

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

REGULAR MEETING

December 9, 2010

Chairman Fisher called the meeting to order at 9:20 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 (Left at 4:09 p.m.)
Richard Boornazian (rep. DEP Commissioner Martin) (Left at 3:10 p.m.)
Fawn McGee (rep. DEP Commissioner Martin) (presided for Mr. Boornazian at 3:10 p.m.)
Ralph Siegel (rep. State Treasurer Andrew P. Sidamon-Eristoff) (Left at 4:09 p.m.)
Brian Schilling (rep. Executive Dean Goodman)
James Requa (rep. DCA Commissioner Grifa) (Left at 2:15 p.m.)
Alan Danser (presided as Chair as of 4:09 p.m.)
Torrey Reade
Stephen P. Dey
Jane Brodhecker
James Waltman

Members Absent

Denis C. Germano, Esq.

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

Others present as recorded on the attendance sheet: Robert Baumley, Heidi Winzinger, Hope Gruzlovic, Brian Smith, Charles Roohr, Edgar Madsen, Ed Ireland, Timothy Brill, Cassandra McCloud, Daniel Knox, Bryan Lofberg, Paul Burns, Patricia Riccitello and Sandy Giambrone, John Denlinger, SADC staff, Daniel Pace, Mercer County Agriculture Development Board, David Reiner, Governor's Authorities Unit, Harriet Honigfeld, Monmouth County Agriculture Development Board, Barbara Ernst, Cape May County Agriculture Development Board, Glorianne Robbi, East Amwell Township, Hunterdon County, Nicole Goger, New Jersey Farm Bureau, Beth Davisson, New Jersey Conservation Foundation, Renee Jones and Fawn McGee, New Jersey DEP, William Millette, Hunterdon County Agriculture Development Board, Amanda Brockwell, Monmouth County Agriculture Development Board, Sherry Dudas and Jim Kinsel, Honey Brook Organic Farm, Burlington and Mercer counties, Jennifer McCulloch, Morris County Agriculture Development Board, Frances Gaugaw, Farmer, Hunterdon County, Andy Coeyman, Monmouth County Park System, Ivan Olinsky, William Flemer and Sons, Inc.

Minutes

A. SADC Regular Meeting of September 23, 2010 (Open Session)

Dr. Dey indicated that he had a question regarding a portion of the closed session minutes of November 4th and therefore requested to have a discussion in closed session before the Committee takes action on them.

It was moved by Ms. Reade and seconded by Mr. Schilling to approve the open session minutes of the SADC regular meeting of November 4, 2010. The motion was unanimously approved.

REPORT OF THE CHAIRPERSON

Chairman Fisher discussed the following with the Committee:

- Proposed Rule for Solar AMP

Governor Christie signed off on the proposed rule for the solar agricultural management practice (AMP). He thanked the Committee and SADC staff for all their work in getting this proposed rule to the Governor's Office.

- Outreach

Chairman Fisher stated that the SADC staff and the Department of Agriculture have been trying to do a lot more outreach so that people have a better understanding of the mission and the way that the SADC operates. Ms. Craft made a presentation at the New Jersey Farm Bureau convention, which was widely appreciated. He stated that many people came up to him and stated that they appreciated hearing from the SADC and knowing about all the work it is doing. It was very well received.

- State Board of Agriculture

Chairman Fisher stated that the State Board of Agriculture will hold its convention in February, 2011. It will have some listening sessions concerning the SADC. Last year the SADC discussed wind and solar and we will continue that theme this year.

- Governor Christie's Initiatives

Chairman Fisher stated that Governor Christie is working to rein in government and make it smaller with better deliverables via agencies being more responsible and efficient. Likewise Lieutenant Governor Guadagno is heading the Red-Tape Committee, looking to generate business development. He stated that he is very proud to be a part of an administration that is doing that.

Regarding commissions, many that have not met, some that have met but were not functional, some that were functional but lost focus or viability have been eliminated through the Governor's executive decisions. He stated that as Chairman of the SADC he wanted the Committee members to be cognizant of the fact that there was a document prepared by the NJ DEP that has been released to the public, called a pre-decisional determination, which references transferring the functions of certain agencies to the NJ DEP. The actual wording is "The GSPT should be eliminated and its authorities be transferred to the NJ DEP, which is responsible for a majority of land acquisitions. The SADC's authority over final land easement acquisitions and the New Jersey Historic Trust should also be consolidated in the NJ DEP. These consolidations will enhance the process, eliminate conflicts and result in savings for the State." Chairman Fisher stated that he felt it was imperative to make sure the Committee understands what is being proposed. He stated that he doesn't know what the historic community will feel but he believes that the agricultural community, as Secretary, is not supportive of this proposal. He stated that no determination has been made to

date.

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Craft discussed the following with the Committee:

- Nonprofit Roundtable Discussion

Ms. Craft stated that SADC staff held a roundtable discussion with the nonprofit community at the D&R Greenway Johnston Education Center. It was very well attended. One of the areas that was focused on was the nonprofit community would like to be able to participate in the planning incentive grant approach to getting funding from the SADC to be able to block-grant money to their plans so that they have flexibility within that, rather than a parcel-specific allocation of funds. She stated that staff welcomed the opportunity to talk to the nonprofit community and use their input in developing that idea and bringing it back to the Committee for consideration. If acceptable, the SADC would propose to amend the nonprofit rules to incorporate a planning incentive grant approach.

Also discussed were housing opportunities, exceptions and moving houses, to better educate people as to how they should be communicating with their property owners when they are in discussions. The SADC has a one page document on exception areas, which is meant to be a very basic but informative instruction document to landowners so they will understand what an exception is, what the implications of taking one are, etc. The nonprofit organizations felt that was a very good document and have asked for more of that type of tool and staff is trying to accommodate that. The SADC had an intern over the summer who was instrumental in putting that first document together. SADC staff is creating a series of very user-friendly instructional documents on the program so that the landowner can understand more thoroughly at the beginning of the process to submit a complete and accurate application.

- Outreach

Ms. Craft stated that with respect to what Secretary Fisher just related, the county agriculture development boards are the SADC's first target for outreach efforts. The SADC is going to look at staff resources and where people live and make a real effort to get one staff person to each of the county agriculture development board meetings. Currently the SADC attends five or six county meetings consistently. In addition to that we would have some talking points. The Office of the Secretary creates a monthly report, which is a bulleted report on what is going on and talks about hot topics. The SADC would like to have that type of

model so that the staff person attending these meetings will have the basic points that the SADC would like to have covered.

- New Governor's Authorities Representative

Ms. Craft stated that Thomas Hower, who was the Governor's Authorities Unit representative, has left the Governor's Authorities Unit and now is working at the Department of Law and Public Safety in the Attorney General's Office. The new representative will be Brandon Minde. Mr. Minde could not make today's meeting. David Reiner is here today in Mr. Minde's place.

COMMUNICATIONS

Ms. Craft reminded the Committee to take home the various articles provided in the meeting binders. She stated it was reported that Gloucester County announced that it will not be accepting additional farmland preservation applications until such time as the 2009 bond funds are made available through the state. She stated that the SADC has been in communication with the Administration on that issue, along with Treasury. The best that she can say is that the Administration understands the need and that it is taking a hard look at what debt service the State can tolerate in the next fiscal year. It is an on-going dialog at this time.

PUBLIC COMMENT

None

NEW BUSINESS

A. New Enrollment of Eight Year Program

1. Bonham Farm, Hopewell Township, Cumberland County

Ms. Reade recused herself from any discussion/action pertaining to this agenda item to avoid the appearance of conflict of interest.

Ms. Winzinger referred the Committee to the New Enrollments Summary for the Eight Year Farmland Preservation Program. She stated that there is one request for new enrollment. She reviewed the specifics with the Committee and stated that staff recommendation is to grant approval to the new eight year program enrollment as follows:

It was moved by Mr. Danser and seconded by Dr. Dey to approve Resolution FY2011R12(1) granting certification of a new Eight Year Farmland Preservation Program for the following landowner as presented and discussed, subject to any conditions of said resolution:

1. Sarah L. Bonham (SADC #08-0025-8F)
Block 18, Lot 5; Hopewell Township, Cumberland County, 58.70 Acres
Soil and Water Conservation Cost Share Eligibility Amount
(subject to available funding): \$5,870.00

The motion was approved. (Ms. Reade recused herself from the vote.) (A copy of Resolution FY2011R12(1) is attached to and is a part of these minutes.)

B. Soil and Water Conservation Cost Share Grant Requests

Chairman Fisher indicated that there will be various recusals for the soil and water conservation cost share grant requests. He stated that the Committee would review the requests individually and in some instances Mr. Danser would chair the meeting due to his conflict of interest.

