

Hunterdon County Agriculture Development Board Meeting
Rt 12 County Complex Building 1 Assembly Room
June 10, 2021 @ 8:00 pm

Members in Attendance:

Dave Bond-Chair
Bob Hoffman-Vice Chair
Susan Blew
Ted Harwick
John Perehinys
Marc Phillips
Liz Schmid (*Via Phone*)

CADB Staff Present:

Shana Taylor, Esq. County Counsel
Aaron Culton, Esq., Asst County Counsel
Bob Hornby, CADB Administrator
Carrie Fellows, Director, Planning
Katherine Fullerton, Supervising Planner
Megan Muehlbauer (NJAES)

This meeting is being held in person with respect to the Public Health guidelines.

Open Public Meeting Act:

Chairman Bond opened the meeting at 8:00 p.m. and read the Open Public Meeting Act:

"This meeting is being held in accordance with the provisions of the Open Public Meeting Act. Adequate notice has been provided by prominently posting and maintaining so posted throughout the year on the first floor of the County Administration Building, Main St., Flemington, New Jersey a public place reserved for such announcements, and by mailing on or before January 15, 2021, to The Hunterdon Democrat, Star Ledger, The Trenton Times, The Courier News and The Express Times newspapers, and TAP Into it newspaper and designated by the Hunterdon County Agriculture Development Board to receive such notices, and by filing with the Hunterdon County Clerk a schedule of the times and dates of such meetings."

Pledge of Allegiance:

Roll Call: Not Present: Christian Bench, Dave Kyle, Forest Locandro, Gerry Lyness & Kevin Milz

Approval of Minutes:

- **Minutes of the May 13th CADB Meeting** – Susan Blew made a MOTION to approve, Bob Hoffman SECONDED. All in favor by Voice Vote.

Communications and Administrative Business:

- **CADB Staff Update** – Bob stated that it was good to see everyone in person and thanked everyone for their patience over the last few months.
 - **Kappus Farm** (Alexandria Twp.) – Closed May 28th. 3rd farm of the year 457th overall
 - **Beam farm** (Bethlehem Twp.) – Got Green Light from State Agriculture Development Committee (SADC) on April 6th. Appraisal awards went out in May, due June 17th.
 - **Curtis Farm** (Delaware Twp.) – Closed in Process. Funded through an Open Space Grant. County took the easement for monitoring purposes.
 - **Thomas Farm** (East Amwell Twp.) – Under final legal review with SADC.
 - **Onuschak Farm** (Franklin Twp.) – Under final legal review with SADC.
 - **Magnolia Creek Farm** (Franklin Twp.) – Going to BOCC, waiting on finance issues.
 - **Grochowicz Farm** (Hampton, Glen Gardner, Bethlehem) – Under final legal review at SADC,

- **DeSapio Farm** (Kingwood Twp.) – Issue with appraisal, fixed the errors and resubmitted appraisal. Must close by Mid-August, using federal funds from the 2014 Farm Bill.
- **Kollmer Farm** (Kingwood Twp.) - Issue with appraisal, fixed the errors and resubmitted appraisal. Must close by Mid-August, using federal funds from the 2014 Farm Bill.
- **Bowlby Farms** (Raritan Twp.) – Closing this week or next week.
- **Saums Farm** (Readington Twp.) – Got final approval from SADC, survey is complete, under staff review at SADC.
- **Staff Activity**
 - Bob stated he has been working with HLT on the new farm bill. There are changes to the federal paperwork.
 - Working on crop reimbursement from PSEG.
 - May 21st NJRC&D had a press event with Cory Booker & Tom Malinowski, it was good publicity for ag in NJ.
 - June is Dairy month. Gerry Lyness and son run Spring Run Dairy. June 10th had an event, Secretary Fisher was in attendance. Received an award. Spring Run Dairy is one of only 2 farms in NJ that milk and bottle on site. They also sell on site and to farm stands.
- **Communications**
 - Received a letter from NJ Conservation Foundation requesting an amendment to the ADA in Tewksbury Twp. Looking at that with County Counsel.
 - County budget has passed, going to be working on the Farmland Preservation Plan.
 - Bob introduced Katherine Fullerton to the Board.
- **Monitoring Update**
 - Kevin was not able to attend tonight's meeting. Not able to update the board. All monitoring must be done and reported to SADC by June 30th.

