Mercer County, 56 Acres
The SADC approves the use of the New Jersey Conservation Foundation's Federal Farm and Ranch Land Protection Program funds to the fullest extent possible for this farm, which will include an impervious coverage limitation of approximately two percent and other restrictions required under the Federal Farm and Ranch Land Protection Program.
Preliminary approval conditioned upon the preservation of the adjacent Senti LLC farm, identified as Block 48, Lot 2.

* Discussion: Mr. Knox stated that the landowner has indicated that the preservation of this farm is contingent upon the preservation of an adjacent Senti LLC farm (Block 48, Lot 2). The landowner has requested a 3.5 acre nonseverable exception around an existing winery building, which will be limited to no residential use and also a one acre nonseverable exception for a future single family dwelling. SADC staff had discussions regarding the 3.5 acre exception line and staff wanted to make sure that the exception was large enough, depending upon what the outcome of the right to farm case concludes as to what he can and cannot do with that facility. The landowner would not get paid on that exception but staff wanted to make sure there was enough flexibility, therefore the exception was enlarged. The one acre exception was originally in a portion of the vineyard but staff requested that it be moved. Mr. Knox stated that this is for preliminary approval for purposes of appraising the farm with a one acre exception for a future residence so that would be impacting the values. Ms. Craft stated that the issue was that staff questioned the location of that house because staff wanted to understand the amount of disruption and construction of roads that may be required to site a house. Staff is recommending preliminary approval but it is subject to location of the one acre exception in a place that the SADC agrees to prior to coming back for final approval.

The motion was unanimously approved. (A copy of Resolution FY2011R9(16), Resolution FY2011R9(17), and Resolution FY2011R9(18) is attached to and is a part of these minutes.)

G. Farmland Stewardship

House Replacement Requests

1. Robert and Donna Riggins, Hopewell Township, Cumberland County
2. Bernard and Ann Britt(Eagle Valley Farm), Mansfield Township, Warren County
3. Celtic Charms Farm, Howell Township, Monmouth County

Mr. Roohr referred the Committee to three requests to replace a single family residence. The first is the Robert and Donna Riggins Farm, located in Hopewell Township (Block 71, Lots 18 and 43) and Greenwich Township (Block 4, Lots 22, 22.01 and 4; Block 7, Lots 2, 2.01 and 2.02), Cumberland County. The owners propose to replace the existing residence with a new one for their son Robert, Jr. and his family. Robert Riggins is currently a full-time partner in the farm operation known as Riggins Nursery. The proposed new house will be built approximately 25 feet behind the existing residence in the same yard area of the existing house and will utilize the existing driveway. Robert Riggins proposes to build a two-story house with approximately 3,400 square feet of heated living space to replace the original farm house, which was approximately 2,400 square feet of living space. The design of the new residence will include a basement of approximately 2,000 square feet of unfinished space. The original residence is in a state of disrepair with structural problems, termite and water damage and lack of adequate insulation resulting in frozen plumbing during winter months. Mr. Riggins has received the necessary demolition permits from the township for the existing residence. Staff recommendation is to approve the request as presented and discussed. Mr. Roohr noted that the hoop houses on this property are over-wintering houses for containerized nursery stock. In this case they have the black landscape fabric down and when you pull that fabric up it is the same elevation as the rest of the farm but without grass. It is just top soil with no gravel but with fabric. Container plants are placed on top of the fabric so air and water circulate. The landowners did use shovels to get the humps out of the ground so that the water wouldn't puddle anywhere. Mr. Roohr noted that SADC staff has verified that the original residence is not included on the New Jersey Register of Historic Places.

