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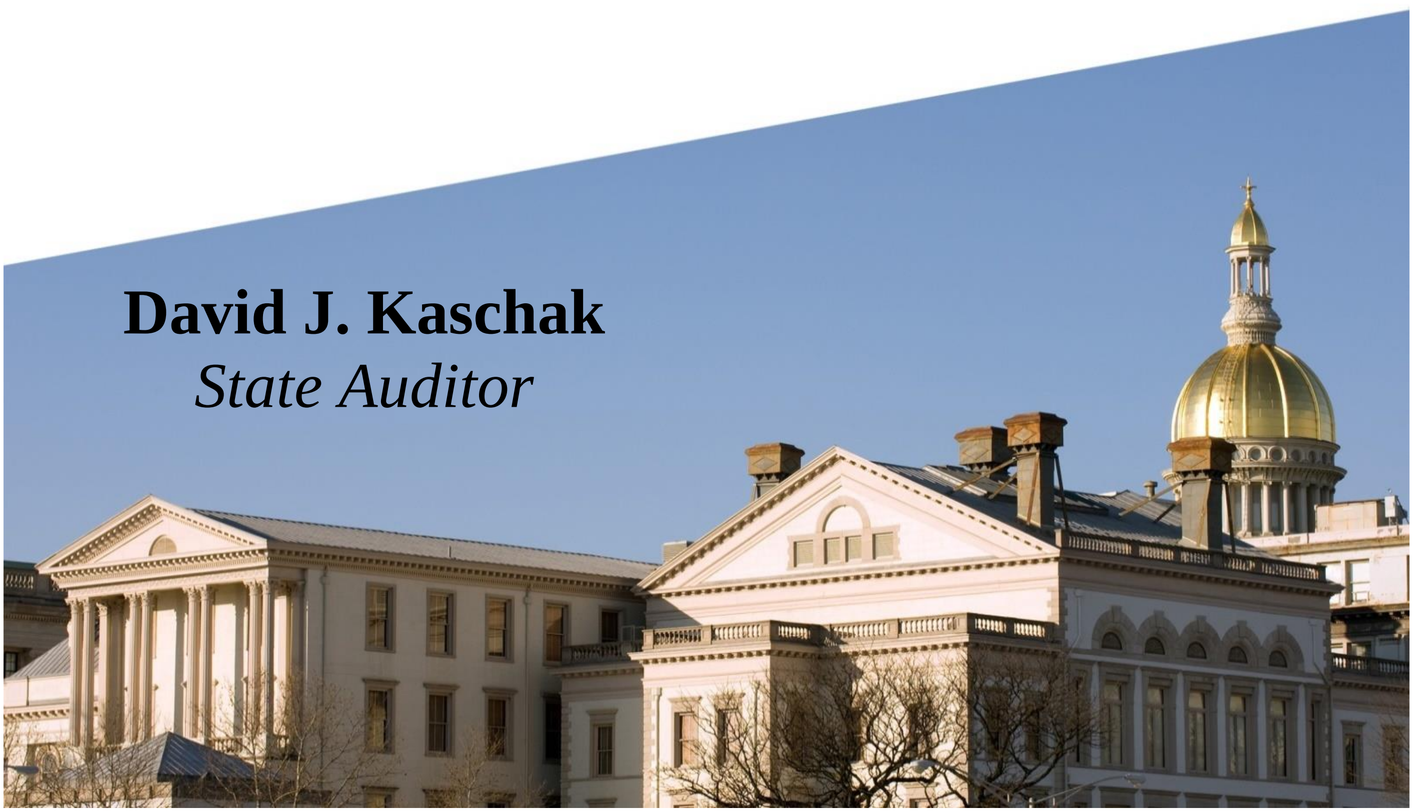
Department of Agriculture
State Agriculture Development Committee

July 1, 2020 to June 30, 2022



David J. Kaschak

State Auditor

NEW JERSEY STATE LEGISLATURE
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The Honorable Nicholas P. Scutari
President of the Senate

The Honorable Craig J. Coughlin
Speaker of the General Assembly

Ms. Maureen McMahon
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the Department of Agriculture, State Agriculture Development Committee for the period of July 1, 2020 to June 30, 2022. If you would like a personal briefing, please call me at (609) 847-3470.

