New Jersey Farm Bureau
Because Agriculture Matters!

168 West State Street, Trenton New Jersey 08608

From the Desk of
Allen Carter, President

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September 27, 2023

Susan E. Payne, Executive Director
State Agriculture Development Committee
PO Box 330
Trenton, New Jersey 08625-0330

RE: Soil Disturbance on Preserved Farmland and Supplemental Soil Disturbance Standards ("SDS")
Proposal Number: PRN 2023-079

Dear Ms. Payne:

The following constitutes New Jersey Farm Bureau's ("NJFB") initial written comments concerning the referenced SDS rule proposal. NJFB reserves the right to submit additional comments following the hearing.

New Jersey Farm Bureau

NJFB is a private, non-profit membership organization that includes 10,000 farm families, affiliated agribusinesses, and supporters of agriculture in New Jersey. The Bureau's members include representatives of all types of agriculture: equine, nursery, fruit and vegetable, field crops, apiary, wine grower, Christmas tree, forestry, livestock, and fisheries.

NJFB advocates on behalf of its members for the preservation of agriculture and the promotion of agricultural interests in the state. It was actively involved in promoting the adoption of the Farmland Preservation Bond Act, P.L. 1981, c.276 ("the Bond Act"); the Agriculture Retention and Development Act ("the ARDA"), N.J.S.A. 4:1C-11 et seq.; and the Right to Farm Act ("RTFA"), N.J.S.A. 4:1C-1 et seq. In addition, NJFB has actively monitored the State Agriculture Development Committee's ("the SADC") administrative rules and actions intended to implement the Bond Act and ARDA. N.J.A.C. 2:76-6.1 et seq. The ARDA has resulted in the preservation of approximately 250,000 acres of land for agricultural use and production. A substantial portion of the 2,900 preserved farms are owned by NJFB members.

NJFB is concerned that the proposed rules will unfairly and negatively impact the current owners of preserved farms. In addition, NJFB is concerned that the proposed rules will **seriously** discourage additional landowner participation in the preservation program.

Quaker Valley Farms Decision

The SADC has referred to the New Jersey Supreme Court's decision in State v. Quaker Valley Farms, Inc. ("QVF"), 235 N.J. 37 (2018), to support the proposed rules. But that reliance is mistaken in the following two respects.

Initially, the Court in QVF directed the SADC "to establish *guidance* on the extent of soil disturbance that is permissible on preserved farms." 235 N.J. at 63. Rather than providing "guidance", a term that is well understood by the New Jersey agricultural community, the SADC erroneously opted for excessive overregulation.

In place of providing advice and counsel concerning permissible activity on preserved farms, the SADC issued an eighty (80) page notice of rulemaking that consisted of nearly thirty (30) pages of explanation and included some fifty (50) pages of detailed regulations. That type of micromanaging may be appropriate in an academic setting, but it has no place in the real world of New Jersey production agriculture.

Secondly, the Court in QVF did not address whether the SADC's guidance could be applied to previously preserved farms or be limited to farms preserved after the issuance of the guidance. That issue was not before the Court in QVF and the Court does not issue advisory opinions. See Crescent Park Tenants Association v. Realty Equities, 58 N.J. 98, 107 (1971). The agricultural community refers to this as "the retroactive issue" and it is discussed in the following section.

The Retroactive Issue

It is important for the SADC to take a step back and recognize that it is proposing to exercise its regulatory authority in an unusual setting. The difference here and it is a very significant difference is that the proposal would drastically alter the terms of settled real estate transactions: the deeds of easements ("DOE") entered into with landowners over the past thirty-eight (38) years.

It is also noteworthy that the SADC adopted a standard form of easement, and the terms of the deed restrictions are set forth in N.J.A.C. 2:76-6.15; -17.15 and -17a-15. Those rules have been repeated verbatim in the DOEs.

Paragraph 2 in the easements provides 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 Agricultural Development Committee . . ." That language clearly referred to the rules that had been adopted at the time the easements were executed. Had the draftsman intended otherwise the deed restrictions would have expressly included both the rules that had been promulgated and rules "to be promulgated in the future".

The DOEs were the result of real estate transactions in which the grantor [the landowner] agreed to certain restrictions that would benefit the grantee. The parties negotiated the consideration to be paid to the landowner for those restrictions. The easement was then recorded in the county recording office and was binding on the grantor, its heirs and assigns and is "construed as a restriction running with the land." N.J.A.C. 2:76-6.15(a)18. From the grantor's perspective, once the DOE is recorded and there is an exchange of consideration, **a deal's a deal**.

Had the SADC placed the landowners on notice that the terms of the DOE were open-ended and could be changed in the future it is likely that many of them would not have opted to sell their development rights or demanded additional consideration. What the SADC is proposing now is fundamentally unfair and is contrary to the well-established principle that the "government has an overriding obligation to deal forthrightly and fairly with property owners." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985). See also W.V. Pangborne & Co. v. New Jersey Dep't of Transp., 116 N.J. 543, 561 (1989), where the Supreme Court "insisted that in the exercise of statutory responsibilities, government must "turn square corners" rather than exploit litigational or bargaining advantages that might otherwise be available to private citizens."

Any suggestion that the SDS is simply a minor clarification of the existing provision in the DOEs that relate to "drainage, flood control, water conservation, erosion control, soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises" defies the plain facts. See, e.g., N.J.A.C. 2:76-6.15(a).7 and paragraph 7 in the DOEs. If the proposed rules were only a minor clarification it is inconceivable that the SADC would have needed to publish eighty (80) pages of text in the New Jersey Register. What we have here is an effort by the SADC to improperly intrude on agricultural operations on previously preserved farms and something that the owners of those farms never consented to or could have envisioned. If the SADC is able to unilaterally revise the soil disturbance terms in the DOEs, it's fair to ask what's next?

SADC's attempt to apply the SDS retroactively – that is, to easements acquired prior to their adoption is legally impermissible. As explained by the Supreme Court in Gibbons v. Gibbons, 86 N.J. 515, 522 (1981):

> It is a fundamental principle of jurisprudence that retroactive application of new laws involves a high risk of being unfair. There is general consensus among all people that notice or warning of the rules that are to be applied to determine their affairs should be given in advance of the actions whose effects are to be judged by them.

While it may be possible but ill-advised to apply the SDS prospectively to DOEs acquired after their adoption it is fundamentally unfair to impose the proposed rules on the unsuspecting landowners who entered into arrangements to preserve their farms in good faith prior to the adoption of the new rules.