It was moved by Mr. Schilling and seconded by Ms. Reade to approve Resolution FY2011R9(19) granting a request by Robert and Donna Riggins, owners of Block 71, Lots 18 and 43, Hopewell Township, Cumberland County, and Block 4, Lots 22, 22.01 and 4; Block 7, Lots 2, 2.01 and 2.02, Greenwich Township, Cumberland County, 165.57 total acres, to replace an existing single-family residence with a new single-family residence, consisting of approximately 3,400 square feet of heated living space, not including any basement that may be constructed, as presented and discussed. The existing single-family residence being replaced shall be removed from the Premises within sixty (60) days of receiving the certificate of occupancy for the new residence. This approval is

valid for a period of three years from the date of Resolution FY2011R9(20) and this approval is non-transferable. The motion was unanimously approved. (A copy of Resolution FY2011R9(19) is attached to and is a part of these minutes.)

Mr. Roohr stated that the second request for a house replacement is from Bernard and Ann Britt (Eagle Valley Farms), known as Block 601.01, Lot 23 in Mansfield Township, Warren County, 78.11 acres. The owners propose to replace the existing residence with a new one that would serve as their primary residence. Because the property is in the Highlands Preservation Area, the owners have proposed two potential sites for the new residence in the event that the Highlands Council does not approve of the preferred house location. The first proposed location would be approximately 65 feet south of the original home site and would require a realignment of a portion of the existing downward sloped driveway to manage water coming off the driveway and direct it away from the house site, which had created a problem with the original house. The additional disturbance required to relocate the driveway may exceed the allowable disturbance limits imposed by the Highlands Water Protection and Planning Act. The second location is approximately 400 feet south of the original home site, closer to the driveway entrance on Hilltop Road and uphill of the original home site. Either location would utilize the existing driveway and would not have a negative impact on the agricultural operation. The owners propose to build a single-story house with approximately 2,200 square feet of heated living space to replace the original farmhouse, which was approximately 1,600 square feet of living space. The design of the new home includes a basement of approximately 1,980 square feet of unheated, unfinished space for utilities and storage. The original farmhouse has already been removed and the area graded and seeded. The original house has been vacant for several years and was in a state of significant disrepair. Staff recommendation is to approve the request as presented and discussed. Mr. Roohr noted that SADC staff has verified that the original residence is not included on the New Jersey Register of Historic Places.

It was moved by Mr. Siegel and seconded by Ms. Reade to approve Resolution FY2011R9(20) granting a request by Bernard and Ann Britt (Eagle Valley Farm), owners of Block 601.01, Lot 23, Mansfield Township, Warren County, 78.11 acres, to replace an existing single-family residence with a new single-family residence, consisting of approximately 2,200 square feet of heated living space, not including any basement that may be constructed, or a total of 3,500 square feet of heated living space, including any such basement area. The SADC approves either one of the two locations shown in Schedule "A" of said resolution, to replace the single-family residence that previously existed on the Premises. This approval is valid for a period of three years from the date of Resolution FY2011R9(20) and this approval is non-transferable. The motion was unanimously approved. (A copy of Resolution FY2011R9(21) is attached to and is a part of these minutes.)

Mr. Roohr stated that the third request to replace the existing residence is from William and Christine Landuyt (Celtic Charms Farm), contract purchasers of the Shapiro/Sunset Stables LLC farm, known as Block 135, Lots 9.03, 9.04, 9.05 and 9.06 in Howell Township, Monmouth County, comprising approximately 26.95 acres. The Landuyts have requested to replace the existing single-family residence with a new residence which will serve as their primary residence. The proposed new house will be built approximately 75 feet behind the existing residence in the same yard area of the existing house. The original house is in a state of severe disrepair with structural problems, related mold, water damage, general deterioration and inhabitation by a large number of cats for a period of time. Also the existing house is approximately 25 feet from Fort Plains Road and does not conform to existing setbacks. The contract purchasers propose to build a single-story house with approximately 3,100 square feet of heated living space to replace the original farmhouse, which was approximately 1,800 square feet of living space. The new house will be built with a crawl space, not a basement. Staff recommendation is to approve the request as presented and discussed.

Mr. Roohr noted that SADC staff has verified that the original residence is not included on the New Jersey Register of Historic Places.