David J. Kaschak

David J. Kaschak
State Auditor
August 1, 2023

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Scope

We have completed an audit of the Department of Agriculture, State Agriculture Development Committee (SADC) for the period July 1, 2020 to June 30, 2022. Our audit included SADC farmland preservation financial activities, which are accounted for in the state's General Fund, the Farmland Preservation Funds, the Garden State Farmland Preservation Trust Fund, and the 1989 Development Potential Bank Transfer Fund. Annually, six percent of the New Jersey Corporate Business Tax is dedicated for environmental purposes. Seventy-eight percent is dedicated for Garden State Preservation Trust Conservation and Preservation Programs, of which 31 percent is distributed to fund farmland preservation.

The SADC's annual expenditures averaged $25.3 million for fiscal years 2021 and 2022, including $4.9 million of administrative costs. Fiscal year 2021 and 2022 appropriations to the SADC were $57.2 million and $83.9 million, respectively. The available and authorized budget amount (including appropriation, re-appropriation, and transfers) totaled $270.9 million as of June 30, 2022. As of June 30, 2022, the total expended and encumbered balance was $48 million and the total uncommitted amount was $222.9 million, or 17.7 and 82.3 percent of the total available and authorized budget, respectively.

The mission of the SADC is to lead in the preservation of New Jersey's farmland and promote innovative approaches to maintaining the viability of agriculture within the state. To that end, the SADC administers the Farmland Preservation Program, which provides grants to counties, municipalities, and nonprofit groups to fund the purchase of development easements on farmland. It also directly purchases farms and development easements from landowners and offers grants to landowners in the program to fund up to 50 percent of the cost of soil and water conservation projects, as well as the installation of deer fencing.

Objectives

An objective of our audit was to assess the SADC's efforts to achieve its stated farmland preservation goals in a reasonable amount of time. A further objective was to determine if the SADC was in compliance with the requirement to effectively monitor development easements.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, the administrative code, and policies of the SADC. Provisions we considered significant were documented, and compliance with those requirements was verified by interview, observation, and our testing of development easements and inspections. We also read the U.S. Department of Agriculture's Census of Agriculture, as well as reports from Rutgers University's New Jersey Agriculture Experiment Station and the American Farmland Trust. We also reviewed financial trends and interviewed SADC personnel to obtain an understanding of the programs and the internal controls. To achieve our objectives, we performed various tests and analyses, as we determined necessary. Additional detail regarding our methodology and work performed can be found in the Appendix, as well as in the finding section when testing resulted in a reportable condition.

A nonstatistical sampling approach was used. Our samples were designed to provide conclusions on our audit objectives, as well as internal controls and compliance. Sample populations were sorted and judgmentally selected for testing. Because we used a nonstatistical sampling approach for our tests, we could not project the results to the respective populations.

Data Reliability

We assessed the reliability of the SADC's FARMS system by tracing easement records in the system to source documentation. We determined the data to be sufficiently reliable for the purposes of this report.

Certain other data in our report were used to provide background information. Data we used for this purpose was obtained from the best available sources. *Government Auditing Standards* do not require us to complete a data reliability assessment for data used for this purpose.

Conclusions

We observed that it is debatable whether the SADC's stated farmland preservation goals would be achieved in a reasonable amount of time. In making that determination, we noted the farmland preservation program could be more effective and efficient toward achieving the farmland preservation goal with changes to the SADC's Planning Incentive Grant program and the farmland preservation cost-sharing formula. We also found the SADC was in compliance with the requirement to effectively monitor development easements.

