

STATE AGRICULTURE DEVELOPMENT COMMITTEE

**Department of Agriculture
Market and Warren Streets
1st Floor Auditorium
Trenton, NJ 08625**

REGULAR MEETING

December 11, 2014

Chairman Fisher called the meeting to order at 9:10 a.m. Ms. Payne read the notice indicating the meeting was held in compliance with the Open Public Meetings Act.

Roll call indicated the following:

Members Present

Douglas H. Fisher, Chairman
Thomas Stanuikynas (rep. DCA Commissioner Constable)
Brian Schilling (rep. Executive Dean Goodman)
Ralph Siegel (rep. State Treasurer Sidamon-Eristoff)
Renee Jones (rep. DEP Commissioner Martin)
Alan Danser, Vice Chairman
Denis C. Germano, Esq.
Peter Johnson
James Waltman (Arrived at 9:12 a.m.)
Jane Brodhecker
Torrey Reade (Arrived at 9:25 a.m.)

Members Absent

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

Others present as recorded on the attendance sheet: Stefanie Miller, Brian Smith, Timothy Brill, Heidi Winzinger, Paul Burns, Dan Knox, Hope Gruzlovic, Jeffrey Everett, Cindy Roberts, Charles Roohr, David Clapp, Sandy Giambrone and Patricia Riccitello, SADC staff; Amy Herbold, Esq., Governor's Authorities Unit (via telephone conferencing); Dan Pace, Mercer County Agriculture

Development Board; Nicole Kavanaugh, New Jersey Farm Bureau; Donna Rue and Ann VanHise, Rue Brothers Farm, Monmouth County; Brian Wilson, Burlington County Agriculture Development Board; Harriet Honigfeld, Amanda Brockwell and Linda Brennan, Monmouth County Agriculture Development Board; Thomas Michalek, Dan Mackey and Adam Darling, farmers, Hunterdon County; Henry Riewerts and Diane Tribble, landowners, Warren County; and Amy Hansen and Alex Bacon, New Jersey Conservation Foundation.

Minutes

A. SADC Regular Meeting of November 13, 2014 (Open and Closed Sessions)

It was moved by Mr. Germano and seconded by Mr. Danser to approve the Open Session and Closed Session minutes of the SADC regular meeting of November 13, 2014. The motion was unanimously approved.

REPORT OF THE CHAIRPERSON

Chairman Fisher made the following comments:

- Corporate Business Tax (CBT) Monies

Hearings have begun in the Legislature regarding the allocation of CBT monies to open space, historic preservation, Blue Acres and farmland preservation programs. Senator Smith's Senate Environment and Energy Committee held the first hearing to solicit testimony on program allocation recommendations. There is much more to come. Everyone needs to focus on this issue because each of those particular areas has their own ideas on how those monies should be spent, knowing that the first round will be approximately \$70 million from his understanding.

- Soil Disturbance Draft Rules

The Committee will review draft soil disturbance rules today, looking at all the work of that subcommittee. This work has taken place over an extensive period of time, but by no means is it complete. He is not expecting nor would he be asking to have the draft approved at this meeting because members will take it with them, everyone will spend some time on it and then perhaps at the next meeting we will start the process of the public comment period. This is an issue that is

very much in the forefront of this Committee and others around the state, the farming community and the general public at large. It took a long time to get to this point of having it introduced but this is the introduction to it.

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Payne made the following comments:

- **Special Occasion Events**

One of the items that staff has been working on and has moved forward with is the special occasion events law for preserved farm wineries. The Committee had discussed this previously. Staff has had two regional outreach meetings with the CADBs, one in the North and one in the South. The outreach meetings were extremely well attended. Staff has received a lot of feedback that the meetings were very helpful. The next step is that staff will be reaching out to each CADB to see how they want to handle making contact with the towns and the property owners and farmers affected by the law. If the CADBs want staff to meet one-on-one or together in regional groups, we can do that. We want to make sure that the SADC has offered to meet with all the affected parties so everyone understands the law.

- **Funding Hearings**

Secretary Fisher has already touched on the hearings that are taking place regarding the funding issues. The SADC is very interested and engaged in the discussion about how the future funds will be allocated among the many competing interests. We will report more on this issue as it evolves.

COMMUNICATIONS

Ms. Payne reminded the Committee to take home the various articles provided in the meeting binders. There is a letter in the packet that was sent thanking Joseph McCarthy, who was the Chairperson of the Monmouth CADB, for his 10 years as Chairman. He retired from that position recently and we wanted to thank him for his huge contribution to the Monmouth County program during his tenure.

There are numerous articles on Monday's hearing regarding funding and there are several articles on the continuing and growing issue of utility line extensions

across all parts of New Jersey, that being open space, preserved and unpreserved farmland and others. Staff will be addressing that issue more thoroughly with the Committee in the coming months. Staff is trying to get a clear enough story and fact-based information to be able to present something to the Committee that is comprehensive so everyone knows what is going on and how it affects our preserved farms.

PUBLIC COMMENT

None

NEW BUSINESS

A. Stewardship

1. Permit for Installation of Personal Wireless Service Facility
 - a. Leone Farm, East Greenwich & Mantua Townships, Gloucester County

Mr. Roohr referred the Committee to Resolution FY2015R12(1) for a request for a special permit for the installation of a personal wireless service facility by Network Building and Consulting, LLC (hereinafter "NBC") as the consultant for Verizon Communications, Inc. (hereinafter "Verizon"), and on behalf of Joseph Leone, Jr., owner of Block 1202, Lots 8,9 and 10; Block 1203, Lots 1 and 6; Block 1004 Lot 30; Block 102, Lot 19; Block 1304, Lot 9 in East Greenwich Township; and Block 6, Lot 13, in Mantua Township, Gloucester County, comprising 253.44 acres. The owner is seeking SADC approval for an expansion of 500 square feet (for additional equipment shelters, generator and fence) of a personal wireless service facility that existed on the property prior to enrollment in the Farmland Preservation Program. The structure that supports the facility is an existing monopole cellular tower and the request is to place an additional set of equipment shelters, generator and fence at the base of the existing monopole in order to allow Verizon to co-locate at this existing site. Verizon is requesting 500 square feet of space adjacent to the existing tower to place the new equipment shelters, generator and fence. The personal wireless service equipment and infrastructure that would be added as a result of this request will be owned by Verizon.

Access to the facility for purposes of installing and maintaining the additional infrastructure is from an existing farm lane currently used to access the existing facilities and will result in approximately one additional vehicle per month visiting the site for routine maintenance. As a result of the personal wireless service facility expansion being

located behind an existing barn and at the base of the existing facility, no useable farmland is being taken out of production to accommodate this expansion. The existing footprint is approximately 900 square feet.

The applicant has requested a permit for 20 years based on its lease arrangement with the owner and the necessary investment to purchase and install the equipment required to complete the expansion of the facility. In this case the existing cellular tower and ancillary facilities are owned by Crown Castle International Corporation and Verizon does not have the authority to offer space on the tower to other entities.

Mr. Roohr stated that because the personal wireless service facility is being co-located on a structure that existed on the Premises prior to preservation and it is not owned by the landowner or Verizon, the requirements that State or local government agencies be allowed to share the facilities at no charge is not applicable. Staff recommendation is to approve the request as presented and discussed and as outlined in the draft resolution.

It was moved by Mr. Germano and seconded by Mr. Danser to approve Resolution FY2015R12(1) approving the construction, installation, operation and maintenance of the personal wireless service facility expansion to be located at the base of the existing cellular tower, consisting of an area no larger than 500 square feet, as identified in Schedule A. The 500 square feet of expansion is the maximum permitted by the regulation. Therefore, no further expansions are permissible on the Premises. The SADC approves this permit for a period of 20 years from the date of this Resolution. The SADC acknowledges that the 151 foot tall monopole and associated infrastructure currently existing on the Premises, consisting of approximately 900 square feet in the location shown on Schedule A, were in existence on the Premises prior to enrollment in the preservation program. This action is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey. The motion was unanimously approved. (A copy of Resolution FY2015R12(1) is attached to and is a part of these minutes.)

2. Review of Activities – Driveway Easement Realignment
 - a. New Village Farms, Greenwich Township, Warren County

Mr. Roohr referred the Committee to Resolution FY2015R12(2) for a request for a relocation of an access right-of-way. New Village Farms, LLC is a 55-acre farm in Greenwich Township, Warren County (Block 44, Lot 5). This request was before the Committee earlier this year. The farm was preserved in 2010 with grant funding from the USDA, NRCS. The title insurance commitment for the Deed of Easement for the

property identified a title exception for a 15-foot wide access right-of-way that services an adjacent non-preserved property (Block 44, Lot 24) currently owned by Henry Riewerts and Diane Tribble. The recorded right-of-way states: "There is conveyed to second party a right of way over an existing roadway leading from the Bloomsbury-Warren Glen Road through the property of first party to the property hereinabove conveyed consisting of approximately fifteen feet in width."

Mr. Roohr stated that the SADC received a request from the neighbors, Mr. Riewerts and Ms. Tribble, proposing to relocate the right-of-way to the west of its existing location, expressing concern that the configuration of the narrow road, two sharp turns and a narrow (railroad) underpass cause vehicles larger than 20-22 feet in length to be unable to enter Lot 24. This includes many delivery trucks, garbage trucks and most fire and other safety vehicles, thus resulting in a safety problem. They stated that there are also water runoff problems coming down from the farm into the railroad underpass and eventually winding up on their property. In 2012 and 2013, the request originally came in and staff sent a notification to the neighbors that their proposed relocation would not be consistent with the Deed of Easement. In August 2013, the neighbors asked for a reconsideration for a straight driveway, which staff identifies as "Alternate 1." Staff met on site at that time with the neighbors and found the suggested Alternate 1 realignment problematic. Even though the driveway now is in the middle of the field, moving it over 200 feet still results in a driveway in the middle of the field. There is also a steep drop-off in grade, which could have conservation effects with turning tractors around and things of that nature. Also, what would become of the old driveway, how would that be remediated and put back into production? Staff made a more modest proposal, or Alternate 2, which continues the use of the existing driveway coming most of the way down and softening that 90 degree turn and then ideally a section in between the turn and the railroad could be used for a water retention practice through the USDA, NRCS, to try to resolve any drainage issues. Mr. Roohr stated that the neighbors still prefer Alternate 1 with the straight alignment.

Mr. Roohr stated that the request was brought to the Committee at its June 2014 meeting and staff recommendation was opposed to Alternate 1 and recommended Alternate 2. The Committee affirmed staff's recommendation at that point but did leave the door open for any future considerations. With that, in October 2014 the neighbors supplied a supplemental engineering report, which gets into more detail about how Alternate 1 would be constructed. It doesn't really say anything about Alternate 2 or how the existing driveway would be remediated, which was a concern at the June SADC meeting. The new proposal shows a few things – one is that if we realign the driveway we would be using up more prime soil than is currently being used. In order to accommodate the steep

slope and the runoff that would come from that, they are going to reduce the size of the driveway by five feet, so instead of a 15-foot driveway it will be a 10-foot driveway and at a certain point it will require about 20 feet of grass strips and swales to catch the water. At some point in there, there is going to be a concrete headwall and two 24-inch underground pipes, and those pipes will end at an outlet structure at the bottom of the farm with another headwall. Altogether it will be either an additional 25 or 35 feet, depending on how you read the engineering report, that they need to accommodate that, which basically results in an additional easement more than what is there today and that is an absolute concern for staff.

Mr. Roohr stated that staff's opinion remains unchanged. The new engineering report gives us greater detail on how this would be done but it also gives greater pause because now we are sure it will require more land to be taken out of production than the current situation. We still don't find the agriculture or conservation value in this to be greatly improving what is existing. In addition, as mentioned previously, the USDA, NRCS is a cost-share partner in this preservation project and staff forwarded this information to them. The USDA, NRCS replied back that they could live with Alternate 2 but Alternate 1 does not meet their criteria for anything that they would permit so they are opposed to Alternate 1 as well. With that, staff feels that there isn't any option here except to deny the request.

Mr. Stanuikynas inquired about Alternate 3. Mr. Roohr stated that Alternate 3 is if you come down a bit on Warren Glen Road to the edge of the property, ideally if you could come down the absolute edge of the property that would get both driveways out of the field completely, which would make it a much nicer farming setup for the farmer. Then there is an above-grade crossing there so you could use that to avoid the underpass issue and everything would be above grade and mostly out of the way for the farmer. Mr. Schilling commented that wasn't there an issue of ownership of the land that would go into? Ms. Payne stated that the owner, Mr. Santini, who owns the preserved farm, has access rights over that surface crossing now. Mr. Riewerts stated that Mr. Santini does not have the access rights and that they do. Mr. Roohr stated that it would still work for the neighbors to get themselves across. Ms. Tribble stated no, that is not correct because Mr. Santini's land is in between.

Ms. Payne stated that regarding Alternate 3 that was discussed in the field, staff never received any analysis of what the impacts of that would be. Mr. Riewerts stated that they do not prefer Alternate 3 because although it improves the situation on the preserved land – Mr. Santini's property – it is detrimental for their property because you can see where it enters in (on maps provided at meeting). Their property comes across the railroad tracks

and bisects a beautiful field, a very productive field, so it does nothing and in total it would be longer than the existing driveway in terms of impervious coverage if you include the impact to their property. Chairman Fisher stated that we understand that no one is interested in pursuing Alternate 3 so we don't have to discuss that any further.

Mr. Riewerts stated that they were before the Committee in June and tried to explain their concerns about the property as it is today, Mr. Santini's and theirs. He provided photographs at that time of the runoff and how it affects their property when it comes off of Mr. Santini's fields. It brings with it all the stuff from his fields – water, soil – and deposits it on their property. They also had a preliminary engineering report that said that if you look at the alternatives – Alternate 1, 2 or 3 – there is no great difference between the three of them in terms of impervious coverage, effect on soil or water runoff. Still Mr. Santini prefers Alternate 1 and he is the owner of that property and the farmer. He doesn't like Alternate 2 for two reasons. He has said many times that he prefers a straight line. He stated that the other thing is that the area that he indicated on a map to the Committee, that area (between the turn in the driveway and the railroad embankment) would be nonfarmable under Alternate 2 so you would be required to bring equipment in to a very narrow place and turn and you can't do that. Mr. Riewerts stated that they don't think that Alternate 2 is viable for those reasons. They may not have said that in June but they didn't think they needed to and they are saying it now.

Mr. Riewerts stated that at the June meeting there were several concerns about what they were proposing in Alternate 1. Some of those concerns had to do with how the area where the existing driveway is currently would be treated in the future and would it or wouldn't it be productive agriculturally. He has some information that would suggest that the soil compaction issue could be mitigated completely in a very short period of time. Mr. Riewerts provided copies of the information to the Committee. He stated that the information he provided would suggest that the water runoff they are currently experiencing coming down the driveway from Warren Glen Road onto their property ultimately could be mitigated also. He directed the Committee to the information he just provided where it states on page 2 or 3 that the soil compaction issue could be cured by plowing essentially. He has spoken with a couple of farmers, Jo and Erv Waters from Mansfield Township, who have recovered the soil from two roads. One was a paved county road and the other one was an easement made of patched shale. They tell him that in a year's time the effects of those roads were mitigatable. They plowed them with a chisel and it was very effective. Mr. Riewerts stated that they don't look at this as being a major impact so a plow would only have to go 10-12 inches in his situation and that would solve the problem. Mr. Riewerts stated that they tell him that in those areas where those farmers recovered the two roadways, they are now planted and there are cornfields

or whatever they are growing that particular year and there are no negative effects. Mr. Stanuikynas asked how many houses share the access road. Mr. Riewerts responded two.

Mr. Riewerts stated that as far as the water runoff is concerned, he provided a pamphlet from the USDA, NRCS that says contour plowing, which was the approach that Mr. Santini would take if the existing roadway was moved, would eliminate as much as 50 percent of the soil erosion. He felt that was very significant and would welcome that. Mr. Riewerts stated that he obtained these documents through public sources, the first one coming from Best Management Practices, which are typically funded by the EPA. Mr. Riewerts stated that they feel that the situation regarding the existing driveway could be offset completely by these two approaches.

Chairman Fisher asked Mr. Riewerts if he was aware of the letter that the USDA, NRCS provided to the SADC staff. Mr. Riewerts stated that he became aware of it this morning. Ms. Tribble stated that they have asked for documents that were relevant in advance and didn't receive them. Mr. Riewerts stated that was correct and they have asked several times now. They supplied information to this Committee but they get nothing back. This first engineering report that they paid a lot of money to submit to the SADC in December or January 2014, they have gotten no response back at all until they got to this meeting in June of this year. Then they were told about what were errors or problems or not acceptable.

Mr. Riewerts stated that what he is going to propose is that they feel that Alternate 1 is acceptable and is the best alternative. Their engineer, who is fully qualified and licensed in New Jersey, tells them that despite what Mr. Roohr or the NRCS says, the square footage that is now being taken up by the existing grass strip that Mr. Santini just planted along the existing driveway, that grass strip is about 27 ½ feet wide by 700 feet long. They feel that if the mitigation measures that he just mentioned were incorporated, that would no longer be necessary. The amount of square footage, if you want to calculate it that way, which would accompany Alternate 1 from the engineering report, is much less than that. The net effect is that it could be gained to the property. He doesn't know if the NRCS looks at things that way, apparently the SADC doesn't either. Mr. Riewerts stated they would like this Committee to consider the engineering report and approve it and approve what they would like to do. There is no reason why it shouldn't be approved. Ms. Tribble stated that this is their easement. It is not the farm easement. She and Mr. Riewerts have generously allowed them, even though they are responsible for the upkeep, to use this road. She and Mr. Riewerts can stop that at any moment and then they will have to put two driveways in. She wants the Committee to consider that they have been really reasonable and cooperative to the farmer to allow him to get the most out of this

land and they don't feel like cooperation has been returned to them in any sense and that is what they are seeking today.