It was moved by Dr. Dey and seconded by Ms. Brodhecker to approve Resolution FY2011R9(21) granting a request by William and Christine Landuyt (Celtic Charms Farm), Contract Purchasers of Block 135, Lots 9.03, 9.04, 9.05 and 9.06, Howell Township, Monmouth County, 26.95 acres, to construct a single-family residence, consisting of approximately 3,100 square feet of heated living space, in the location shown in Schedule "A" of said resolution, to replace the existing single-family residence currently existing on the Premises. The existing house shall be removed within sixty (60) days of receiving the certificate of occupancy on the new house. This approval is valid for a period of three years from the date of Resolution FY2011R9(22) and this approval is non-transferable. The motion was unanimously approved. (A copy of Resolution FY2011R9(21) is attached to and is a part of these minutes.)

Monique Purcell addressed the Committee regarding a question that arose earlier in the meeting pertaining to a soil and water conservation cost share grant request for Wayde and Margaret Allen, landowners in Salem County. Dr. Dey had inquired whether the landowners would be able to get a water certification relating to their project request. She stated that she contacted the NRCS and they have informed the landowners that they need to get the allocation from the NJ DEP. She stated that the landowners would then work with their county agent to get the water allocation permit. Unfortunately she was not able to reach the county agent at the moment. She stated that possibly the Committee could give conditional approval based on the allocation or it could table the action. Ms. Craft asked Ms. Purcell if she was aware of any difficulty farmers had in this part of the

state in obtaining water allocation permits. Ms. Purcell stated that there are some critical areas in terms of water supply. She cannot pinpoint Quinton Township right now but there are some critical areas in Southern New Jersey where it would be very difficult to get a water allocation based on legislation. She stated that the NJ DEP does not have an application from the landowners at this point and right now the county agent is in the field so she cannot verify if he has an application to go to the NJ DEP.

Ms. Craft stated that Dr. Dey's point is should the Committee be approving a project and encumbering funding for a well related project where they may never be able to secure a well permit. Ms. Purcell noted that a farmer does not need to have a registration from the NJDEP unless they have the ability to pump 100,000 gallons per day so this could be under that threshold, which would then mean that they would not need an allocation. She stated she would feel more comfortable speaking with the county agent to find out more. She stated that if you have the ability to pump 100,000 gallons per day you must register. If in fact you do pump 100,000 gallons per day you have to secure a certification. Mr. Waltman suggested that the Committee not take action today on this cost share request until we can verify the certification issue. Ms. Craft stated that there is a small amount of money available for soil and water conservation cost share project grants. She stated that possibly we could table this until the next meeting of the Committee to get more information but she would like to recommend that if this application is able to successfully move forward next month, that it be the first project in line for funding because we are the cause of the delay in moving forward and if we can get our questions answered by the next meeting there might be a higher priority project that takes precedent for funding. To be fair to this landowner and the fact that they have gone through the district and the usual channels she doesn't want to see this landowner be unable to secure funding. It was the consensus of the Committee to table action on this agenda item until further information as discussed is secured and that when it comes back to the Committee for review and action that it be the first project in line for funding.

Ms. Craft stated that for the public's information there was a very important appellate division ruling that came out under right to farm dealing with the Raub case in Harmony Township and Pohatcong Township in Warren County. It was a nuisance complaint by neighbors and it went to the Superior Court at the county level. Repeatedly the Judge was notified that this issue did not belong in the jurisdiction of the Court but rather with the CADB. The Judge ignored that advice from many areas and the upshot of it was that there was a final judgment of \$40,000.00 in punitive damages and other damages assessed against the property owner. They appealed that Superior Court decision to the Appellate Division. The Appellate Division dismissed it and said that for nuisance actions,

this case is equivalent in significance to the denHollander case when it came to municipal zoning issues. The Judge stated that the case had to be referred to the CADB. The Judge then vacated the \$40,000.00 in damages. In the meantime, the Raubs also pursued a parallel site specific agricultural management practice (SSAMP) and secured that. She stated that she would have to speak to the Attorney General's Office to see what happens next but it is her understanding that the county's SSAMP is in control in terms of what is protecting the property owner from the nuisance complaints of the neighbor.