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 \$352,593.15 available for soil and water conservation cost share grant projects as outlined on the Status Report. He stated that the increase in funding is in part due to some landowners cancelling their project requests. He referred the Committee to Projects for Funding Summary showing six (6) requests for soil and water costs share grants under Priority # 1 before the Committee today. He indicated that if the Committee approves today's grant requests the remaining balance will be \$251,817.75.

Mr. Lofberg reviewed the soil and water cost share grant requests with the Committee and stated that staff recommendation is to grant approval to the six cost share grant requests as presented and discussed.

Note: Vice Chairman Danser presided over the meeting at this point. Chairman Fisher recused himself from any discussion/action pertaining to the Roger R. Kumpel and the Ruth Kumpel requests for soil and water conservation cost share grants to avoid the appearance of a conflict of interest. Mr. Kumpel is a member of the State Board of Agriculture, to whom Chairman Fisher reports in the discharge of his duties as New Jersey Secretary of Agriculture.

It was moved by Dr. Dey and seconded by Ms. Reade to approve Resolution FY2011R12(2) and Resolution FY2011R12(3), granting a soil and water conservation cost share grant to the following landowners, as presented and discussed and subject to any conditions of said Resolutions:

PRIORITY # 1

BURLINGTON COUNTY

1. Roger R. Kumpel (Resolution FY2011R12(2))
SADC #03-0019-PG
Southampton Township, Burlington County, 31.018 Acres
Cost Share Grant Amount: \$13,650.00 under Obligation # 2
2. Ruth L. Kumpel (Resolution FY2011R12(3))
SADC #03-0038-PN
Southampton Township, Burlington County, 69.528 Acres
Cost Share Grant Amount: \$30,680.60 under Obligation # 4

The motion was approved. (Chairman Fisher recused himself from the vote.) (A copy of Resolution FY2011R12(2) and Resolution FY2011R12(3) is attached to and is a part of these minutes.)

MIDDLESEX COUNTY

Note: Chairman Fisher presided over the meeting at this point. Mr. Danser recused himself from any discussion/action pertaining to the Donald and Lynda Patterson agenda item. Mr. Danser is the Chairman of the Middlesex County Agriculture Development Board.

It was moved by Ms. Brodhecker and seconded by Dr. Dey to approve Resolution FY2011R12(4), granting a soil and water conservation cost share grant to the following landowners, as presented and discussed and subject to any conditions of said Resolution:

1. Donald and Lynda Patterson (Resolution FY2011R12(4))
SADC #12-0005-EP
Cranbury Twp., Middlesex County, 184.6830 Acres
Cost Share Grant Extension Amount: \$15,425.00 under Obligation # 1

The motion was approved. (Mr. Danser recused himself from the vote.) (A copy of Resolution FY2011R12(4) is attached to and is a part of these minutes.)

MONMOUTH COUNTY

It was moved by Mr. Waltman and seconded by Mr. Danser to approve Resolution FY2011R12(5), 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:

1. Concorde Stud Farm (Resolution FY2011R12(5))
SADC #13-0038-EP
Upper Freehold Township, Monmouth County, 238.9880 Acres
Cost Share Grant Extension Amount: \$3,585.00 under Obligation # 2

The motion was unanimously approved. (A copy of Resolution FY2011R12(5) is attached to and is a part of these minutes.)

OCEAN COUNTY

Mr. Schilling recused himself from any discussion/action pertaining to the Hisham Moharram agenda item to avoid the appearance of conflict of interest.

It was moved by Ms. Reade and seconded by Dr. Dey to approve Resolution FY2011R12(6), 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:

1. Hisham Moharram (Resolution FY2011R12(6))
SADC #15-0031-EP
Plumsted Township, Ocean County, 54.059 Acres
Cost Share Grant Extension Amount: \$5,000.00 under Obligation # 2

The motion was approved. (Mr. Schilling recused himself from the vote.) (A copy of Resolution FY2011R12(6) is attached to and is a part of these minutes.)

WARREN COUNTY

It was moved by Mr. Danser and seconded by Ms. Reade to approve Resolution FY2011R12(7), 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:

1. Brian Foley (Resolution FY2011R12(7))
SADC #21-0019-NP
Washington/Franklin Twps., Warren County, 62.174 Acres
Cost Share Grant Extension Amount: \$32,434.80 under Obligation # 1

The motion was unanimously approved. (A copy of Resolution FY2011R12(7) is attached to and is a part of these minutes.)

Note: The agenda item for the appeal of development easement values for the Deborah Post farm and the Granskie farm are being moved to later in the meeting as the landowners have not arrived at the meeting as yet. Ms. Craft stated that the Deborah Post issue involves a county easement purchase application in which the SADC certified a development easement value. Ms. Post filed an action in court to appeal that decision but later agreed to withdraw that request and obtain an official action by the SADC to exhaust her administrative opportunities first. Therefore she and her attorney have agreed to come to today's meeting and make their presentation for the Committee's consideration. Ms. Craft stated that it is her understanding that Ms. Post will be providing additional documentation with her today for the Committee's consideration.

Ms. Craft stated that on the Granski farm the Committee was prepared to take action with respect to that certification but the landowner requested that the Committee hold off on taking final action until such time as they were able to address the SADC's concern with respect to legal access to the property.

C. Request for Final Approval – FY 2009 Municipal Planning Incentive Grant Program (PIG) Applications including comprehensive farmland preservation plans and project area agreements

1. Holmdel Township and Upper Freehold Township, Monmouth Co.

Mr. Brill referred the Committee to Resolution FY2011R12(8) for a request for final approval of the Holmdel Township and Upper Freehold Township, Monmouth County Municipal Planning Incentive Grant Program applications, including the comprehensive farmland preservation plans and project area summaries. He reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Mr. Requa and seconded by Dr. Dey to approve Resolution FY2011R12(8) granting final approval to the Holmdel Township and Upper Freehold Township, Monmouth County Municipal Planning Incentive Grant Program Applications, including Comprehensive Farmland Preservation Plans and Project Area Summaries, as presented and discussed and subject to the conditions of said resolution.
The motion was unanimously approved. (A copy of Resolution FY2011R12(8) is attached to and is a part of these minutes.)

2. Peapack and Gladstone Boroughs, Somerset County

Mr. Brill referred the Committee to Resolution FY2011R12(9) for a request for final approval of the Peapack and Gladstone Borough, Somerset County Municipal Planning Incentive Grant Program applications, including the comprehensive farmland preservation plans and project area summaries. He reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Mr. Requa and seconded by Dr. Dey to approve Resolution FY2011R12(9) granting final approval to the Peapack and Gladstone Borough, Somerset, County Municipal Planning Incentive Grant Program Applications, including Comprehensive Farmland Preservation Plans and Project Area Summaries, as presented and discussed and subject to the conditions of said resolution. The motion was unanimously approved. (A copy of Resolution FY2011R12(9) is attached to and is a part of these minutes.)

D. Appeal of Development Easement Value

1. Deborah Post (Riamede Farm) Chester Township, Morris County

Secretary Fisher stated that Ms. Post is now present. He indicated that Ms. Post requested two hours for her presentation to the Committee. He stated that he has requested through SADC staff to condense this presentation down to approximately 30-45 minutes. It is noted that a court reporter is present to prepare a transcript of this discussion.

Note: Court reporter was present to transcribe the discussion pertaining to this agenda item.

Ms. Craft stated that the SADC previously certified the development easement value of this farm, located in Chester Township, Morris County, comprising 56 acres. The SADC received from Morris County its appraisals and after the SADC's normal review process certified a development easement value and it was transmitted to the county under the normal circumstances and was extended to the property owner. The property owner, through her attorney, Mr. Coakley, filed in Superior Court in the Appellate Division making a series of claims about why the SADC's certification of value was insufficient. When staff received that documentation the application process had stopped because the landowner had written letters requesting that the SADC reconsider the certification but that had not come to the Committee for final action. What is before the Committee today is a request from the landowner to reconsider the SADC's certification of value. At the end of the landowner's presentation the Committee will have a couple of options, either that the Committee will have heard enough information that it directs staff to go back and consider what the landowner presents today to see if it would have any impact on value

or that the Committee doesn't hear anything that is compelling enough to have staff reconsider the certification of value, in which case the Committee could say the certification of value stands as is. When the Committee makes its final determination either way that will be considered final agency action and will be appealable to the Appellate Division. Deputy Attorney General Jason Stypinski stated that the lawsuit to the Appellate Division was withdrawn pending the final decision of the SADC. Mr. Danser stated that he is concerned because every applicant is unhappy with their certified value and he is concerned of this process where everyone comes back in this way. Ms. Craft stated that is for the Committee to determine.