Background

The Agriculture Retention and Development Act was enacted in 1981 as part of New Jersey's efforts to counteract the loss of farmland throughout the state. The act declared the following:

- The strengthening of the agricultural industry and the preservation of farmland are important to the present and future economy of the state and the welfare of its citizens.

- It is necessary to authorize the establishment of state and county organizations to coordinate the development of farmland preservation programs within identified areas where agriculture will be presumed the priority use of the land and where certain financial, administrative, and regulatory benefits will be made available to those landowners who choose to participate.

The SADC was established pursuant to section 4 of The Right to Farm Act (N.J.S.A 4:1C-4), which was signed into legislation in January 1983 and makes appropriations available to the SADC. Using the appropriations, the SADC makes grants available to local units and landowners to purchase development easements and funding of soil and water projects on agricultural land. The SADC administers the Farmland Preservation Program and partners with County Agriculture Development Boards, municipal governments, nonprofit organizations, and landowners to establish a voluntary farmland preservation program.

Farmland can be preserved the following ways:

- The purchase of development easements through either SADC's direct purchase or cost-sharing grants to counties, municipalities, and nonprofit partners. Landowners continue to own their land; however, they sell the right to develop it for anything other than agricultural use.

- The SADC purchases farmland outright at fair market value. The purchased farmland is then auctioned to a private owner with agricultural deed restrictions in place to ensure its permanent preservation.

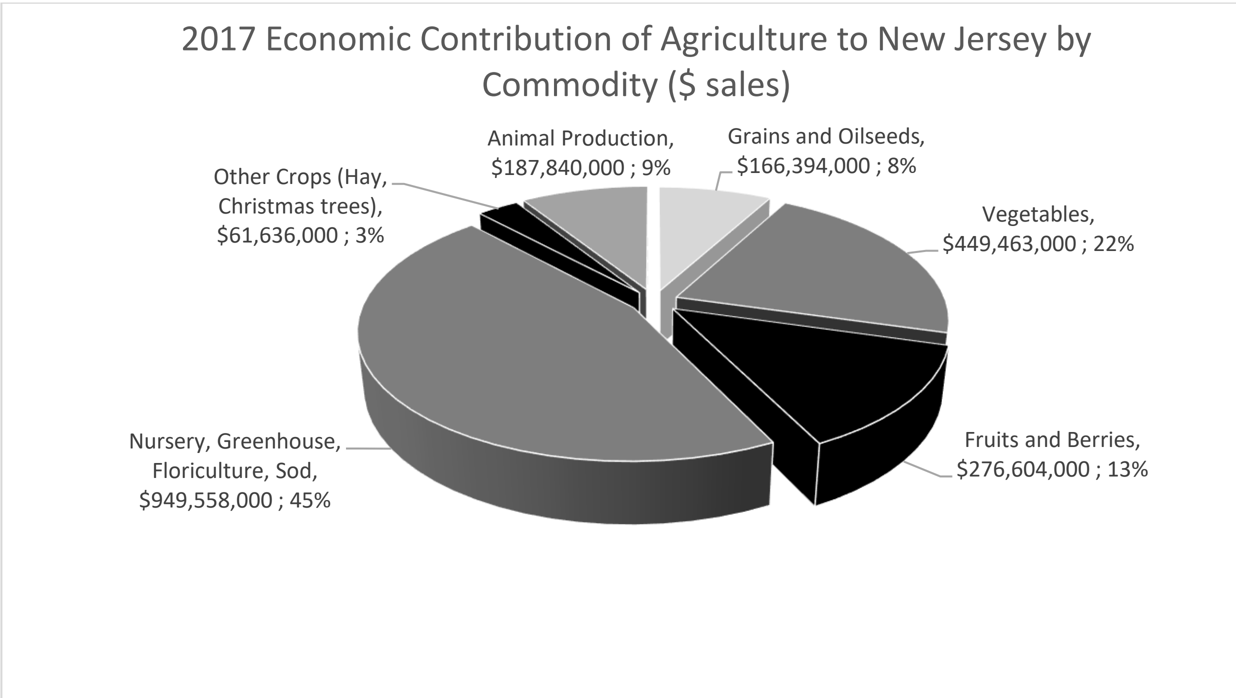
- Farmers and landowners donate development rights for possible income or estate tax benefits.