The Waiver Provision

The waiver process, [proposed] N.J.A.C. 2:76A-25.6, is described in six pages of text. It is unduly complicated and will require the farmer to retain several expensive experts to prepare a credible waiver application.

The applicant for a waiver will have to demonstrate, among other things, that "[t]here is no apparent feasible alternative" and '[i]t is not feasible to utilize areas of existing soil disturbance that would provide sufficient land area for the proposed use, nor is it feasible to implement a certified rehabilitation project on the premises". The "feasibility standard" is no standard at all. It provides the SADC with unfettered discretion to reject any and all waiver applications. The opportunity to obtain a waiver is illusory.

* * * * *

For the foregoing reasons, the proposed rules should be withdrawn so that the SADC can prepare reasonable and practical "*guidance* on the extent of soil disturbance that is permissible on preserved farms" acquired after the adoption of such guidance.

Very truly yours,
NEW JERSEY FARM BUREAU

_____
ALLEN CARTER, PRESIDENT

New Jersey Farm Bureau
100 Years Strong!
BECAUSE AGRICULTURE MATTERS!

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To: Susan Payne, SADC Executive Director

From: Allen Carter, NJFB President

Date: 23 February 2024

Via: Electronic mail - SADC@ag.state.nj.us

Subject: Public Comment - Proposed New Rules
Soil Disturbance on Preserve Farmland/Supplemental Soil Disturbance Standards

SYNOPSIS - NJAC 2:76-25A: The New Jersey Farm Bureau is firmly opposed to the proposed rule of the State Agriculture Development Committee as cited above. We believe that the attempt to impose regulations not guidance via the Administrative Procedures Act violates longstanding contract law regarding deeds of easement (**further explained by our legal counsel** - see Addendum 1). Furthermore, the proposal has generated nearly universal opposition from all segments of the farming industry, the very constituency that the enabling legislation (ARDA - Agriculture Retention and Development Act) was designed to assist in its voluntary action-based approach to farmland preservation. We fear that the prescriptive mandates embedded in the proposal will discourage future participation in the program by production agriculture farmers and incur a loss of reputation that could easily be avoided with a less dogmatic approach to the manageable task at hand.

BACKGROUND

This issue began with Quaker Valley Farms (QVF), a nursery grower in Hunterdon County, grading the slopes of a preserved farm to accommodate new greenhouse construction in 2007. Seventeen years later, the entire agricultural industry in New Jersey is engulfed in controversy from the State's ambiguity in balancing the protection of agriculture viability with soil disturbance. Topsoil at this site was forever altered on 17% of this preserved farm, an action found to be egregious by the State Supreme Court. In making that statement, it advised the State Agricultural Development Committee (SADC) to establish "guidance" on the extent of soil disturbance that is permissible on all preserved farms.

The proposed remedy is currently the third working proposal by SADC, each of them unfortunately based on prescriptive regulations. The latest proposal allows for 12% or 4 acres of allowable soil disturbance per farm, with farms within 50% of the limit receiving a small amount of flexibility for growth. It is anticipated that **these rules will be applied "retroactively"** to all preserved farms since the inception of the Farmland Preservation Program (FPP) in the 1980s. This has become the flash point of farmer opposition. It is safe to say that there has been little awareness at the farmer level that such stringent regulations would one day be part of their Deed of Easement (DOE) agreements. Most of these deals were originated through handshakes around farm kitchen tables, as trust has been integral in the pursuit of agriculture for generations.

Approximately one year ago, some State Board of Agriculture members suggested a workable "stewardship approach" instead of quantitative regulations. Under this idea, the use of a bright line percentage of limits on use of the property would be dropped in favor of the use of a stewardship plan and negotiated compliance with soil conservation best management practices (BMPs) to create the guidance sought by the Supreme Court. This proposed alternative seems to have been temporarily accepted in discussions but was then lost along the way by the SADC. When the draft rules came out, problems emerged. The only way to adopt innovative practices, for example, is through an unacceptable waiver process that is unduly complicated and far too expensive for farmers to obtain.

CONTROVERSY

The Quaker Valley Farm easement was a rare exception to violate soil standards ... why is the SADC advocating overkill regulations when up to 99% of preserved farmland was in compliance with soil protection?

We do not believe that the Supreme Court of New Jersey directed the SADC to mandate over 80 pages of regulations. Farm conservation plan requirements began in 1994; since that time, the vast majority of preserved farms have remained in compliance based on annual SADC monitoring and reporting.

The easement recorded upon preservation of farmland includes multiple paragraphs on balancing agricultural development with soil and water protection. A contract cannot be changed after the fact without the consent of both parties.

The current proposal should not move forward as written. The retroactivity feature of these new rules is a breach of contract for over 2,900 preserved farm owners who never agreed to such terms. NJFB's Board of Directors have voted unanimously to oppose the retroactivity feature of the proposed SPS. Additionally, almost all the County Boards of Agriculture and over a dozen County Agricultural Development Boards (CADBs) also hold this position. Resolutions have been passed at the annual meeting of the Farm Bureau and State Agricultural Convention for 2023 and 2024 with strong language urging the SADC to withdraw the current proposal. (**See Addendum 2 for details on opposition to this proposal**). The SADC should not move forward with these rules with such a fracture in the farming industry's previously collaborative relationship with farmland preservation. The future success of the program is at stake.

SUGGESTED ALTERNATIVE

NJFB seeks qualitative guidelines rather than hard stop regulations as farmers already continue to protect their soil and water resources, and they should be allowed flexibility as they innovate into an uncertain future. We suggest some form of another methodology be adopted to garner consensus within the industry for a workable, fair solution to the Supreme Court mandate.

The current rule proposal should rescind the objectionable regulation of all pre-existing preserved farms and replace it with a combination of advisory procedures and the announcement of prohibited actions classified as soil disturbance (ie: cut/fill, compaction and irreparable covering). Guidance could start by issuing a warning-type notice to all DOE holders coinciding with the effective date of these rules, stating that the SADC is establishing guidelines to ensure protection of soil resources on preserved farms (make specific reference to QVF case at the Supreme Court).

During recent dialogue with the State Board of Agriculture, **Farm Bureau was asked for its recommendations on a suggested alternative** to the proposed SPS standard authored by the SADC now under review. That was done and communicated from NJFB President Allen Carter to State Board President Holly Sytsema in a letter dated January 31, to demonstrate that alternate scenarios can be prepared that do not violate the DOE while still achieving the goal of providing soil-protecting "guidance." Unfortunately, NJFB was not party to a discussion of those alternatives that took place between SPS sub-committees of the SADC and State Board of Ag held on February 1. The consideration of that alternative dissipated.