Mr. Resker, Warren County CADB Administrator stated that the CADB is wondering if it has to take an action or does it wait for the Raubs to come back to it because the Raubs have appealed the ruling of the CADB. The CADB placed certain restrictions on what Mr. Raub was doing and he has appealed that. He stated he believed it is before the Office of Administrative Law for a hearing. Ms. Craft stated that in the mean time we have this Appellate Division action that has impacts state-wide in saying that the superior courts cannot be hearing these complaints and that they have to be sent to the CADB. It is a very powerful precedent case and very good news for the community. SADC Chief of Legal Affairs Brian Smith commented that due to the damage award being imposed because the Raubs trespassed and also cut down trees, those intentional acts, even the Raubs admitted that they were not entitled to do that under the right to farm. The reason the punitive damage award was reversed was because the Judge, on his own, cut the punitive damage award in half after a jury had imposed the \$40,000.00 figure. The Judge did not follow the statutory requirements for explaining how he came up with the reduction of fifty percent so the Appellate Division remanded that issue to him to go over the statutory standards more clearly to come up with that number. Ms. Craft stated that this is the problem with right to farm. It is a very powerful law but it is very expensive getting to the end product. There is no relief for that currently in terms of reimbursement of legal costs and the like for the landowner.

PUBLIC COMMENT

Nicki Goger from the New Jersey Farm Bureau stated that it is an interesting point that Ms. Craft makes and going back to solar on farms debate and the comment that Dr. Dey made regarding grandfathering. She stated that the example that was shown in the power point presentation of the small scale farm happens to be right on the road, the neighbor across the street and another neighbor that is constantly suing those farmers over right to farm issues. They are part of the reason that law is being proposed because they always have to pay these expenses related to this one nuisance neighbor who seems to want to harass them all the time. She stated that regarding the grandfathering provision she doesn't want the draft AMP to provide ammunition to these neighbors who are already

trying to pursue farmers who have existing solar systems on their farms. She hopes that the Committee will address this issue of grandfathering or some way to treat existing systems that are out there now.

Ms. Goger stated that she wanted to remind the Committee regarding farmers who are going to put up buildings for the specific purpose of putting solar panels on them because they might be exempt in some way, if that were to happen ten acres of buildings would also mean that the farmer would have to pay full taxes for all those buildings. Therefore there would be an economic measure for whether or not that would be feasible. She asked that the Committee keep that in mind when considering structures and buildings and whether or not someone is going to build ten acres of buildings to put up panels.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Thursday, November 4, 2010, beginning at 9:00 a.m. Location: **Health/Agriculture Building, First Floor Auditorium.**

CLOSED SESSION

At 1:20 p.m. Ms. Reade moved the following resolution to go into Closed Session. The motion was seconded by Mr. Schilling and unanimously approved.

“Be it resolved, in order to protect the public interest in matters involving minutes, real estate, attorney-client matters, pursuant to N.J.S.A. 10:4-12, the NJ State Agriculture Development Committee declares the next one hour to be private to discuss these matters. The minutes will be available one year from the date of this meeting.”

Action as a Result of Closed Session

A. Real Estate Matters – Certification of Values

Municipal Planning Incentive Grant Program

It was moved by Dr. Dey and seconded by Mr. Siegel to certify the development easement values on the following farms as presented and discussed in closed session:

1. Tweed Farm North (Estate of Janice Tweed) c/o Lisa Maria Pfrommer Block 2701, Lots 17.01 and 18, Franklin Township, Gloucester County, 60 Acres
2. Tweed Farm South (Estate of Janice Tweed) c/o Lisa Maria Pfrommer

Block 2702, Lot 25, Franklin Township, Gloucester County, 64 Acres

The motion was unanimously approved. (A copy of the Certification of Value Reports is attached to and is a part of the closed session minutes.)

Direct Easement Purchase Program

Note: Mr. Siegel recused himself from any discussion/action pertaining to the Jack Cimprich certification of value to avoid the appearance of a conflict of interest.

