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January 16, 2023

BY EMAIL AND PRIORITY MAIL EXPRESS

New Jersey State Agriculture Development Committee
Susan E. Payne, Executive Director
State Agriculture Development Committee
PO Box 330
Trenton, NJ 08625-0330
susan.payne@ag.nj.gov
SADC@ag.state.nj.us

CC: Brian D. Smith, Esq., Chief of Legal Affairs
brian.smith@ag.nj.gov

RE: **SUBMISSION OF ADDITIONAL COMMENTS ON PROPOSED NEW RULES: PROPOSED N.J.A.C. 2:76-25 AND 25A, SOIL DISTURBANCE ON PRESERVED FARMLAND AND SUPPLEMENTAL SOIL DISTURBANCE STANDARDS.**

Dear Ms. Payne:

Please recall that I previously provided comments dated September 29, 2023, and October 10, 2023, to the State Agriculture Development Committee regarding the S.A.D.C.'s proposed new rules N.J.A.C. 2:76-25 and 25A which propose to regulate Soil Disturbance on Preserved Farmland and Supplemental Soil Disturbance Standards. 55 N.J.R. 8(1), August 7, 2023. The purpose of this letter is to provide supplemental comments.

In its summary of the proposed rules, the S.A.D.C. advised that the New Jersey Supreme Court, in State of New Jersey, State Agriculture Development Committee v. Quaker Valley Farms, LLC, 235 N.J. 37 (2018), "cautioned the State Agriculture Development Committee ("Committee" or "S.A.D.C.") to adopt regulatory standards balancing the nature and extent of soil disturbance with permissible agricultural development on preserved farms." (See, Summary of proposed rules, 55 N.J.R. 8(1), August 7, 2023). Respectfully, I believe this reiterates a common misperception that the New Jersey Supreme Court mandated the S.A.D.C. to adopt such standards, which is not accurate. Instead:

- 1) The S.A.D.C. has no such mandate or authority to develop a retroactive soil disturbance limit pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. ("A.R.D.A.") or the Quaker Valley Farms decision.
- 2) The New Jersey Supreme Court comments regarding the adequacy of regulatory standards to reconcile the deed of easement in Quaker Valley Farms is entirely distinguishable because it evaluated a 1993 preservation deed of easement. The 1993 preservation deed of easement did not require farm conservation planning. The S.A.D.C. added the farm conservation planning requirement to deeds of easement in 1994, and its rulemaking comments stated: "The [farm conservation] plan contains the soil and water conservation practices which are needed for the

specific type of agricultural operation. * * * Ultimately, the measure of compliance is the Grantor's conformance with the farm conservation plan."26 N.J.R., at 3161. Quaker Valley Farms was not required to have a farm conservation plan because deed of easement amendments are not retroactive.

- 3) Overlooked in Quaker Valley Farms is the New Jersey Supreme Court cautionary guidance to the S.A.D.C. stating that it would not uphold S.A.D.C. enforcement actions against farmers engaging in otherwise permissible development if the alleged soil conservation violations would not have been understood by a reasonable person at the time the parties agreed to the deed of easement (i.e. retroactively imposed new expectations that would not have been reasonably expected at the time of preservation would be unenforceable)
- 4) The Quaker Valley Farms holding is merely that, while a preserved farm owner is permitted to construct new structures for agricultural purposes and those structures may disturb soil, the permanent destruction of soil, whereby the soil is no longer available for a variety of future agricultural production, violates the preservation deed of easement if it exceeds the limit that a reasonable person would have understood at the time of preservation.
- 5) In Quaker Valley Farms, the New Jersey Supreme Court did in fact caution the S.A.D.C. to guide farmers in balancing agricultural development against soil conservation. Legally, these comments were not necessary to decide the case, did not make law, and are therefore merely *in dicta* statements having no legal bearing on the case before the Court.
- 6) In analyzing Quaker Valley Farms, it is critically important to understand that farm conservation planning and the Natural Resource Conservation Agricultural Management Practice was not utilized by Quaker Valley Farms yet would have allowed a site specific determination of Quaker Valley Farm's soil disturbance activities. Given these facts, the materials filed by the parties with the New Jersey Supreme Court did not raise issues or brief the Court regarding farm conservation planning and the Natural Resource Conservation Agricultural Management Practice.
- 7) If the adequacy of existing regulations was not an issue before the New Jersey Supreme Court, the Quaker Valley Farms *in dicta* comments can by no means be construed as a mandate to promulgate additional regulations.