Essential components of that plan by Farm Bureau, which is a rejuvenated version of the "stewardship plan" once proposed by the State Board of Ag, are:

- blanket letter from the SADC to all DOE holders declaring the importance of soil protection

- farmers with projects affecting large areas of soils are welcome to an informal consultation with SDC staff; trigger mechanisms can be set

- if needed, farmer applicant seeks a technical review on soil impact with the local soil conservation district after a cooperative agreement is struck between SADC and the State Soil Conservation Committee. Recommendations by the SCD are returned to the SADC

- this process would rely upon established soil conservation principles and best management practices already in place with the soil districts (state and federal)

- this guidance process can be crafted to fit the need of the Supreme Court mandate without the need for retroactive mandates.

This alternative would remove the installation of regulation to the preserved farm DOE by substituting a clarification to the existing DOE language that is already signed in order to ensure care of soil resources. It would potentially avoid impacting 95%+ DOE holders who have no current intention to expand "disturbance" activity on their farm and would allow SADC staff to keep recent mapping and other individual preserved farm research on file as background research. Most importantly, it utilizes expertise and familiarity of local soil and agronomic conditions of the SCDs in the review process instead of employing SADC staff who do not have that expertise.

There really is no need for the elaborate process for calculating "disturbed soil" segments on preserved farms, which implies preserved farm owners are an active threat to violate a "soil protection standard." A formal relationship with local SCDs regarding soil "disturbance" activity could be negotiated and established in a cooperative agreement regarding soil conditions on preserved farms to manage any special review that might be needed for on-farm activity.

We believe this satisfies the mandate of the Supreme Court decision arising from the QVF case to establish soil protection standards for any preserved farm unsure if a proposed activity would be in compliance with the terms of the DOE. It will be administratively easier and less costly than the SADC proposal now pending in the NJ Register review process as well as no longer being unduly burdensome upon the applicant to innovate into the future. We hope it may restore confidence of the farm industry with the state's FPP by diminishing complaints of bad faith that arose with the current proposal calling for being regulated retroactively.

SUMMARY

It is not too late to resuscitate this soil issue from the reputational damage that has thus far complicated the task of establishing a rule. However, with good faith and dedication to the original principles of ARDA which were oriented to the viability of agriculture, a course correction can be achieved, and farmland preservation can get back to the rest of an agenda for things like RTF, forest land acquisition, the new alternative appraisal formula, financial assistance for precision farming and other others. We remain dedicated to the objective of adopting SPS as soon as possible so that a harmonious relationship can be restored and the SADC can dedicate itself to these other meaningful programs in support of the farming industry.

With that said, however, the proposal as currently written should not move forward. The FPP will never survive this betrayal of trust with those it was created to protect. This breach of contract would tarnish the program indefinitely.

On Addendum 3, there are a series of questions that should be answered by the agency as part of this formal review process. These are just a selection of the questions that surround the current proposal.

On Addendum 4, there is a statement presented regarding an agency within the NJDA that adopted new soil standards for landowners. That agency **did not retroactively implement coverage of its new standards** for prior contract holders.

cc: Office of the Governor
Joe Atchison, Assistant Secretary of Agriculture
Holly Sytsema, State Board of Agriculture President

NJFB Comments to the SADC - February 23, 2024

- Proposed Soil Protection Standard
- ADDENDUM 1: LEGAL COMMENTS

1A - Letter from NJFB legal counsel Lewis Goldshore to Susan Payne of the SADC dated October 10, 2023

This 9-page letter **commenting on the legal infirmities of the SPS** now subject to NJ Register public comment and review has already been submitted for the record and is being re-submitted here as part of the overall New Jersey Farm Bureau comments.

1B - Letter from NJFB legal counsel Lewis Goldshore to Susan Payne of the SADC dated February 22, 2024

This 4-page letter reflects on the testimony presented at the September 27, 2023 public hearing, the concerns of the agricultural community and to outline a path forward once the proposed SPS rule proposal is withdrawn.

1C - The central question creating the frail, if at all, legal justification for imposing Administrative Procedures Act-based regulations on all preserved farms is the belief that "the Supreme Court made me do it."

In other words, in adjudicating the lower court's conclusion that the SADC was justified in finding egregious conduct in soil management practices at its preserved farmland in Hunterdon County and therefore in violation of the pertinent DOE, the view has emerged by the SADC staff that it has a blank check to adopt regulations to protect soil resources that would be binding on all DOE-holding landowners back to the inception of the program in the early 1980's. We strongly disagree.

It is possible that the SADC staff is confusing the permissibility of the SADC adopting a uniform rule/regulation to implement "guidance" needed to reach the Supreme Court directive with carte blanche power to impose new requirements on owners of preserved farms. Indeed, it is the crossing of that regulation-imposing line of requirements (8O-pages of rules, mapping, waiver procedures, etc. etc.) that goes too far in our opinion. Rather, a "guidance"-based protocol that leaves the pre-existing DOE's unmolested could be adopted as the response to the Supreme Court QVF ruling. That alternative was suggested to the SADC staff ("stewardship" alternative) by several members of the State Board of Agriculture during the early months of 2023 and provided a brief whiff of hope to the SPS process. However and most unfortunately, that proposal was squelched by the SADC staff and soon thereafter the SADC voted (April, 2023) to send the current proposal into the formal NJ Register public review process that concluded on February 23, 2024.

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Addendum 1A

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October 10, 2023

Susan E. Payne, Executive Director
State Agriculture Development Committee
P.O. Box 330
Trenton, New Jersey 08625-0330

RE: Soil Disturbance on Preserved Farmland and Supplemental Disturbance Standards
55 N.J.R. 89(1)
Proposal Number: PRN 2023-079
Written Comments on Behalf of the New Jersey Farm Bureau

Dear Ms. Payne:

I serve as general counsel for the New Jersey Farm Bureau ("Farm Bureau"). In that capacity, I was requested to review the proposed rules ("SPS") and submit written comments to the State Agriculture Development Committee ("SADC") concerning their legal sufficiency with particular reference to their application to the preservation deeds of easement executed prior to adoption of the rules ("preexisting DOEs"). For the following reasons, it is my considered opinion that the SPS are legally defective and cannot under any circumstances be applied to preexisting DOEs.