- Landowners voluntarily restrict development on their land for a period of eight or sixteen years in exchange for becoming eligible to apply for cost-sharing grants for soil and water conservation projects and other benefits and protections.

The SADC consists of 11 board members and 30 support staff. Six board members are citizens appointed by the governor with the advice and consent of the Senate, four of whom must be actively engaged in farming, and the remaining five are ex-officio members. The SADC is chaired by the Secretary of Agriculture and is under the management of the SADC's Executive Director.

New Jersey's goal is to preserve 550,000 acres of farmland, including 500,000 acres recommended by the Governor's Council on New Jersey Outdoors report issued in February 1998. The report concluded 500,000 acres of farmland was needed to maintain a critical mass for agricultural production and to ensure the future of agriculture activities in the state.

A New Jersey Agricultural Experiment Station of Rutgers University report dated May 2020 concluded agriculture contributed $2.1 billion to the state's economy in 2017, of which $1.1 billion was from direct sales. In addition, the agricultural industry supported approximately 31,000 jobs. The contribution of agriculture to the state's economy is grouped into six main categories as shown in the following chart:



Source: The above chart is from a report prepared by the Rutgers University, New Jersey Agricultural Experiment Station, Economic Contribution of Agriculture to the New Jersey Economy issued May 2020 using data from the United States Department of Agriculture's 2017 Agriculture Census.

According to the American Farmland Trust in January 2021, New Jersey ranked fourth in terms of most preserved farmland acres. As of June 30, 2022, New Jersey had preserved 247,517 acres of farmland and had provided $1.2 billion in cost sharing funds, or 64.7 percent of the land's total cost, since the program began in January 1983.

According to the SADC, 18 of 21 counties have designated 1.1 million acres of farmland in New Jersey's Agriculture Development Area, of which 389,000 acres are unpreserved farmland of agricultural land use.

Observations

Farmland Preservation Goal

Based on historical trends, it is debatable whether the SADC will achieve the goal of preserving 550,000 acres of farmland.

As of June 30, 2022, New Jersey had preserved 2,800 farms totaling 247,517 acres at a cost of $1.8 billion, of which $1.2 billion was from state cost-share and $649 million from counties, municipalities, and federal cost share.

The Planning Incentive Grant (PIG) program enables the SADC to provide grants to eligible counties and municipalities for the purchase of development easements to permanently preserve farmland in designated areas. As part of the application process for PIG program funds, counties and municipalities submit a ten-year plan to the SADC that includes targeted farm acreage, preservation goals, and project costs. In fiscal year 2013, counties and municipalities combined to identify 323,000 acres of targeted farm acreage to be preserved and established a ten-year goal to preserve 208,976 acres, or an average of 20,898 acres per year. Our analysis of preservation data revealed that this goal was not achieved.

During the ten-year period of fiscal year 2013 through 2022, the counties and municipalities preserved a total of 31,053 acres (14.9 percent), or 3,105 acres per year. Of the 62 counties and municipalities that had established an individual preservation goal, just one was able to achieve its goal. While preservation efforts may have been impacted by the COVID-19 pandemic, through the first seven years of the 2013 ten-year plan (prior to the onset of the pandemic), only 25,095 acres were preserved, or an average of 3,585 per year. Furthermore, when we include the efforts of all other preservation partners, there were 39,006 acres preserved during the same seven-year period, or an average of 5,572 per year. Based on this prior performance, it would take an additional 54 years to achieve the goal of preserving 550,000 acres.

Planning Incentive Grant Funding

Unexpended funding balances were not reallocated to the most active preservation program or partners.