Mr. Riewerts stated that he looked at the agricultural deed for the Santini property and it clearly allows changes in line with what they would like to do. First it says that the application, techniques and methods of soil preparation and management are part of the agricultural definition that this property must adhere to. It says that drainage and water management are also. That is all they are trying to do in proposing a change in the location. The deed also says that the grantor is not restricted to maintain all roads and trails existing on the premises and that is what they are trying to do, maintain the road properly. It may have been adequate in 1935 when the aerial photos were taken but it no longer is today. Probably the original entrance to this farm was to the west of where it is today. He looked at the old maps and it shows the driveway coming out much further to the west than it is presently. He would suspect that it was put in its present location in the early 1900s when the railroad was built. To substantiate that, usually when you come to a farm lane you'll see the house before or at the same time as the farm buildings. This property is just the reverse. You come into their lane and you see the barn first and then the house. It is flipped backwards and he thinks that is because the original entrance was further to the west. Mr. Riewerts stated that he has spoken with a person whose parents were born on that farm and he spent his summers there in the 1920s and 1930s and he states that the entrance was further to the west but cannot remember where it was. He is around 90 years old now. Mr. Riewerts stated that also in the easement it states a 4 percent impervious coverage maximum was put on this property. The existing impervious coverage is .6 acres. If the NRCS or someone else feels that we are infringing on the productivity or using too much land, the property would be still way below that 4 percent level.

Ms. Payne stated that the most fundamental legal problem with the proposal is that for one thing, Paragraph 13 of the deed, which is contained on page 4 of the resolution in the second Whereas, states that "nothing in the Deed of Easement shall be deemed to restrict the right of the grantor to maintain all roads and trails existing upon the premises as of the date of the easement. Grantor shall be permitted to construct, improve or reconstruct unpaved roadways necessary to service crops, bogs, agricultural buildings or reservoirs as may be necessary." The one glaring legal problem is that we are talking about creating a new paved road, which is not an inherent right in the deed because this is NRCS language. The second fundamental legal problem is that you have a 15-foot wide easement and you are proposing to have an easement that is much bigger than that when it is both for the paved driveway and for the drainage facilities that you will need to construct in order to have that road. In the parlance of deed-restricted farmland, the

landowner doesn't have the right to convey drainage easements to neighbors. Once the farm becomes preserved those nonagricultural development rights have been removed. Those are the two biggest legal barriers and thirdly, the NRCS is a participating funding agency on this and their opinion has been unchanged by the report that you submitted in late October. It is their opinion, and the SADC shares that opinion, that moving this driveway to a steeper portion of the property is not having a positive impact on the resources. In fact it is having a negative impact. We can debate that but the NRCS is the expert on that and that has been their consistent opinion. The Committee cannot just override the NRCS position. Mr. Riewerts stated that the SADC could recommend to the NRCS that a change be filed. Ms. Payne responded that the SADC could but it doesn't disagree with the NRCS assessment. Chairman Fisher stated that the letter from the NRCS further states that "Alternate 1 is detrimental to drainage, flood control, water conservation or soil conservation, which is detrimental to the continued agricultural use on this parcel." Ms. Tribble asked if they have an engineer because she has an engineering report and she would like to see theirs. Ms. Tribble stated that when you talk about what the grantor provides to the grantee, they weren't the grantees and they received no funds, they received no notice. The SADC, and she believes probably incorrectly from a legal standpoint, took their rights away to move their driveway. She wants to know how the SADC factors that legality into its decision and its recommendations. She is stunned that they cannot do what their deed says they can do when the SADC didn't buy any rights from her. Ms. Tribble stated that the SADC can buy them, she will sell that right, but it will cost a lot. Ms. Payne stated that the SADC didn't buy any rights from Ms. Tribble, the rights were bought from Mr. Santini. Ms. Tribble stated yes, with no notice to her that she would be losing her rights. She doesn't care how it gets sugarcoated, that was wrong and something was done incorrectly. You cannot take the neighbors' rights away by giving the other neighbor some money. Ms. Tribble stated that they were not noticed when they locked their driveway. Mr. Germano stated that these folks have an easement and nothing that the SADC did changed that easement in any way, shape or form. Mr. Riewerts stated that yes, it did change because they cannot now move their driveway, with the consent of the property owner. Mr. Germano stated that you couldn't move it before – it was what it was and is what it is. Ms. Tribble stated no, that they could move it before. The deed didn't limit their ability to move the easement with the consent of the property owner. Mr. Germano stated that you had an easement; you did not have a constitutional property or any other right to make Mr. Santini give you some other easement in some other place. Mr. Riewerts stated that Mr. Santini would like Alternate 1, he said that in writing. Mr. Germano stated that Mr. Santini wants to do it now in a point in time where he had already given up that right.

Chairman Fisher stated that there is a staff recommendation. He asked if anyone on the

Committee would like to make a motion.

It was moved by Mr. Waltman and seconded by Mr. Siegel to approve Resolution FY2015R12(2) finding that the proposed right-of-way relocation shown as Alternate 1 on Schedule A is not consistent with the terms of the Deed of Easement and associated regulations promulgated at N.J.A.C. 2:76-6.5 for the reasons outlined in Resolution FY2015R12(2). The SADC denies the request to relocate the existing right-of-way in accordance with Alternate 1 in the Engineering Report for the reasons set forth in Resolution FY2015R12(2). The SADC finds that the proposed right-of-way relocation shown as Alternate 2 on the original Engineering Report – partially realigning the right-of-way to eliminate the 90-degree turn on the Premises – is consistent with the terms of the Deed of Easement and associated regulations promulgated at N.J.A.C. 2:76-6.15 for the reasons set forth in Resolution FY2015R12(2). The SADC approves the concept of realigning the existing right-of-way with Alternate 2 in the Engineering Report because this proposal is consistent with the terms of the Deed of Easement and associated regulations promulgated at N.J.A.C. 2:76-6.15, the proposal would constitute an agricultural use and serve agricultural and conservation purposes by addressing existing drainage, erosion control and soil conservation concerns associated with the existing right-of-way. The NRCS, which is a party to the Deed of Easement, approves the concept to relocate the existing right-of-way in Alternate 2 in the Engineering Report because this proposal is consistent with the purpose and goals of the Federal Farm and Ranch Lands Protection Program, and the proposal enhances or improves the conservation values of the Deed of Easement. Formal approval of Alternate 2 shall be considered upon submission and review of the engineering work necessary to implement that design. A copy of the signed resolution will be forwarded to the NRCS, Warren County Agriculture Development Board, the Greenwich Township municipal offices, the owner and the neighbors. This approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey.

Mr. Riewerts asked if he could get a copy of the conservation plans for this property. Mr. Everett stated that in the Farm Bill, section 16.19, there is confidentiality regarding farm conservation plans. We ourselves have to get permission from the landowner to receive a copy of their conservation plan. Ms. Tribble stated so you are dumping water on our property and we don't have a right to know. Chairman Fisher stated that due to the confidentiality rules, you would have to ask the property owner for that. Mr. Riewerts stated that he doesn't have it, that was his response. Chairman Fisher suggested that he be asked to get one. Mr. Riewerts stated that this is coming down to a right to farm issue; that is where we are going at this point in time. We'll shut the field down by closing the driveway and taking him to court over the runoff. That is where you are putting us. Ms.

Tribble stated that she wants to take the SADC to court because it is their water that is being dumped on her property.

Chairman Fisher stated that you have received all the information that you can at this point. Obviously you have options that are available to you but at the same time there is a motion and a second on the resolution on the floor. Mr. Siegel asked if the landowner, Mr. Santini, is aware of Alternate 2. Ms. Payne responded that he is.

Mr. Danser stated that he has a drafting question. The second "Be It Further Resolved" on Page 6 says that the NRCS, which is a party to the Deed of Easement, approves the concept to relocate the existing right-of-way in Alternate 2. If they have already done it, it seems to him that this paragraph should be a "Whereas." If we are requiring them to do it, then it should say "shall approve, or must approve" or something like that. It seemed confusing to him when he read it. It is part of the facts, not part of the action. Mr. Waltman and Mr. Siegel amended their motion and second to reflect that the above noted paragraph will be moved to the "Whereas" section of the resolution, not to be included in the "Be It Further Resolved" section.

Mr. Waltman stated that he is very sympathetic to the problem of runoff; we see it all the time. But there are many different ways to address stormwater runoff. Putting a new road on the side of a hill, he doesn't believe is a wise one. He would hope that the neighbor would be willing to work with you to identify other ways to this. Ms. Tribble stated how about the fact that the fire trucks cannot get to her property very easily, how about the fact that she almost had a head-on collision. It is not just one issue. Chairman Fisher stated that before they take the vote on this issue, he wanted to say that it is his understanding that because of the issue of safety, the proposal that was made by staff addressed that issue to remove the curve – there wouldn't be a curve. Ms. Tribble stated there are also issues with safety at the top. We cannot see when we enter the 45 mph road.

The motion was unanimously approved with the above noted amendment. (A copy of Resolution FY2015R12(2) is attached to and is a part of these minutes.)

3. Draft Soil Disturbance Regulations

Ms. Payne stated that this is an issue that is important to the agricultural community, to every easement holder and certainly to the SADC. She wanted to thank staff who did an enormous amount of work to get us to this point. It has been years of work, dating back to when Deputy Executive Director Rob Baumley was here and contributing to the early

thinking on this issue. Mr. Roohr has been involved every step of the way since the beginning and then as Mr. Everett and Mr. Clapp came on board, they have really helped bring this to a point where it was ready for a presentation. To reiterate Secretary Fisher's comments earlier, this is not an end point but rather a beginning point for this conversation with the public. We certainly wanted to have the research done and as many facts as we could have so that we can have an informed conversation with the public as this moves forward.

As Secretary Fisher also stated, we are not seeking any type of Committee vote today. This is really for the subcommittee to air what it has developed so far. Ms. Payne stated that not only has staff spent a lot of time but the subcommittee members who have worked with us have met many times over the past five years spending many hours in trying to work with staff to think this through. Ms. Payne thanked them publicly for all their assistance on this. The three farmer members – Ms. Reade, Mr. Danser and Mr. Johnson – have served on the subcommittee and before Mr. Johnson it was Dr. Dey. The two public members were Mr. Germano and Mr. Waltman. This draft is where we are as a subcommittee. We wanted to bring it to the public, air it and definitely after today let the members of the full Committee go back to their respective agencies or constituencies and digest and discuss it and provide whatever feedback they want before the SADC will be asked to formally release this for public comment. If the Committee wants to change anything today it could do that at the next meeting. At the next meeting we would like to get to a point of having a document that the Committee says is good and reasonable, and get the Committee's go-ahead to make presentations to all the agricultural boards, county boards of agriculture and or the environmental groups, whoever will hear us and wants to learn how we got to this point to get their feedback. There will be a fairly extensive review period once the Committee releases this formally.

Chairman Fisher stated that this is being introduced today. It is going to float for about a month essentially before it comes back to the Committee and then the Committee can adopt, reject and make changes. The reason for the one month is so that it can go out to wherever it needs to go. Obviously it is going to affect a lot of the farming community, and that is what you are here for, to make sure we have working farms. At the same time, there are issues because of this – issues of soil disturbance, which the farming community and public at large really need to know as we are making these decisions every day on what can and cannot be done on a preserved farm. The unique part of this is that it will float for a month so we want everyone to work it every way that you can through your agencies or through the county boards and the like, so that we can make the call at the next meeting of the Committee.

Ms. Payne stated that she would provide a little bit of a background on how we got here and then turn it over to staff to make a detailed presentation. One thing she will say is that this process has been replete with massive spreadsheets and amounts of data. Staff has tried projecting them and they don't come out properly. So part of what everyone will see today on the screen are summaries but the Committee has a fuller, digital presentation of all the data. Staff will make that data available to the public but it just doesn't translate well on the screen. Ms. Payne stated that she will discuss how we got here, and how staff is proposing to define soil disturbance, quantify how much disturbance is out there and propose a limitation, and then talk about things like exemptions, waivers and remediation.

Ms. Payne stated that soil disturbance activities really came into focus with the Quaker Valley Farms case. She thinks the public is well aware of that case and the SADC has been engaged in that litigation from early 2008. In addition to the Quaker Valley Farms case, we have had several cases over the past few years where the issue was raised of how much building and soil disturbance a farmer can do on a preserved farm. This isn't just about Quaker Valley Farms; it is about the general agricultural community asking for clarification of that issue. Clearly, the SADC understands that this is not an open space program and we are not preserving lands as open museums. This is a working landscape for the farming community. We understand that soil disturbance is necessary and that stormwater basins are necessary, depending on what kind of agriculture you have, and we are really trying to balance those issues in our discussions.

Ms. Payne stated that ideally the regulations are intended to provide this guidance so that the agricultural community understands clearly and can rely on what the limits are. There are two basic provisions in the deed that most of this focuses on. In Paragraph 7, which has been in the regulation since the beginning of the program in 1985, it reads as follows: "No activity shall be permitted on the premises which would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the premises." This is really the language that we are giving guidance on as to how the SADC interprets that language as it relates to preserved farmland.

Ms. Payne stated that the SADC's basic concern is soil conservation. What is soil conservation? In our minds it is protecting that soil resource so that future farmers can use it. Soil destruction is the clear removal of soil, the mixing of layers – a lot of which we got into with the Quaker Valley Farms case. Soil compaction is compacting soil so that the next farmer cannot farm that soil. These are what we consider soil conservation issues and she is sure there is more detail. What it is not, and she thinks this was the issue

that has come up, is that farmers or landowners have said, "Well, I got a Chapter 251 permit from the Soil Conservation District, therefore I'm conserving soil." Ms. Payne stated no, that is an erosion control law – that prevents erosion from occurring on the farm during construction. That is not a law that conserves that soil resource for agricultural purposes. That is really what we are focusing on here, activities detrimental to continued agricultural use. So the question is the extent of infrastructure that can be built on a preserved farm such that the next farmer can actually use that property for another kind of agriculture.

Ms. Payne stated that she thinks it is these three pieces – soil destruction, soil compaction and the extent of infrastructure, which we are trying to deal with holistically in the rule. The SADC went to court and the decision that was handed down by the Superior Court judge had some important language in it, which is listed here in the PowerPoint presentation. Ms. Payne asked the Committee to take a moment to read it. The judge decided in the Quaker Valley Farms case that "the plain language in the statute makes clear that the content of the soil's ability to support agriculture and the ability of the land to have agriculture production as its first priority use are at the core of farmland preservation." That encapsulates what we are trying to get at here. One of the questions that has been asked is whether we need a regulation to deal with this. She has heard farmers throughout the state say, "Well, you had one bad actor and we shouldn't respond with regulations." The SADC disagrees.

Ms. Payne stated that there are examples across the country of large-scale, infrastructure-type agriculture happening and it is impacting preservation programs. We are not the first to deal with this issue. Ms. Payne showed various examples of this in the PowerPoint presentation (the Shantz farm in Lehigh County, Pa.). The State of Pennsylvania in 1997 changed its regulations to allow limiting the construction of buildings on preserved land for the same reasons that we are talking about today. The picture shows a 42-acre farm under glass with a greenhouse operation. The second program that staff is aware of is in Suffolk County, New York, which is the oldest farmland preservation program in the country. In 2010 they amended their regulations to limit the construction of infrastructure on preserved farmlands. The picture shows Ivy Acres Farm, 78 acres under glass. This is not a preserved farm but we show the picture to give everyone the sense of the order of magnitude of agricultural operations that are out there. Ms. Payne showed a picture of the Metrolina Farm in Mecklenburg County, North Carolina, which is 158 acres under glass. This is not some imaginary problem that staff is cooking up. To us, this is happening out on the landscape across the country and it is going to continue to happen. The question is, is this compatible with the Deed of Easement that the public has paid for? That is really what we are getting at. We are not reacting to one actor, we are opening our eyes and

seeing what the future of agriculture will include as a component and we have to deal with that. Ms. Payne showed a picture from the Netherlands (Westland, South Holland, The Netherlands), which is a major greenhouse force in the world. That town has about 18,000 acres of greenhouses under glass. So we are talking massive, industrial-scale infrastructure and the problem is do we stick our heads in the sand and pretend it isn't coming or do we deal with it proactively?

Ms. Payne showed another picture of a commercial farm operation in Brooklyn, New York, that is located on top of an existing building. Clearly, greenhouses are part of agriculture and they are going to be a big part of agriculture's future. The question is, do they need to be built on prime soil and do they all need to occur on preserved farmland? Those are some of the questions we are grappling with here.

Ms. Payne stated that to summarize why we are here, we need to give clear guidance to the agricultural community so they can plan and invest accordingly, and make sure the soil resources that we preserved are available for future farmers. We really do not want to be enforcing soil disturbance in the Deed of Easement on a case-by-case basis. We have spent a lot of money and nearly seven years dealing with one property. It is just not a sustainable way to run a program. She thinks the Committee has to deal with this holistically. That is how we got here and some of what we see going on.

Ms. Payne turned the presentation over to SADC Chief of Agricultural Resources Jeffrey Everett and Soil Conservationist David Clapp.

Mr. Clapp stated that Ms. Payne did a good job explaining the reasons that we are looking at soil disturbance in general. The first step that the SADC took was to hire Rutgers University to do an assessment of soil disturbance on farmland. What this assessment looked at was less about the scale of disturbance but more about the normal disturbances that occur on farms and the permanence of those soil disturbances. They looked at the effects of compaction on soils and found that compaction destroys the soil structure, which is a pretty important part of how soil functions for growing crops. That negatively affects plant growth. The natural hydrology or water movement in soil is circumvented when soils become compacted and that can lead to – aside from an increase in runoff and pollution – limiting the amount of water that is available to plants for growing. The Rutgers study determined that soil compaction is not easily or rapidly remediated and that once the soil has been compacted it has a greater risk of subsequent compaction.

Mr. Clapp stated that soil compaction is a long term and potentially unsolvable problem.