It was moved by Ms. Reade and seconded by Ms. Brodhecker to certify the development easement values on the following farms as presented and discussed in closed session:

1. Jack and Ronnie Cimprich
Block 11, Lots 32, 36, 38.01, Upper Pittsgrove Township, Salem County,
100 Acres
2. Richard E. Pierson (Pierson Farm # 1 – Whig Lane)
Block 43, Lot 3; block 31, Lot 1
Pilesgrove Township, Salem County, 169 Acres
3. Richard E. Pierson (Pierson Farm # 2)
Block 20, Lots 6 and 8; Block 30, Lots 9 and 11
Pilesgrove Township, Salem County, 104 Acres

The motion was approved. (Mr. Siegel recused himself from the vote.) (A copy of the Certification of Value Reports is attached to and is a part of the closed session minutes.)

It was moved by Dr. Dey and seconded by Ms. Reade to certify the development easement values on the following farms as presented and discussed in closed session:

1. High Ridge Holding Co. # 1 (Wojcik Farm)
Block 27, Lot 22, Upper Freehold Township, Monmouth County, 188
Acres
2. High Ridge Holding Co. # 2 (Martin D. Wojcik)
Block 27, Lot 23, Upper Freehold Township, Monmouth County, 126
Acres

The motion was approved. (Mr. Waltman Opposed and Mr. Siegel abstained.) (A copy of the Certification of Value Reports is attached to and is a part of the closed session minutes.)

County Planning Incentive Grant Program

Note: Ms. Brodhecker recused herself from the discussion/action pertaining to the Lynn and Bonita Turr farm to avoid the appearance of a conflict of interest. Ms. Brodhecker is the Chairperson of the Sussex County Agriculture Development Board.

It was moved by Dr. Dey and seconded by Mr. Waltman to certify the development easement values on the following farms as presented and discussed in closed session:

1. Cumberland County/Anne Sheppard
Block 18, Lot 1, Greenwich Township, Cumberland County, 72 Acres
2. Carmine Adamucci – Farm # 2
Block 78, Lot 24.04, Hopewell Township, Cumberland County, 48 Acres
3. Cumberland County/Thomas Kates et al
Block 2, Lot 4, Lawrence Township, Cumberland County, 25 Acres
4. William and Helen Stefka (# 1)
Block 101, Lot 1, East Greenwich Township, Gloucester County, 26 Acres
5. William and Helen Stefka (# 2)
Block 264, Lot 2, Greenwich Township, Gloucester County, 36 Acres
6. William and Helen Stefka (# 3)
Block 265, Lot 1, Greenwich Township, Gloucester County, 21 Acres
7. William and Helen Stefka (# 4)
Block 262, Lot 3, Greenwich Township, Gloucester County, 34 Acres
8. Edward Longley
Block 27, Lot 2, Elk Township, Gloucester County, 17 Acres
9. Josephine Gallagher
Block 2701, Lot 19, Franklin Township, Gloucester County, 46 Acres
10. Gary Prowe
Block 265, Lot 9.02, Mantua Township, Gloucester County, 24 Acres

11. Still run Properties LLC (Stephen Brown)
Block 2, Lots 3, 4, 5, 9, Mantua Township, Gloucester County, 94 Acres
12. Lynn and Bonita Turr
Block 135, Lots 8.04 and 8.05, Wantage Township, Sussex County, 52
Acres

The motion was approved. (Ms. Brodhecker recused herself from the vote.) (A copy of the Certification of Value Reports is attached to and is a part of the closed session minutes.)

Nonprofit Fee Simple Program

It was moved by Dr. Dey and seconded by Mr. Waltman to certify the Fair Market Fee Simple Before and After Values on the following farm as presented and discussed in closed session:

1. New Jersey Conservation Foundation/Dorothy Gilde
Block 22, Lot 21
Delaware Township, Hunterdon County, 20 Acres

The motion was unanimously approved. (A copy of the Certification of Value Report is attached to and is a part of the closed session minutes.)

B. Request for Final Approval – State Acquisition (Easement)

Mr. Knox stated that the Committee just certified the development easement values on the High Ridge Farm # 1 and # 2. He referred the Committee to two resolutions for final approval for these farms and stated that staff recommendation is to grant final approval.