The Bond Act and the Implementing Laws

A review of the Farmland Preservation Bond Act of 1981 ("the Bond Act"), L. 1981, c. 276, the Right to Farm Act ("RTFA"), N.J.S.A. 4:1C-1 et seq., and the Agriculture Retention and Development Act ("ARDA"), N.J.S.A. 4:1C-11 et seq., indicates that the SPS impermissibly

conflict with the Bond Act's essential purpose and the legislative intent and purposes expressed in the implementing laws.

The Bond Act recognized that agriculture is at its core **an economic pursuit.** The agricultural preservation program was designed to preserve agriculture **as an ongoing viable industry** and not simply as an attractive bucolic vista for rural or suburban neighbors and passing motorists to admire or to function as an extension of the State's Green Acres Program that preserves land for open space conservation and recreation.

That distinction was made clear in several sections of the Bond Act: §2(a) provided that: "The development of agriculture and the retention of farmland are important to the **present and future economy** of the State and the welfare of the citizens of the State"; §2(c) recognized that the State was acquiring the development easements to assure that the farmland would "be retained in **economical viable agricultural production** . . ."; and §3(e) identified the principal purpose of the "Farmland preservation program" as assuring the long term preservation of "agricultural land and the **maintenance and support of increased agricultural production as the first priority use of that land**".

Following the Bond Act's approval by the electorate, the RTFA and the ARDA were approved to implement and advance the public policy expressed in its provisions. Both of the implementing laws included the identical legislative finding and declaration: "All State departments and agencies thereof should **encourage the maintenance of agricultural production and a positive agricultural business climate.**" N.J.S.A. 4:1C-2(d); 4:1C-12(b). Thus, the Legislature has recognized that agriculture is a business, not just a description of a land use.

The RTFA also directed the SADC to "[r]eview and evaluate the proposed rules, regulations and guidelines of any State agency in terms of feasibility, effect and conformance with"

maintaining agricultural production and promoting a positive agricultural business climate. N.J.S.A. 4:1C-6(b). Presumably that statutory direction required that the SADC review and evaluate its own proposed rules and regulations for those purposes prior to their adoption.

Those essential purposes were reiterated in the ARDA where the Legislature found and declared that:

> The **strengthening of the agricultural industry and the preservation of farmland are important to the present and future economy of the State** and the welfare of the citizens of the State, and that the Legislature and the people have demonstrated recognition of this fact through their approval of the "Farmland Preservation Bond Act of 1981," P.L. 1981, c. 276. N.J.S.A. 4:1C-12(a).

The State's agriculture community was a strong proponent for the farmland preservation program and has continued to support it following its adoption. As a result, the program has been extremely successful and preserved approximately 2,900 farms comprising some 250,000 acres. Its continued success will be placed in serious jeopardy if the proposed SPS are not withdrawn.

The 102-page proposal, published on the SADC's website, required 40 pages of text to explain its 60 pages of regulations. That fact alone is telling and represents a failure to consider "the needs and difficulties of agriculture" and an attempt by a government agency to impermissibly micro-manage agricultural operations on preserved farms, N.J.S.A. 4:1C-4(a). The State's policy is to maintain and support increased agricultural production and a positive agricultural business climate not to impose layer upon layer of regulation that will "unnecessarily constrain essential farm practices". N.J.S.A. 4:1C-2(b).

Initially, the SADC staff indicated that only about 15 or so of the 2,900 preserved farms had engaged in what it considered to be excessive soil disturbance and that an equal number were close to that designation. Following its mapping, the staff may have finetuned the estimates, although questions have been raised as to the accuracy of the mapping process. In light of the small number

of farms that may have exceeded the arbitrary 12% limitation, it is especially disturbing that the agency would propose such complex and burdensome regulations on all the owners of preserved farms. Certainly, an agricultural agency charged with promoting farmland preservation by maintaining and supporting increased agricultural production as the first priority of that land should have been able to find a better way to deal with the minimal number of purported outliers without resulting in universal and sustained opposition from the agricultural community.

The basis for that opposition was underscored by the testimony presented at the September 27, 2023, hearing which was only reluctantly scheduled at the insistence of representatives of the agricultural community. Speaker after speaker at the hearing emphasized that agriculture was an economic pursuit not simply an activity engaged in for the casual enjoyment of the State's non-farming residents. The speakers explained that the proposed rules would unduly constrain current and future operations on preserved farms and threaten their economic viability.

Preexisting DOEs

The SPS' failure to distinguish between preexisting DOEs and those executed following the adoption of the rules misconstrues the legal significance of the underlying real estate transactions. While a State administrative agency may be free to change the terms of a regulation so long as it complies with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and other applicable law, it cannot unilaterally abrogate a contract or change the terms of a recorded easement after-the-fact without the consent of the landowner.

The preservation easement was the result of a real estate transaction in which the landowner, referred to as "the grantor", received a stated amount of monetary compensation and in exchange agreed to certain written deed restrictions prescribed by the grantee on the future use of the

property. In essence, the property would be devoted to agricultural use and not developed for non-agricultural purposes.

The parties negotiated the consideration to be paid to the landowner in exchange for the imposition of the restrictions. The easement resulted from a settled real estate transaction and was then recorded in the county recording office and was binding on the grantor, its heirs and assigns and was "construed as a restriction running with the land." N.J.A.C. 72:76-6.15(a)18.

The SADC adopted a standard non-negotiable form of easement, and the terms were also set forth in N.J.A.C. 2:76-6.15. It is particularly significant that those rules were repeated verbatim in the preservation deeds of easement.

Paragraph 2 in the easements provides 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 Agricultural Development Committee, (hereinafter Committee)." (emphasis added). The only reasonable interpretation of that provision is that the reference is to rules that were in place – had been promulgated - at the time the DOEs were executed.

The New Jersey Supreme Court has instructed that "[i]n the absence of specific intent to the contrary, words in a statute are to be given their ordinary and primary meaning." Kingsley v. Hawthorne Fabrics, Inc., 41 N.J. 521, 526 (1964). The same rule of interpretation applies in respect of regulations. In re Eastwick College, 225 N.J. 533, 542 (2016) (words in a regulation are to be given their ordinary and commonsense meaning).

The word "promulgated" in Paragraph 2 in the easements is the past tense of the word "promulgate". The ordinary and for that matter the only meaning of the term "promulgated" is that it referred to an action that had been taken in the past. In this case, it could have only referred to those rules that were in effect at the time that each particular easement was executed. If the SADC

intended a different result when the rules were adopted (N.J.A.C. 2:76-6.15, 2:76-17.15 and 2:76-17(a)-15) the deed restrictions would have expressly referenced both the rules that had been promulgated (past tense) **and** the rules "to be promulgated in the future" (future tense).