You can do some things to remediate it but you may not ever be able to resolve it. Soils that are compacted for engineering purposes, such as putting up buildings or building roads, the literature cites that once the soils have been permanently compacted, there is no real natural attenuation rate at which that soil will come back. So once it is compacted it is permanently changed. Those are sort of the generic conclusions that the Rutgers study made about soil compaction. They looked at everything as a continuum so some compaction is fairly normal and relatively easy to work with and is necessary for agriculture. Compaction for getting good seed-soil contact to allow crops to grow is important and necessary and relatively reversible. Compaction in the topsoil when you are normally farming is the same thing; when you plow, you're breaking up the soil or a certain part of it and it is relatively reversible. When you get into compacting by weight, fairly heavy vehicles, multiple passes across fields and those sorts of things and compaction by design for load bearing when you are putting up structures, those are the areas that become more difficult to reverse. So what we looked at for soil disturbance regulations was where on this continuum is it a good clean break that would make it reasonable for us to regulate without limiting farming. Where we are looking is somewhere between the compaction you would get from normal farming versus the compaction you would need for building structures. Rutgers also looked at certain practices, and again they didn't look at the scale of these practices or the acreage when they thought about the potential for remediation. But, for example, they looked at geotextile fabrics and they determined the potential for remediation of an area using that was medium to high – that it would be relatively easy to remediate just the use of geotextile, not necessarily the compaction or the gravels or those sorts of things that would be used with the geotextile fabrics. But if it was just the field with the geotextiles laid out, then removing the geotextiles would be fairly easy and there would be very few long-term impacts to the soil compared to permanent structures or outdoor equine tracks, where there is a substantial amount of engineering compaction used to develop the site for their uses. Ultimately those sorts of practices would be much less likely to be successfully remediated.

Mr. Clapp stated that ultimately the Rutgers study determined that the things that Ms. Payne mentioned were sort of the areas where we should be concerned about soil disturbance. Most minor practices could be remedied through cultural practices through plowing, tilling and natural sort of things. The more extensive your disturbance was, the more potentially expensive it would be and cost-prohibitive to remediate. The more intensive that disturbance is, the more likely the crop yield would be depressed for at least some period of time. Also, most soils can be improved through additional organic matter or through the use of cultural practices but once that soil structure has been lost or changed, there is a much greater risk of losing productivity. Moving those layers and the

mixing of layers, once that happens, it is very difficult to continue to have a soil that is productive. Mr. Clapp reviewed various definitions as outlined in the PowerPoint presentation with the Committee

Mr. Clapp stated that to give everyone an idea of some of the items that we wouldn't consider soil disturbance, one would be unimproved farm lanes, which would be an area that is unsurfaced and used to access production fields and not frequently or intensively used. Geotextile fabrics, again by themselves, are permeable, woven fabrics that would allow for water infiltration into the underlying soil. There are farms that just lay geotextile fabrics down for mushroom production, for example, that is just laid over the soil and removed and then a crop could be planted the following year. So it isn't the geotextile fabric itself that causes the disturbance; it is the cultural practices that are used with it, the compaction and soil movement. Hoophouses we are not considering soil disturbance and this is thanks to the assistance of many of the county agricultural development boards. We were able to get out to several growers' properties and measure the compaction underneath the hoops. What we found is there may have been some minor shaping and grading in the plow layer to get proper drainage but ultimately the areas under the hoops were either using the natural soil as a growth medium or they had fabric over them and the soil itself underneath it was not compacted. That was because the vehicular traffic and the intensive uses were going around the hoops, not underneath them. That is why we are considering hoophouses not to be soil disturbance.

Mr. Clapp stated that the SADC has rules and regulations regarding solar panels. The panels themselves, if they are installed in accordance with the regulations and they don't have concrete footings but are screwed or pushed into the ground, they don't have a soil disturbance association. The concrete pads and the access lanes, those would still be considered soil disturbance but the panels themselves are not.

Mr. Siegel commented that to be clear, just like in the statute, in the regulation a statement that this is what soil compaction is, this is what soil disturbance means, does take on the regulatory force of law. Ms. Payne responded that for the purposes of the Deed of Easement, yes. Certain DEP regulations have their own opinion about what compaction may be, the Highlands may have a different one, the Pinelands Commission may have one. So these definitions apply only to our interpretation of the deed.

Mr. Everett made his presentation to the Committee relating to various statistics and research methodology employed to determine how much disturbance typically exists on New Jersey farms. The first step was to contract with Rowan University's GEOLAB to measure land uses on preserved and unpreserved farms through the use of Geographic

Information Systems (GIS). Rowan University has been involved in many different projects within the state for many years. They have not just statewide prowess but they are nationally recognized for their GIS lab. What it comes down to is you take those definitions for disturbance and put them into a database design of land use classifications. All of the 23 classifications are typically measured on preserved farms. Mr. Everett stated that what they did was take DEP's land use cover layer as a baseline and Rowan had a number of students as well as professors who went into every single property and assigned every single part of every farm to one of the 23 land uses. Then you can strip it away and actually show the 23 uses. Mr. Everett showed various GIS mapping photos of land use classifications. Mr. Everett stated that there are statistics that go along with this so he can tell on every single farm what every single category of land use is and how many acres that is. Ms. Payne stated that this was a big piece of work that we did. We started off saying that most farms have a spot where most of the infrastructure is. Would it make more sense to just define how big the farmstead complex can be? The difficulty with that approach was the subjectivity of drawing the line. We had various different staff go in and do hand delineations of farmstead complexes and two people will draw it differently. It is a very photo interpretative thing. So we went to Rowan and asked if there was a computer model way to do that and they developed different computer models that would draw the farmstead complex automatically to take the subjectivity out of it. But it was just inconsistent from farm to farm so we abandoned that approach and we are just focusing strictly on hard disturbances – buildings, digging, piling soil that is easily quantified. That way it is more objective and it is clearly more defensible.

Mr. Everett stated that in Phase I we measured 100 percent of preserved farms enrolled in the Farmland Preservation Program as of October 1, 2013, which was 2,198 farms. We thought we better measure a statistically valid random sample of unpreserved farms to see what disturbance looks like on those as well. What we did in Phase II was take all the farmland assessment data from the 18 counties that have farmland preservation programs, ascertained the median value of improvements and looked at farms that had greater than the average amount of improvements, which amounted to 654 farms. When you add Phase I and II together, you get 2,852 farms, 224,289 acres measured, which is about one-third of all farms in New Jersey. That is a very statistically valid sample size. What the statistics show is that 90 percent of farms have some form of permanent disturbance. Mr. Everett reviewed the Rowan Frequency of Disturbance Averages on Preserved Farms spreadsheet (1,414 farms – 64 percent of total – having 1 acre of disturbance; 97 percent of farms having 0-3 acres; 99 percent of farms having 0-6 acres).

Mr. Everett reviewed the Rowan Disturbance Averages/Percentages (for farms with permanent disturbance) for both preserved and unpreserved farms. The farm size began at

five acres because that is the minimum to qualify for farmland assessment, which is a prerequisite for our program. He stated the statistics on this spreadsheet, as you go along, are very consistent. This is why you want to do a statistically valid random sample. Staff did an in-house study of unpreserved farms, approximately 140 farms, and they were sort of cherry-picked because we wanted to see the most disturbed, and the statistical story was much different. So we do a true random sample, statistically valid, and compare it against the 100 percent population size of preserved farms and you will see as you go down the line that there is not a lot of variation until you get to the section of 200 acres and above. Mr. Everett stated that there is an "All" category – if you aggregate all these statistics you will see that 1.34 acres on average is what preserved farms have in New Jersey that is permanent disturbance. 0.69 acres is what unpreserved farms have and that is because the average farm size of preserved farms was 96 acres and the average unpreserved farm size was 31 acres.

Mr. Everett stated how do you take this data and propose a reasonable number for the farm community and this program? That is the next section of the presentation on proposing a soil disturbance limitation. Step one is to calculate the standard deviations for Rowan's data to ascertain the range of disturbance values. Standard deviation is a measure of the dispersion of a set of data from its average (both above and below it.) The more the data is spread apart, the higher the standard deviation. Mr. Everett reviewed the statistical analysis of Rowan's data for preserved and unpreserved farms. To give farmers the benefit of the doubt, you may have farms that have well more than the average disturbance and he accounted for that here in this spreadsheet. When looking at the standard deviation versus disturbance acres, you can see that the larger the farm, the more dispersed the data; the smaller the farm, the more clustered the data. To account for the upper range of disturbance like we did with the upper range of improvement value in looking at unpreserved farms, you take the average disturbance acres plus the standard deviation – only the upper range because you have to remember that the standard deviation goes north of this number and south of the number. Therefore, he only took the standard deviation that was greater than the average amount of disturbance. He came up with what he is calling the upper range disturbance acreage.

Mr. Danser stated that is the 75th percentile. Mr. Everett stated that you are looking at the most disturbed farms here. Mr. Danser stated that if one standard deviation includes only 50 percent then what you are calling the upper range is actually the 75th percentile. Mr. Everett stated that the problem is that the "upper quartile" is a lot of mansions. When we looked at the farmland assessment data, a lot of the improvement value was assigned to the residential structures, not the farm buildings. Mr. Danser stated that he is just questioning the definition of upper range because that upper quartile that Mr. Everett is

talking about is over 1.04 for the 5-25 acre range. Mr. Everett stated that is correct. Ultimately, take this number and divide it against the average and you get the upper range disturbance percentage of average farm acres. Mr. Everett stated that you want to consider future growth. You don't want to look at a snapshot of disturbance today. This is a perpetual easement program and the hardest part of running an easement program is considering what might happen well into the future. So you look at the upper range as the basis to develop limitations.

Mr. Everett reviewed Part VI – Proposing a Soil Disturbance Limitation – with the Committee. He stated that the limitation for preserved farms in the draft regulations is 10 percent of the premises acreage, except for preserved farms up to 25 acres where the limit is 2.5 acres of the premises. There is more of a sliding scale approach for the first quartile because those farms have higher amounts of disturbance plus staff felt that every farm needed a minimum amount of disturbance. Mr. Everett stated that regardless of how much disturbance you get, the topsoil must not be removed from the premises. Any stripping or stockpiling must be performed in accordance with a farm conservation plan. Mr. Everett showed an example of a preserved farm where they stripped the topsoil, banked it, seeded it and they had a farm conservation plan for it. Mr. Germano added that was a farm conservation plan approved by this Committee? Ms. Payne responded yes, that is correct. Mr. Danser stated that we don't approve them, you get them from the USDA. Mr. Germano stated that this draft says that you have a plan approved by this Committee. Ms. Payne stated that is correct and the reason is that there are certain activities that you can get an NRCS conservation plan to do, like turning a huge area into a wetland, but that is not necessarily consistent with what we would like to see. We need the Committee to be able to be that back stop on issues where the NRCS may allow a large amount of disturbance or loss of productive farmland because it is consistent with their mission but it is not consistent with our mission.

Mr. Everett stated that Step 3 in the presentation deals with the test of the 10 percent limitation for the proposed soil disturbance limitation against preserved and unpreserved farms. He reviewed the spreadsheet with the Committee. Mr. Everett stated that we took the number of preserved farms and the acreage ranges, and you allocate 10 percent to those greater than 25 acres and 2.5 acres for those with less than 25 acres. Mr. Clapp will discuss later in the presentation about exemptions for man-made ponds, which constitute almost half of all disturbance in the state. Staff felt we had to provide some type of relief from that because these were created years ago by the Soil Conservation Service so we thought it would be inappropriate to regulate those retroactively. But in the future for an irrigation pond we would exempt those. If it is a stormwater management facility or a decorative pond or something like that we would still consider that soil disturbance.

Ultimately what we are looking at here in the spreadsheet is you have your farm acreage, you have your draft allocation acres, take out your exemptions, then how much of the draft allocation capacity is used? In other words, how much room is there for future growth? At the bottom of the spreadsheet it lists 6.13 percent out of 100 percent capacity has been utilized on average on preserved farms throughout the state. So there is plenty of growth potential. There is a caveat in that we did not apply the exception areas around the buildings. If we did, you would actually further increase the capacity because a lot of your disturbance would not be on the "premises."

Ms. Payne clarified that when you look at the data, when we look at these 2,100 plus farms across the state, we are trying to understand how much infrastructure is on preserved farms and unpreserved farms. Whether someone elected to take an exception or not is an arbitrary decision. So for the purposes of analysis we removed all the exception areas. So you are looking at a farm and looking at all the infrastructure, whether it is on the exception area or not. Mr. Everett's point here is that while farms in the 5-25 acre range have used 12 percent of their capacity based on current conditions, that number of 12 percent is going to drop when you put the exception areas back on because we are not regulating disturbance in exception areas. That is why people took exception areas. These numbers assume there is no such thing as an exception area.

Mr. Siegel stated that he could see that creating a statistical problem in the data because you are looking at a universe of farms without exception areas and you are blending it in a universe of farms with exception areas and are treating them the same and you make a statistical analysis. But then for the purposes of public policy, you are only looking at farms with exception areas removed and you go to create a public policy based on the land that is under the Deed of Easement. Statistically he can see that as being a problem. You are going to have a much larger number because you are no longer taking the disturbance into account that is in the exception area, but the disturbance in the exception area is the basis of your statistical analysis. Ms. Payne stated that is right and that is part of the policy discussion that goes into these statistics, but you're right. We are not hiding from it, we are trying to make sure everyone is aware of that. If she is hearing Mr. Siegel right, we are proposing to allocate 10 percent. If we counted the fact that the exception area existed, she thinks what Mr. Siegel is saying is that the number would go down. Mr. Siegel responded yes. We do not allow activities in the exception areas that are detrimental to the preserved farmland. Ms. Payne stated yes, but that could be a lot of development, it could be completely covered, mined, who knows. Mr. Siegel stated that from a policy perspective we are treating a farm that did not take an exception area differently than the farm that did and they could be across the street from each other. Ms. Payne stated that is inherent to the whole concept of an exception area. Mr. Siegel stated

that he understands that but it doesn't mean that our policy has to go there. Ms. Payne stated she understood. Mr. Siegel stated that the policy can take the farm holistically and look at the exception area coverage in calculating what is permissible on the preserved acreage. Ms. Payne stated absolutely and she is not arguing the point.

Mr. Waltman stated that there were two analyses done here. One was an inappropriate amount of soil disturbance. The second was to look at the universe of preserved and nonpreserved farms to try to figure out what we should do. In the beginning, he argued with Ms. Payne that the second process should be irrelevant. Six years later, he is now very much comforted by having done that analysis and what it means is that if we got the first number right, and he is not sure we did and we can have a conversation about that, the second analysis says that it is not going to impact that many farms. That second part shouldn't affect the policy and the policy should just be based on what is an appropriate and inappropriate amount of soil disturbance and that second analysis was just to make sure what the implications would be for the farmers and landowners. He hears what you are saying – if the policy should be determined in part by what the effect would be on farmers then the analysis has exaggerated what the effect would be. However, even with that exaggeration it still looks like a very small number of farmers and landowners who would be affected by this proposal.

Mr. Everett discussed the Compliance With Draft Limitation – Preserved and Unpreserved Farms spreadsheet with the Committee. He stated that there is the preserved farms group, the unpreserved farms group and the aggregate group. He stated we will look at the number of farms that are compliant with the draft regulation – 99.27 percent of preserved farms; 99.85 percent of unpreserved farms; and the aggregate is 99.40 percent. So to state otherwise, .73 percent are noncompliant under the preserved farms; 0.15 percent for unpreserved farms and the aggregate is 0.60 percent. If you bifurcate the compliant farms from the noncompliant farms, it actually drops the percentage of disturbance of a preserved farm down to .56 percent on average of preserved farms, 1.54 percent for unpreserved farms and then the aggregate is 0.64 percent. Conversely, the disturbance percentage of noncompliant farms is 17.45 percent for preserved farms, 16.18 percent for unpreserved farms and the aggregate is 17.43 percent. He stated that we will visually present that 10 percent number in the next slide presented to the Committee. Mr. Everett stated that going back to a previous slide that was discussed regarding percent capacity and allocation capacity that has been utilized, if you strip out the unpreserved farms, where we talked about 6.13 percent of preserved farms, 25 percent of all disturbance in this state on preserved farms is actually the result of the 16 noncompliant farms.

Chairman Fisher stated that the ones that took exceptions, that is part of history. We are starting at a point in time now and saying what we can and can't do. Are you suggesting that you take it out because it has already happened and it shouldn't be part of the calculation or leaving it in, it should be part of the calculation because everyone gets to have the exact same fair opportunity to represent the percentage of the farm they want to have this issue dealt with? Ms. Payne stated correct. Mr. Germano stated the percentage of the preserved land, not percentage of the farm. That is what you are doing when you take the exception out. You are only regulating the preserved land. Ms. Payne stated that if this standard stays at 10 percent, if you have a preserved farm the standard would say that you could disturb up to 10 percent of the preserved portion. Whatever disturbance you have on your exception area, that is in addition. That is how this is drafted. The proposed disturbance is at 10 percent. What that is saying is that you can disturb up to 10 percent of the preserved portion of your farm and not be in violation of this. If you have an exception area, that additional area you could disturb and it is not a problem because we are only regulating the preserved portion of the farm. You would basically be allocated 10 percent on the preserved portion plus whatever amount you can do in your exception area. That is between you and your township with whatever you can get permits for.

Donna Rue asked if you didn't claim an exception area what would happen. Ms. Payne stated that the 10 percent would apply to the entirety of the preserved farm.

Mr. Siegel stated that for clarity, our preserved farm data does not distinguish between nonseverable exception farms and farms without a nonseverable exception. Mr. Everett stated no we don't. Mr. Siegel stated that he is still going back to what the farm is. Ms. Payne stated that we looked at how much farmland-assessed land there is in every county in New Jersey. It represents a portion of the whole. So let's say 18 percent of all farmland-assessed land is in Salem County. So then we took a statistically valid sample in every county based on the amount of land that they have in farmland assessment, so there was equal distribution throughout the counties. You wouldn't want the random distribution to pick all the farms in Bergen County. So we had to make sure there was geographic distribution. When we looked at those farms and mapped them, to Mr. Danser's point, we looked at the farms and we said, OK, of all the farmland-assessed land in Salem County, we ranked them in order of how much improvement value they had, because you can get that data out of farmland assessment. We only picked as the universe of farms those that had 50 percent or higher amount of the median value of improvements. That is the sample we set in every county and then we said, OK computer, pick a random sample based on that distribution. Mr. Waltman stated that it is overstating improvements on average. Mr. Everett stated that was correct.