State Agriculture Development Committee (SADC) Updates:

Bob Hornby spoke on behalf of SADC

- Bob phoned into their last meeting. There are a couple bills, one is siting utility scale solar and whether it should be allowed on prime soils. Special Occasion Events is still in the legislature. There are two classes. If you make \$5K – \$10K you are allowed 15 events a year 2 of them can be over 250 people. If you make >\$100K you are allowed 52 events a year 12 can be over 250 people. Any event over 250 requires a pre-application to the Grantee. Legislation for Farmers to recover costs of RTF matters filed in bad faith. Martin house relocation was approved by SADC. Bob took questions from board members.

Chair Comments:

NONE AT THIS TIME

Old Business:

- **Soil Disturbance Standards**
 - Board discussed pros and cons of the Standards. Board decided to have Bob write a letter opposing the Soil Protection Standards being enforced on existing easements to be copied to the SADC, BOCC, State Legislators and Candidates for Governor. Chairman Bond asked for a MOTION to write a letter opposing the Standards. Robert Hoffman made a MOTION, Susan Blew SECONDED. More extensive discussion ensued.

- Chairman Bond entertained comments from the public.
- Chairman Bond had Bob read back the MOTION. All in favor by Voice Vote.
- **Monitoring Procedure**
 - The board discussed the draft procedure. There was never a procedure written down. This is a guide for Kevin that can also be given to the landowners. By law it has to be done, but there was never a procedure in place. Liz Schmid made a MOTION to approve the Draft copy. There was no SECOND. Chairman Bond wanted to discuss this more. The board decided to Table this issue until Kevin Milz is present. Marc Phillips made a MOTION to Table this issue, John Perehinys SECONDED, all in favor by Voice Vote.

New Business:

NONE AT THIS TIME

Right To Farm Matters:

- **SSAMP Hearing- Beneduce Vineyards (Alexandria Block 21 Lot 41.31) No testimony will be heard.**
 - Counsel called for a motion to open Public Hearing on Beneduce Vineyard, John Perehinys made a MOTION to Open, Marc Phillips SECONDED. All in favor Voice Vote
 - Counsel called for a motion to close and carry the Public Hearing until CADB Meeting on July 8, 2021. John Perehinys made a MOTION to close and carry until July 8, 2021. Liz Schmid SECONDED. All in Favor by voice vote.
 - Chairman Bond had comments on this matter that Shana will pass on to the parties involved.

Public Comment:

- **Daniel Herr** of Clinton Twp. has comment on Monitoring. He has neighbors encroaching on his property. Chairman Bond and Shana said this is legal matter and there is nothing CADB can do.
- **Patricia Springwell** of Lebanon commented on Preservation and price and they should pay the farmer more so they can keep farming.

Adjournment: MOTION to Adjourn made by John Perehinys, Liz Schmid SECONDED. All in favor, Meeting Adjourned at 9:15PM.

Hunterdon County Agriculture Development Board

Hunterdon County Administration Building #1
Route 12 County Complex
PO Box 2900
Flemington, New Jersey 08822-2900

June 16, 2021

RE: Soil Protection Standards

Members of the State Agriculture Development Committee:

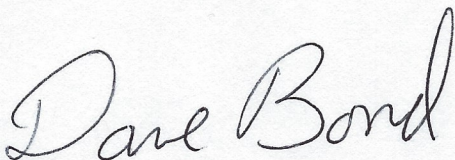
The Hunterdon County Agriculture Development Board (CADB) has a long history of supporting farmland preservation and great interest in the continuation of agriculture as a viable industry in Hunterdon County. Farmland Easements in Hunterdon County cover almost 35,000 acres at a public cost exceeding \$290 million. An additional 1,500 acres are currently in the process of preservation. 28% of the Farm Assessed acreage in Hunterdon County is permanently restricted for agricultural use. The first family farm to be preserved in NJ was in Hunterdon County in 1985.

The CADB appreciates the work done by the State Agriculture Development Committee (SADC) on the Soil Protection Standards and commends the Staff outreach in gathering stakeholder comments on the draft version. The Hunterdon CADB accepts the draft Best Management Practices as a solid foundation in protecting a valuable resource.