Ms. Craft stated that the now proposed configuration of these two farms will include a severable exception of roughly twenty one acres down by the woods for a total of three housing opportunities, two will be on the High Ridge # 1 farm and the other on the High Ridge # 2 farm. This approval is also reflecting a proposed sale of a conservation easement from the property line or Doctor's Creek up to the top of the bank to Monmouth County. That conservation easement will not include public access at this time but will reserve the opportunity in the future for the property owners to convey that access if they desire. The conservation easement will need to include sufficient provisions to create irrigation access across the conservation easement to service the preserved farms. The SADC's understanding is that Monmouth County has offered to compensate the landowner for the area subject to the conservation easement equivalent to the value of the

development easement certified by the SADC.

Mr. Wojcik, owner of High Ridge Farm # 1 and # 2 addressed the Committee. He stated that he is unhappy about the conservation easement to the County and he doesn't know what is going to happen in the future. Politics sometimes can force someone to do something. He stated that he hopes that the county doesn't force him to have public access. If he decides on his own, then he'll be happy to do so but he doesn't want to be forced to do it. Ms. Craft stated that perhaps he should look to include that language in his conservation easement as it is negotiated with the county.

It was moved by Ms. Reade and seconded by Dr. Dey to approve Resolution FY2011R9(22) and Resolution FY2011R9(23) granting final approval to the following landowners as presented and discussed, and subject to any conditions of said resolutions:

1. High Ridge Holding Co # 1 (Resolution FY2011R9(22))
Block 27, Lot 22, Upper Freehold Township, Monmouth County, 180 Net Acres
Development Easement Value at \$21,000.00 per acre for approximately \$3,780,000.00 based on 180 acres, subject to conditions contained in Schedule "B" of said Resolution. The SADC approves an approximate 16 acre severable exception that shall be limited to two single-family residences; The SADC approves a six-acre nonseverable exception around an existing three unit residence with the condition that if the structure should be destroyed or replaced it can only be replaced with one single family residence or a residence with up to three units as currently exists; The SADC approves a severable exception with conservation easement restrictions to the Monmouth County Parks Department for the certified easement value of \$21,000.00 per acre on an area from the top of slope to the property line along Doctor's Creek, approximately 12 acres +/-, which will be identified as a severable exception area at closing, offer no public access at this time and reserve irrigation access to service the preserved farm.
2. High Ridge Holding Co. # 2 (Resolution FY2011R9(23))
Block 27, Lot 23, Upper Freehold Township, Monmouth County, 125 Net Acres
Development Easement Value at \$22,000.00 per acre for approximately \$2,750,000.00 based on 125 acres subject to the conditions contained in Schedule "B" of resolution; The SADC approves an approximate six acre severable exception as identified on Schedule "A" of said resolution that shall be limited to one single family residence and access shall be provided via the 16+/- acre severable exception on the adjacent Lot 23

(High Ridge Farm # 1); the SADC approves a one acre nonseverable exception around an existing three unit residence with the condition that if the structure should be destroyed or replaced it can only be replaced with one single-family residence or a residence with up to three units as currently exists; The SADC approves the sale of a severable exception with conservation easement restrictions to the Monmouth County Parks Department for the certified easement value of \$22,000.00 per acre on an area from the top of slope to the property line along Doctor's Creek, approximately 1 acre+/-, which will be identified as a severable exception area at closing, offer no public access at this time and reserve irrigation access to service the preserved farm.

The motion was approved. (Mr. Waltman opposed and Mr. Siegel abstained.) (A copy of Resolution FY2011R9(23) and Resolution FY2011R9(24) is attached to and is a part of these minutes.)

C. ATTORNEY/CLIENT MATTERS

None

ADJOURNMENT

There being no further business, it was moved by Ms. Reade and seconded by Mr. Waltman and unanimously approved to adjourn the meeting at 3:01 p.m.

Respectfully Submitted,

Susan E. Craft, Executive Director
State Agriculture Development Committee

Attachments