Mr. Siegel suggested that the Committee have a brief discussion in closed session. He stated that in his opinion we are opening an enormous door by conducting this proceeding. He stated that if a landowner is not happy with a value they do not have to proceed with the preservation of the property. He stated that there is no by right of appeal of a financial decision of a board. The right is to not accept the offer.

Ms. Craft stated that the SADC certified a value, as it always does, the landowner submitted letters questioning what was done. Staff prepared and sent comprehensive letters back trying to explain why the SADC's certification of values was not in error. The landowner then filed an action in the Appellate Division. Ms. Craft stated that her concern is to ensure the Committee understands that this is the decision of the Committee and when it is final, it's final. The landowner is submitting documentation that may cause the Committee to reconsider its certification. She stated that staff reviewed what was previously submitted and staff responded in writing supporting the value conclusions. Ultimately the SADC is the agency that certifies the value. If the Committee determines today that it doesn't want to hear this presentation and considers its previous certification final that is a decision. Mr. Siegel stated that also a decision of the Committee is that it doesn't want to preempt the prerogatives of its staff and that it is for the staff to say whether the applicant has raised an interesting point or not, say a technical error, to which the appraiser is willing to adjust the appraisals and then the SADC comes back to the Committee with an explanation of what is different. Landowners do not have a constitutional right to have their farm preserved.

Mr. Waltman asked why the value wasn't a final agency action. He stated that if this is a legal question, that should be discussed in closed session.

CLOSED SESSION # 1 (POST MATTER)

It was moved by Mr. Siegel to adjourn into closed session to discuss the legal aspects of this agenda item.

“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 half hour to be private to discuss these matters. The minutes will be available one year from the date of this meeting.”

Mr. Coakley, attorney for Ms. Post requested to make a statement prior to the Committee going into closed session. He stated that the procedure that led them to this point was that after the certification of value was transmitted, a letter was sent to the SADC requesting that it reconsider the determination of value. When that was responded to by SADC staff and not the SADC there was no alternative than to file an appeal. When that appeal was filed counsel from the Attorney General’s Office contacted them and said that the SADC has not reconsidered this and has not made a record and would Ms. Post withdraw the appeal and come to the SADC and make a presentation so that the Committee can consider this matter and have a record to go forward. Mr. Danser commented that Mr. Coakley stated there was no alternative, as if walking away from the deal wasn’t an alternative? Mr. Coakley responded that it may be an alternative to some but it is not necessarily the only alternative. There is an alternative of objecting to the methodology of the appraisals that have been submitted if they don’t follow the regulations.

Mr. Stypinski stated that there was an email from him to Mr. Coakley confirming Ms. Post’s ability to come before the SADC with her concerns and that the appeal would be withdrawn from the court.

Mr. Stypinski stated that procedurally he can explain what the thinking was but he recommended that be discussed in closed session.

The motion was seconded by Mr. Boornazian and unanimously approved.

The Committee retired to the 3rd floor Division Director’s conference room to discuss the matter.

ACTION AS A RESULT OF CLOSED SESSION # 1 (POST MATTER)

Chairman Fisher stated that having come from closed session he requested Mr. Stypinski to make a statement on behalf of the Committee. He stated that the Committee will not be taking any action until staff has had the opportunity to review all materials submitted, including the package that has been submitted at today’s meeting and then make a recommendation to the Committee. Chairman Fisher restated that Ms. Post would have 30-45 minutes for her presentation.

Mr. Coakley provided the Committee with a binder and requested that one copy be marked "P1" for identification purposes.

Ms. Post addressed the Committee in support of her request for the SADC to reconsider her certified development easement values. She stated that she has been given a time limit for her presentation however this is her first and only opportunity as a landowner to provide any input into this process that represents a major financial event for her and for most landowners. Despite having submitted six inches of documents containing critiques and fresh appraisals, these documents have not been considered. She stated that she received a letter from the SADC that stated "The SADC does not evaluate appraisals that have not been contracted for by the CADB for purposes of determining certification of values for the cost share grant, nor does the agency consider the conclusions of the landowner and/or other parties interested in the transaction." Ms. Post stated that it is rare that a process of this importance is so one sided. She continued with her presentation to the Committee, reviewing the material she provided at today's meeting. Ms. Post made a 45 minute presentation regarding various technical aspects of the appraisals conducted, the qualifications of the appraisers, the potential use of value derived from Highland's TDR calculations, which she read from a prepared statement into the record. Secretary Fisher reminded Ms. Post that she had reached the time limit that was given for her presentation, at which time Ms. Post concluded her presentation.

Mr. Coakley thanked the Committee for the opportunity to present. He stated that the written summary that Ms. Post read from will be copied and sent to Mr. Stypinski and he requested that it be marked as P2 in the record and distributed to the Committee prior to making a decision. He stated that the main point to take from this presentation today is that there needs to be input from property owners because they have something to say when they go through the effort of providing appraisals to the Committee they should be considered and when there are egregious errors in appraisals the Committee should take some corrective action.

Note: Ms. Craft stated that the other agenda item regarding an appeal of a development easement value for the Granskie farm has been removed from the agenda. She stated that staff has received an email this morning at 9:42 a.m. stating that the landowner has decided to withdraw her application to the county.

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

Ms. Winzinger referred the Committee to two resolutions for final approval under the new rule Municipal Planning Incentive Grant Program. She reviewed the specifics of each with the Committee and stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Mr. Requa and seconded by Ms. Brodhecker to approve Resolution FY2011R12(10) and Resolution FY2011R12(11), granting final approval to the following landowners as presented and discussed and subject to any conditions of said resolutions:

1. Norman J. Lenchitz (Resolution FY2011R12(10)) *
Block 2003, Lot 16
Pittsgrove Township, Salem County, 18 Acres
State cost share grant at \$4,400.00 per acre for an estimated total of \$79,200.00 (62.86% of the certified market value and purchase price).

* Discussion: The County will pay its cost share directly to the landowner by way of an installment purchase agreement, which is subject to the review and approval of the SADC Executive Director.

2. R.T.R. New Home Building Contractors, Inc.
(Calukovic) (Resolution FY2011R12(11))
Block 55, Lot 20.03
Upper Freehold Township, Monmouth County, 49 Acres
State cost share grant of the entire Township's Planning Incentive Grant appropriation, which is \$750,000.00 (an estimated 48% of the certified market value and purchase price).

The motion was unanimously approved. (A copy of Resolution FY2011R12(10) through FY2011R12(11) is attached to and is a part of these minutes.)

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

Mr. Danser recused himself from any discussion/action pertaining to the agenda item for the Balz Farm in Middlesex County to avoid the appearance of a conflict of interest. Mr. Danser is the Chairperson of the Middlesex

County Agriculture Development Board. He requested that the Committee take action on that agenda item separately.

Ms. Winzinger stated that there are four 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.

It was moved by Dr. Dey and seconded by Mr. Danser to approve Resolution FY2011R12(12), Resolution FY2011R12(13) and Resolution FY2011R12(14) granting final approval to the following landowners, as presented and discussed and subject to any conditions of said resolutions.

CUMBERLAND COUNTY

1. Thomas S. Newton (Resolution FY2011R12(12)) *
Block 16, Lots 5 and 10.01; Block 18, Lot 6.02
Greenwich Township, Cumberland County, 45 Acres
State cost share grant at \$3,100.00 per acre (68.89% of the certified market value and purchase price); to account for any potential increase in the final surveyed acreage a 3 percent buffer has been applied to the funds encumbered from the County's base grant, which would allow for a maximum SADC cost share of \$144,642.90; the SADC grant funds are conditioned on the appropriation of funding by the legislature and approval by the Governor and availability of those funds; the SADC will utilize any remaining NJCF FY 2007 Federal Farm and Ranch Lands Protection Program funds (estimated \$800 per acre) to reduce the SADC's grant taken from the County's base grant as outlined in said Resolution.

- * Discussion: The Cumberland CADB in participation with the New Jersey Conservation Foundation (NJCF) has applied to use the NJCF's USDA, NRCS FY2007 Farm and Ranch Lands Protection Program grant funding in the amount of \$2,300.00 per acre to further leverage available county funding for farmland preservation. The owner has agreed to the additional restrictions associated with the use of federal funding, including a one (1) acre impervious cover limit available for the construction of agricultural infrastructure required for all farms under fifty acres utilizing FY2007 federal funding. It is noted that the landowners have chosen not to take any exception areas and they have signed an acknowledgement form related to that.