Had the SADC been candid and placed the landowners on notice that the terms of the easement were open-ended and that the **promulgated** rules could be changed in the future to impose additional burdens on the landowners it is likely that some grantors would have opted not to sell their development rights or demanded additional compensation for the interest that was being conveyed. The law of easements prohibits the easement owner from involuntarily increasing the burdens on the landowner. Tide-Water Pipe Coo. V. Blair Holding Co., 42 N.J. 591, 609 (1964), citing Tallon v. Hoboken, 60 N.J.L. 212, 218, 37 A. 895, 897 (E. & A. 1897); 2 Thompson. Real Property § 426, p. 694 (1961 repl.); and 2 American Law of Property § 8.66, p. 278 (1952). The SADC cannot through the artifice of a regulation attain what is otherwise impermissible.

What the SADC is proposing now is fundamentally unfair and is contrary to the well-established principle that the "government has an overriding obligation to deal forthrightly and fairly with property owners." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985). See also, W.V. Pangborne & Co. New Jersey Dep't of Transp., 116 N.J. 543, 561 (1989), where the New Jersey Supreme Court "insisted that in the exercise of statutory responsibilities, government must "turn square corners" rather than exploit litigational or bargaining advantages that might otherwise be available to private citizens."

The SADC drafted the DOE and promulgated the implementing regulation, N.J.A.C. 2:76-6.15. The Appellate Division has observed that where that is the case the rule is that any "ambiguities will be construed against the drafter." St. George Dragons. L.P. v. Newport Real Estate Group, L.L.C., 407 N.J. Super. 464, 483 (App. Div. 2009); see also Terminal Construction Corp. v. Bergen

County Hackensack River Sanitary Sewer Dist. Authority, 18 N.J. 294, 302 (1955) ("Where an ambiguity appears in a written agreement, the writing is to be strictly construed against the draftsman.").

There is no ambiguity here: the reference is to the rules that had been promulgated by the SADC and were in place at the time the preexisting DOEs were executed. But if there were some questions about the timing issue, the New Jersey courts have held that any ambiguity should be interpreted against the drafter's (the SADC) position.

In sum, the SADC is attempting to reinterpret the preexisting DOEs so that it can get a better deal and impose additional burdens on the grantors (the landowners) that were never contemplated at the time the instruments were executed. The SADC's position is fundamentally unfair and must be rejected. In plain language, **a deal is a deal.**

Any suggestion that the SPS is merely a minor clarification of the existing provision in the preexisting DOEs that relate to "drainage, flood control, water conservation, erosion control, soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises" conflicts with the plain facts. See, e.g., N.J.A.C. 2:76-6.15(a).7 and paragraph 7 in the deeds of easement. If this was only a minor clarification it is inconceivable that the SADC would have considered it necessary to publish a regulatory document 102 pages in length. What we have here is an effort by the SADC to improperly intrude on the operations of previously preserved farms and something that the owners of those farms never consented to or could have envisioned.

Furthermore, SADC's attempt to apply the SPS retroactively – that is, to easements acquired prior to their adoption – is legally impermissible. As explained by the Supreme Court in Gibbons v. Gibbons, 86 N.J. 515, 522 (1981):

It is a fundamental principle of jurisprudence that retroactive application of new laws involves a high risk of being unfair. There is general consensus among all people that notice or warning of the rules that are to be applied to determine their affairs should be given in advance of the actions whose effects are to be judged by them.

Several of the speakers at the September 27th hearing, although unreasonably limited by the chair to only four minutes to present their comments, confirmed that the adoption of the SPS would adversely impact their businesses and seriously discourage future participation in the preservation program. They expressed the concern that if the SADC was able to adopt the SPS, what other restrictions on agricultural operations on preserved farms would it impose in the future.

The SPS conflicts with the Bond Act, the RTFA and ARDA and should not as a matter of policy be applied even prospectively, that is, to easements acquired after their adoption. However, in no event can they lawfully be imposed on the unsuspecting landowners who entered into arrangements with the government to preserve their farms prior to the adoption of the proposed SPS.

Lastly, there is nothing in the State v. Quaker Valley Farms, Inc., 235 N.J. 37 (2018) (QVF) decision that suggests or supports retroactive application of the SPS. That issue was simply not before the Supreme Court and the New Jersey courts do not issue advisory opinions. Crescent Park Tenants Association v. Realty Equities, 58 N.J. 98, 107 (1971).

The Court in QVF instructed the SADC to issue guidance or standards that would advise the owners of preserved farms when they could be subject to enforcement actions for violating the terms of the preexisting DOEs. It did not contemplate or authorize the SADC to issue a 102-page regulatory document that would have the effect of rewriting the terms of settled real estate transactions.

The *No Waiver* Provision

The so-called waiver provision warrants comment. SADC has indicated that the SPS provides for two types of limited waivers: production waivers and innovation waivers. But to qualify for a waiver the applicant would have to prove: (i) that there was "no apparent feasible alternative . . . which would avoid or substantially reduce the proposed soil disturbance"; (ii) that "[i]t is not feasible to utilize areas of existing soil disturbance that would provide sufficient land area for the proposed use"; and (iii) and that it is not "feasible to implement a certified rehabilitation project on the premises. . . which, once completed, would render the need for a waiver unnecessary".

The "feasibility" requirements for obtaining relief appears to have been lifted from rules adopted by the Department of Environmental Protection. The bottom line is that it would enable the SADC to deny a waiver application for any reason or no reason at all and is in direct conflict with the intent and policies expressed in the Bond Act, RTFA and ARDA.

The application process will be unduly lengthy, expensive and require the applicant to retain a team of technical and legal experts. To make matters worse the inevitable result of this costly wild goose chase would be a denial.

* * * * *

For all the foregoing reasons, the SPS are inconsistent with the legislative intent and purpose expressed in the applicable laws and cannot lawfully be applied to preexisting DOEs, should not be applied to DOEs obtained in the future, and should be withdrawn by the SADC.

Very truly yours,

Lewis Goldshore

LEWIS GOLDSHORE

c: New Jersey Farm Bureau

ADDENDUM 1B

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February 22, 2024

Ms. Susan E. Payne
State Agriculture Development Committee
P.O. Box 330
Trenton, NJ 08625-0330

RE: Proposed Soil Preservation Rules; Proposal Number: PRN 2023-079
Supplemental Comments

Dear Ms. Payne:

This is to supplement the comments submitted by New Jersey Farm Bureau's (Farm Bureau) president, Allen Carter, Jr., and general counsel, Lewis Goldshore, Esq. The purpose of these supplemental comments is to reflect on the testimony presented at the September 27, 2023, public hearing, the concerns of the agricultural community and to outline a path forward once the proposed soil preservation rules are withdrawn.