N.J.S.A. 4:1C-43.1 authorized the SADC's PIG program to provide grants to eligible counties and municipalities for farmland preservation purposes. To be eligible for a grant, a county or municipality shall establish and maintain a dedicated source of funding for farmland preservation or an alternative means of funding, including, but not limited to, repeated annual appropriations or repeated issuance of bonded indebtedness, which the SADC deems to be, in effect, a dedicated source of funding because of a demonstrated commitment on the part of the county or municipality.

The New Jersey Administrative Code (N.J.A.C. 2:76-17.8 and N.J.A.C 2:76-17A.8) requires the SADC to establish for each funding cycle a base grant allocation to counties and municipalities (preservation partners) in addition to the competitive grant, which is first come first served. If at any time during the funding cycle a county board or municipality seeks final approval for an eligible farm for which there are insufficient funds remaining in the base grant, the request for final approval will be applied to the funding available in the competitive grant fund. The code allows the SADC to adjust any preservation partner's base grant eligibility or withhold it entirely based on various factors, including past performance. The preservation partners shall expend funds within three years of the date the funds are allocated or risk the loss of those funds through reallocation. The SADC has previously reprogrammed funds when partners have been unable to expend their base grant funding. However, there is funding that could be reprogrammed but has not been.

We sampled PIG funding from all 18 counties and 45 municipalities that participated in the PIG program during fiscal years 2009 through 2017 to determine whether funds were expended during the three-year funding cycles and to determine whether allocated funds were reprogrammed to other preservation programs or partners if not spent. Through our testing and analysis, we identified $49.4 million that could have been reprogrammed. This includes $10.7 million from county grants, $28.7 million from municipality grants, and $10 million from competitive grants.

Our testing and analysis disclosed the following:

- Six of 18 counties had not been able to expend all of the base grant funds that were made available to them. As of June 30, 2022, the six counties had an available base grant balance of $10.7 million, or 52 percent of the $20.5 million awarded to them. Three of those six counties had not purchased any easements to preserve farmland from fiscal year 2016 through fiscal year 2022. Two of the six counties had not been able to expend more than $500,000 of base grant funding since fiscal year 2016.

- Thirty-six of 45 municipalities had not been able to expend all of the $50 million base grant funding received during fiscal year 2009 through fiscal year 2017. As of June 30, 2022, the 36 municipalities had a total balance of $18.1 million, or 36 percent of the total awarded to them. Some of those municipalities continued to receive base grants after fiscal year 2017, bringing the total balance to $28.7 million. Fourteen of the 36 municipalities had not purchased any easements for the preservation of farmland from fiscal year 2016 through fiscal year 2022, including ten that did not submit their annual plans for fiscal year 2022 to be eligible for the fiscal year 2022 funding cycle.

- Additionally, municipal partners had access to a pool of $10 million in competitive grant funding; however, because all municipal partners had only expended approximately 55 percent ($49.8 million of $90.2 million) of the funding from base grants allocated to them from fiscal year 2009 to June 30, 2022, it is unknown when municipalities will be able to expend the competitive grant funding.