2. Clifton and Dorothy Jones (Resolution FY2011R12(13)) *
Block 18, Lot 28
Greenwich Township, Cumberland County, 70 Acres
State cost share grant at \$2,800.00 per acre (70% of the certified market value and purchase price); to account for any potential increase in the final surveyed acreage a 3 percent buffer has been applied to the funds encumbered from the County's base grant, which would allow for a maximum SADC cost share of \$201,880.00; the SADC grant funds are conditioned on the appropriation of funding by the legislature and approval by the Governor and availability of those funds; the SADC will utilize any remaining NJCF FY 2007 Federal Farm and Ranch Lands Protection Program funds (estimated \$300 per acre) to reduce the SADC's grant taken from the County's base grant as outlined in said Resolution.

* Discussion: The Cumberland CADB in participation with the New Jersey Conservation Foundation (NJCF) has applied to use the NJCF's USDA, NRCS FY2007 Farm and Ranch Lands Protection Program grant funding in the amount of \$1,500.00 per acre to further leverage available county funding for farmland preservation. The owner has agreed to the additional restrictions associated with the use of federal funding, including a four (4) percent impervious cover limit available for the construction of agricultural infrastructure. The property includes a two acre severable exception for the existing historic single-family residence (national register).
3. Norman and Lynette Kacewich (Resolution FY2011R12(14)) *
Block 25, Lot 12; Block 26, Lot 11.03
Stow Creek Township, Cumberland County, 17.37 Acres
State cost share grant at \$4,900.00 per acre (62% of the certified market value and purchase price); to account for any potential increase in the final surveyed acreage a 3 percent buffer has been applied to the funds encumbered from the County's base grant, which would allow for a maximum SADC cost share of \$87,665.90; the SADC grant funds are conditioned on the appropriation of funding by the legislature and approval by the Governor and availability of those funds; the SADC will utilize any remaining NJCF FY 2007 Federal Farm and Ranch Lands Protection Program funds (estimated \$200 per acre) to reduce the SADC's grant taken from the County's base grant as outlined in

said Resolution.

- * Discussion: The Cumberland CADB in participation with the New Jersey Conservation Foundation (NJCF) has applied to use the NJCF's USDA, NRCS FY2007 Farm and Ranch Lands Protection Program grant funding in the amount of \$3,950.00 per acre to further leverage available county funding for farmland preservation. The owner has agreed to the additional restrictions associated with the use of federal funding, including a one (1) acre impervious cover limit available for the construction of agricultural infrastructure required for all farms under fifty acres utilizing FY2007 federal funding.

The motion was unanimously approved. (A copy of Resolution FY2011R12(12) through Resolution FY2011R12(14) is attached to and is a part of these minutes.)

MIDDLESEX COUNTY

It was moved by Mr. Siegel and seconded by Dr. Dey to approve Resolution FY2011R12(15), granting final approval to the following landowners, as presented and discussed and subject to any conditions of said resolution.

1. Robert and Karen Balz (Resolution FY2011R12(15)) *
Block 83, Lot 6.09
Monroe Township, Middlesex County, 14.1
State cost share grant at \$27,000.00 per acre (60% of the certified market) for a total grant need of approximately \$380,700.00.

* Discussion: The property has a 0.61 acre severable exception around a building used for machinery repair and general storage.

The motion was approved. (Mr. Danser recused himself from the vote.) (A copy of Resolution FY2011R12(15) is attached to and is a part of these minutes.)

G. Request for Preliminary Approval – State Acquisition (Easement)

1. Hill and Dale Farms, Inc., Tewksbury Township, Hunterdon County

Mr. Knox referred the Committee to Resolution FY2011R12(16) for a request for preliminary approval on the Hill and Dale Farms, Inc., located in Tewksbury Township, Hunterdon County. He reviewed the specifics with the Committee. He stated that this property is in the Highlands Preservation Area. Mr. Knox stated that staff recommendation is to grant preliminary approval as presented and

discussed, subject to any conditions of the resolution.

It was moved by Mr. Danser and seconded by Dr. Dey to approve Resolution FY2011R12(16) granting preliminary approval to the Hill and Dale Farms, Inc. property, known as Block 51, Part of Lot 80, Tewksbury Township, Hunterdon County, 41 Net Acres, subject to any conditions in said resolution. The motion was unanimously approved. (A copy of Resolution FY2011R12(16) is attached to and is a part of these minutes.)

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

1. Tullo Farm, Lebanon Township, Hunterdon County

Mr. Knox referred the Committee to Resolution FY2011R12(17) for a request for final approval of the David and Susan Tullo farm, located in Lebanon Township, Hunterdon County, comprising approximately 131 net acres. He stated that the property is in the Highlands Preservation Area. He reviewed the specifics with the Committee and stated that staff recommendation is to grant final approval, as presented and discussed.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolution FY2011R12(17), granting final approval to the following landowners, as presented and discussed and subject to any conditions of said resolution:

David and Susan Tullo
Block 57, Lots 27 and 28
Lebanon Township, Hunterdon County, 131 Net Acres
At a value of \$6,500.00 per acre for a total of approximately \$851,500.00; the SADC approves the use of funding pursuant to the SADC FY 2006 Highlands Preservation appropriation Expenditure Policy – Amended, which authorizes the use of Highlands funds to support additional applications in all farmland preservation programs where demand for funding has outstripped otherwise approved SADC funding.

The motion was unanimously approved. (A copy of Resolution FY2011R12(17) is attached to and is a part of these minutes.)

I Request for Final Approval – Nonprofit Grant Program

1. New Jersey Conservation Foundation/Lovero Farm, Hopewell Township, Mercer County

Mr. Knox referred the Committee to Resolution FY2011R12(18) for a request for final approval for the New Jersey Conservation Foundation (NJCF)/Lovero farm

in Hopewell Township, Mercer County. He reviewed the specifics with the Committee. He indicated that this farm would be utilizing NJCF, USDA, NRCS, Federal Farm and Ranch Lands Protection Program funding, which will include a two percent impervious coverage restriction equaling approximately 1.5 acres available for agriculture infrastructure outside the exception area. He stated that staff recommendation is to grant final approval as presented and discussed.

It was moved by Mr. Siegel and seconded by Mr. Waltman to approve Resolution FY2011R12(18), granting final approval to the following landowner as presented and discussed, subject to any conditions of said resolution:

1. New Jersey Conservation Foundation/Lovero
Block 62, Lot 26.041
Hopewell Township, Mercer County, 73 Acres
The SADC shall provide a cost share grant not to exceed \$7,000.00 per acre (total of approximately \$511,000.00 based on 73 acres) to the New Jersey Conservation Foundation for the development easement acquisition of this farm; the SADC approves the use of the New Jersey Conservation Foundation's Federal Farm and Ranch Land Protection Program funds, which will include an impervious coverage limitation of approximately two percent outside the exception area.

The motion was unanimously approved. (A copy of Resolution FY2011R12(18) is attached to and is a part of these minutes.)

H. Farmland Stewardship

1. House Replacement Request (Renewal of Approval)
Michael and Amanda Dippolito, E. Amwell Township, Hunterdon County

Mr. Roohr stated that this agenda item has been removed from today's meeting. Ms. Craft stated that this agenda item was tabled at the last meeting of the Committee to give the Township the opportunity to provide some input. Staff received a letter from the Township's attorney yesterday raising various issues. Staff wanted to have an opportunity to look at the various issues before bringing it back to the Committee.

2. Request for a Division of the Premises
Simpson Farm, Tewksbury Township, Hunterdon County

Mr. Roohr referred the Committee to Resolution FY2011R12(19) for a request for a division of the Premises by Rhyne and Andraya Simpson, owners of Block 19,

Lots 11.05, 11.06 and 11.07 in Tewksbury Township, Hunterdon County, comprising approximately 72.71 acres. The property has one single family residence. The owners proposed to divide the premises to allow them to sell Parcel B to an adjacent landowner, Marlena Heydenreich. The owners had previously proposed to divide the premises through a similar configuration in December 2009, which the SADC denied because it did not result in agriculturally viable parcels. This recent request involves the proposed donation of a development easement on eight acres of Ms. Heydenreich's 26-acre lot which is located adjacent to the premises, if the division request is approved. The owners would retain Parcel "A" to continue their sport horse equine operation. The owners find it necessary to divest themselves of a portion of the property for financial reasons.

Mr. Roohr stated that in November 2010 Mr. Simpson and the contract purchaser (Ms. Heydenreich) came to the SADC offices and met with staff to further explain their proposal for the property.) Ms. Heydenreich indicated at that meeting that she would like to own Parcel "B" for view shed purposes because it is located directly in front of her residence and forms the continuum of the field that is adjacent to her eight acre hay field. She had agreed to donate the development easement on the eight tillable acres and has agreed that Parcel "B" and her 26-acre parcel shall never be sold apart from one another, if the SADC approves the division request. She currently pays a local farmer to farm the eight acres and feels that the new larger configuration would make farming her overall property more efficient for the tenant farmer. She did not wish to restrict the remainder of her 26-acre portion of her property any more than with the 8 additional acres. Mr. Roohr stated that Mr. Simpson, Ms. Heydenreich and the tenant farmer Scott Clucas are present today and would like to address the Committee. Mr. Roohr stated that he is providing some additional information that just became available, to the Committee, which is a couple of maps and a letter from the Chair of the Ag Advisory Committee in Tewksbury Township in support of the request.