The CADB objects to the basic concept of the Soil Protection Standards as they serve to change and restrict the terms of Easements that have been agreed to and abided by for decades. Roughly half of the 458 Easements in Hunterdon are at least 15 years old. Once a landowner has signed a permanent easement the SADC should not further restrict agricultural uses. Confidence in the Preservation Program relies on landowners understanding what they are agreeing to and those terms not changing over time and with subsequent owners. The CADB is concerned that the Standards set a precedent to undermine a popular program that has been beneficial to continued viable agriculture in Hunterdon County.

On behalf of the Board, thank you for your time and attention,

Dave Bond
CADB Chair



Cc: State Agriculture Development Committee
Staff
Hunterdon Board of County Commissioners
Governor Phil Murphy
Senator Shirley Turner (15th District)
Assemblywoman Verlina Reynolds-Jackson
(15th District)
Assemblyman Anthony Verrelli (15th
District)

Senator Christopher Bateman (16th District)
Assemblyman Andrew Zwicker (16th District)
Assemblyman Roy Freiman (16th District)
Senator Michael Doherty (23rd District)
Assemblyman John DeMaio (23rd District)
Assemblyman Erik Peterson (23rd District)
Candidate for Governor Jack Ciattarelli



Memo

To: Agricultural and Preservation Partners
From: Jeffrey C. Everett, Deputy Executive Director, State Ag. Development Committee
Date: 4/19/2021
Re: Draft Soil Protection Standards - Request for Informal Comments

Since June of 2019, the full State Agriculture Development Committee (hereafter “SADC” or “the Committee”) and a Deed of Easement Subcommittee have been working on a draft regulation that establishes soil protection standards for preserved farms. The job is not complete, but the basic concepts and a number of key details have been extensively deliberated. At its February 25, 2021, meeting the Committee directed staff to develop a plain language explanation of the draft rule, to circulate it among the Committee’s various partners and to invite their questions and informal comments. Before delving into the details of a draft regulation, however, it is prudent to briefly explain why a rule establishing soil protection standards is necessary, describe the concepts behind the proposed rule, and clarify that the present course of action is the result of a New Jersey Supreme Court decision that concerned a preserved farm.

A number of years ago, the SADC was involved in a court case that centered on the question of how much of a preserved farm can be “disturbed” in order to build farm structures. The case went all the way to the New Jersey Supreme Court where the Court ruled what the farmer had done violated the Farmland Preservation Program restrictions. It also gave the Committee some very clear guidance about what the conceptual underpinnings of soil protection standards must be. The Court said,

“... the ARDA (Agriculture Retention and Development Act) and the (deed of easement) have a dual purpose: to strengthen the agricultural industry and to preserve farmland. Both are important goals; neither is subordinate to the other... **the approach must be to balance farmland preservation and strengthen the agricultural industry.**”

In its decision, the Court also stated,

“If the SADC fails to undertake the necessary rulemaking to establish the extent of soil disturbance that is permissible on preserved farms, then it can expect administrative due process challenges to its enforcement actions . . . those who own deed-restricted farmland must have well delineated guidelines or rules that will permit them to make informed decisions about the permissible limits of their activities.

The state has yet to promulgate such guidelines or rules....
Farmers must know where the goalposts are set before
the State burdens them with costly enforcement actions.”

Therefore, in an effort to strike an appropriate balance between soil conservation and promoting the business of agriculture, the SADC conducted a study of its own and commissioned multiple studies of preserved and unpreserved New Jersey farms. Based on those studies, the SADC has developed a framework of proposed soil protection standards. That framework will allow preserved farms, almost without exception, to operate the way they are operating today while allowing room for future infrastructure growth and, at the same time, sets clear limits on disturbances to the soil resource.

The broad outlines of the proposed regulation are detailed in the attached chart that is color-coded Red, Orange, Yellow, and Green. But before explaining the specifics of the proposed disturbance limits, two points need to be made about what they WILL and WILL NOT apply to.

1. The proposed regulations will apply to all farms regardless of when the farm was preserved. Farms that entered the program before the regulations are adopted will be bound by them to the same extent as farms preserved after their adoption.
2. Exception areas will be completely exempt from the proposed regulation; the proposed soil disturbance limits will apply only to land subject to the deed of easement. In other words, soil disturbance on exception areas will not be included in calculating soil disturbance on preserved land.