The August 7, 2023 Public Notice

The August 7, 2023, public notice inexplicably failed to provide for a public hearing despite the fact that the proposed soil protection standards (SPS) would have substantial impacts on the agricultural businesses conducted by the owners of the 2,900 preserved farms as well as on those landowners contemplating participation in the preservation program. 55 N.J.R. 1573. It was only after representatives of the agricultural industry objected that the public hearing was scheduled.

The September 27th Hearing

The September 27, 2023, hearing was chaired by the SADC's executive director. She spoke for more than ten (10) minutes in an attempt to justify the defective proposal but then proceeded to preemptively impose a strict four (4) minute limit on members of the public.

Several speakers, including those representing agricultural organizations, were cut off midsentence by the incessant ringing of a bell before they could fully express their comments in opposition to the proposal. It was clear that the chair was not interested in hearing from the public and was simply going through the motions. In sum, the September 27th hearing was conducted in a manner that was intentionally designed to unreasonably constrain public comment in violation of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., due process and was otherwise arbitrary, capricious, and unreasonable.

Those commenting at the hearing explained how the proposed rules would be detrimental to the viability of their agricultural businesses and how they were contrary to the purposes of the Farmland Preservation Bond Act of 1981, L. 1981, c. 276, subsequently approved bond acts, the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. The comments underscored the reasons why the proposed SPS must be withdrawn.

SPS' Fatal Flaw

SPS' fatal flaw is SADC's mistaken assumption that it has plenary regulatory authority respecting previously preserved farms. That fails to consider the nature of the real estate transactions entered between the landowners and the grantees (the State, counties or nonprofit entities) which consisted of the sale of development rights in accordance with the terms of Deeds of Easement (DOEs).

The SPS represents an impermissible attempt by the SADC to impose additional burdens on the owners of previously preserved farms without compensation. The proposal conflicts with the

law pertaining to easements and the nature of settled real estate transactions between the landowner and the acquiring entity.

The SADC appears to have been aware that its rulemaking authority was limited in 1994 when it amended N.J.A.C. 2:76-6.15 (Deed Restrictions). On August 1, 1994, the SADC amended N.J.A.C. 2:76-6.15(a)(7) to require the owners of preserved farms to obtain "a farm conservation plan approved by the local soil conservation district" and "conform with the provisions of the farm preservation plan." 26 N.J.R. 3162. However, the SADC did not attempt to retroactively apply that additional burden on the owners of farms preserved between 1986 and 1994. Thus, it is curious and mistaken that the SADC is now seeking to engage in impermissible retroactive rulemaking.

If the SADC can impose soil preservation regulations on the owners of previously preserved farms, **what's next:** requiring that the affected landowners engage in organic farming practices; limiting the type or number of farm animals; and/or dictating the color of farm buildings? The bottom line is that the SADC may specify the terms of the DOEs **prior to their execution** but it may not change those terms **after the consideration has been paid and the instrument has been recorded.** In plain language: **a deal's a deal!**

The Path Forward: An Alternative Approach

The proposed SPS is a non-starter. Once it has been withdrawn it will be essential for the SADC to recognize the fundamental difference between previously preserved farms and those that will be preserved after the adoption of the rules. This is referred to as **a two-tier approach.**

SADC's regulatory authority concerning the first tier, the previously preserved farms, is very limited: the agency cannot lawfully revise the terms of recorded DOEs. SADC's authority respecting those farms is restricted to issuing a regulatory guidance document advising the affected landowners when they would be subject to enforcement actions for violating the DOEs. See N.J.S.A. 52:14B-3a(d) and State v. Quaker Valley Farms, 235 N.J. 37, 63-64 (2018). Such

guidance document should provide opportunities to mediate differences of opinion and adequate time to cure alleged violations. In any enforcement action the SADC should have the burden to prove a violation by clear and convincing evidence.

The SADC can impose new soil protection standards for the second tier consisting of those farms preserved after the adoption of the rules. A central problem with the current proposal is that it is overblown, turgid and mind-numbing and will only serve to discourage future participation in the preservation program. Several speakers at the September 27th hearing made this point and Farm Bureau officers and staff have heard from landowners potentially interested in preservation who advised that they would not preserve their farms if the pending SPS proposal is adopted.

Eighty page plus regulatory tomes might have some place in academic settings, but they don't work in the real world of production agriculture. Rather, the SADC should issue straightforward practical guidance in cooperation with the State's soil conservation districts that identifies soil protection standards in the form of a recommended agricultural management practice. Any such guidance would need to be flexible and recognize that each farm has its own particular characteristics and that the business of agriculture is continually evolving.

Once the SPS proposal is withdrawn, Farm Bureau and its members are prepared to cooperate with SADC to formulate a workable approach.

Very truly yours,

Lewis Goldshore

LEWIS GOLDSHORE, ESQ.

c: Assistant Secretary Joe Atchison, III

NJFB Comments to the SADC – February 23, 2024

- Proposed Soil Protection Standard
- ADDENDUM 2: DESCRIPTION OF FARM INDUSTRY OPPOSITION

There can be no doubt that the farm industry, both as individual farmers and by its representative spokesgroups are opposed to the SPS proposal as presented in the NJ Register. The following information describes how that can be measured by identifying its many forms.

Policy Resolutions: Farm Bureau, State Agriculture Convention

The $1.5 billion farming industry is well-organized in its representative policy-making structure, a tradition that began in the late 1800's and continues virtually intact to the present day. The independent, private sector voice is the New Jersey Farm Bureau; the public sector voice is at the Department of Agriculture where its role is outlined in longstanding state statutes (NJSA 4:et seq.). When first apprised of this structure in a get-acquainted meeting in the summer of 2017, governor candidate Phil Murphy told visiting farmers it was "citizens democracy at its finest."

Each organization holds a convention each year and reviews/debates policy questions to guide its decision-making during the following year on behalf of the farming industry. **Each organization has adopted resolutions** for the past two years in fact, **opposing the SPS proposal** for its core provision of attempting to retroactively impose regulations on all pre-existing deeds of easement (DOE) dating back to the inception of the program in the early 1980's. The number of the DOE's is approximately 2,900 covering more than 250,000 acres of land. Copies of those resolutions are readily available upon request. Of great significance, **the State Ag Convention adopted its resolution very recently when it met in Atlantic City on Feb. 7-8**. It was approved emphatically among 100+ voting delegates, with numerous county representatives making individual comments to support the resolution.