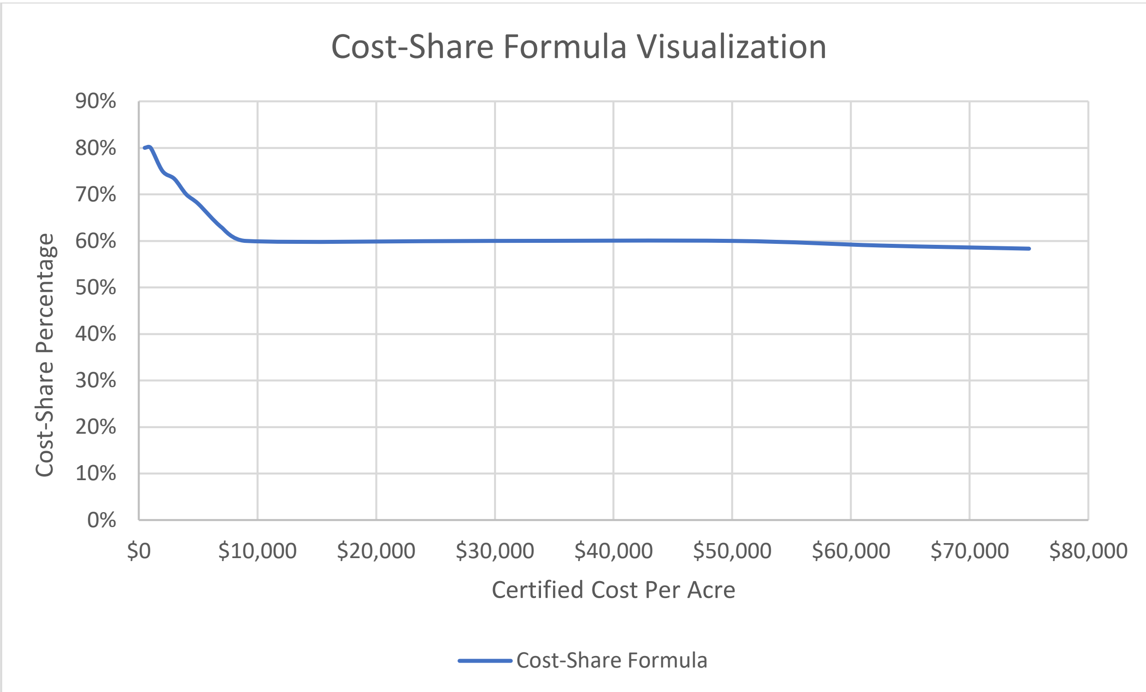
It is possible changes in program regulations or market forces could provide opportunities for some of the less active partners to increase their activity in purchasing easements. We spoke to representatives of several county partners and found that some counties would like to preserve more farmland through the PIG program. However, they are unable to find enough farmland that meets the current minimum eligibility requirements of the program. Additional flexibility in how funds are reprogrammed could potentially mitigate this issue.

Grant Cost-Share Formula

The Planning Incentive Grant program cost-share formula may be outdated.

N.J.S.A. 4:1C-31 authorizes the SADC to provide no more than 80 percent of the total cost of the easement for the permanent preservation of farmland. N.J.A.C. 2:76-6.11 establishes a cost-share formula that determines the amount the SADC will provide from allocated funds based on the per acre cost of the easement. The remainder of the per acre cost will be provided by another source, generally the preservation partner. The current cost-share formula is comprised of 11 tier-based formulas, each based on the per acre cost of the easement. As the per acre cost of an easement increases, the percentage of the cost the SADC contributes to the preservation of an easement decreases for most tiers of the cost-share formula.

The graph on the next page provides a visual representation of the cost share formula used by the SADC.



Certified Cost Per Acre	Cost-Share Percentage
$1,000	80%
$3,000	73%
$5,000	68%
$9,000	60%
$29,500	60%
$50,000	60%
$75,000	58%

We observed that N.J.A.C. 2:76-6.11 has not been updated since 2007 despite the current version of the PIG program beginning in 2009. This led us to question whether the formula should be updated based on the current version of the PIG program. The first tier of the formula concerns easements with a cost between $0 to $1,000 per acre. We observed no easements under the current PIG program had a per acre cost below $1,000. We view this as an additional reason for updating the formula.

Additionally, we spoke with several preservation partners, and one told us an increase in the percentage contributed by the SADC would likely enable them to preserve more farmland. Updating the cost-share formula to increase the percentage contributed by the SADC could allow preservation partners to preserve more farmland and increase the likelihood of the state achieving its goal of preserving 550,000 acres.

Appendix

Methodologies to Achieve Audit Objectives

To determine if inspections were being performed, we traced a sample of 10 of 2,185 inspections in fiscal year 2021 to inspection forms. We also tested a judgmental sample of 25 of 59 uninspected easements from fiscal year 2021 to determine whether they were inspected the following year. We further identified and tested 25 (100 percent) easements in noncompliant status from the fiscal year 2021 inspection to determine whether adequate action was taken to resolve noncompliant issues.