Mr. Siegel stated that he is fairly familiar with the database universes that are being used here and this is coming apart somewhat for him. He is a little taken aback that you used taxation data for instance, in part because there are more than 300,000 acres in farmland assessment that the USDA doesn't recognize in its Census as being agricultural. He is not terribly familiar with how the USDA does its Census except it is like a survey, so they are doing a certain amount of modeling in terms of what people answer, just like the regular Census does and they come up with 850,000 acres. Farmland Assessment is 1.1 million acres and if you are counting the improvement value you are looking at improvement value on a lot of property and your data is going to include a lot of properties that the USDA is not recognizing as agricultural. Ms. Payne stated that she didn't know that it would say a lot of it would be. She understands the point being raised and she thinks that we can do more explanation and create a better understanding of how we went about it to answer Mr. Siegel's question of is that a valid sample and a valid way. Mr. Siegel felt that the improvement number is too large.

Mr. Stanuikynas stated that with your preserved farm database, you probably know of farms that are multiple parcels so one farm stretches over four or five parcels and you have that data for the entire farm but the Division of Taxation, that is parcel-based so you might find a farm parcel but not know that it also contains three or four of the surrounding parcels, so you may not be seeing the entire farm. Mr. Schilling stated that you might have one farm that has multiple preserved farms, if you will, so you might have one farm management unit and three preserved farms, but you have the metes and bounds description for calculating percentages. Just to clarify the record, farmland assessment versus the Census, you have about 715,000 acres according to the latest Census and then you have about 980,000 enrolled under farmland assessment. A lot of that difference is the managed and unmanaged woodlots to some extent. That is the biggest part of the difference. So you are comparing apples to oranges. You select it based on above the median value of improvements so you are kind of looking at the unpreserved farms that have more stuff. Ms. Payne stated that is correct. We are trying to look into the future. It doesn't do us a lot of good to do a random sample of farmland-assessed property if the random sample happened to produce a bunch of farms that have no improvements. It doesn't tell us anything about what is the extent of improvements that are necessary on farms. That is the question that we are trying to get at through the data. In terms of the USDA data, it is consolidated. You cannot pick a property, get the data for it and then map it. We are using a GIS exercise so farmland assessment data was the best default. Ms. Payne asked Mr. Everett to address Mr. Stanuikynas' concern about the aggregation because we did look at that. Mr. Everett stated that what we did was once we had these random sample parcels, we actually manually went in to see what was

contiguous around it under the same ownership. We took what would be analogous to our premises under the preserved farm, so if there was a noncontiguous parcel under the same ownership under the same mailing address, we included it.

Mr. Everett continued with the analysis stating that under the allocation capacity utilized for compliant farms, 5.56 percent was for preserved farms, 10.94 percent was for unpreserved farms and the aggregate was 6.16 percent. The allocation capacity utilized for noncompliant farms for preserved farms was 172.49 percent, so frankly staff's opinion is that we don't know much more we can do.

Mr. Schilling stated that the 16 noncompliant farms, they had 25 percent of what is presently being defined as disturbance. Do they tend to be large or little farms? He is assuming large because they count as 25 percent of disturbances. Mr. Everett stated that there is a full range of those. They encompass all the acreage ranges. He reviewed a few example slides of what those farms are and what the causes were for those disturbances. He stated that for one 510-acre farm, it is an 18 percent disturbance and that is because there was 23 acres of buildings, 18 acres of paved parking and 54 acres of paved farm lanes. Mr. Johnson stated that the farm lanes are really blowing it out? Mr. Everett responded they are. Ms. Payne stated that we talked about that and it is really a huge issue, about what kind of farm lanes we are talking about.

Mr. Siegel stated that this regulation doesn't become a preservation criterion then, or do you see it that way. For instance, if this farm applied to the program, we would look at it and say it is way above the 10 percent policy so we are not going to preserve this farm. Ms. Payne stated that we have not addressed that question in this proposed rule. She doesn't necessarily agree with what Mr. Siegel is saying. If that farm came in like this today for preservation, on a personal level she would be concerned about accepting it if it is violation of these rules. We may need to deal with landowners with exception areas and the like to deal with that issue. The rule does say that we would not approve a subdivision that created a farm that violates the rule. So the same thinking would be that we wouldn't accept a farm that violates the rule in the program. It is not addressed in the rule; it is a policy decision for the Committee. Ms. Jones stated that here there is no exception area on this farm. Mr. Everett stated that there is no exception on this farm and what staff did to ascertain noncompliance was take the time to put the exceptions back on, which did knock off a few of the farms. It may have had an exception area but it was not enough to throw them out of the noncompliant category. Mr. Siegel stated that with this regulation enacted as written, because this farm is above the limit, would it in effect be an immediate freeze on anything in addition to what he already has? Ms. Payne responded that is correct.

Chairman Fisher stated that assume you have an unpreserved farm coming into the program. They want to preserve the half that has no greenhouses on it. Ms. Payne stated that is possible, particularly if it is a large farm. If it is a 100-acre farm and they want to carve off 12 acres where the buildings are and preserve the rest, we could deal with that. You do get to a point though, on a 32-acre farm where you have some of it in woods. If this came in and they wanted to carve off that area, what would be left to preserve? Is that what we should be spending our time and money on? We are going to have to deal with that and every county is going to have to deal with that, particularly as funding gets less prevalent in the program, then every acquisition has to count. If that farm came in and they wanted to take half of it off, because it is disturbed, she would question whether it should be pursued.

Ms. Payne stated that staff just gave a sampling to the Committee to give an idea – there are 16 farms that we can walk through in detail if the Committee wants to see every one of them at the next meeting but we weren't going to do that today. We tried to provide a sense to the Committee. It is no big mystery that greenhouses and equine tracks are the big disturbances.

Mr. Clapp discussed Part V – Exemptions, Waivers and Remediation. He stated that he will discuss some of the items specifically in the rule now. As we drafted this we recognized that there were certain activities that would fall under the definition but that would happen on just about every preserved farm and if we tried to regulate everything, we would either come up with such a large number for disturbance that it wouldn't mean anything or we wouldn't be allowing farmers to farm, so we determined that the best way to handle that was to exempt some activities.

Mr. Clapp stated that for exemptions there are some general requirements – that the activity being exempted must be an agricultural practice and it must be otherwise compliant with the Deed of Easement. Mr. Clapp reviewed the various examples of specific exemptions with the Committee, as outlined in the presentation. These specific exemptions would be considered fairly normal farming activities that would have a negligible impact on agricultural use of the soil resources. An example would be irrigation storage reservoirs. These could be ponds, tailwater recovery systems and similar associated practices when they are used for irrigation. The intent was that if it is used to improve the farmability of the surrounding ground by supplying a source of irrigation water that should be exempt, as compared to a pond that would be for aesthetics and those sorts of things. It must be part of an approved and implemented farm conservation plan to be exempt.

Mr. Clapp stated that earlier geotextile fabrics were discussed, that it is not so much the fabric itself that causes the disturbance but rather the land preparation that goes with it. So the use of geotextile fabrics or temporary plastic for plasticulture would be exempt, provided that no asphalt, concrete, gravel, millings or other similar materials were utilized and that you were not doing compaction. Areas where there has been major compaction or major stripping of soil or, in the other example provided to the Committee, in an area where you may be building a sand riding arena where geotextiles are part of a series of the construction where there is also gravel and the placement of other building materials, would be considered disturbance. Mr. Clapp stated that unimproved farm lanes – those that are not surfaced and are used to get to the agricultural production fields – would be exempt. For surfaced roads, we recognize that there are times when either the landscape or the type of activity or crop would require having some surfaced lanes to either prevent erosion or to enable access to the fields. So what we proposed was 1 percent of the premises' acreage could be used for surfaced roads that connect fields for harvesting or planting of crops. As an example, a 100-acre farm could have up to 1 acre of exempt improved farm lane, which is about 8/10ths of a mile of a 10-foot wide road or 2,900 hundred linear feet of a 15-foot wide road, or almost 2,200 linear feet of a 20-foot wide road.

Mr. Clapp stated that soil disturbance that is created solely by a third-party property interest in the property such as a utility easement or road rights-of-ways, those sorts of things that the landowner has no control over like pipelines, would not count toward their disturbance limitation. Also other agricultural practices consistent with the intent of this subchapter and approved by the Committee would be exempted.

Mr. Clapp stated that some things may not fall under exemptions but the Committee may determine that they are beneficial to agriculture and necessary for that operation so those practices could potentially receive a waiver. This is a little harder to get than an exemption. A waiver would have to be for activities that do not diminish the agricultural productivity of the land. Mr. Clapp reviewed the specific criteria for a waiver with the Committee, as outlined in the presentation. Ms. Payne stated that an example would be a cranberry operation – they are sitting on land that is very deep sand and they are moving sand around and creating bogs so that is what this was intended to address. We understand that they have a very homogenous profile and they are going to move land around to make things, and it is not affecting the agricultural activity of the property. So it gets to one of the points that was raised earlier.

Thomas Michelanko stated that he is a farmer and also a member of the Hunterdon

County Board of Agriculture. Mr. Michelanko asked whether a landowner must come to the Committee for an exemption or whether it is automatic. Mr. Clapp stated that the exemption would be automatic. Waivers you would have to ask for approval of those. The part of this that is important to mention is that this is for folks who are right up to that 10 percent limit. If you have 2 percent disturbance and you want to do something, in theory, that would require a waiver because you were trying to go above and beyond that disturbance limit, that would require you to come in. If you were well below the 10 percent limit we are sort of saying that the initial 10 percent, you don't necessarily have to come to us to get approval for it. Ms. Payne stated that we should be careful here because the draft rule states that the Committee may grant a waiver from the maximum soil disturbance limitations. As drafted, someone would absolutely need to come into the Committee to get the waiver to disturb more than 10 percent of their property. Mr. Danser stated that what Mr. Clapp was saying is that if you are only at 2 percent and you want to do something that would take you to say 2 ½ percent, you can do it without a waiver but you are risking ½ percent that you might run into down the line. Ms. Payne stated that is correct. Mr. Germano questioned that. He stated that the Committee saw a slide that said if you are stockpiling or stripping, that has to be done with a conservation plan that is approved by the Committee. So if you are at 2 percent and you do that extra ½ percent, if you are talking about stripping or stockpiling, even though they are well below the 10 percent, they do have to come to the Committee. Ms. Payne stated that is a question for the Committee. Part of her goal, at least early in this discussion, was to draw the box around the amount of land that can be disturbed without involving the Committee. However, the issue of topsoil loss has been raised and actually counties all over the state say, "Look, I don't care what you're doing on your property but don't take the topsoil off." So we are trying to reconcile those two issues. On the one hand we want all the topsoil to stay on the preserved farm and the only way to make that happen is to make it required to be compliant with the plan. But then that does require people to submit a plan for all disturbance if they are storing topsoil. We throw that out there as a policy issue we are wrestling with.

Mr. Michelanko wanted to know what the thinking is on the pipeline. He knows it was just said that there are exemptions. They will go through your land, they will go down 80 inches, dig up the rocks, there is soil compaction, with large equipment weighing 40 or 50 tons and what is the ruling on that, because he has investigated this quite well and he has talked to a farmer who had a pipeline put in. You have to watch the people doing it because they don't worry about the topsoil or putting it back right. They do not get the rocks taken away, they want to cut your woods out, chop your trees up and unless you specify that you have the trees and use them for wood, they only need a 50-foot right of way but need a 100-foot working area and take it down to bare ground. They go through

wetlands and all kinds of stuff. He just heard something about exemptions for pipeline. He wants to know what the reasoning is. He also heard that you have the right to arbitrate and get any funding but to him, no matter what they pay it is not enough to have a second easement on his farm. The pipeline thing is coming to a lot of places and they are moving it around, but if that is exempt he wants to know what is the reasoning for that exemption.

Chairman Fisher stated that Mr. Michelanko's question can be addressed in the public comment portion of the meeting. He is not going to entertain any more questions from the public at this time, until staff has an opportunity to complete their presentation. Once the entire presentation is done and the Board asks their questions, we will then address any questions that the public may have, including Mr. Michelanko.

Mr. Clapp stated that was one type of waiver. Any other waiver requests that would come in front of the Committee would have to meet some general requirements – either the proposed disturbance would have to be required by a federal or state law or the proposed disturbance would have to be a soil or water conservation practice that is eligible for cost share and in an approved conservation plan and also approved by this Committee. If you meet one of those two criteria, the proposed disturbance that you are seeking a waiver for would have to meet additional criteria, such as no feasible alternative to the project on or off the property; cannot be installed on exceptions areas; cannot be installed on prior disturbed areas; the disturbance is minimized and otherwise compliant with the Deed of Easement, and finally not required to address self-imposed hardship. Examples of self-imposed hardships could potentially be failure to address stormwater management or other DEP rules that were required at the time the disturbance was created and failure to address a violation of the Deed of Easement in order to build production practices.

Ms. Jones stated that since the NJ DEP was listed, they were able to have a preliminary discussion with someone in the Bureau of Land Use Regulation who was the Bureau Chief. She would suggest that it might be good for staff to talk to them. Overall, the DEP is glad that staff and the Committee is looking into this and everyone has done a great job and has done amazing research. What the DEP would like to see, and they will provide comments to staff later, is a statement under the limitations section, talking about compliance with law that is applicable to the DEP regulations, because obviously a lot of farmers still have to get certain DEP regulations for certain activities that they do. She thinks that some of the soil compaction and activities may require a DEP permit, whether it is a permit by rule, depending upon what the actual permit would be. Ms. Payne commented that the DEP wants to make sure that people are not interpreting this as to granting compliance with DEP rules. Ms. Jones responded yes, that is correct.

Mr. Danser stated that we have to cover that with some statement that compliance with this does not imply or mean that you are automatically exempt from any town, county, state regulatory or agency regulations. Ms. Jones stated that it is standard language that we have always had.

Mr. Clapp stated that ultimately, if the activity that you are interested in isn't exempt and not eligible for a waiver, we recognize that there is the potential for needing to change your operation. For example, if you purchased the farm that had all of its infrastructure right along the road and you are going to a different type of operation that needs infrastructure in the back of the farm for whatever reason, you may need to remediate a portion of the disturbance that exists on the farm today to be able to expand or change the operation to something different. That is why we allowed for the potential for remediation. It is important to note that every site may be eligible for remediation but the degree to which remediation is possible, based on the types of soil, will be a site-specific case-by-case basis. Not every disturbance will potentially be able to be remediated. Mr. Clapp stated that the grantor may, with prior written approval of the Committee, reduce the extent of soil disturbance on the property. It is a two-step process with the first being to develop and implement a remediation plan and then demonstrate satisfactory performance of post-remediation testing. The Committee will determine if remediation was successful and pass a resolution to that effect. Then those acres remediated will not count toward the soil disturbance limit unless it was disturbed again.

Ms. Jones stated that when they were looking at the proposed regulations, when we saw the word remediation, it triggered in them "brownfields," kind of a DEP world of remediation. She wondered if staff would want to think about "restoration" instead of remediation. It is something to think about. Ms. Payne stated yes, it is a point well taken.

Ms. Payne stated that there is lots of data behind all of this. We tried to break it down into a presentable, digestible amount of information but any inquiries, thoughts, questions you may have at the Committee level, please feel free to share them with staff because we have probably done the analysis or have the data to answer your question. Staff feels like we have done all we can do and wanted to bring it up and get feedback on it.

Chairman Fisher thanked staff for their efforts. To mine all that data and put it into this kind of document is extraordinary. Yes, we will have questions but this is the time where it will float. It is out there for all of you to report to staff on your thoughts and what you feel should be incorporated or looked at before it goes out as an introduced document. Chairman Fisher felt this was so big and there are so many complexities to it that the more we can get done at this level, maybe we can put away some of these holistic

concerns.

PUBLIC COMMENT

Ms. Payne responded to Mr. Michelanko's earlier question regarding pipelines on preserved farmland. Ms. Payne stated that the question was how the draft soil disturbance rule deals with utility condemnations or going across preserved farmland. The SADC is very well aware of the fact that some utility projects have condemnation power that supersedes the State's authority or the SADC's authority to stop. There are some projects that have federal overriding power and federal law supersedes State law. When there is a project like that, what we are saying in the rule is if XYZ pipeline comes in and disturbs 3 acres of a person's farm, that we are not going to count that 3 acres toward the disturbance that the landowner is entitled to because it is being done by force and is out of the landowner's control. We are trying to hold the landowner harmless from those impacts. The second part of Mr. Michelanko's question is what is going on with the pipelines and what is the SADC's position? Ms. Payne stated that she started this meeting by saying to the Committee that staff has been trying to keep it updated on news articles and generally what is going on. Staff needs to prepare a comprehensive presentation to the Committee so it understands what is going on throughout the state in terms of pipelines, how many preserved farms are being affected.

Mr. Michelanko stated that the reason he brought some of this up was because at the New Jersey Farm Bureau Convention he had some things he wanted to put in their policy book about pipelines and they said that the SADC has to come up with things that should be thought about and put forth regarding what is needed for the pipelines. Ms. Payne stated that the New Jersey Turnpike expansion is an example of a nonagricultural project coming through and taking preserved land. What we have done in the past and will continue to do is work with the utility company as early as we can to try to have them avoid preserved farms wherever possible. The SADC works with the DEP very closely on their early review process so we try to get utilities to avoid preserved farms. When we can't avoid it, then we try to work with the utility company to make sure the issues that you have raised are addressed. She is not sitting here pretending that the SADC has the authority to tell the utility company what to do because we don't. Mr. Michelanko asked that he is hearing that the SADC has the right to arbitrate the dollar amount. Ms. Payne stated that when a farm is preserved, let's say for instance that the property was worth \$10,000 per acre today and the easement is worth \$5,000 per acre. When we go to closing, the SADC provided collectively a 50 percent grant – that represents 50 percent of the value. Paragraph 23 in the Deed of Easement states that if a utility company or government ever comes in and condemns and takes a portion of the preserved land, the

SADC gets 50 percent of the proceeds because its investment represented 50 percent of the value of the land at the time of closing, and the landowner gets the balance. What is happening is a utility company may come by and say that the easement is only worth \$200 an acre. We review those and we say, no you have to pay us back fair-market value. So we do have our review appraiser review those, the Committee accepts values and then we go to closing and get reimbursed. Mr. Michelanko asked if it was the value of what you paid for the land years ago. Ms. Payne stated it is the relationship between what we paid and what it was worth then, but it is updated to what it would be worth today.