The facts and law reviewed in Quaker Valley Farms litigation did not include 1994 amendments to the preservation deed of easement and current conservation agricultural management practices promulgated by the State Agriculture Development Committee for soil and water conservation.

In Quaker Valley Farms, the New Jersey Supreme Court was reviewing an outdated preservation deed of easement. Quaker Valley Farm's preservation deed of easement was executed in 1993, before the S.A.D.C. amended its regulations to add farm conservation planning as the compliance mechanism for soil disturbance. See, enclosed herewith, the September 22, 1993, Deed of Easement, State of New Jersey Agriculture Retention and Development Program, Harold F. Mathews and Rosalie Lilian J. Mathews, Grantor, and the County of Hunterdon, Grantee (Mathews being the predecessor in title to Quaker Valley Farms)("Mathews DOE").

After the 1993 Mathews DOE, the S.A.D.C. amended the standard form deed of easement to add farm conservation planning requirements (N.J.A.C. 2:76-6.15(a)(7)(i) and (ii)) as per rules proposed on April

4, 1994 (26 N.J.R. 1419(a)). Therefore, The Mathews DOE reviewed by the New Jersey Supreme Court did not include the below underlined amendments which address soil and water conservation:

“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.

i. Grantor shall obtain within one year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district.

ii. Grantor's long-term objectives shall conform with the provisions of the farm conservation plan.”

N.J.A.C. 2:76-6.15(a)(7)(emphasis added).

As stated in the S.A.D.C. rulemaking comments:

“The SADC’s amendment requires that the grantor’s long term objectives shall conform with the provisions of the farm conservation plan. Most importantly, the Grantor’s long term objectives as they pertain to a particular agricultural operation must be reflected in revisions to the farm conservation plan. The plan contains the soil and water conservation practices which are needed for the specific type of agricultural operation.
* * * Ultimately, the measure of compliance is the Grantor’s conformance with the farm conservation plan.”

26 N.J.R., at 3161 (emphasis added).

Thereafter, on December 6, 1999 the SADC proposed the Natural Resource Conservation Agricultural Management Practice (31 N.J.R. 3881(a))(codified as N.J.A.C. 2:76-2A.7). As a result, there already exists a generally accepted agricultural management practice for site-specific implementation of a farm conservation plan for the development of a soil, water, and natural resource conservation plan on farmland. Specifically, N.J.A.C. 2:76-2A.7, sets forth the following natural resource conservation agricultural management practice, restated here in its entirety:

(a) The purpose of this section is to establish a generally accepted agricultural management practice for the implementation of a farm conservation plan for the conservation and development of soil, water and related natural resources on farmland.

(b) The following terms, as used in this section, shall have the following meanings:

"District" or "Soil Conservation District" (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

"Farm conservation plan" means a site specific plan developed by the landowner and approved by the local soil conservation district which prescribes needed land treatment and related conservation and natural resource management measures including forest management practices that are determined practical and reasonable to conserve, protect and develop natural resources, to maintain and enhance agricultural productivity and to control and prevent nonpoint source pollution.

"United States Department of Agriculture, Natural Resources Conservation Service, (NRCS) Field Office Technical Guide" means a composite of national, regional, State and local data and standards derived primarily from local universities, NRCS and conservation district offices and cooperating conservation agencies which administer natural resource conservation programs.

(c) The implementation of a farm conservation plan on farmland shall be a generally accepted agricultural management practice recommended by the Committee.