Mr. Roohr reviewed the specifics with the Committee as outlined in the resolution. He stated that staff recommends denial of the request for reasons set forth in the resolution.

Mr. Simpson, Ms. Heydenreich and Mr. Clucas addressed the Committee in support of the division of the premises request.

Mr. Waltman stated that the SADC has to continue to have a very high burden of proof that a subdivision actually advances agriculture and he doesn't see that in this situation.

Mr. Siegel motioned to accept staff recommendation as presented and discussed.

Dr. Dey seconded the motion. A roll-call vote was taken as follows:

Richard Boornazian (rep. DEP Commissioner Martin)	Oppose
James Requa (rep. DCA Commissioner Grifa)	Oppose
Ralph Siegel (rep. State Treasurer Sidamon-Erstoff)	Yes
Brian Schilling (rep. Executive Dean Goodman)	Abstain
Jane R. Brodhecker	Oppose
Alan A. Danser	Abstain
James Waltman	Yes
Denis C. Germano	ABSENT
Torrey Reade	Yes
Stephen P. Dey	Yes
Douglas H. Fisher, Chairperson	Oppose

Oppose staff recommendation votes: 4

Accept staff recommendation votes: 4

Abstain from staff recommendation votes: 2

Absent votes: 1

The motion does not pass. Ms. Craft stated that staff recommendation is to deny the request. We heard testimony from the tenant farmer saying the bigger piece of ground the better or the more acres you have the better. The proposal is taking a seventy acre property and dividing it to make two smaller pieces and there is no compelling agricultural reason to do that in her opinion. We are degrading the viability of the preserved farm. The vote does not pass staff recommendations but it also does not approve the subdivision so therefore there is no action. She stated that from a staff perspective Mr. Simpson and Ms. Heydenreich were kind enough to come to the office, we sat and had a very frank conversation and it was clear to her that Ms. Heydenreich's motivation was to extend her holdings, to protect her viewscape of her home. She stated that she cannot imagine that the Committee should entertain that as motivation or justification for a subdivision of a publicly preserved farm. The sentiment that was conveyed to staff was concern about the view and not want structures to be built on this land. Ms. Heydenreich stated that she didn't believe that was her intent in how she described that, she was describing that what was important to her is preserved land and by donating the eight acres that preserves that land but it gives her a feel that it is farmed, which is more viable than just the eight acres and it attaches that to her property so whether it is for her or a future buyer that now becomes a different type of property because of the field in front of it that is viable.

Chairman Fisher stated that the Committee took no action. Mr. Simpson asked if it is acceptable for him to ask one of the abstentions to change their vote. The response to that was no. Mr. Siegel asked if staff would now prepare a different resolution and recommendation for consideration at the next meeting. Ms. Craft responded no, not unless it is directed to by the Committee. Chairman Fisher stated that initially he was going to vote to deny the request and the second part is that it is difficult, and he doesn't know what the abstentions are based on but basically we are here to vote and we recuse because of some type of conflict but when we don't vote, he believes there has to be a reason not to vote. Mr. Schilling stated that he abstained because he is finding that it is becoming more difficult to assess the viability test.

Mr. Danser stated that he would explain his abstention vote. As far as he is concerned this is right on the cusp and it is very difficult. His view on the 24 month statement from the time the owner came into the program is somewhat different from Mr. Siegel's. This came in as a seventy acre application and maybe there was a fifty-five acre application that didn't get considered because this one ranked ahead of it but if it came as 44, the other one may have been preserved and this wouldn't. The only way he would consider this would be if the 54 acres were consolidated with a 14-acre exception or the area on the map was restricted to not being subdivided and that would need to be reflected in a deed.

Chairman Fisher stated that right now there is no action taken by this Committee. He would suggest 1) no action has been taken so it's not been denied or approved. Secondly, if there are some other factors that you could speak to staff about you are welcome to do so. He suggested that Mr. Simpson and the others present today could speak to staff after the meeting. Ms. Brodhecker stated that the owners could come up with a different rationale. Apparently some of that rationale did not get through to some members of the Committee, whether it would be positive or negative. She stated that it would need more structure for the Committee to be able to be convinced to vote either yes or no. Ms. Reade stated that she comes from a county that has a 100 farm backlog and they are on the waiting list. They have bigger and more viable farms than this that are not being subdivided and they cannot get into the program. She wanted to point out that as Mr. Siegel related to earlier is that we did make a selection and preserved 72 acres two years ago. Mr. Siegel stated that these applicants are making a deal with the taxpayers and the timeframe is a factor. Mr. Boornazian stated that he doesn't see the hurt story from his point of view or from the state's. You have more efficient acreage going into the program, they are making a donation and he feels we come out positive on this. The state is not spending any more money to get eight more acres.

3. Request for House Replacement
Ernst Farm, Upper Freehold Township, Monmouth County

Mr. Roohr referred the Committee to Resolution FY2011R12(20) for a request by Roger Ernst, owner of Block 32, Lot 3, in Upper Freehold Township, Monmouth County to replace the existing residence on the property with a new residence for himself and his family. The proposed new house would be built approximately seventy-five feet south of the existing house and would utilize the existing driveway. The owner proposes to build a ranch style house, approximately 3,200 square feet of heated living space to replace the existing house, which is approximately 3,700 square feet of living space. The new house would be built on a slab without a basement. The owner has also requested that he and his family be permitted to reside in the existing house until the new house is completed. Staff recommendation is to approve the request as presented and discussed.

It was moved by Ms. Brodhecker and seconded by Mr. Danser to approve Resolution FY2011R12(20) granting a request by Roger Ernst, owner of Block 32, Lot 3, Upper Freehold Township, Monmouth County to construct a new single-family residence, consisting of approximately 3,200 square feet of heated living space and that the owners may live in the existing residence until the construction of the new residence is completed. The approval is valid for a period of three years from the date of this resolution. The existing single-family residence shall be removed from the Premises within sixty days of receiving the certificate of occupancy for the new residence and this approval is non-transferable. The motion was unanimously approved. (A copy of Resolution FY2011R12(20) is attached to and is a part of these minutes.)

Mr. Siegel noted that he recently attended a farmland preservation conference from the federal government's perspective. There is a precedent but he cannot remember from which state it is from, that properties that are on the national register for historic places or eligible that are privately owned, the landowner can tear them down and it doesn't matter if they are on the national register. Private property is not controlled by the national register. You might discourage them from that but you cannot prevent them from doing so. If you are on the national register it only means that the government cannot take it down. There is a new interpretation from the Department of the Interior that if any preservation funding has gone into the property that counts as government money and therefore any national register properties/buildings, they come under that provision, even though that money is not literally being used to take down the house. It is a new finding. If preservation money has gone into the property, even though the easement doesn't mention anything about the barn, if the barn is on the national register the Department of Interior is now interpreting that to mean the barn is protected. He stated that this may have an effect on the Cavalier house, which to him looks to be highly eligible for the national register. As far as these things are concerned, eligibility and ranking have no difference; it's just a matter of how

long it takes to get the register listing. If the property is eligible for the national register the rules apply. This prevents developers from knocking buildings down before the registration paperwork comes through. Mr. Siegel stated that this may be something that staff may want to look into regarding the Cavalier property because if the house is as old as they say it could be register eligible.

I. Right to Farm – Final Decisions

1. Blew/Bailey, Franklin Township, Hunterdon County

Mr. Smith stated that this is a very complicated procedural matter that involves a very important public policy issue regarding the construction and use of solar panels. There are basically three events to summarize. The first is the 2005 site specific solar panel agricultural management practice (SSAMP) and the 2005 Franklin Township Planning Board approval of the solar panels. Secondly, proceedings in 2008 that were presented before the Hunterdon CADB, which involved a right to farm complaint against the construction and use of the solar panels, and last, a 2008 SSAMP that the farmer applied for, not only for the solar panels, which the farmer had gotten an SSAMP for in 2005 but also for all other agricultural production activities occurring on the farm. Other components of this issue is the 2009 lawsuit that was brought against the Hunterdon CADB for violations of the Open Public Meetings Act (OPMA) and a collateral issue associated with the OPMA complaint was an allegation that one of the CADB members was disqualified from voting.