Mr. Michelanko asked that since the SADC has that control is it going to go out there and watch to see if the topsoil is put back right, if the subsoil that they take away – are you going to regulate any of that, being you have the right to half of the money? Because he talked to a farmer who has experience with a pipeline coming through and he said you have to really watch and when they got done it wasn't the same yield of hay he had last year. The land that he farmed and didn't watch, it was terrible. They are not careful and they do not care. Ms. Payne stated that the answer is that the SADC does not have the resources to go out and watch what is going on. The landowner needs to be the eyes on the ground. She will say that when they went through the Turnpike issue, they talked at length about this issue with them up front so they were on notice that eyes would be open. One or two of the landowners said they came out and cleared this and that. They used us as a conduit and the SADC reached out to the Turnpike Authority and brought these things to their attention but we don't have the authority to tell them to stop work.

Chairman Fisher asked Agriculture and Natural Resources staff person Frank Minch to address everyone from the conservation district's point of view. Mr. Minch stated that the local soil conservation district would monitor that. Because it's a regulated permit activity they would be the group that you would need to approach with those types of concerns.

Donna Rue from Rue Brothers farm stated that she is concerned about the existing preserved farms that don't comply. How are you going to enforce this and how are you going to work with them to get them in compliance when you have new things? Also, she has a 300-acre farm, four lots under one preserved easement. Three of the lots have buildings and there were no exception areas taken when they went into the program. Let's say she is going to sell one lot. She questioned how the 10 percent would work. Ms. Payne stated that they would each have 10 percent. It is 10 percent of the whole or if you subdivided the farm, each piece would have 10 percent so the subdivision, in and of itself, doesn't reduce the allocation. Mr. Johnson stated that some lots could come with nothing left though if you used your entire 10 percent on one of the lots. Mr. Danser

stated that in Ms. Rue's case, you are probably at 1 percent, maybe 1.5 percent. You have lots of flexibility aside from this thinking that you can't put 10 acres of greenhouses on a 70 acre piece because that would be over 10 percent. Ms. Rue responded right. What she is thinking of is the whole farm, 300 acres and they have four lots. As it stands right now, they have 10 percent on the 300 acres. But if she sells a lot, then what? Mr. Danser stated that if you have 300 acres right now your 10 percent is 30 acres. If you sell 70 acres, that parcel gets 7 acres out of the 30 and the 230 acres that remain get 23. They would each be allowed 10 percent. This is hypothetical. We don't know yet because we haven't done the rule yet. Ms. Rue stated that she understands that but she was wondering because with people who already have preserved farms, it is like you are adding new rules and regulations after the fact to them so she is wondering how this is all going to play out as far as those who have been in the program for many years and how it is going to impact them.

Harriet Honigfeld from the Monmouth County Agriculture Development Board stated that she is impressed with the work that staff did and all the research and thinking. She doesn't want to speak specifically to the rules without engaging their farmers and board, but something that did jump out at her is kind of a reality check, requiring conservation plans. It is theoretically a fine idea but they are so backed up in their county and others. She has been waiting for three years at least for the farms they have on the waiting list. They don't even ask new farmers and they don't push new farmers to go get them. Ms. Honigfeld stated that they tell them to contact the NRCS but they don't press them about compliance because they cannot get through the backlog. There have been some agreements made with inter-departmental work. But that is going to be an issue. Ms. Payne stated that she hears what is being said. Ms. Honigfeld stated that she thinks that related to the whole Rue farm greenhouse proposal, as she is reading the draft she has some hope that maybe a project like the one that has been discussed in the last few months might be eligible for a waiver because if there was some sort of soil movement and the topsoil gets put back and used in a productive way then maybe the Committee would be open to that. As written she is not sure but they do want to allow for those scary looking structures in those first few slides presented today, when done in a thoughtful way that uses the soil underneath, because we don't know from those slides if there were concrete floors or if the plantings are in the ground. We have to be open to those possibilities.

Amy Hansen from the New Jersey Conservation (NJCF) stated that she is representing the NJCF and she also owns a preserved farm in Hunterdon County. She thanked the Committee for its hard work and extensive research and it is very much appreciated and needed. Obviously there has been certain abuses of soil in the state on preserved farmland

that is unconscionable and it is really tough to be taxpayers paying for preserved farmland and then that happens to it. The NJCF and she applaud the Committee for setting standards. They also hope that large greenhouse operations would be put on brownfields or rooftops or other impervious surfaces. The NJCF would prefer a smaller impervious cover allowance but it will look forward to working with everyone going forward and providing detailed comments. Again, strong soil protections will allow many types of agriculture going forward, including healthy food production. Ms. Payne stated that she wanted to make clear that this is not an impervious cover limit.

Alex Bacon from the NJCF stated that this was great work and that everyone has been working very hard on this. She came here because the NJCF is very concerned about the Penn East pipeline issue that Mr. Michelanko mentioned. She is aware that Mr. Brill from the SADC is working very hard on it and you don't have a full policy as yet. She wanted to point out a few things. The NJCF has been working with the SADC over the years and has had some wonderful partnerships preserving a lot of farmland all over the state. One of the focus areas has been Hunterdon County. Ms. Bacon presented a map showing the proposed route of the pipeline. You will note that it goes through a lot of lands indicated in orange – those are all preserved farms. They are feeling that this is a very critical issue. She stated that the total easement amount that has been spent on these easements is approximately \$17 million. That is from all the various partners, taxpayers from the State of New Jersey and some federal monies. The easements total approximately 3,000 acres. She knows that what can be done on a State level is limited because this is coming from the federal level but we all have to think long and hard about the fact that this is a fresh cut and it is a green fields pipeline. It looks to her like they have targeted preserved farmland. Ms. Bacon stated that we also need to be thinking about the farms along the line that are not yet preserved and also the Green Acres land that this will be affecting. She thinks that if everyone were to work together we might think outside of the box and be able to talk to the powers that be in Washington, the Federal Energy Regulatory Commission, and tell them that this is a 50-year-old program in New Jersey that has been incredibly successful, and if the word gets out that you can target preserved lands and get your pipeline through easily and inexpensively, the door is open. There are many pipelines being proposed and no policy as to where or how and what they should be doing. We need to think about ways to protect the lands preserved in New Jersey. This will be our new job, protecting the land that we preserved.

Mr. Waltman stated that his organization manages 930 acres of properties indicated in dark green close to that red line, about 60 of which are in active agriculture. They have been brought into this discussion. There are several organizations and individuals who have been looking at other utility corridors that run roughly parallel to this proposed line.

The NJDEP apparently has, although he has not seen it, a policy that favors co-location of utilities. So if there is a new pipeline proposed and there is an existing cut or utility corridor, DEP's policy is to try to push new infrastructure into existing pipeline rights of way or other utility easements. His question is does the SADC have a policy regarding that co-location issue? Ms. Payne stated the SADC does not have a formal one. At the staff level we have interfaced with all of these utility companies but the Committee has not adopted a policy. Mr. Waltman stated that is something that maybe staff could look into to discuss at another time. Ms. Payne stated that if the Committee wants to take a position on it then we will do whatever work is necessary. Mr. Brill stated that FERC has a co-location policy that we have commented on many times in relation to other projects so there is an understanding that it is preferential in most cases, not all. He hesitates to have an absolute statement because you have to look at real world conditions and developed areas as well as undeveloped areas. But it is increasingly difficult to find corridors where it is technically possible to run this kind of infrastructure in a state like New Jersey and other parts of the Northeast in particular. Having said that, we will continue to work hard with all of our partners and agricultural interests going forward. We have already had one exchange with our county and municipal partners in this corridor, which has one of the most heavily concentrated areas of preserved and unpreserved farmland, and we are working with pipeline company representatives to do everything to minimize impacts where necessary related to this project. It is an ongoing process. They are starting with a 400-foot study area, which is kind of the worst-case scenario, so some of the preserved farms we may be able to move off of as the process continues. But we will continue to offer opportunities for landowners and other interests to come together from an agricultural perspective, as we also work with DEP to coordinate environmental and agricultural and historic considerations.

Mr. Michelanko stated that he farms many farms that the pipeline will go through. He realized now after talking to you that he has to regulate how the soil is put back so his crops will grow again. This is a huge burden that he is going to have to go through because he farms 50 farms and they are going to go through so many farms and there are going to be so many places he is going to have to regulate how that work is being done on other people's farms. Mr. Brill stated that they are already talking with FERC and Penn East about having the pipeline company pay for a third-party construction monitoring service that would follow every step of the construction process, wherever that is occurring. He cannot promise it will be perfect but there are provisions in place to not require landowners to stay over the backhoe or equipment. However, these concerns are well placed. The pipeline companies will not do the construction work. They will hire independent contractors that will be low-bid contractors that need to be required to adhere to the standards that we are building into the documents. Ms. Payne stated that we

have no history on the actual farming impacts of pipelines. The SADC would welcome any information that you, Farm Bureau and landowners have because the position that the utility companies are taking on these projects is that we are going to cut a trench, lay the pipe and put it all back and you are good to go and farm over it. She just doesn't have enough experience to know whether that is how it is going to play out. To the extent that the impacted public can help educate us, then we will be in a better position when we are dealing with the utility companies.

Nicole Kavanaugh from New Jersey Farm Bureau stated that at their Convention she does believe there was a resolution and part of the resolution that was adopted was that the Farm Bureau would work with the soil conservation districts, the Department of Agriculture and the SADC to develop some sort of guidance for landowners on what to look out for in this whole process, in the negotiation process and how their land is treated. The Farm Bureau looks forward to working with the SADC on that. She knows that when she has talked to a few other concerned landowners about pipelines and they have had anecdotal experiences, she has recommended that they contact Mr. Brill and let him know about it.

Ms. Kavanaugh stated that on the issue of soil disturbance, the Farm Bureau also adopted at the annual meeting this year, as part of the resolution, to oppose any adoption of the rule to direct soil disturbance on preserved farms. The primary goal of the Agriculture Retention and Development Act (ARDA) is to support the industry of agriculture and to promote a positive agricultural business climate. This is all in the legislative findings and declarations of ARDA. So restricting agricultural development on preserved farms with no flexibility goes against that stated purpose. We don't want to see a strict limit on the amount of soil disturbance because we believe it goes beyond the parameters that were set forth in the existing deeds of easement that are out there today. She noted the issue brought up by Ms. Rue of adding a restriction after the fact. And you already have 16 preserved farms that don't fit your rules. So what does that tell you? The SADC must consider that it is possible to construct agricultural buildings and move soil in a conscientious and deliberate way to protect its integrity for future use and not all soil movement is done in a destructive way. There shouldn't be a hard and fast line. Overall, the tightened policies being adopted by the SADC to interpret the Deed of Easement are increasingly limiting the ability of preserved farmland owners to survive in a changing agricultural industry. She is sure that the Farm Bureau will be putting something in its newsletter tomorrow or tonight so do you know when and where this information will be available and how soon it will be posted so we can tell the agricultural community? Ms. Payne stated that the PowerPoint presentation will be posted tomorrow, if not by today. In terms of outreach, SADC staff will be glad to make presentations to any board that

wants to have us but it will not be until such time as the Committee meets again and the Committee is comfortable with the document. She doesn't want to come out and make presentations about what the rule says when the Committee may change it soon. Ms. Kavanaugh stated that right now you are meeting in January and the Committee might say yes or no to put this out for informal comment and then after that you would give presentations to the CADBs or county boards of agriculture. Ms. Payne responded that is the preliminary schedule. Ms. Kavanaugh stated that this isn't even an informal comment period, it is just a first look. Ms. Payne responded that is correct.

Chairman Fisher stated that he is hopeful that it will work in a way that there won't be hysteria in terms of look what they are doing here because everyone is getting a chance to help craft this so the Committee can make its final determination and then it goes out for public comment. It is a little bit different. He is hopeful that we can do this in a way that people will be able to help tailor this. It is an issue that has to be addressed.

Mr. Siegel stated that he had one thought on the premises acreage – that there are two categories, 5 to 25 acres and then 25 and above. Was there any thought given that the 5 to 25 acres was a bit of a large universe and maybe that could be subdivided? We require 5 acres of tillable acres to be eligible to get into the program. Would we preserve a farm with 5 tillable acres and then have 2.5 of those acres be disturbed? That is a question and he is not expressing an opinion. He has been told by other people that these small street corner farms are exactly where we should be putting greenhouses rather than the large plowing acreage. Ms. Payne stated that part of what staff looked at was the distribution, how many farms under what size are in the program. We would have to look back at that to see if it makes any sense to break that down any finer. Mr. Siegel thought that it was a big number and possibly it could be broken into three levels.

Mr. Schilling stated that one thing that struck him was soil loss tolerance rate. It struck him as potentially a new compliance criterion within the Deed of Easement. He knows the concept has been around for a long time but he has not heard it used in the context of determining whether the preserved farm is compliant or not. What has agonized him over the past several years and some of the more recent issues we have had to listen to is more of a philosophical view that there is a link between soil health and productivity and what we are calling disturbance of soil. Some of the literature, and with all respect to his Rutgers colleagues, he is not a soils expert by any means, but it is unclear to him what some of these disturbances do in terms of long-term agricultural productivity. He thinks what is needed is something that his understanding is doesn't exist, which is long scientific periods of time to do a scientific study of what impacts on soil productivity occur when it is under concrete or under an unpaved lane or what have you. He doesn't

know how much of what has been presented from experts is really consensus view of the literature or kind of an extrapolation of what the literature means.

Mr. Schilling stated that not exempting stormwater management areas struck him as odd. He thought it was contradictory to provision 2:76-68.8, which is a waiver for compliance for federal and State laws and regulations. If you are developing that stormwater facility to remain compliant with State law, it just struck him as contradictory. Also, philosophically, are you penalizing a landowner for protecting another public value? Ms. Payne stated that on that point, we talked about that a lot. She thought the dialogue was something like, it is mostly hoop houses so you can put hoops up and the soils underneath are OK but at that scale they are going to be required at some point in time to put stormwater facilities in. If you have a 30-acre farm and it is so intensely used such that you have to excavate a 10-acre soil retention basin, it is the same issue that when they go to sell it to the next property owner or farmer there are 10 acres of land that have been excavated and are gone. So we appreciate the fact that stormwater is needed to comply with stormwater management regulations but that doesn't solve the inherent problem, which is excavation of the soil destroys the soil resource that was there. Mr. Schilling stated that his reaction to that is some of this stormwater compliance activity would come into effect when a farm is engaged in what we would all consider a legitimate agricultural endeavor. So it seems like a catch-22.

Mr. Schilling stated that there is a provision under Page 7 that struck him as odd under waivers, that the Committee may grant a waiver, etc., provided the activities do not diminish the agricultural productivity of the soil provided the following conditions are met. If he understood that correctly, if we are not diminishing the agricultural productivity of the soil, then why are there additional conditions such as soil layers have to be homogenous, etc.? If agricultural productivity is not diminished, that should be what we endeavor to do. He doesn't understand the five other provisos.

Mr. Schilling stated that he is really fixated on the whole scientific basis for saying there is a degradation in the agricultural value of the soil. That is his fundamental concern. He stated that there is a philosophical issue here. In some of the opening comments and he has heard them since, he doesn't think the question is whether greenhouses need to be on preserved land. He thinks it is a matter of whether there is a right for the farmer to develop greenhouses on one of these properties. In some cases we are hearing about, to a layperson from an agricultural production standpoint, pretty novel production scenarios where the greenhouses would not have paved surfaces or things of that nature so he thinks there is a lot of case specificity. There has been discussion in this Committee in the past regarding what about 100 years from now. That is beyond his ability. We cannot

predict the future. Look at the trouble we are having trying to basically modify rules and laws that were put in effect 30 years ago, so to go that far out is impractical to him. He thought it was interesting that you had some of the proof of concept operations out there, some of these very large operations. Yes, they are feasible but when he looks at 715,000 acres, we have 212,000 that we have preserved. But 16 out of 2,000 farms are not going to be found in compliance with the current proposal. He doesn't think that people are going to wake up every day and say I'm going to put up one million square feet of glass. He really struggled with this whole discussion but most fundamental is what he perceives as a lack of good long-term science that understands the connection between some of these practices that we are concerned about and actually the soil impacts for productivity and whether or not that can be remedied with normal agricultural practices. The last comment he has is we have done some work in corn mazes where the paths are less compacted than the actual soil in and around the plants so we still have guys go out every year and plant corn, they go do proper agricultural management practices and that soil is good.

Mr. Johnson stated that this is a fresh discussion point to discuss what this is going to do to the program as a whole. He thinks there is a real possibility that this is going to paralyze interest in the farmland preservation program. If he had a piece of property that he was considering preserving, at this point he would not do it. If he was considering purchasing a preserved farm, at this point he would not do it, and also the impact on the taxpaying citizens, which does include the agricultural community. The difference between before and after values could potentially be greater so the program could become more expensive to the taxpayer.

Mr. Siegel asked about if there was a large farm, a status-quo operation, where suddenly there was a determination that because of stormwater runoff rules, the farmer has to implement some engineering, which may involve soil disturbance. That is compliance with State law and that is not counting on his criteria, correct? Ms. Payne stated no, that is not correct. Mr. Siegel stated so it is a status-quo operation and he hasn't done anything differently but he is getting an unfavorable finding with the DEP that he has a stormwater runoff problem that he has to deal with. Ms. Payne stated that we were trying to make a distinction between someone who let's say builds lots of hoopouses or whatever kind of structure without paying attention to stormwater and they max out. Then they come to us and say they need more disturbance in order to comply with the rules. That would not be eligible for relief, in our minds, because it was a self-inflicted hardship. They ignored the need from the beginning to deal with stormwater, as opposed to you have a large livestock operation and you are fine and compliant and the USDA comes along and passes a regulation that you must put a new concrete bunker in to handle all the manure.

There we are saying yes, that would be eligible for a waiver because it is due to no action by the property owner that they now need additional infrastructure. It is purely by virtue of changing rules.