THE PROPOSED REGULATION

The proposed regulation tells the owners of preserved land how much soil they can disturb without violating the farmland preservation deed of easement. The basic provisions of the rule are:

1. **Basic Disturbance Allowance (“RED” uses) - Up to eight percent (8%) of the acreage on a preserved farm or six acres (6), whichever is greater,** may be disturbed for the kinds of uses and activities that cause the most permanent and significant damage to the soil, things like paved travel lanes, paved parking lots, and storage areas, stormwater basins and permanent buildings (shown in RED in the attached chart). The eight percent (8%) or six-acre (6) disturbance limit includes and applies to both existing and any proposed, new infrastructure and improvements.
2. **Best Management Practices (BMPs) - In addition to the 8%/6-acre limitation for RED land uses, additional allowance is provided for certain more reversible activities as long as they are designed, constructed and maintained in accordance with prescribed Best Management Practices (BMPs).**

A. BMP Overview:

- If a landowner conducts the types of agricultural activities that are addressed in the BMPs, but does not follow the standards contained in the BMPs, **then the activities count as “RED” uses and are subject to the 8%/6 acre basic disturbance allowance discussed above.**
- The most important thing to understand about the BMPs is that the proposed regulations do not require any farmer to follow a single one of them as long as the farm continues to comply with the 8%/6-acre limits and/or unless a landowner

wants to ensure certain activities will not count towards the RED limits. Otherwise, adherence to the BMPs is completely voluntary.

- Most of the uses, buildings and structures covered by the BMPs require maintenance. Proper maintenance will be checked by the easement holder during annual monitoring inspections.
- The most current versions of eleven (11) draft BMPs, which have been vetted by both the Deed of Easement Subcommittee and the full SADC, are attached for review. It is important to note that these can be updated in the future as agronomic practices change.

B. BMPs for Semi-permanent Activities (“ORANGE” uses): The proposed regulation will permit an **additional five percent (5%)** of the preserved land to be disturbed to accommodate five (5) common semi-permanent farm improvements (shown in ORANGE in the attached chart) **PROVIDED** they are designed, built and maintained according to the BMPs.

- These improvements have the potential to do significant damage to the soil, but if designed, built and maintained in compliance with the BMPs, will not permanently damage it.
- The area of soil disturbance caused by any **existing or future ORANGE** use, building or structure not built in compliance with the applicable BMP will count toward the eight percent (8%), six-acre (6) disturbance limits.
- Certification by the SADC is required before the practices are installed to ensure they meet the BMP’s certifications.

C. BMPs for Temporary Activities (“YELLOW” uses): The proposed regulation will permit an **unlimited amount** of the preserved land to be disturbed to accommodate six (6) common temporary farm improvements (shown in YELLOW in the attached chart) that involve minimal and minimally harmful soil disturbance **PROVIDED** they are designed, built and maintained in compliance with the applicable BMPs.

- An **unlimited amount** of these uses, buildings and structures is permitted.
- The area of soil disturbance caused by any **future YELLOW** use, building or structure not built in compliance with the applicable BMP will count toward the eight percent (8%), six-acre (6) disturbance limits. Pre-existing uses, buildings, and structures in this category are exempt from the disturbance limit and certification process.
- Certification by the SADC is required before future practices are installed to ensure they meet the BMP’s certifications.

3. Normal Farming Activities (“GREEN” uses) - Finally, uses that involve growing crops, grazing livestock, or managing woodland along with other natural resources uses and conservation practices (shown in GREEN in the attached chart) are not considered soil disturbance and therefore are unlimited and unregulated insofar as a soil disturbance limit is concerned.

OBJECTIVES OF THE DRAFT PROPOSAL AND NEXT STEPS

Additional details such as how soil disturbance limits will be treated when an owner seeks to divide a preserved farm, how activities that are not contemplated in the land use chart are to be handled, how to address farms at or over the soil disturbance limit at the time that the rules are adopted, etc.¹, will be fleshed out once the proposed limits and associated BMPs have been distributed and informally commented on by the SADC's partners. Again, please note that the overarching objectives of this whole endeavor are to:

- Provide clear standards for farmers and farmland owners as to how much preserved farmland can be disturbed, while staying compliant with the deed of easement.
- Ensure that any proposed standards are realistic in light of the unique nature of New Jersey agriculture and that ample opportunities are provided for future growth. The intent in providing ample future growth is so that farmers can operate without having to constantly seek permission for each and every activity they engage in.
- Protect the soil resources of preserved farms so that they can continue to support agricultural operations far into the future.