Mr. Smith stated that in 2005 an SSAMP was applied for and was granted to the Blews, who are commercial farmers. At the same time that was approved the Blews also received planning board approval for the solar panel array. As a result of all the proceedings involved with those two matters, in 2008 a right to farm complaint was filed by the neighbor, the Baileys, and another SSAMP application was filed by the Blews, for the solar panels and for all other agricultural production activities. The Hunterdon CADB met over a several month period in 2008 and 2009 and that is where we get into the OPMA issue because the Hunterdon CADB had nine voting members but at some of the meetings they only had four or three voting members taking action. As a result of those issues the complaint was filed in the Superior Court in 2009 by the Baileys and as a result of that litigation the Superior court remanded the OPMA claim to the SADC. Included in the OMPA claim was the VanNuys disqualification issue. Mr. VanNuys is a member of the CADB but he is also the Chairperson of the Hunterdon County Soil Conservation District. Staff, having reviewed the record does have serious problems with the Hunterdon CADB acting with three or four members from a nine member voting board, but it does not have any problem with the fact that in 2005 the SSAMP was granted for the solar panels and no one

appealed that decision. No one appealed the CADB action in 2005 and no one appealed the Franklin Township's Planning Board's decision within the statutory or regulatory timeframes. There was litigation filed a year later, after these approvals were granted and far outside what the law requires for an appellant. Mr. Smith stated that the staff recommendation, which is in the final decision before the Committee today, is that the 2005 SSAMP be upheld. The 2008 proceedings that involve the solar panels, we don't need to address anymore because we are recommending that the 2005 SSAMP be upheld so there is no need for a 2008 SSAMP to be disposed of. That does leave the agricultural production element for the 2008 SSAMP and because we believe that the Hunterdon CADB did not have a proper quorum, it could not conduct meetings on four occasions. The SSAMP that the CADB granted for the agricultural production activities cannot stand. With respect to the VanNuys disqualification, the SADC does not profess to have any expertise when it comes to disqualifications, recusals, conflicts of interest or office incompatibilities. Those matters can be addressed by the Department of Community Affairs' Local Finance Board. The summary of staff findings can be found in the last few pages of the report before the Committee.

Ms. Craft stated that staff has the Administrative Law Judge's (ALJ) decision and the SADC's charge is to either accept, reject or modify it. Ms. Craft stated that Mr. Smith just reviewed the issues with the Committee and staff recommends modifying the ALJ's decision by upholding the Blews 2005 SSAMP and affirming the ALJ's conclusion that because no valid public meetings were held by the Hunterdon CADB on the stated dates, those actions taking by the CADB are void. Staff suggests modifying the decision with respect to the 2008 SSAMP request such that these matters will not be remanded to either the SADC or the CADB, that there is no SSAMP for the Blews agricultural production activities and the burden is now on the Blews to reapply to the Hunterdon CADB for a determination. If the Blews decide to reapply for an SSAMP for those production activities, the CADB will have to hear the case with the proper quorum of at least five voting members. If the landowners want to pursue an SSAMP for the rest of their operation, separate and apart from the solar panels, they will have to reapply to the CADB to have it properly heard. Also modified was the decision with respect to the conflict of interest matter to send that matter back to the CADB stating that it has to take that issue up with the Local Finance Board to clarify the conflict of interest issue.

It was moved by Ms. Reade and seconded by Mr. Danser to approve the Final Decision involving the Blew/Bailey Right to Farm matter as presented and discussed. The motion was approved. (Mr. Waltman abstained from the vote.)
(A copy of the Final Decision is attached to and is a part of these minutes.)

2. Frank Magrosky v. Somerset CADB and Robert Eurick t/a Rolling Acres Flower Farm

Mr. Smith stated that this was an SSAMP from Somerset County, which was a combination of a Right to Farm complaint and an SSAMP. The Somerset CADB upheld the farmer and it was appealed by the neighbor and in the Office of Administrative Law the attorney for the farmer filed a motion to dismiss the appeal. The neighbor received a copy of the motion but never responded. Therefore, almost by default, the Administrative Law Judge's (ALJ) initial decision was that the farmer wins and the CADB decision is upheld and there is no basis for the SADC to disturb the ALJ's findings. This issue involved a poultry operation and some crowing roosters. There is evidence in the record that the farmer did everything possible to move the coops away from the property line. The final decision that staff is recommending that the Committee adopt affirms the initial decision of the ALJ.

It was moved by Mr. Siegel and seconded by Mr. Danser to approve the Final Decision in the Frank Magrosky, Petitioner vs. Somerset County Agriculture Development Board; and Robert Eurick t/a Rolling Acres Flower Farm, Respondents, as presented and discussed. The motion was unanimously approved. (A copy of the Final Decision is attached to and is a part of these minutes.)

PUBLIC COMMENT

Sherry Dudas and Jim Kinsel from Honey Brook Organic Farm in Burlington/Mercer Counties addressed the Committee. She stated that she was a former staff person to the SADC's Right to Farm program. She stated that she and her husband purchased the first farm preserved in the farmland preservation program in Chesterfield and were in the process of putting up a section of deer fencing and received a violation notice from the zoning office stated that they were in violation of the Township's fencing ordinance. Despite a very unambiguous letter that was sent by Mr. Smith of the SADC to the Township's Zoning Officer, the Judge and a copy to the CADB, they did choose not to forward the complaint to the CADB, which is the process under the Right to Farm Act. She stated that they appeared in municipal court this past week and the matter was transferred to Springfield Township because the Chesterfield Township Judge had a conflict. The Springfield Township Judge did not even let their attorney lay out what the Right to Farm process should have been. She stated that their attorney did speak to the prosecutor beforehand and did get the Chesterfield prosecutor to agree to start the Right to Farm process. However, the Judge ruled that the process can only take 120 days. She is requesting that the SADC consider allowing staff to write a letter to that Judge letting him know that his ruling, in her opinion, was improper. She stated that apparently her attorney cannot make that communication because it would be considered an exparte

communication. Ms. Craft asked where is the CADB on this issue. Ms. Dudas stated it is her understanding that the zoning officer has communicated to the Burlington CADB on this issue but the CADB has not communicated with her or her husband at all on the issue. Ms. Craft stated that from what she knows of this issue in a superficial manner is that there is a title question involved that is clouding the issue somewhat? Ms. Dudas stated that this preserved farm has an access easement that goes back to the farm, somewhat like a flag lot. They have a neighbor that is exerting his allegation, through a lawsuit against her and her husband, that he has an access easement on a portion of that lane. She stated that even though she and her husband did their due diligence before purchasing this farm the easement never showed up in their title. Therefore in this lawsuit the neighbor is claiming he has a right to this access lane or a right of access to his property that has a driveway that comes off of her access lane. She stated that she and her husband are defendants in this lawsuit and as part of their research they found that the Chesterfield Township Planning Board, in 2005, actually granted this neighbor a conditional use approval to operate a commercial business on his residence. She stated that what the neighbor was claiming was that he has a residential use for this alleged access and then her research found that the Township actually granted him commercial use of a portion of her access lane. She emphasized to the Committee that she owns that lane in fee simple as a part of the preserved farm. She stated that she has had four attorneys look at this conditional use approval and they all feel that it is flawed. She understands that the original easement issue is sort of murky but she felt that the 2005 conditional use approval is pretty clear that they had actually expanded the use of this alleged residential easement into a commercial easement. She stated that the neighbor is actually operating a used car lot from his residential property.

Ms. Dudas stated that she and her husband operate a community supported agricultural farm and they are open once a week. They have customers coming up and down that lane as well as employees. She stated that she has asked the CADB by letter to, at the minimum, to let the neighbor know that he didn't have a right to expand this alleged easement use and the CADB didn't answer that letter. It is her understanding that the CADB has decided not to take a position in the matter. She stated that Mr. Roohr and Mr. Smith are familiar with this background and she spoke to Mr. Roohr about it, because the county owns the easement on this farm. SADC staff felt the CADB should handle the matter and then come back to the SADC if she felt that she wasn't heard. She stated that is why they are here today to ask the SADC to allow staff to explore what is happening with this issue. She felt that this is a serious issue if his expansion of this easement is allowed to stand. She feels it would have serious repercussions state-wide if that initial use is allowed to stand as is. Mr. Kinsel felt that if the SADC was to take action to disallow the expanded commercial use, that the owner would capitulate on the other lawsuit and it would preempt problems for the SADC down the road, because a Judge could make a prescriptive easement ruling on their lane that would have an impact and set a precedent for prescriptive easements on preserved farms.