Mr. Waltman stated that he joined the Committee in 2008 and almost immediately Ms. Payne and the Secretary at that time established this subcommittee. Initially he thought there was a big mistake made because it was left to the public and farmer members and he thought the DEP should have been a member of that subcommittee. He never expected the kind of thorough, professional, detailed work that came out of the SADC staff. This has been a long process and there are a lot of compromises in this document. He could argue about how this number is too high. When he started out he thought we needed a tight limit on impervious cover. If you look at what we are doing here, there is a lot of impervious cover that will not count as soil disturbance. So you could argue if you think you should have a tighter impervious cover there is a lot of stuff in there. Mr. Waltman stated that in almost every instance where there was a calculation or some statistical analysis, it was done in a way that overstated the current amount of soil disturbance. That was intentional. He stated thank God we did that and because of that overstatement of that impact on landowners, he thinks that this is actually a small impact on the program. He pointed out to Mr. Johnson that every month they approve one to a half-dozen or more farms with federal money that comes with an impervious cover limit and it doesn't seem to him that farmers are running away from the program. If a county or town is in a tight spot and needs the federal money and it shows up, the landowners are stepping in and accepting the impervious cover limits, so he doesn't think that this threatens the program at all.

TIME AND PLACE OF NEXT MEETING

SADC Regular Meeting: Thursday, January 22, 2015, beginning at 9 a.m. Location: Health/Agriculture Building, First Floor Auditorium.

CLOSED SESSION

At 1:19 p.m. Mr. Siegel moved the following resolution to go into Closed Session. The motion was seconded by Mr. Danser and unanimously approved.

“Be it resolved, in order to protect the public interest in matters involving minutes, real estate, and attorney-client matters, pursuant to N.J.S.A. 10:4-12, the N.J. 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

A. Real Estate Matters - Certification of Values

It was moved by Mr. Danser and seconded by Mr. Germano to approve the Certification of Values as discussed in Closed Session for the following applicant:

County Planning Incentive Grant Program

Ms. Brodhecker recused herself from any discussion/action pertaining to the Scheller farm to avoid the appearance of a conflict of interest for personal reasons.

1. Estate of George E. Scheller, SADC # 14-0113-PG
Block 20, Lots 46.01, 46.02, 22, 50, Washington Township, Morris County, 41 Acres
Certification is contingent upon official recording of a proposed access easement providing access to the neighboring lot currently known as Block 20, Lot 49.01.

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

It was moved by Mr. Danser and seconded by Mr. Germano to approve the Certification of Values as discussed in Closed Session for the following applicants:

2. Steven R. and Timothy G. Brown, SADC # 17-0127-PG
Block 56, Lots 12, 17, Upper Pittsgrove Township, Salem County, 58 Acres
3. Alice Fogg, Harriet Harris and Mary Allen, SADC # 17-0135-PG
Block 3, Lot 42.02, Quinton Township, Salem County, 34 Net Acres
4. Dubois Properties, LLC (Henry Dubois, Jr.), SADC # 17-0134-PG
Block 1401, Lot 8.01, Pittsgrove Township, Salem County, 30 Acres
5. John and Jean Smith (Windy Acres North - # 1), SADC # 21-0530-PG

Block 12, Lot 20, White Township, Warren County
Block 14, p/o Lot 9, Harmony Township, Warren County
77 Total Acres

Certification is contingent upon successful subdivision of the subject property as described in the appraisals and this report prior to final approval.

6. John and Jean Smith (Windy Acres South - # 2), SADC # 21-0558-PG
Block 14, Lot p/o 9, Harmony Township, Warren County, 38 Acres
Certification is contingent upon successful subdivision of the subject property as described in the appraisals and this report prior to final approval.

Municipal Planning Incentive Grant Program

7. Else Farm, SADC # 11-0176-PG
Block 92, Lot 2, Hopewell Township, Mercer County, 91 Acres
8. John and Miriam Jacobson, SADC # 10-0352-PG
Block 15, Lot 1, Alexandria Township, Hunterdon County, 30 Acres

Nonprofit Easement Purchase Program

9. Montgomery Friends/Firmenich Family, SADC # 18-0007-NP
Block 33001, Lots 22, 22.01, Montgomery Township, Somerset County, 31 Acres

Direct Easement Purchase Program

10. C. Lape, C. Rollo and J. Casper, SADC # 17-0274-DE
Block 16, Lot 6; Block 40, Lot 10, Mannington Township, Salem County
Block 7, Lot 3; Block 9, Lot 1, Alloway Township, Salem County
98 Total Acres

The motion was unanimously approved. (Copies of the Certification of Value reports are attached to and are a part of the Closed Session minutes.)

B. Attorney/Client Matters

Litigation

- a. Right to Farm – Proposed OAL Final Decision – In the Matter of David and Diane Fish, Morris CADB

It was moved by Mr. Siegel and seconded by Mr. Danser to adopt the Final Decision in the matter of David and Diane Fish, Morris County Agriculture Development Board, as discussed in Closed Session with the amendments as discussed in Closed Session. The motion was unanimously approved. (A copy of the Final Decision is attached to and is a part of these minutes.)

PUBLIC COMMENT

None

ADJOURNMENT

There being no further business, it was moved by Mr. Danser and seconded by Mr. Siegel and unanimously approved to adjourn the meeting at 2:00 p.m.

Respectfully Submitted,



Susan E. Payne, Executive Director
State Agriculture Development Committee

Attachments

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2015R12(1)

Leone Farm
December 11, 2013

Installation of a Wireless Service Facility, Structures and Equipment on an Existing Structure
Located on a Preserved Farm

Subject Property: Joseph Leone Farm
Block 1202, Lots 8, 9 & 10
Block 1203, Lots 1 & 6
Block 1004, Lot 30
Block 102, Lot 19
Block 1304, Lot 9
East Greenwich Township, Gloucester County
Block 6, Lot 13
Mantua Township, Gloucester County
253.44-Acres

WHEREAS, Joseph Leone, Jr., hereinafter "Owner", is the record owner of Block 1202, Lots 8, 9 & 10, Block 1203, Lots 1 & 6, Block 1004, Lot 30, Block 102, Lot 19 and Block 1304, Lot 9 in the Township of East Greenwich and Block 6, Lot 13 in the Township of Mantua, County of Gloucester, by Deed dated July 17, 2007, and recorded in the Gloucester County Clerk's Office in Deed Book 4415, Page 262, totaling approximately 43 acres, hereinafter referred to as "Premises" (as shown on Schedule "A"); and

WHEREAS, the development easement on the Premises was conveyed to the County of Gloucester on June 5, 2003, by the former owners Samuel and Joseph Leone, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., as a Deed of Easement recorded in Deed Book 3608, Page 264; and

WHEREAS, P.L. 2005, c.314 (N.J.S.A. 4:1C-32.2), signed into law on March 13, 2006, states that the State Agriculture Development Committee (SADC) may issue a special permit for constructing personal wireless service facilities on preserved farmland on which a development easement exists; and

WHEREAS, the SADC adopted regulations at N.J.A.C. 2:76-23.1, et seq., for personal wireless service facilities to implement P.L. 2005, c.314, to establish the process landowners, pursuant to N.J.S.A. 4:1C-32.2, to apply for a special permit to allow for a personal wireless service facility to be erected on the preserved farmland, and to identify the standards for review of an application for a special permit by the SADC; and

WHEREAS, the SADC has determined that it may accept and review applications for the construction of personal wireless service facilities on preserved farms, and may issue such a special permit, in its sole discretion, in order to limit, to the maximum extent possible, the intensity of the permitted activity and its impact on the land and surrounding area; and

WHEREAS, N.J.A.C. 2:76-23.4 states that the owner of a preserved farm may apply for a special permit to allow a personal wireless service facility to be erected on the land, provided that:

- (1) The land is a commercial farm;
- (2) No other special permit for a personal wireless service facility on the premises has been granted;
- (3) There is no commercial nonagricultural activity in existence on the premises at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the SADC may waive this requirement entirely, or subject to any appropriate conditions (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to N.J.S.A. 4:10-1, derived from the farm, or (b) for other good cause shown by the applicant;
- (4) Notwithstanding (3) above, a person who has been granted a special permit for a commercial nonagricultural activity pursuant to N.J.A.C. 2:76-22 is eligible for a special permit on the same premises pursuant to N.J.A.C. 2:76-23.1, et seq.; and
- (5) The development easement was acquired without the participation of Federal Farm and Ranch Lands Protection Program funds; and

WHEREAS, on November 26, 2014, the SADC received a completed "Application for a Special Permit for the Installation of a Personal Wireless Service Facility" from Network Building & Consulting, LLC (hereinafter "NBC") as the consultant for Verizon Communications Inc. (hereinafter "Verizon"), and on behalf of the Owner pursuant to both N.J.S.A. 4:1C-32.2 and N.J.A.C. 2:76-23.4; and

WHEREAS, the SADC has determined that the Owner has met the qualifications of N.J.A.C. 2:76-23.4 to apply for a personal wireless service facility; and

WHEREAS, NBC has provided the required \$1,000.00 application fee pursuant to N.J.S.A. 4:1C-32.3; and

WHEREAS, the Owner is seeking SADC approval for an expansion of 500 sq./ft. (for additional equipment shelters, generator & fence) of a personal wireless service facility that existed on the premises prior to enrollment in the farmland preservation program; and

WHEREAS, N.J.A.C. 2:76-23.6 states that the SADC shall determine whether the application meets the following criteria:

- (1) The premises meets the definition of "commercial farm" set forth in this subchapter;
- (2) No other special permits for a personal wireless service facility have been granted on the premises;
- (3) The personal wireless service facility is necessary and serves a public benefit by potentially improving cellular communications, in particular, for emergency purposes;
- (4) There are no commercial nonagricultural activities in existence on the premises or on any portion of the farm that is not subject to the development easement.
 - i. The Committee and the easement holder may waive this requirement if they find the preexisting commercial nonagricultural activity is of a minor or insignificant nature or relies principally upon farm products, as defined pursuant to N.J.S.A. 4:10-1, derived from the premises, or for other good cause shown by the applicant;
- (5) The personal wireless service facility utilizes, or is supported by, a structure existing on the premises as of the date of application;
- (6) If an expansion of an existing structure(s) is requested:
 - i. The expansion cannot exceed 500 square feet in footprint area in total for all the structures needed to accommodate the personal wireless facility;
 - ii. The expansion is necessary to the operation or functioning of the personal wireless service facility; and
 - iii. The area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;
- (7) If a new structure is being proposed to support of accommodate the personal wireless service facility:
 - i. The new structure cannot exceed 500 square feet in footprint area;
 - ii. The new structure is necessary to the operation or functioning of the personal wireless service facility;
 - iii. The area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;
 - iv. There are no existing structures on the land which could be utilized or occupied to adequately support the personal wireless service facility and the relevant deficiencies associated with each existing structure, as provided by the applicant pursuant to N.J.A.C.2:76-23.5(a)9i, support that conclusion;
- (8) The personal wireless service facility does not interfere with the use of the land for agricultural purposes;
- (9) The personal wireless service facility uses the land in its existing condition, except as otherwise allowed pursuant to paragraph 7 above;

- (10) The personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area and does not require the creation of additional parking spaces, paved or unpaved and is consistent with the deed of easement and land use approvals and any other applicable approvals that may be required by Federal, State, or local laws, rules, regulations, or ordinances, provided that if such approvals contain any requirements for implementation of the personal wireless service facility that are inconsistent with N.J.S.A. 4:1C-32.2, N.J.A.C. 2:76-23.1, et seq., or the special permit itself, the special permit will be denied;
- i. To the maximum extent possible, the facility shall avoid being placed on soils classified as prime farmland and Statewide importance;
- (11) The location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;
- (12) All necessary local zoning and land use approvals, and any other approvals required by Federal, State, or local law, rule, regulation or ordinance have been obtained, and such approvals do not contain any requirements for implementation of the personal wireless service facility that are inconsistent with N.J.S.A. 4:1C-32.2, this subchapter or the special permit itself;
- (13) Additional factors, such as traffic generated and the number of employees are limited to the maximum extent possible to limit the intensity of the activity and its impact on the land and surrounding area;
- (14) The personal wireless service facility provider has agreed in writing to allow, at no charge to the requesting State or local government entity, the sharing of the facility or any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, as permitted by the Committee;
- (15) The personal wireless service company is not requiring conveyance of an easement or another interest in the premises to construct or access the personal wireless service facility;
- (16) The owner of the premises is not in violation of any provision of the deed of easement; and
- (17) The personal wireless service facility otherwise complies with N.J.S.A. 4:1C-32.2.

WHEREAS, the structure that supports the personal wireless service facility is an existing monopole cellular tower as identified on Schedule "A"; and

WHEREAS, the request is to place an additional set of equipment shelters, generator and fence at the base of the existing monopole in order to allow Verizon to co-locate at this existing site; and

WHEREAS, N.J.A.C. 2:76-23.4, allows for up to 500 sq./ft. of new structures to accommodate the personal wireless service facility, and Verizon is requesting 500 sq./ft. of space adjacent to the existing tower to place a new equipment shelter, generator and fence; and

WHEREAS, the personal wireless service equipment and infrastructure that would be added as a result this request will be owned by Verizon; and

WHEREAS, access to the personal wireless service facility for purposes of installing and maintaining the additional infrastructure is from the existing farm lane presently used to access the existing facilities and will result in approximately one additional vehicle per month visiting the site for routine maintenance; and

WHEREAS, as a result of the personal wireless service facility expansion being located behind an existing barn and at the base of the existing facility, no useable farmland is being taken out of production to accommodate this expansion; and

WHEREAS, N.J.A.C. 2:76-23.5 (a)18, allows for permits to be granted in excess of five years, with justification; and

WHEREAS, the applicant has requested a permit for 20 years based on its lease arrangement with the Owner, and the necessary investment to purchase and install the equipment required to complete the expansion of the facility; and

WHEREAS, in this case the existing cellular tower and ancillary facilities are owned by Crown Castle International Corporation, and Verizon does not have the authority to offer space on the tower to other entities; and

WHEREAS, because the personal wireless service facility is being co-located on a structure which existed on the Premises prior to preservation and is not owned by the landowner or Verizon, the requirement that State or local government agencies be allowed to share the facilities at no charge per N.J.A.C. 2:76-23.5 (a)16 is not applicable; and

WHEREAS, in accordance with N.J.A.C. 2:76-23.4(a)3ii., the SADC finds that the fact that the monopole and associated ancillary infrastructure related to the personal wireless service facility, consisting of approximately 900 sq./ft., existed prior to enrollment in the farmland preservation program is good cause to allow the Owner to request an expansion of up to 500 additional sq./ft., as contemplated in the regulation; and

WHEREAS, on December 4, 2014, the Gloucester County Agriculture Development Board reviewed and approved the 500 sq./ft. expansion of the existing personal wireless service facility on the Premises; and

NOW THEREFORE BE IT RESOLVED, that the SADC finds that the Owner has complied with all of the applicable provisions of N.J.S.A. 4:1C-32.2 and N.J.A.C. 2:76-23, et seq., concerning a personal wireless service facility to be erected on the land; and

BE IT FURTHER RESOLVED, that the SADC approves of the construction, installation, operation and maintenance of the personal wireless service facility expansion to be located at the base of the existing cellular tower, consisting of an area no larger than 500 sq./ft. as identified in Schedule "A"; and

BE IT FURTHER RESOLVED, that 500 sq./ft. of expansion is the maximum permitted by the regulation therefore, no further expansions are permissible on the Premises; and

BE IT FURTHER RESOLVED, that the SADC approves this permit for a period of 20 years from the date of this resolution; and

BE IT FURTHER RESOLVED, that the SADC acknowledges that the 151 foot tall monopole and associated infrastructure currently existing on the Premises consisting of approximately 900 sq./ft. in the location shown on Schedule "A" were in existence on the Premises prior to enrollment in the preservation program; and

BE IT FURTHER RESOLVED, that this action is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey; and

BE IT FURTHER RESOLVED, that this action is not effective until the Governor's review period expires pursuant to N.J.S.A 4:1C-4f.

12-11-14

DATE



Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairman	YES
Thomas Stanuikynas (rep. DCA Commissioner Constable)	YES
Brian Schilling (rep. Executive Dean Goodman)	YES
Ralph Siegel (rep. State Treasurer Sidamon-Eristoff)	YES
Renee Jones (rep. DEP Commissioner Martin)	YES
Alan Danser, Vice Chairman	YES
Denis C. Germano, Esq.	YES
Peter Johnson	YES
James Waltman	YES
Jane Brodhecker	YES
Torrey Reade	YES

Schedule "A"

Joseph Leone Farm

Existing Cell Tower
& Infrastructure
~900 sq./ft.

Proposed Expansion Area
500 sq./ft.