To consider input from partners before the promulgation of these proposed rules in the New Jersey Register, the Committee is inviting interested parties to comment informally before the formal Register process commences. **To that end, please submit your written comments within a 60-day review period that concludes June 18, 2021,** by electronic mail (strongly encouraged) to sadc@ag.nj.gov or if necessary, by U.S. Mail at the following address:

State Agriculture Development Committee
Attn: Soil Protection Standards Comments
PO Box 330
Trenton, NJ 08625-0330

With those comments in hand, we will return to the full Committee to finalize the details before a proposed rule is sent to the Register, tentatively this summer with adoption slated for fall. In the interim, please do not hesitate to contact me at the above addresses or by phone at 609-984-2504. Thank you for your attention to this matter.

Distribution list:

State Agriculture Development Committee – Members
State Board of Agriculture – Members
County Boards of Agriculture – Presidents
County Agriculture Development Boards – Administrators
New Jersey Department of Agriculture – Division Directors
Rutgers Cooperative Extension
New Jersey Farm Bureau
Farm Credit East
Northeast Organic Farming Association of New Jersey
USDA Farm Service Agency

¹ The Committee has contemplated providing an additional 2% of the preserved premises or 2 acres, whichever is greater, for these non-compliant farms.

USDA Natural Resources Conservation Service
USDA Rural Development
Soil Conservation Districts
North Jersey Resource Conservation & Development
South Jersey Resource Conservation & Development
Municipal PIG Program Contacts
Land Trusts

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Soil Disturbance/Soil Protection Land Uses Chart

	Degree of Reversibility		Land Uses	Soil Effects Classifications	Soil Disturbance Limitations ³	Soil Disturbance Exemptions ⁴
		SOIL PROTECTION STANDARDS - GENERAL	Cut/fill activities (includes stormwater basins)	Permanent Soil Disturbance ("Red" Category)	Up to 8% of the preserved premises acres or 6 acres, whichever is greater.	All pre-existing and future land uses subject to Soil Disturbance Limitation.
			Permanent buildings/structures			
			Permanent travel lanes			
			Permanent livestock training areas			
			Permanent parking and storage areas/hardscape			
		SOIL PROTECTION STANDARDS - BEST MANAGEMENT PRACTICES (BMPs)	Semi-permanent travel lanes	Semi-Permanent Soil Disturbance ("Orange" Category)	Up to 5% of the preserved premises acres if following BMPs; subject to "Red" Category Limitation if not following BMPs.	All pre-existing and future land uses subject to Soil Disturbance Limitation.
			Semi-permanent livestock training areas			
			Semi-permanent parking and storage areas			
			Agricultural water impoundments			
			Soil stockpiles			
			Geotextiles and geomembranes	Temporary Soil Disturbance ("Yellow" Category)	No limitation if following BMPs; subject to "Red" Category Limitation is not following BMPs.	All pre-existing land uses exempted from Soil Disturbance Limitation; all future land uses subject to Soil Disturbance Limitation.
			Temporary structures			
			Temporary travel lanes			
			Temporary livestock training areas			
			Temporary parking and storage areas			
			Ground-mounted solar energy facilities			
		SOIL PROTECTION STANDARDS - GENERAL	Cropland and pastureland	Soil Protection ("Green" Category)	No limitation.	All pre-existing and future land uses exempt from Soil Disturbance Limitation.
			Woodland			
			Wetlands and streams			

¹ Any land use not enumerated in this chart will be evaluated on a case-by-case basis. Additional BMPs can be developed as needed and existing BMPs can be updated as agronomic practices and soil science evolves.

² Acreage classified in the Red and Orange categories can be reduced by following SADC-approved soil rehabilitation standards. Land included within exception areas is not subject to the limitations set forth herein.

³ Compliance with BMPs is voluntary on the part of the landowner. However, not adhering to the BMPs will cause the acreage of a particular land use to count towards the Red Category Limitation.

⁴ Certain land uses, such as pre-existing livestock ponds or cranberry bogs, are considered exempt from the Soil Disturbance Limitations and corresponding details will be articulated in the General Standards.