1. A farm conservation plan on farmland shall be prepared in conformance with the following:

i. United States of Agriculture, Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), revised April 20, 1998, incorporated herein by reference, as amended and supplemented; and

ii. Forest management practices shall be in accordance with standards and specifications adopted by the New Jersey Department of Environmental Protection, Bureau of Forest Management where such standards and specifications are not included in the NRCS FOTG.

2. For purposes of this recommended agricultural management practice, a farm conservation plan which includes recommendations concerning land application of sewage sludge-derived products is not recommended as a generally accepted agricultural management practice by the Committee.

N.J.A.C. 2:76-2A.7 (emphasis added).

When proposing N.J.A.C. 2:76-2A.7, the Natural Resource Conservation Agricultural Management Practice, the S.A.D.C. advised:

The purpose of the proposed new rule is to establish the implementation of a farm conservation plan as the agricultural management practice (AMP) for the conservation of soil, water and related natural resources on individual commercial farms. Commercial farm operators whose

operations are in conformance with this agricultural management practice will be afforded protections under the Right to Farm Act for activities related to the plan.

* * *

There is a significant social benefit to commercial farm operators utilizing the adopted agricultural management practice in that the potential for conflicts arising with neighbors of the commercial farm operation is minimized. The adopted agricultural management practice will be utilized in an attempt to resolve conflicts between commercial farm operators and any person or municipality aggrieved by the operation of same. The commercial farm operation is protected from private and public nuisance lawsuits and municipal regulations, pursuant to the Right to Farm Act, if it is found to be in conformance with the adopted agricultural management practice as well as the other prerequisites of the Right to Farm Act.

* * *

The proposed new rule will have a positive impact on the State economy by promoting the continuation of agriculture in New Jersey through the implementation of effective natural resource conservation agricultural management practices.

* * *

Conformance to the adopted agricultural management practice via the development and adherence to a farm conservation plan will provide commercial farm operators with a tool for planning and applying natural resource conservation techniques. Generally, development of the farm conservation plan, with technical assistance provided by NRCS staff is at no cost to the commercial farm operator.

* * *

The proposed natural resource conservation agricultural management practice at N.J.A.C. 2:76-2A.7 does not require the commercial farm operator to incur any costs in terms of reporting or recordkeeping when complying with the proposed rule. The capital costs associated with compliance with the farm conservation plan aspect of the natural resource conservation agricultural management practice vary from low, to moderate and high depending on the recommendations of the farm conservation plan. Often, financial assistance may be available to eligible commercial farm operators from sources such as the USDA Sustainable Agriculture Research and Education (SARE) Program, the State Agriculture Development Committee, Soil and Water Conservation Cost Share Program, and the State Soil Conservation Committee, Conservation Cost Share Program.

Neither farm conservation planning nor the Natural Resource Conservation Agricultural Management Practice, which allows site specific implementation of agricultural specific conservation practices, were considered by the New Jersey Supreme Court in the Quaker Valley Farms decision. In the Quaker Valley Farms case, the S.A.D.C. alleged permanent damage to prime soil and compared such destruction to a soil conservation practice whereby soil is carefully stockpiled. Id., at 41. Under a proactive approach, such stockpiling could be reviewed using a farm conservation plan prior to greenhouse construction. In the absence of a farm conservation planning requirement in the Mathews DOE or use of the Natural Resource Conservation Agricultural Management Practice, the New Jersey Supreme Court had to balance two extremes. Yet, in effect, it recited a *de facto* lack of conservation practices when reasoning in favor of the S.A.D.C.