Ms. Craft stated that the concern she has is that the right to farm process is intended to protect farmers from either municipal and county regulations or from nuisance complaints from neighbors. Every time we talk about that at the staff level it became a title debate about who has access and does the town have the right to grant them the right to use that driveway for a nonresidential use. Does that violate the terms of this access easement. It keeps coming back in her mind to a more legal property rights type of question that needs to get resolved. She is not sure that applying right to farm is going to clarify this, it may muddy the issue. Ms. Dudas stated that she only meant to address the right to farm for the deer fencing issue. She stated that they are asking for the SADC's support in their claim that the judge did not go through the proper right to farm process. Their deer fence issue should not have even gone to the municipal court. She feels that this is a conflict issue through the conflict resolution part of the right to farm act so when the zoning officer issued them a violation notice, right then it should have been filed as a complaint with the CADB under the conflict resolution process that is afforded to commercial farmers.

Ms. Craft stated that SADC staff will follow up with the county on both tracts to find out what is happening and will follow up with the court with respect to any timeframe that has been given to resolve the right to farm issue. She asked Ms. Dudas to supply all the appropriate copies of letters and pertinent information to staff to review.

Pat Butch, Chair of the Farmland Preservation Committee in Millstone Township. In December 2008 they put in their first application for a municipal Planning Incentive Grant property and they have gotten to the point now where she was before the Committee approximately four months ago and received an extension to make an offer to the landowner due to issues between the Green Acres Program and the farmland program that had to do with appraisal values and trail components on this property. They resolved the appraisal issues between the two agencies and they have made an offer to the landowner and they have a contract with only two days left on the extension that was provided. She stated that the CADB has passed a resolution for final approval and the municipality has introduced an ordinance accepting a final value for this property and it is on the agenda for the County Freeholders. She stated that there is still one issue remaining, which is the trail issue. There are four funding partners for this project, the municipality, the county, Green Acres and the SADC. She is asking that before the next SADC meeting, if they could have a meeting with all the funding partners to see if this issue can be resolved. It has been over two years getting to this point and we need to get to closing.

Chairman Fisher stated that we are dealing with the issue. Ms. Butch stated that she

cannot close on the project without Green Acres and the SADC coming to terms.

Mr. Boornazian stated that he didn't feel it is a Committee issue regarding requesting a meeting but he would be happy to meet anywhere, any time. Ms. Craft responded she would be happy to meet also.

Mr. Boornazian asked why Princeton Nurseries, which was originally on the open session portion of the agenda, is now just in closed session, along with substantive minutes for that item. Ms. Craft stated that she would like to have the opportunity to discuss the contract negotiations on that project, with the Committee in closed session and then as a result of that discussion will come into open session and make whatever determination the Committee wants to make.

Mr. Coeyman from Monmouth County Parks stated that he feels the same as Ms. Butch. He stated that they have been held up on the trails issue on the Princeton Nurseries property, which is a very large tract in three counties for about two and one half years themselves. He stated that his director has been working with Ms. Craft and Mr. Boornazian trying to resolve the trails issues. He stated that the county's position is proposing three fee simple trail corridors, the northern one, the Wemple Trail, a central one called the South Side Trail and a southern one called the Countryside Trail. They have been in the field with SADC and Green Acres staff laying out these corridors. They vary in widths depending on where they are located. In areas where they will be between preserved farms, they are recommending no less than 100 feet so they can be buffered. The issue is placing restrictions from the SADC on Green Acres or County park lands, which is unacceptable to them. He stated that they were exploring the idea of an agreement between the county and the adjoining farmers but are backing away from that at this point. His director has done an email in the last day or so on that issue. What he would like to see is a memorandum of understanding between the three agencies (Monmouth County Park System, Green Acres and the SADC) laying out a framework/agreement to agree on trails. They are hoping that the entire project will get moving so we can get under contract. The county has had unofficial discussions on the possibility of the county stepping in and acquiring the entire project in Monmouth County. The SADC is the only entity that can acquire the farmland portion, which is not desired but if they have to do that they will.

Mr. Coeyman stated that they are opposed to required buffers. They have many miles of trails on other projects, trails within their parks, trails up against farms and trail corridors that run for miles throughout the county. Over time they are going to try to buffer those or allow natural vegetation or plant succession to naturally buffer those trails. He stated that the 100 foot corridor between preserved farms is a good idea and placing the trail in the middle. They have nothing against the preserved farms buffering their lands, fencing it off, allowing conservation buffers, etc. He stated that in all probability, in time, they

will buffer their trails that are created but they are not going to have someone from the outside tell them it must occur by a certain date. He stated that they are well know for their system and they are considered excellent.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Thursday, January 27, 2011, beginning at 9:00 a.m. Location: **Health/Agriculture Building, First Floor Auditorium.**

Note: Mr. Requa left the meeting at this point.

CLOSED SESSION # 2 (Princeton Nurseries Contract Negotiations Discussion)

At 2:28 p.m. Ms. Brodhecker moved the following resolution to go into Closed Session. The motion was seconded by Mr. Siegel 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 # 2 – Princeton Nurseries

(See Closed Session # 2. Mr. Boornazian left the meeting at 3:10 p.m. during the discussion of Princeton Nurseries.) Fawn McGee stepped in to represent the NJ DEP at 3:10 p.m.

A. Real Estate Matters

1. State Acquisition - Final Approval

- a. Princeton Nurseries – Upper Freehold Twp., Monmouth Co.
Hamilton Twp., Mercer Co. & North Hanover Twp., Burlington Co.

SADC staff referred the Committee to Resolution FY2011R12(21) for a request for final approval for the purchase of development easements on nine properties totaling approximately 869.7 acres, known as the Wemple Farm, Scheese/Gravett Farm, Hutchinson Farm, Schlaepi Farm, Mifflin Farm, Josephson Farm, Anderson Farm, Thread Farm and Hannon Farm, collectively known as Princeton Nurseries, located in Upper Freehold Township, Monmouth County, Hamilton Township, Mercer County and North Hanover Township, Burlington County.

SADC staff sought the advice of its attorney and the Committee during closed session. As a result of that discussion, staff recommendation is to grant final approval for the purchase of development easements on the following properties, subject to the following amendments to said resolution:

It was moved by Mr. Siegel and seconded by Mr. Danser to approve Resolution FY2011R12(21) granting final approval the Princeton Nurseries properties listed below, conditioned upon the following revisions to the resolution, as discussed in closed session and subject to any other conditions of said resolution:

The removal of the deed notices language in the 9th “Whereas” on page three (3) of said resolution and that this resolution is contingent upon development of a management agreement between the SADC, Green Acres and Monmouth County. Ms. Craft stated that whereas could then read: “Whereas said coordination will result in the execution of a Memorandum of Understanding between Monmouth County, Green Acres and the SADC, setting forth the mutual understanding of how the open space areas will be designed, used and managed.” The wording that will be deleted is: ...“recording of a certain deed notice on both farmland and open space lands to be preserved.”

Ms. McGee requested that the fifth and seventh “Whereas” on page three of said resolution should reflect adding the words “fee simple” as highlighted below:

Whereas # 5 – “Whereas, funding committed by the County of Monmouth, County of Burlington and Upper Freehold Township for farmland preservation purposes total approximately \$5,958,223, however, due to reductions in farmland acreage and increases in “fee simple” Open Space “lands” since the time of their prior authorizations.....”

Whereas # 7 – “Whereas, each Farm Parcel contains proposed “fee simple open space lands” for the purpose of creating public.....

Mr. Siegel and Mr. Danser as the mover and seconder of the motion accept the additional requests noted above by Ms. McGee as part of the motion.

Princeton Nurseries

Block 43, part of Lots 15 &17 (**Wemple Farm**)
Upper Freehold Twp., Monmouth County
Approximate Net Easement Size: **110.2 acres**

Block 43, part of Lot 14.03 (Hannon Farm)
Upper Freehold Twp., Monmouth County
Approximate Net Easement Size: **26 acres**

Block 49, part of Lot 4.05 (**Scheese/Gravett Farm**)
Block 49, part of Lot 10.01
Upper Freehold Twp., Monmouth County
Approximate Net Easement Size: **140.3 acres**

Block 50, part of Lot 20.01 (**Hutchinson Farm**)
Upper Freehold Twp., Monmouth County
Approximate Net Easement Size: **75 acres**

Block 50, part of Lot 11.04 (**Schlaepi Farm**)
Block 50, part of Lot 13
Upper Freehold Twp., Monmouth County
Approximate Net Easement Size: **104 acres**

Block 50, part of Lot 11.04 (**Mifflin Farm**)
Upper Freehold Twp., Monmouth County
Approximate Net Easement Size: **86.7 acres**

Block 50, part of Lot 9 (**Josephson Farm**)
Upper Freehold Twp., Monmouth County
Approximate Net Easement Size: **83.4 acres**

Block 47.06, part of Lot 28 (**Anderson Farm**)
Upper Freehold Twp., Monmouth County
Block 2743, part of Lot 22
Block 2745, part of Lot 3.02
Block 2745, Lot 4
Hamilton Township Mercer County
Approximate Net Easement Size: **128.6 acres**

Block 100, part of Lot 1.01 (**Thread Farm**)
North Hanover Twp., Burlington County
Approximate Net Easement Size: **115.5 acres**

Total Acreage (approx.): **869.7 acres**

SADC Cost Share (approx.)	\$ 6,687,437.00 (58%)
SADC Cost Share Partners (approx.):	\$ 4,875,391.00 (42%)
Total Purchase Price	\$11,563,828.00

Final approval is subject to receiving cost share funding from Monmouth County, Burlington County and Upper Freehold Township, Monmouth County.