NJ Turnpike

G:\SADC\Leone - Cell Tower\Schedule A.mxd

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

Joseph Leone Farm
Block 1202, Lots 8, 9 & 10
Block 1203, Lot 1 & 6
Block 1004, Lot 30
Block 102, 19
Block 1304, Lot 9
East Greenwich Township, Gloucester County
Block 6, Lot 13
Mantua Township, Gloucester County
253.44 Acres

0 450 900 1,800 2,700 Feet



Farmland Preservation Program

	PRESERVED EASEMENT
	EXCEPTION AREA
	PRESERVED EASEMENT / NR
	EXCEPTION AREA / NR
	FINAL APPROVAL
	PRELIMINARY APPROVAL
	ACTIVE APPLICATION
	8 YEAR PRESERVED
	TARGETED FARM
	INACTIVE APPLICATION
	NO CORRESPONDING DATA

State Planning Areas	
	(PA1) METRO
	(PA2) SUBURBAN
	(PA3) FRINGE
	(PA4) RURAL
	(PA4b) RURAL ENV SENS
	(PA5) ENV SENS
	(PA5b) ENV SENSITIVE BARRIER IS
	(P10) PINELANDS
	PARK
	MILITARY
	NEW JERSEY MEADOWLANDS
	WATER
	ELLIS ISLAND- NJ
	ELLIS ISLAND- NY
Base Map	
	County Boundaries
	Municipal Boundaries
	Highlands Planning Area
	Highlands Preservation Area
	Pinelands Area
Green Acres Preserved Easements	

12/4/2014

STATE AGRICULTURE DEVELOPMENT COMMITTEE

RESOLUTION FY2015R12(2)

Relocation of Access Right-of-Way

New Village Farms, LLC

December 11, 2014

WHEREAS, New Village Farms, LLC (hereinafter "Owner") is the current record owner of Block 44, Lot 5, as identified in the Township of Greenwich, County of Warren, by deed recorded in the Warren County Clerk's Office on April 15, 2011 in Deed Book 2367, Page 156, totaling 54.88 acres (hereinafter "Premises"), as shown on Schedule "A"; and

WHEREAS, the development easement (hereinafter "Deed of Easement") on the Premises was conveyed by predecessors in title, Robert Schuster and Geraldine Schuster, to the Warren County Board of Chosen Freeholders and the United States of America, acting by and through the United States Department of Agriculture, Natural Resources Conservation Service on behalf of the Commodity Credit Corporation (hereinafter "NRCS") by deed recorded in the Warren County Clerk's Office on July 23, 2010 in Deed Book 2327, Page 128, pursuant to the Agriculture and Development Act, N.J.S.A. 4:1C-11 et seq., PL 1983, c. 32; and

WHEREAS, the title insurance commitment for the Deed of Easement on the Premises identified a title exception for a 15-foot wide access right-of-way (hereinafter "R.O.W.") recorded in the Warren County Clerk's Office on April 23, 1951 in Deed Book 351, Page 139, that services an adjacent non-preserved property currently owned by Henry Riewerts and Diane Tribble (hereinafter "Neighbors") and identified as Block 44, Lot 24; and

WHEREAS, the recorded R.O.W. lacks a metes and bounds description but instead states, "There is conveyed to second party a right of way over an existing roadway leading from the Bloomsbury-Warren Glen Road through the property of first party to the property hereinabove conveyed consisting of approximately fifteen feet in width." The "existing roadway" is discernable in an aerial photograph from circa 1930, as shown in Schedule "B", and is in the same location as it exists today; and

WHEREAS, SADC received a request from the Neighbors by letters dated June 27, 2012 and January 10, 2013 proposing to relocate the R.O.W. to the west of its existing location, opining that "the configuration of narrow road, two sharp turns, and a narrow (railroad) underpass causes vehicles larger than 20-22 feet in length to be unable to enter Lot 24" which "include many delivery trucks, garbage trucks and most fire and other safety vehicles...thus resulting in a safety problem"; and

WHEREAS, SADC staff, in letters dated October 26, 2012 and February 15, 2013, responded to the Owner and the Neighbors, respectively, stating that the proposal to relocate the R.O.W. to the west of its existing location would not be permitted by the Deed of Easement.; and

WHEREAS, the Neighbors, by letter dated August 27, 2013, requested SADC reconsider its opinion that the R.O.W. relocation proposal is prohibited by the Deed of Easement. Subsequently, staff met onsite with the Neighbors and their engineer to discuss their proposal and to contemplate two other R.O.W. realignment alternatives, which culminated in an engineering report (hereinafter "Engineering Report") prepared for the Neighbors by North Star Design, LLC, dated December 20, 2013; and

WHEREAS, the Neighbors and the Owner were informed that any formal R.O.W. relocation request must be made in writing to the SADC by the Owner, and a letter dated February 25, 2014, from the Owner was received in which the Owner cites "environmental and safety benefits" in proposing to relocate the R.O.W. to the west as "Alternate 1" as delineated in the Engineering Report and shown on Schedule "C", which is the same location as proposed by the Neighbors. More specifically, the Owner states in his letter that "with today's larger equipment it makes things harder to see and navigate around turns," referring to the two 90-degree turns on either side of a railroad underpass the existing R.O.W. makes from its origin at Warren Glen Road to its terminus at the Neighbors residences. The Owner continues by stating, "moving the driveway west would alleviate the concern of operator safety" since the relocated R.O.W. is proposed to follow a straight path through the Owner's property and railroad underpass to the Neighbor's property; and

WHEREAS, in subsequent conversations the Owner explained that due to overall width and height constraints large farm equipment would have a difficult time making it through the railroad underpass, which would instead have to reach the Neighbor's property via a private at-grade railroad crossing located just east of the railroad underpass that the Owner has legal access to utilize; and

WHEREAS, the Engineering Report envisions a new, nearly straight driveway from Warren Glen Road through the center of the preserved farm to the railroad underpass, however it does not contemplate the straightening of the 90-degree turn located on the Neighbor's property on the opposite side of the railroad underpass;

WHEREAS, the Engineering Report references the need to stabilize the area of the existing R.O.W. using the *Standards for Soil Erosion and Sediment Control in New Jersey* if "Alternate 1", as shown in Schedule "C", is approved by the SADC, suggesting this area will remain in a permanent vegetated condition once the asphalt is remove rather than being reverted to cropland; and

WHEREAS, the Engineering Report acknowledges that the existing R.O.W. is located within a natural low area of the Premises between two drainage areas such that stormwater travels down the existing R.O.W.; and

WHEREAS, "Alternate 1" is located outside of the designated building envelope (Farm Building Area) established by the NRCS-FRPP deed language, as shown on Schedule "A"; and

WHEREAS, in a memo dated June 17, 2014, upon review of the Engineering Report, staff advised the Committee of its opinion that "Alternate 1" would have negative impacts on the use of the Premises for agricultural production purposes, soil conservation, drainage and erosion and should not be approved, (see attached staff memo as Schedule "E"); and

WHEREAS, staff also advised the Committee that the proposal by Neighbors did not include any information on how the existing roadway would be put back into production if "Alternate 1" was approved; and

WHEREAS, in order to address both erosion and drainage concerns existing on the Premises as well as the Neighbors concern about the 90 degree into the railroad underpass staff offered "Alternate 2", as shown in Schedule "C"; and

WHEREAS, "Alternate 2" continues the use of the existing driveway for a majority of its length but begins the turn toward the railroad underpass at an earlier point therefore softening the 90 degree turn to create a more straight on approach; and

WHEREAS, under the "Alternate 2" proposal the newly created small triangular shaped parcel at the bottom of the slope between the driveway and the railroad embankment would be used to address agricultural runoff and erosion concerns through installation of NRCS approved conservation practices; and

WHEREAS, at the June 25, 2014, meeting the Committee voted to affirm the staff recommendations against "Alternate 1" and in favor of "Alternate 2", expressly relaying its concern for what would become of the existing roadway area if "Alternate 1" were approved; and

WHEREAS, subsequent to that meeting the Neighbors have supplied additional comments and a supplement to the North Star Design engineering report, (hereinafter "Supplemental Report"), and have requested new consideration by the Committee for "Alternate 1"; and

WHEREAS, the Supplemental Report provided by North Star Design provides greater detail about the design features of "Alternate 1", but does not provide additional information about "Alternate 2" or restoration plans for the existing driveway; and

WHEREAS, this proposal is being evaluated by the SADC for its compliance with the Deed of Easement and associated regulations promulgated at N.J.A.C. 2:76-6.15; and

WHEREAS, paragraph number 1 of the Deed of Easement states that "Any development of the Premises for nonagricultural purposes is expressly prohibited"; and

WHEREAS, paragraph number 2 of the Deed of Easement states that "The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter "Committee"). Agricultural use shall mean the use of the premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management,

fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing"; and

WHEREAS, paragraph number 9 of the Deed of Easement states that "No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises"; and

WHEREAS, paragraph number 13 of the Deed of Easement states that "Nothing in this Deed of Easement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this Deed of Easement. Grantor shall be permitted to construct, improve or reconstruct **unpaved** roadways necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary"; and

WHEREAS, paragraph number 15(c)(i) of the Deed of Easements states that "All such buildings and structures shall be located within the designated building envelope (Farm Building Area) as described in the Farm Conservation Plan referred to in paragraph 9. Changes in the location or extent of the Farm Building Area, or buildings and structures to be located outside of the Farm Building Area, except as provided for under Paragraph 15(a)ii above, must be approved in advance by the United States"; and

WHEREAS, paragraph number 15(c)(ii) of the Deed of Easement states that "At the time of acquisition of this development easement, there exists 0.59 percent of impervious surface on the Premises as identified on the survey plat prepared by Cherry, Weber & Associates, dated June 24, 2010. Any improvements to existing residential buildings, agricultural labor housing, agricultural buildings or any new residential buildings, agricultural labor housing or agricultural buildings or other improvements resulting in an increase in impervious surface as defined below shall not, in combination with existing improvements cause the total impervious surface coverage to exceed a maximum of four percent (4%) of the Premises as authorized by the United States Department of Agriculture's Natural Resources Conservation Service. Any impervious surface in excess of four percent (4%) is expressly prohibited"; and

WHEREAS, on November 17, 2014, the NRCS, as party to the easement, provided written comments related to "Alternate 1" and "Alternate 2", attached Schedule "F"; and

WHEREAS, the NRCS approves of the concept to relocate the existing R.O.W. in "Alternative 2" in the Engineering Report because this proposal is consistent with the purpose and goals of FRPP, the proposal enhances or improves the conservation values of the Deed of Easement;

NOW THEREFORE BE IT RESOLVED, the SADC finds that the proposed R.O.W relocation shown as "Alternate 1" on Schedule "A" is not consistent with the terms of the Deed of Easement and associated regulations promulgated at N.J.A.C. 2:76-6.15 for the following reasons:

1. The proposal does not constitute an agricultural use or serve an agricultural purpose but is instead constitutes development of the Premises for the non agricultural purpose of improved access to an adjacent residential property; and

2. The proposal would be detrimental to drainage, flood control, erosion control, and soil conservation as a result of steeper slopes and the potential for more runoff and erosion; and
3. The proposal, as described in the Engineering Report and Supplement, would be detrimental to the continued agricultural use of the Premises by taking more prime farmland out of production than the existing R.O.W. per its location relative to Washington silt loam (WafB), 3 to 8 percent slopes, a prime farmland mapped by NRCS as part of the National Cooperative Soil Survey as shown on Schedule "D." Further, by installing a permanent vegetative cover in the area of the existing R.O.W. per the Engineering Report's recommendation, additional land will be removed from crop production and will split the farm into three parts rather than two, will reduce the size of the fields, increase field edge and attendant crop loss to wildlife; and
4. The Supplemental Report's design information for "Alternate 1" calls for a rip-rap outlet structure at the bottom of the farm field as well as grass strips and swales along substantial portions of the new road which when added to the paved roadway would require easements of 45 feet in width where the current roadway totals 15 feet in width, thereby removing additional farmland from production; and
5. Conveyance of an additional easement greater than the existing 15 foot wide easement constitutes granting non-agricultural development rights to the Neighbors, which would be a violation of the Deed of Easement; and
6. As described in the November 17, 2014, letter from the NRCS, who is a party to the Deed of Easement, the "Alternate 1" proposal is in conflict with Deed of Easement restrictions inherent to farms preserved with funding through their Farm and Ranch Lands Protection Program (FRPP), and therefore the request is denied by that agency; and

BE IT FURTHER RESOLVED, that the SADC denies the request to relocate the existing R.O.W. in accordance with "Alternate 1" in the Engineering Report for the reasons set forth above; and

BE IT FURTHER RESOLVED, the SADC finds that the proposed R.O.W. relocation shown as "Alternate 2" on the original Engineering Report -- partially realigning the R.O.W. to eliminate the 90-degree turn on the Premises -- is consistent with the terms of the Deed of Easement and associated regulations promulgated at N.J.A.C. 2:76-6.15 for the foregoing reasons:

1. The proposal constitutes an agricultural use and serves agricultural and conservation purposes by addressing existing drainage, erosion control, and soil conservation concerns associated with the existing R.O.W. Specifically, drainage and erosion control concerns from the existing driveway could be addressed in the triangle of land located between the old alignment and the new alignment through the installation of various NRCS conservation practices such as filter strips; and
2. The proposal reduces impervious cover from the existing driveway alignment by approximately 38 square feet and does not impact any prime farmland; and
3. The proposal is not in conflict Deed of Easement restrictions inherent to farms preserved with funding from NRCS through FRPP as confirmed by the NRCS on November 17, 2014. Further, the proposal enhances or improves the conservation values of the Premises.

BE IT FURTHER RESOLVED, that the SADC approves the concept to realign the existing R.O.W. in accordance with "Alternate 2" in the Engineering Report because this proposal is consistent with the terms of the Deed of Easement and associated regulations promulgated at N.J.A.C. 2:76-6.15, the proposal would constitute an agricultural use and serve agricultural and conservation purposes by addressing existing drainage, erosion control, and soil conservation concerns associated with the existing R.O.W; and

BE IT FURTHER RESOLVED, that formal approval of "Alternate 2" shall be considered upon submission and review of the engineering work necessary to implement that design; and

BE IT FURTHER RESOLVED, that a copy of the signed resolution will be forwarded to the NRCS, Warren County Agriculture Development Board, the Greenwich Township municipal offices, the Owner, and the Neighbors; and

BE IT FURTHER RESOLVED, that this approval is considered a final agency decision appealable to the Appellate Division of the Superior Court of New Jersey; and

BE IT FURTHER RESOLVED that this approval is not effective until the Governor's review period expires pursuant to N.J.S.A. 4:1C-4f.

12-11-14

DATE:



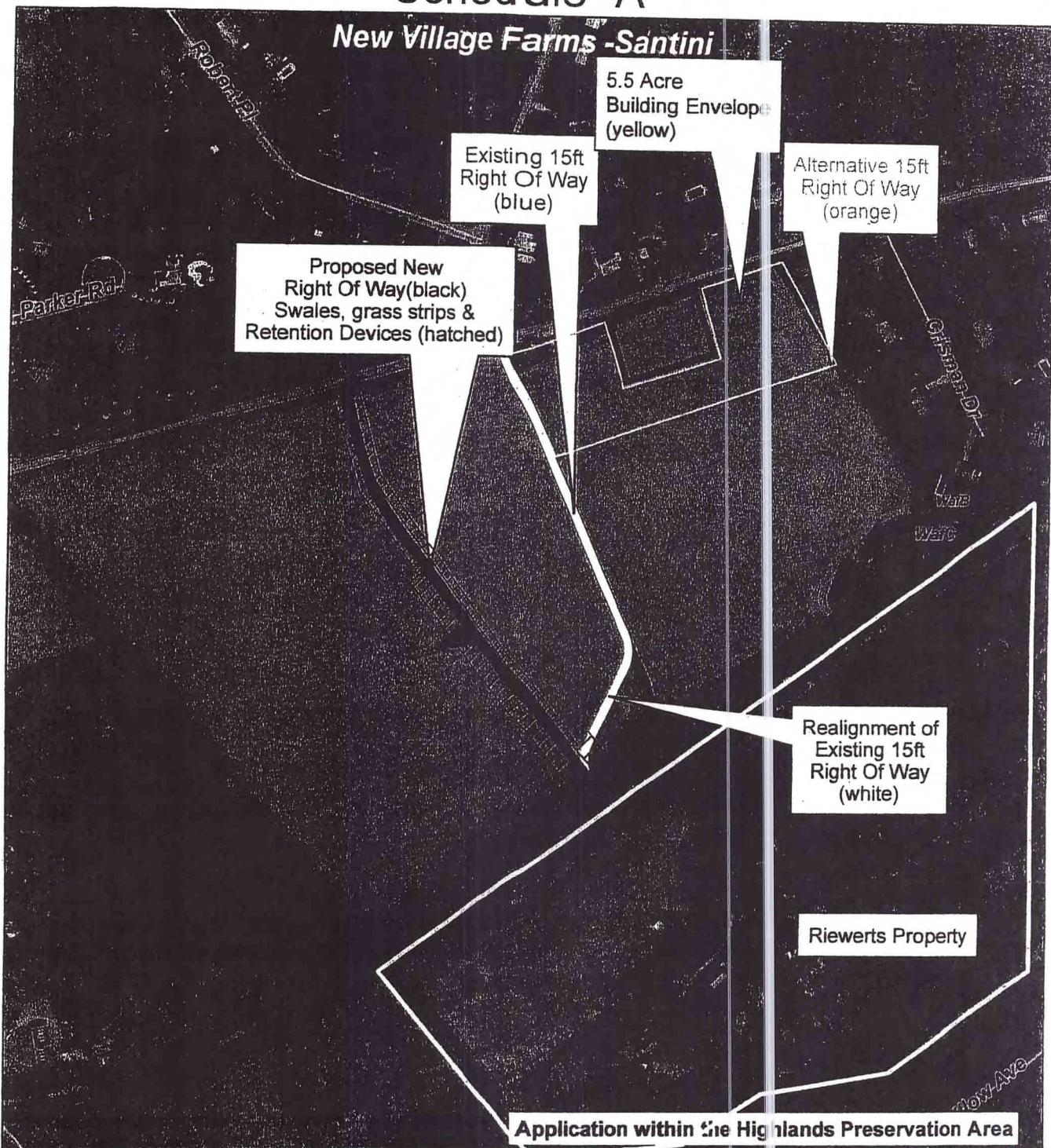
Susan E. Payne, Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Douglas H. Fisher, Chairman	YES
Thomas Stanuikynas (rep. DCA Commissioner Constable)	YES
Brian Schilling (rep. Executive Dean Goodman)	YES
Ralph Siegel (rep. State Treasurer Sidamon-Eristoff)	YES
Renee Jones (rep. DEP Commissioner Martin)	YES
Alan Danser, Vice Chairman	YES
Denis C. Germano, Esq.	YES
Peter Johnson	YES
James Waltman	YES
Jane Brodhecker	YES
Torrey Reade	YES

Schedule "A"

New Village Farms -Santini



G:\SADC\Santini-Riewerts\schuster_santini_ALL_ROW.mxd

FARMLAND PRESERVATION PROGRAM NJ State Agriculture Development Committee

New Village Farms-Santini
Block 44 Lots P/O 5 (53.88 ac)
P/O 5-EN (non-severable exception - 1.0 ac)
Gross Total = 54.88 ac
Greenwich Twp., Warren County

500 250 0 500 1,000 Feet

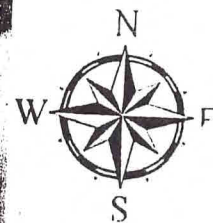
DISCLAIMER: Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user. The configuration and geo-referenced location of parcel polygons in this data layer are approximate and were developed primarily for planning purposes. The geodetic accuracy and precision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



Sources:
NRCS - SSURGO 2012 Soil Data
Green Acres Conservation Easement Data
NJOT/OGIS 2012 Digital Aerial Image

June 23, 2014

Schedule "B"