State of New Jersey

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SUSAN E. PAYNE
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To: **Office of the State Auditor**
From: **Susan E. Payne, Executive Director, SADC**

DocuSigned by:
Susan E. Payne
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CC: **Joseph Atchison III, Assistant Secretary, Dept. of Agriculture**
Date: **July 26, 2023**
Re: **SADC Audit Response**

Please accept the following responses to observations in the July 11, 2023, confidential audit report on State Agriculture Development Committee (SADC) operations between July 1, 2020 – June 30, 2022.

Observation 1: Based on historical trends, it is debatable whether the SADC will achieve the goal of preserving 550,000 acres of farmland.

Answer: The SADC is pursuing multiple strategies to achieve its goal of preserving ~550,000 acres and believes this goal is achievable.

The SADC's overall strategy for farmland preservation is largely the result of the combined comprehensive Farmland Preservation Program (FPP) plans adopted by 18 counties and 44 municipalities across the state and approved by the SADC. The county agriculture development boards (CADBs) are responsible for delineating an Agriculture Development Area (ADA) defined as an area in which *"agriculture shall be the preferred, but not necessarily the exclusive, use of land in that area"* (N.J.S.A. 4:1C-18), which the SADC then certifies (N.J.S.A. 4:1C-7b.) The counties and municipalities recently submitted updated 10-year plans including the targeting of individual farms for preservation (see N.J.A.C. 2:76-17 and 17A). These comprehensive plans include, but are not limited to, the geographic location of targeted farms, a description of the locality's agricultural resource base and industry trends, the zoning and land use context of targeted farms, strategies to promote the long-term viability of agriculture within the ADA, and an identification of financial resources available to contribute

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toward FPP costs. These most recently submitted plans show our partners targeting approximately 221,000 acres over the next 10 years alone. So, not only is there sufficient farmland remaining to preserve, but also the corresponding interest in achieving this scale of preservation among the SADC's county, local and nonprofit partners.

SADC recently partnered with Rutgers to conduct an analysis of program appraisals between 2000-2022 which showed that the average per acre FPP easement value, as a percent of the "before" or total land value, declined by approximately 20%. Accordingly, easement values that represented 70% of total land value in 2000 now represent only 50%. FPP easement values have not kept pace with inflation, discouraging landowners from enrolling in the program. A4729/S3279 currently under review by the legislature would allow the SADC to create a formula-based valuation process to determine easement values, as an alternative to the current traditional appraisal process, which we believe would enable the program to become vastly more competitive, thereby increasing landowner interest. Increased participation by landowners will increase the pace of acquisition and corresponding expenditure of FPP funds.

The SADC is pursuing use of its Direct Easement and Fee Simple Acquisition programs (where the SADC acquires easements or land directly from landowners) to redirect big box/warehouse and other nonagricultural development away from high-quality, strategically located farmland. Both North and South Jersey are expected to have continued robust demand for additional big box development, extending from the urban centers adjacent to NYC and Philadelphia, and outward from these cities along New Jersey's interstate and intrastate highways. The Farmland Preservation Program can be used to help prevent the loss of strategically located, high quality farmland from conversion to such nonagricultural uses – in places where it makes sense, and where preservation helps further local government's land use goals. Use of the Direct Easement and Fee Simple programs for these types of projects will increase the pace of SADC acquisitions and corresponding expenditure of FPP funds.