The motion was approved. (Mr. Waltman and Dr. Dey recused themselves from the vote, Mr. Requa was absent for the vote.) (A copy of Resolution FY2011R12(21) is attached to and is a part of these minutes.)

Ms. Craft stated that this resolution provides for final approval for the transaction and will allow staff to move forward in executing the contract with the landowner. With respect to the open space issues, she explained to the public present that the Committee amended the draft resolution to eliminate any reference to incorporating any maintenance or management restrictions in the deeds, however, it is contingent on a memorandum of understanding (MOU) being executed between the SADC, Monmouth County and Green Acres with respect to how the open space will be managed.

Richard Goldman, attorney for the sellers addressed the Committee. He stated that what Ms. Craft just related is a very good step but the only concern he has on behalf of the owners and sellers is any time you represent a seller and there is an open contingency that may or may not get resolved over the course of many months, they don't want to end up having a bunch of agreements that tie up the land for the next year while surveys and the like are being done and then a year from now we get a call saying the SADC and Green Acres and Monmouth County couldn't agree on a MOU so there is no deal. They are very concerned about that. He stated that when they work on their agreements they may want to have a deadline on when the agencies are going to let everyone know that they have reached an agreement or they haven't. They are very optimistic that our state and county agencies can work together to come up with a solution. He stated that certainty is very important for the landowners because they are tying up their land. He stated that to the owners it is a nonissue in terms of how the two parcels will relate to each other, the Green Acres and the farm parcels. He stated that whatever the agencies come up with is fine with the owners as they have no particular position pro or con on either view. They do not think that the trails present a problem with the farmers.

Chairman Fisher stated that Mr. Goldman should take comfort in the fact that the matter will be resolved in a timely manner.

Mr. Danser stated that the owners do not have to worry as everyone here is committed to get this worked out in way less time than it will take to do the surveys.

CLOSED SESSION # 3 (Real Estate Matters – Certification of Values)

At 3:56 p.m. Mr. Danser moved the following resolution to go into Closed Session. The motion was seconded by Dr. Dey 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 half 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 # 3 – November SADC Meeting Closed Session Minutes, Real Estate Matters, – Certification of Values, Attorney/Client Matters, Substantive Minutes-Princeton Nurseries

A. Closed Session Minutes of November 4, 2010

Mr. Danser asked for a motion to approve the closed session minutes with the proviso that SADC staff verifies that the minutes read correctly regarding the Schnetzer farm parcel designations, as discussed in closed session.

It was moved by Ms. Brodhecker and seconded by Mr. Schilling to approve the closed session minutes of November 4, 2010 subject to SADC staff verifying the correct parcel designations, as discussed in closed session. The motion was approved. (Mr. Waltman Abstained, Mr. Requa, Mr. Siegel and Chairman Fisher were absent for the vote.)

A. Certification of Values

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

Municipal Planning Incentive Grant Program

1. Fiorendo, Rose, Renaldo & Marie Sigismondi (Millhurst Road)
Block 64, Lot 11, Manalapan Township, Monmouth County, 30 Acres
2. Fiorendo, Rose, Renaldo & Marie Sigismondi (Dey Grove Road)
Block 59, Lot 4, Manalapan Township, Monmouth County, 94 Acres

County Planning Incentive Grant Program

1. Frank P. Baitinger, III
Block 22, Lots 1 and 2, Hopewell Township, Cumberland County, 71

Acres

2. Cumberland/Riggins Farm
Block 13, Lot 27, Stow Creek Township, Cumberland County, 76 Acres
3. Samuel and Richard Ayling
Block 82.21, Lot 28, Washington Township, Gloucester County, 38 Acres
4. Matthew Chiuccarello
Block 44, Lot 7, Woolwich Township, Gloucester County, 53 Acres
5. Michael and Jane DiBella
Block 44, Lots 8 and 8.02, Woolwich Township, Gloucester County, 92 Acres
6. Heatherwood Farm III, LLC
Block 55, Lot 1, Woolwich Township, Gloucester County, 77 Acres
7. W.W. Heritage Sons, Inc.
Block 20, Lot 1, Harrison Township, Gloucester County, 37 Acres
8. Rosemary D. Wright revocable Trust & Joseph M. DiBella
Block 43, Lots 13 and 14, Woolwich Township, Gloucester County, 131 Acres
9. Harry and Cheryl Copeland
Block 39, Lot 3, Delaware Township, Hunterdon County, 70 Acres
10. Hill and Dale Farms, Inc. (Rothpletz # 2)
Block 38, Lot 1.05, Tewksbury Township, Hunterdon County, 43 Acres
11. Kenneth and Kathleen McDermott
Block 63, Lots 12, 13, 14, 21, 22, 25.01, Washington Township, Morris County, 212 Acres

The motion was approved. (Mr. Requa, Mr. Siegel and Chairman Fisher were absent for the vote.) (A copy of the Certification of Value Reports are attached to and are a part of the closed session minutes.)

B. Substantive Minutes of December 9, 2010 (portions of Open and Closed Session)

1. Princeton Nurseries – Upper Freehold Twp., Monmouth County,

Hamilton Twp., Mercer Co. and North Hanover Twp., Burlington
Co.

Ms. Craft stated that the Committee is substantively approving these draft minutes that reflect action that it took so that they can be submitted to the Governor for approval to allow the SADC to execute the contracts before the next meeting of the SADC.

Ms. McGee asked if they could see those finalized substantive minutes ahead of time. Ms. Craft stated that there is a draft under tab 18 in the meeting binders but these will have to be amended in detail, which will be provided to you. Mr. Danser stated that the amended substantive minutes will reflect the three amendments to the resolution.

It was moved by Ms. Brodhecker and seconded by Ms. Reade to grant approval to substantive minutes of December 9, 2010 (portion of Open Session) dealing with the following properties known as the Wemple Farm, Scheese/Gravett Farm, Hutchinson Farm, Schlaepi Farm, Mifflin Farm, Josephson Farm, Anderson Farm, Thread Farm and Hannon Farm, collectively known as Princeton Nurseries, as presented and discussed in open session, subject to any conditions of said Resolution, and to provide the substantive minutes to the Governor's Authorities Unit for its review and approval.

Dr. Dey and Mr. Waltman recused themselves from the vote. It is noted that Chairman Fisher, Mr. Requa and Mr. Siegel had left the meeting and there is one Committee member absent. With Dr. Dey and Mr. Waltman recusing that leaves five Committee members voting. Ms. Craft stated that with five members voting there would not be a quorum. Mr. Danser stated that the minutes are in the open session and therefore Dr. Dey and Mr. Waltman were present for the session. Deputy Attorney General Jason Stypinski stated that you are just voting to approve the minutes. Mr. Danser stated you are voting to approve the actions that the Committee took. Mr. Stypinski agreed that the Committee is voting on the written minutes for approval.

Ms. Craft stated that you are only voting on minutes of actions that were handled in open session regarding the draft resolution with amendments. That is all you are attesting to. Ms. Craft asked Mr. Stypinski if they could proceed. Mr. Stypinski stated that the two members do not have to recuse themselves on the approval of the substantive minutes and therefore we have quorum to proceed.

The motion was approved. (Chairman Fisher, Mr. Siegel and Mr. Requa were absent for this vote.)

C. ATTORNEY/CLIENT MATTERS

1. Schnetzer v. Warren County, Warren County Agriculture Development Board and the SADC: Stipulation of Settlement

It was moved by Dr. Dey and seconded by Ms. Reade to accept the Stipulation of Settlement as presented and discussion in closed session. The motion was approved. (Chairman Fisher, Mr. Siegel and Mr. Requa were absent for this vote.) A copy of the Stipulation of Settlement is attached to and is a part of the closed session minutes.)

ADJOURNMENT

There being no further business, it was moved by Ms. Brodhecker and seconded by Dr. Dey and unanimously approved to adjourn the meeting at 4:35 p.m.

Respectfully Submitted,

Susan E. Craft, Executive Director
State Agriculture Development Committee

Attachments

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