County Boards of Agriculture Opposition

Both the Farm Bureau and Ag Convention draw the bulk of their leadership from county boards of agriculture. Specific policy issues often begin at the county board level and get taken up at the state level. **Nearly every county board of agriculture** has submitted letters to the SADC in opposition to the SPS proposal, especially its retroactive feature. Copies are available upon request and should also be reflected in the record of comments when the NJ Register public comment period is done.

ADDEN 2 (CONT'D.)

Public Hearing for the SPS Proposal

Perhaps the most telling expression of opposition to the proposal is the experience with the one and only official public hearing. It is notable by the fact that it occurred only because of a petition by two farm organizations and not by choice of the SADC. When it took place on Sept. 27 via Zoom, the SADC executive director was the hearing officer and imposed a strict 4-minute time limit on comments - some 11 individuals were interrupted and told to stop commenting! A tally of the comments by the 29 individuals who testified, some 27 of whom were opposed to the SPS proposal. Among those who were opposed were officers from the Farm Credit banking cooperative ($3 billion loan portfolio in NJ), a group of county farmland preservation coordinators (CADB's) as well as soil conversation district staff persons. A copy of the 101-page transcript of this hearing is readily available.

Others

It should also be noted that the above-referenced opposition reflects a correlation between farmers opposed and the comparatively small number of farmers who stay familiar with policy issues. There are an enormous number of farmers who have not spoken out either because they are unaffected by DOE rules or they have not been notified. Question: what prompted Assistant Ag Secretary Joe Atchinson to state at the beginning of the public hearing … "also recognize that many people are very passionate about this subject … all participants will observe proper decorum, professional behavior and civil discourse." This is certainly a reasonable expectation for hearing administrators to have, but what is it about the SPS proposal that creates such a concern? Was it the last-minute mailing to DOE owners alerting them for the first time in August, 2023 to the impending regulation of their farms?

NJFB Comments to the SADC: February 23, 2024

- Proposed Soil Protection Standard
- ADDENDUM 3: QUESTIONS

1. **What alternative approaches**, especially those that would not encroach upon the deed of easement contract of previously preserved farm owners, **were considered** during the development of the current proposal now under review?
2. **Were previously preserved farm owners notified** by the SADC staff about this proposal that will impose restrictions on the use of their property? If so, how and when was that notification achieved? What comments/reaction was received by the SADC staff – how has it been documented?
3. **Regarding the single public hearing about the proposal** held on Sept. 27, 2023, is it true that the initial announcement of the proposal did not make any provision for a public hearing? How many individuals participated - what was the tally of those favoring versus those opposing the proposal? Have the responses been recorded and compiled into a report for review by the SADC members?
4. **Has the SADC received any written comments from the State Board of Agriculture** regarding its position on the pending soil protection proposal? If so, what are they and how can they be reviewed as a matter of public record? Please describe the extent of the interaction and the content of the discussion with the State Board of Agriculture, which speaks for the Murphy administration regarding farming issues, about this SPS proposal? Was there ever a concern expressed about the "retroactivity" coverage issue, i.e. SADC imposing regulations via the Administrative Procedures Act on owners of previously preserved deeds of easement without their prior consent? If so, please describe the SADC staff response to those concerns.
5. Has the SADC staff taken any **action regarding the SPS proposal with prospective farm owner applicants prior to its final approval**? If so, please describe. Does the SADC staff know of any prospective farm preservation applicants terminating their interest in participating in farmland preservation after being told about the proposed SPS requirements?
6. The waiver requirements are unduly complicated, and it will be exceedingly costly and time-consuming for the applicants. The provision, as written, provides the SADC with the discretion to deny an application for any or no reason at all. Was any consideration given to adopting a more realistic waiver provision that recognized the reasonable needs of agricultural landowners and the evolving nature of the industry?
7. The Deed of Easement provisions have since 1995 required that the landowner prepare a farm conservation plan. Kindly confirm that this provision was not applied retroactively to properties preserved between 1986 and 1995. If that provision was not applied retroactively to previously preserved farms, what is the source of the SADC's authority to retroactively apply the Soil Protection Standards to previously preserved farms?

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NJFB Comments to the SADC – February 23, 2024

- Proposed Soil Protection Standard
- ADDENDUM 4: SPS AT ODDS WITH NJDA PRECEDENT

It appears that the intended willingness of the SADC to retroactively impose new standards on landowners under changing legal circumstances is at odds with prior action by a fellow state agency.

In December of 2017, the State Soil Conservation Committee (SSCC) revised its New Jersey Soil Erosion and Sediment Control Standards to include provisions for mitigating the negative impacts of soil compaction on construction sites subject to review and regulation of the statute by the same name (see NJSA 4:24-39). The SSCC enforced the new standards as of December 7, 2017. Any application submitted to a local Soil Conservation District for soil erosion/sediment control plan must include provisions to mitigate potential soil compaction. **Most importantly, however, the SSCC clearly stated: "previously certified soil erosion/sediment control plans ... are not subject to the adopted amendments."**

Action to create the soil compaction rules began in 2010, well before 2017 and during which hundreds if not thousands of C.251 plans from property owners were certified as final - similar to the DOE in farmland preservation. By the time the agency finally adopted its revised standards, it did not retroactively apply the standards to all subject landowners back to 2010! Same agency (NJDA) housed the SSCC (as it does the SADC) with the same Secretary of Agriculture chairing both agencies.

This is clearly a contradiction. (See attached documentation on Addendum 4A and 4B).

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ADDENDUM 4A

State of New Jersey

DEPARTMENT OF AGRICULTURE
HEALTH / AGRICULTURE BUILDING
PO BOX 330
TRENTON NJ 08625-0330

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DOUGLAS H. FISHER
Secretary

Memo

To: Soil Conservation District Managers and Chairman

From: Frank Minch, Executive Secretary FM

Date: December 4, 2017

Subject: Soil Restoration Measures

In accordance with P.L. 2010, Chapter 113, the State Soil Conservation Committee has revised its New Jersey Soil Erosion and Sediment Control Standards to include provisions for mitigating the negative impacts of soil compaction on construction sites subject to review and regulation by the New Jersey Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39, et seq. These provisions have been included within Chapters 8 (Topsoil) and 19 (Land Grading) of the Standards.

A complete copy of the Standards and associated forms and documents may be downloaded from the Department's website at: http://www.nj.gov/agriculture/divisions/anr/nrc/njerosion.html .