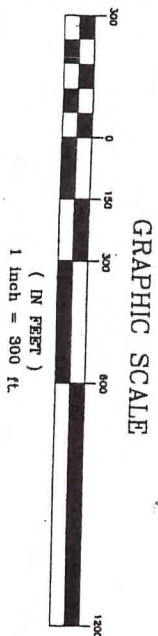
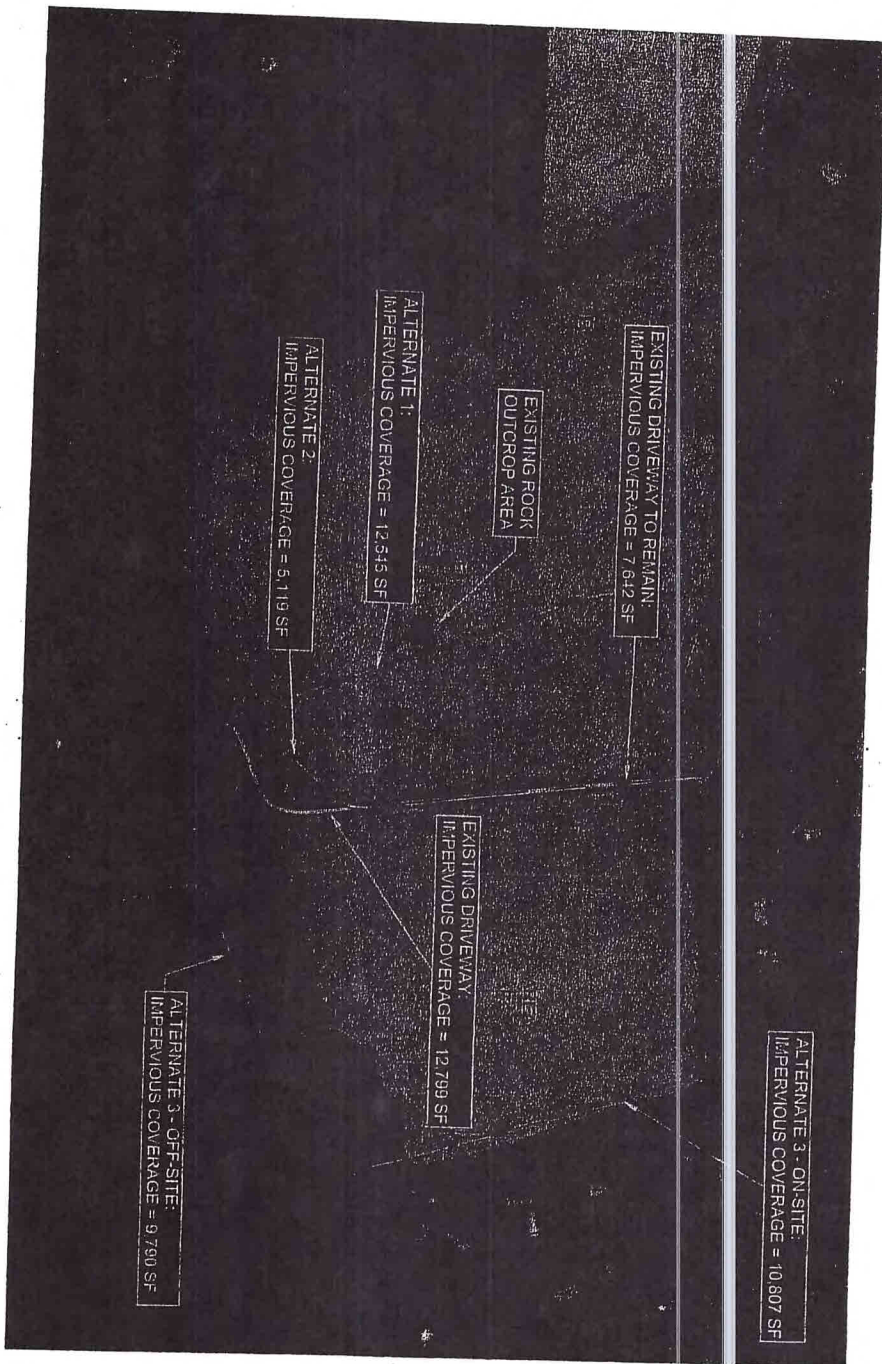
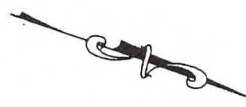
1930's Aerial

How Santini)

Riewert

11/1/1960

Schedule "C"



			W.C. VIOLA, II OWNER	OVERALL MAP (FIGURE 2) 1	
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Schedule "D"



FARMLAND PRESERVATION PROGRAM
NJ State Agriculture Development Committee

New Village Farms-Santini
Block 44 Lots P/O 5 (53.88 ac)
P/O 5-EN (non-severable exception - 1.0 ac)
Gross Total = 54.88 ac
Greenwich Twp., Warren County



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



Sources:
NRCS - SSURGO 2012 Soil Data
Green Acres Conservation Easement Data
NJOIT/OGIS 2012 Digital Aerial Image

July 15, 2014

Memo

To: SADC Members
From: Jeffrey C. Everett, Chief of Agricultural Resources, SADC
CC:
Date: 6/17/2014
Re: New Village Farms, LLC - Right-of-Way Relocation Request
Greenwich Township, Warren County
Block 44, Lot 5 (54.88 acres)

Staff is in receipt of a request from Robert Santini, owner of the subject preserved farm, and the landowners of the adjacent property (Block 44, Lot 24), Henry Riewerts and Diane Tribble, to relocate an existing access right-of-way (R.O.W.) that runs across the preserved farm to the Riewerts/Tribble property located to the southeast. The existing 15-foot R.O.W. predates the recording of the deed of agricultural preservation easement held by the Warren County Board of Chosen Freeholders, SADC, and the U.S. Department of Agriculture-Natural Resources Conservation Service (Farm and Ranch Lands Protection Program) and appears as an exception to the title insurance commitment. The R.O.W. was first recorded in 1951 and the deed of agricultural preservation easement was recorded in 2010. The 1951 R.O.W. language lacks a metes and bounds description, stating that "there is conveyed to second party (predecessor in title to Riewerts/Tribble) a right of way over an existing roadway leading from the Bloomsbury-Warren Glen Road through the property of first part (predecessor in title to New Village Farms, LLC) through the property of first part to the property hereinabove conveyed consisting of approximately fifteen feet in width." An aerial photograph dating from circa 1930, twenty-one years before the R.O.W. deed was first recorded, shows the driveway to be in roughly the same location as it exists today (**Attachment 1**).

Mr. Santini cites "environmental and safety benefits" in moving the existing driveway to the west, away from the existing R.O.W. location (**please see R.O.W. Relocation Alternate 1 shown on Attachment 2**). Specifically, Mr. Santini states that "with today's larger equipment it makes things harder to see and navigate around turns," referring to the two 90-degree turns on either side of a railroad underpass the existing R.O.W. makes from its origin at Warren Glen Road to its terminus at the Riewerts/Tribble residences (**Attachment 3**). He continues by stating, "moving the driveway west would alleviate the concern of operator safety." Mr. Riewerts echoes these safety concerns by opining that "the configuration of narrow road, two sharp turns, and a narrow underpass causes vehicles larger than 20-22 feet in length to be unable to enter Lot 24" which "include many delivery trucks, garbage trucks and most fire and other safety vehicles...thus resulting in a safety problem."

In addition to purported safety concerns, both Mr. Santini and Mr. Riewerts state that there are agronomic and conservation considerations that are associated with this R.O.W. relocation. Specifically, Mr. Santini states that "moving the driveway from the lowest part of the field would result in less soil erosion and better drainage." Meanwhile, Mr. Riewerts states that "changing the location of the (access) easement would reduce or eliminate the erosion and runoff issues because the pavement would no longer be at the fields' low point and conduct the water and sediment off the field to Lot 24."

Staff has evaluated this proposal for its compliance with associated regulations promulgated at N.J.A.C. 2:76-6.15 and the deed of easement that encumbers this property, the pertinent sections of which are enumerated below and organized by theme for convenience:

Agricultural and Nonagricultural Uses

1. Any development of the Premises for nonagricultural purposes is expressly prohibited.

2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of the premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

14. Nothing in this Deed of Easement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this Deed of Easement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, logs, agricultural buildings, or reservoirs as may be necessary.

Mr. Santini stated in his letter that large farm equipment would have a difficult time making it through the railroad underpass, and a subsequent conversation with him revealed that he uses a private at-grade railroad crossing (that he has access rights to) just east of the railroad underpass to move his combine and other large farm equipment to farm the Riewerts/Tribble property (Lot 24) which he rents for crop production, using the railroad underpass only for his disc, roller, and planter (**Attachment 4**). Further, in the engineering study commissioned by Mr. Riewerts, there is no schematic that shows the straightening of the 90-degree turn located on the Riewerts property. The R.O.W. services only two residences on the Riewerts property and its location has been fixed for at least 84 years. Thus, it is staff's opinion that the R.O.W. relocation request represented by Alternate 1 emanates primarily from a nonagricultural purpose – convenience of travelers to and from the Riewerts/Tribble property – rather than an agricultural purpose, which is a prerequisite under the deed of agricultural preservation easement.

Soil and Water Conservation

7. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

15(c)(ii). At the time of acquisition of this development easement, there exists 0.59 percent of impervious surface on the Premises as identified on the survey plat prepared by Cherry, Weber & Associates, dated June 24, 2010. Any improvements to existing residential buildings, agricultural labor housing, agricultural buildings or any new residential buildings, agricultural labor housing or agricultural buildings or other improvements resulting in an increase in impervious surface as defined below shall not, in combination with existing improvements cause the total impervious surface coverage to exceed a maximum of four percent (4%) of the Premises as authorized by the United States Department of Agriculture's Natural Resources Conservation Service. Any impervious surface in excess of four percent (4%) is expressly prohibited.

15(c)(iii). Impervious surface, for purposes of this Deed of Easement, is defined as permanent, non-seasonal rooftops, concrete and asphalt surfaces including residential buildings, agricultural buildings (with and without flooring), and paved areas located on the Premises. Conservation practices listed in the United State Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide are not considered impervious surface.

Review of the various R.O.W. relocation alternatives by SADC staff, staff from Agricultural and Natural Resources Division (AGNR) of the New Jersey Department of Agriculture, and NRCS staff all result in an opinion that the relocation alternative preferred by Mr. Santini and Mr. Riewerts (Alternate 1) would be detrimental to drainage, erosion control, soil conservation, and continued agricultural uses of the Premises. Dan Mull, District Conservationist for the Hackettstown Service Center, stated that "this area has steeper slopes and potential for more runoff and erosion using this alternative" (**Attachments 5 and 6**). Alternate 1 will take more prime farmland out of production than the existing driveway per its proposed location relative to Washington silt loam (WafB), 3 to 8 percent slopes, a prime farmland mapped by NRCS as part of the National Cooperative Soil Survey (**Attachment 7**). Although the existing driveway is proposed to be converted to cropland under Alternate 1, the potential for success appears unlikely due to the characteristics of this area of the property – it is a low-lying area of concentrated water flow, most likely rendering it unstable for cropland (**Attachment 8**). In fact, the engineering report prepared for Mr. Riewerts suggests the site will be stabilized using the Standards for Soil Erosion and Sediment Control, which, to staff's understanding, will require the area to remain in a permanent vegetated condition and remove additional land from active crop production. Further, installing a grass area and the new driveway will split the farm into three parts rather than two. This will reduce the size of the fields, increase field edge and attendant crop loss to wildlife. The new field orientation will encourage farming up and down the slope, which may increase erosion and the amount of sediment flowing off site to the Riewerts property.

There are in fact drainage, erosion control, and soil conservation concerns on the preserved farm associated with the existing R.O.W. that need to be addressed. Thus, staff is of the opinion that R.O.W. Relocation Alternate 2 (shown on Attachment 2), first proposed by AGNR staff, would help remedy these issues and have an ancillary benefit of alleviating safety concerns raised by Messrs. Santini and Riewerts. Alternate 2 utilizes the existing driveway for approximately 764 feet before angling towards the southwest and approaching the railroad underpass head-on instead of at a 90-degree angle. This alternative reduces impervious cover from the existing driveway alignment by approximately 38 square feet, and does not impact any prime farmland. Drainage and erosion control concerns from the existing driveway could be addressed in the triangle of land located between the old alignment and the new alignment through the installation of various NRCS conservation practices such as filter strips. Thus, staff is of the opinion that partially relocating the R.O.W. per Alternate 2 constitutes an agricultural use and accomplishes agricultural and conservation purposes in accordance with the deed of agricultural preservation easement.

Conditions of Approval and Conclusions

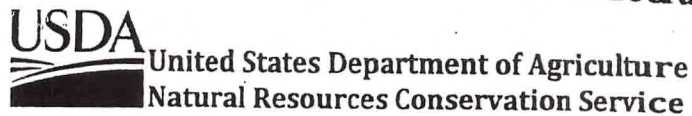
Should the Committee approve Alternate 2, staff recommends conditioning the approval on the preparation and implementation of a farm conservation plan for the Santini farm that addresses the aforementioned resource concerns. Further, it is recommended that this conditional approval require a final engineering plan that addresses the elimination of the 90-degree turn on the adjacent Riewerts property so that the safety issues raised are holistically addressed. While Alternate 2 partially relocates the R.O.W. from its original location to another portion of the property that is also encumbered by the agricultural preservation easement, we believe this is a reasonable solution to the issue given 1) the lack of a specific metes and bounds description in the original R.O.W.; 2) the need to properly address the erosion issues existing on the farm that are directly related to the current configuration of the road, and 3) the landowner's right to "maintain all roads" existing on the property when the farm was preserved.

A third alternative, denoted as Alternate 3 on Attachment 2, was not discussed at length by staff and applicant, although this alternative hugs the property line and makes use of the aforementioned private at-grade railroad crossing that Mr. Santini has rights to, ostensibly addressing both agricultural use and safety issues. However, this alternative was not received favorably by Mr. Riewerts per various phone conversations.

In summary, staff is of the opinion that Alternate 1, the alternative favored by Messrs. Santini and Riewerts, lacks consistency with the deed of agricultural preservation easement whereas Alternate 2 can be accommodated – an opinion that is collaborated by NRCS, who along with SADC, holds an interest in this deed of agricultural preservation easement.

S:\Planning Incentive Grant -2007 rules County\Warren\Schuster\Post Closing -Stewardship\Committee Meeting\New Village Farms Memo.sep comments.docx

Schedule "F"



220 Davidson Avenue 4th Floor
Somerset, NJ 08873
Voice 732-537-6040
Web: <http://www.nj.usda.gov>

November 17, 2014

Jeff Everett
SADC-Chief of Agricultural Resources
NJ Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330

Dear Mr. Everett:

This letter will re-affirm NRCS findings from March 2014 concerning the proposed Santini/Riewerts driveway alterations. The Santini property was permanently preserved in 2010 with Federal FRPP funds and is located in Warren County, Greenwich Township, Block 44, Lot 5. The Riewerts are requesting a driveway re-location outside of the existing driveway easement.

These were the most recent alternatives offered by the Riewert's engineer:

- Alternative 1: re-locate driveway to the west of the existing driveway through a large crop field and expand the driveway easement from 15' to 20-35' wide plus install stormwater management system.
- Alternative 2: Continue to use existing driveway but re-route a short piece at the bottom, cutting off a small piece of the cropland at the bottom of the large crop field.
- Alternative 3: Re-locate the driveway to the east side of the parcel along the edge of the small crop field.

NRCS is endorsing Alternative #2 based on the following conservation objectives:

Alternative 1 driveway is located on a steeper slope than the existing lane and the new lane would go straight through the crop field and may act as a conduit for water and sediment to flow directly to the underpass/railroad crossing that serves as the accessway to Mr. Riewert's property. This alternative would facilitate farming up and down the slope, resulting in an increased amount of soil erosion during normal farming activities. Alternative 1 would increase the amount of impervious cover on the parcel. The addendum does not mention restoring the existing driveway back into cropland. A restoration plan for the abandonment of the existing driveway would need to be approved by NRCS and SADC prior to construction. The restoration plan would describe how the former driveway would be brought back into crop production in order to stay within the limits of the approved impervious cover percentages for the parcel. Eliminating the existing driveway will not eliminate the need to stabilize it. The area in and around the existing driveway will continue to act as a conduit for water and sediment from the surrounding landscape and will need to be stabilized to prevent erosion.

In addition to the above, the deed of easement states that "*Nothing in this Deed of Easement shall be deemed to restrict the right of Grantor, to maintain all roads and trails existing upon the Premises as of the date of this Deed of Easement. Grantor shall be permitted to construct, improve or reconstruct unpaved roadways necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary.*" We are assuming that the new roadway would be paved which is not allowable according

to the terms of the deed. NRCS can allow modifications to conservation easements only if the planned alterations are not detrimental to drainage, flooding, soil erosion, water conservation or soil conservation. Site visits by NJDA, SADC and NRCS staff note that installing the driveway per Alternative 1 would be detrimental to soil and water conservation and drainage as well as the continued agricultural use of the property. It will also result in increased flood storage on the Farmland Preserved cropland. Alternative 1 is detrimental to drainage, flood control, water conservation or soil conservation which is detrimental to the continued agricultural use on this parcel.

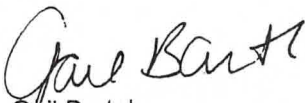
Alternative 2 will keep the amount of impervious cover change to a minimum while ensuring the health and safety of the people using the lane. The odd area created by re-aligning the end of the lane could be dedicated as a filter strip or to collecting and storing some of the runoff and then direct the water to a safe outlet, thereby reducing concerns of safety and flood hazard.

Alternative 3 was not discussed at length during the site visit and therefore was not addressed in this letter.

In conclusion, NRCS is recommending the use of Alternative 2 as the driveway alteration that will have the least detrimental effect on this farm. Selection of this alternative will result in the least amount of water runoff, flooding, and soil erosion. Of all of the alternatives presented to us, it will have the least amount of impact on the agricultural use of the property and is most consistent with the purpose of the Deed of Easement. Alternative 1 is not acceptable to NRCS due to the fact that, as stated above, it will have a detrimental effect on the natural resources of the parcel. Alternative 2 is a minor change compared to Alternative 1 and is the least intrusive. Minor changes to the existing road are acceptable for reasons of safety and health and farmability. Major changes such as building and paving a new access road with the caveat that they must put the old road back into ag production is unacceptable to NRCS.

If you have any questions concerning this matter, please contact me at 732-537-6042.

Sincerely,



Gail Bartok

NJ NRCS Assistant State Conservationist- Programs