Approximately one-half of New Jersey farmland is owned by someone other than the farmer conducting the agricultural operation on the land. These non-agricultural landowners often have different financial motivations associated with the decision to preserve their land from those of traditional farmer-landowners who typically seek to retire debt, expand the farming operation, or transition the land to the next generation of farm-family operators. For these nonagricultural landowners, receipt of a lump sum cash payment is often not in their financial best interest. In these cases, innovative tax strategies could create additional incentives for these landowners to consider preservation. Successful examples of effective tax strategies to encourage land preservation exist in other northeast states. One such example is use of installment purchase agreements (IPAs) which defer receipt of principal easement purchase payments to the future, thus deferring capital gains tax due, while providing landowners with tax-exempt interest for the duration of the IPA contract. Other examples include offering income tax credits as an alternative, or supplement, to easement payments, and providing property tax credits as an incentive to choose preservation. The SADC will be exploring these and other potential financial incentives to identify which approaches may be most effective for consideration in order to increase landowner participation in the Farmland Preservation Program.

SADC is assessing the viability of establishing a forest conservation arm of the Farmland Preservation Program to expand eligibility to farmland assessed properties that do not meet the program's existing eligibility criteria. This would expand participation to include landowners who have a sizeable land base, but because of the extent of woodlands present on the property, do not meet current tillable acreage requirements. Consideration will be given to establishing evaluation and ranking criteria, as well as deed terms, that speak to long term forest protection and sustainability.

Another potential improvement includes consideration to providing more support to our local preservation partners for their administrative responsibilities, particularly the CADBs. The FPP started 40 years ago and, since then, over 2,800 farms have been preserved totaling nearly 250,000 acres. Counties alone have preserved over 2,100 of those farms, or over 75% of the total, and many counties have the same, or fewer, number of staff dedicated to farmland preservation than they had in prior decades. Counties and nonprofit program staff have much greater administrative responsibilities associated with the program today, including conducting required monitoring of every preserved farm, processing post-closing requests from farm owners, and conducting general landowner outreach and customer service. County staff are rarely dedicated only to FPP activities and have many other professional obligations, including administering the Right to Farm program and performing other county functions (e.g., open space preservation and county planning review). Due to time and mission challenges put upon county staff, many are faced with the reality of being able to work on FPP in only a limited capacity, making it difficult for them to conduct preservation outreach and bring new landowners into the program. We are compiling ideas on how to address this issue and think consideration should be given to the SADC providing administrative grant funds to our local partners to improve resources at the county level.

Observation 2: Unexpended funding balances were not reallocated to the most active preservation program or partners.

Answer: This observation is accurate; however, the SADC offers the following response.

The viability of the farmland preservation program is dependent on each partner having the grant resources available to maintain program activity on a recurring basis. In prior years when state FPP funding was limited, the SADC aggressively reprogrammed funds from county, municipal and nonprofit grant allocations when it was clear that the partners' use of the funds was not imminent, and other program participants' demand for funding outstripped supply. Our strategy over more recent fiscal years has been to not reallocate funds from partners with limited activity, but rather to ensure no additional funds are allocated to them until pending balances are drawn down. This approach reinforces the program's positive message to partners to stay active and expend preexisting appropriations, rather than what is perceived as a more "punitive" approach of recalling funds.

Observation 3: The Planning Incentive Grant program cost-share formula may be outdated

Answer: The SADC agrees with this finding.

The SADC believes that increasing the cost share formula so the state is contributing a larger percentage of the total cost on a farmland acquisition would help partners who are particularly disadvantaged by the availability of limited county and local property tax revenues dedicated to farmland preservation. Some county and municipal partners with limited property assessments are spending a larger portion of their property tax revenues on farmland preservation compared to others who have much more robust ratable bases. Ideally, we would like to aid those partners whose limited funds are contributing to a slower pace in preservation than otherwise would be possible.

Conclusion

The state has a sufficient farmland base, partner interest and a robust state revenue stream to accomplish the preservation of over 500,000 acres of farmland. The biggest challenge for the program is making the sale of FPP easements an economically attractive choice for NJ farm owners. Implementation of the strategies described above should enable the program to dramatically increase the pace of preservation to a projected goal of at least 10,000 acres per year. At that rate, the state would achieve its FPP goals within 20-25 years.