The Department has also created a Frequently Asked Questions document to aid the regulated community in complying with these requirements.

Effective December 7th, 2017, any application submitted to a local Soil Conservation District for erosion and sediment control plan certification must include provisions to mitigate potential soil compaction in accordance with the revised Standards. Previously certified Soil Erosion and Sediment Control Plans, Plan eligible for recertification and minor revisions are not subject to the adopted amendments.

The attached Frequently Asked Questions (FAQ) are provided as guidance for compliance with these new provisions for soil compaction mitigation.

ADDENDUM 4 B

NEW JERSEY DEPARTMENT OF AGRICULTURE
STATE SOIL CONSERVATION COMMITTEE
Chapter 251, PL 1975 as amended,
Administrative Policies Bulletin

Administrative Bulletin: 2017-4.0	**Effective Date:** December 7, 2017
Subject: Soil Restoration Measures	**From:** Frank Minch, Executive Secretary

1.01 PURPOSE

To provide guidance relative to Soil Erosion and Sediment Control Plan Certification and Inspection in conjunction with the Standards for Topsoiling and Land Grading to ensure adequate decompaction of subsoil where necessary and proper topsoil depth prior to the issuance of a Report of Compliance.

1.02 SUMMARY

Amendments to the Standards in conjunction with the Soil Restoration Act, P.L. 2010, c. 113, require additional measures to provide for cost-effective restoration of the optimal physical, chemical and biological functions for specific soil types and intended land use.

* The following policy shall apply to Soil Erosion and Sediment Control Plans submitted on or after December 7, 2017.

1.03 PROCEDURE

Soil Erosion and Sediment Control Plan review shall include an examination of project area(s) which may be subject to the soil restoration elements of the Standard for Land Grading. These elements include:

1. Delineation of land areas not subject to soil compaction mitigation. A description of such land areas are provided in the Standard.
2. Standard soil restoration notes.
3. Typical lot detail identifying potential areas for soil compaction testing.
4. Other potential areas for soil compaction testing. (e.g. common areas)

Upon determination that these elements along with all other requirements under N.J.A.C. 2:90-1 are satisfactory, the District shall certify the Soil Erosion and Sediment Control Plan in accordance with N.J.S.A. 4:24-45.

FARM CREDIT EAST

Statement of Stephen Makarevich, Regional Credit Leader at the
PUBLIC HEARING ON SADC SOIL PROTECTION STANDARDS RULE PROPOSAL
September 27, 2023

Good evening, my name is Steve Makarevich, a regional credit leader for Farm Credit East, based in our Flemington office. I'm pleased to have the opportunity to present testimony on this important regulation on behalf of Farm Credit East.

As a cooperative providing credit and financial services to farms, forest product and fishing businesses, Farm Credit East serves eight Northeast states, providing nearly $1.4 billion in loan commitments to our more than 1,900 members in New Jersey.

- With nearly 250,000 acres on almost 3,000 farms protected, New Jersey's farmland protection program has been highly successful at protecting the state's natural resources and working landscapes. This land is the foundation of the agricultural industry in the state and contributes to the quality of life for all.
- Food and agriculture are also important to the state's economy. According to Farm Credit East's report, *Northeast Economic Engine,* New Jersey's agriculture sector generates $11.5 billion in economic activity and supports over 50,000 jobs when inputs, processing and marketing are included.
- Farm Credit East supports the goal of protecting the soil and using appropriate conservation practices on preserved farms.
- In reviewing the proposed regulations, however, Farm Credit East is concerned with their potential economic impact on farms that are currently in the program as well as those that may participate in the future. Specifically, we are concerned with the following aspects of the regulation:
    - The retroactive application of these new rules to farms currently in the program that made improvements in good faith consistent with the deed of easement and whose property had been inspected through the years.
    - The implications for existing farms that are found to be out of compliance, in terms of what steps they will need to take to

remediate the non-compliance and the subsequent impact on the value of the property.

- While it is appropriate to provide limits on the amount of preserved land that can be disturbed, it is also important that farms are able to make the improvements necessary to remain viable. One of the great successes of New Jersey's program is that it has not only preserved farmland as a natural resource but has helped the preserved farms to stay competitive in today's challenging business climate.
- If preserved farms are unable to make necessary investments and improvements, these rules could undermine the goal of the program if it results in the land not being actively farmed.
- The complexity of the new rules and the additional costs to determine compliance with them, along with the other restrictions, could negatively impact the current farms in the program and discourage prospective participants.

In closing, these regulations have been in development for several years, and Farm Credit East and other agricultural organizations have raised similar concerns in the past. As the regulatory process has moved forward, it does not appear that these views have been taken into account.

So I would urge the SADC to consider the views being expressed tonight before implementing this rule to consider the impact of the rules on the economic viability of existing preserved farms and future participation in the program.

State Board Statement

10/25/23

New Jersey State Board of Agriculture members have, over the past several months, heard continued concerns from the agricultural community about the State Agriculture Development Committee's (SADC) proposed rules regarding soil protection on preserved farms.

As the rule proposal was being developed, a Board subcommittee met with SADC staff over the course of many months to provide input on behalf of the industry, and these meetings resulted in additional soil disturbance allowances that take into account production issues and mitigation methods. Yet, Board members continue fielding repeated calls, e-mails, and other communications that the agricultural rule as proposed in the *New Jersey Register* is still seen as unacceptable to a great many farmers, especially those already enrolled in the Farmland Preservation Program.

The end of the official public-comment period for the rule published in the *Register* is looming in early-November. A recent meeting in Hunterdon County where SADC staff answered questions directly to concerned farmers seemed to help provide a deeper understanding of the proposed rule, the objectives behind it, and the legal issues that made it necessary. Additional SADC informational meetings with county agriculture boards already are scheduled for October 25 in Cumberland County and October 26 in Somerset County.

Today, this Board urges the SADC to continue holding meetings directly with farmers in as many counties as possible to inform the agricultural community about the details, background, and legality of the proposed rule.

It is important to the State Board that this matter be resolved in a way that satisfies the Supreme Court ruling, maximizes agricultural economic opportunity, and maintains public confidence in the integrity of the Farmland Preservation program, so that it will remain an integral part of our state's agricultural future for decades to come.

Accordingly, the Board asks the SADC to extend the public comment period, preferably to a date after the winter conferences of the New Jersey Farm Bureau and the State Agricultural Convention, to afford farmers the opportunity to network and learn more about this new rule when they have the opportunity to fully engage outside their busy harvest schedule.