In reaching its decision, the New Jersey Supreme Court noted that the S.A.D.C.'s experts "determined that Quaker Valley's excavation activities had destroyed a large amount of prime soil for a variety of agricultural uses." Quaker Valley Farms, at 46. The S.A.D.C.'s expert, a State Resource Conservationist with the United States Department of Agriculture, Natural Resources Conservation Service, compared the extent of destruction at Quaker Valley Farms with presumably permissible grading activities, stating, "he was familiar with "other large-scale farmland cut[-]and[-]fill grading activities" where "the soil was carefully removed in layers and then stockpiled to the side" so that the land could be restored to its natural state (emphasis added). Id. At Quaker Valley Farms, Smith found "a cut-and-fill operation in which little soil was separated by layer, except some topsoil, and instead the layers of soil appeared to have mixed together (emphasis added)." Id. The Court reported that the State's expert determined that it would be "impossible for all practical purposes to ever separate the component soil layers, or horizons, and reapply them to recreate the highly productive Prime soils which had previously existed (emphasis added)." Id., at 46-47. The New Jersey Supreme Court discussed the testimony of an expert in soil science and agronomy, detailing his testimony about whether or not disrupted soil was managed in a planned manner that it could be restored to its agricultural productivity. Id., at 47 and 48.

The Quaker Valley Farms case did not involve a disturbance limit. It involved a lack of proper conservation planning. Quaker Valley Farms involved a preservation deed of easement that did not require farm conservation planning. And Quaker Valley Farms did not take advantage of the Natural Resource Conservation Agricultural Management Practice and instead submitted a much more limited soil erosion and sediment control plan.

When cautioning the S.A.D.C. to address its lack of guidance for the extent of permissible soil disturbance, the New Jersey Supreme Court did not have before it any facts questioning the adequacy of the farm conservation planning compliance mechanism. In its opinion, the New Jersey Supreme Court noted that the S.A.D.C. advised during oral argument that it had undertaken an "internal review process" of parameters regarding soil disturbance on preserved properties, but "held off doing anything pending resolution of this case." Id., at 62.

Therefore, we do not know what guidance the Supreme Court would have provided to the S.A.D.C. if the Court was reviewing the current form of preservation deed of easement (N.J.A.C. 2:76-6.15(a)(7)(i) and (ii)) and/or advised of the guideposts put in place after preservation of the Quaker Valley Farms property. For these reasons, I find nothing in the Quaker Valley Farms opinion that mandates a new regulatory scheme which retroactively curtails agricultural development rights.

New structures for agricultural purposes may disturb soil to the extent that a reasonable person would have understood at the time of preservation. Since the S.A.D.C.'s 1994 amendments, a reasonable person is apprised of the farm conservation planning requirements via the amended deed of easement.

The New Jersey Supreme Court only determined “whether Quaker Valley’s grading and leveling of the twenty-acre field violated the deed of easement and ARDA...” Id. at 55. In determining if a deed of easement violation occurred, the New Jersey Supreme Court framed the legal issue by stating that “paragraph seven of the deed of easement which prohibits activities detrimental to erosion control or soil conservation must coexist with paragraph fourteen, which states that landowners “may construct any new building for agricultural purposes (emphasis added).”” Id., at 45, citing, N.J.A.C. 2:76-6.15(a)(7) and (14). Quaker Valley Farms unsuccessfully argued that its soil erosion and sediment control plan should have been adequate to obtain regulatory compliance. *I.e.*, Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and regulations at N.J.A.C. 2:90-1.1 et seq. See, Quaker Valley Farms, at 60 (“Nor do we find merit in Quaker Valley’s argument that their adherence to the C.251 Plan is evidence that their activities were not detrimental to soil conservation. * * * The purpose of a C.251 Plan is, in part, to protect the land from storm water runoff and conserve the soil from erosion.”).

It is further misconceived to believe the New Jersey Supreme Court’s decision permits the S.A.D.C.’s proposed bias against livestock, dairy, equine, greenhouse, and similar agricultural development in favor of soil conservation. The New Jersey Supreme Court further reasoned that:

“Structures are certainly a crucial component of agricultural operations, such as livestock, dairy, equine, or greenhouse operations. Some degree of soil disturbance will be incidental to the construction of such structures. Thus, while the S.A.D.C. regulation categorically prohibits activities that “would be detrimental” to soil conservation, N.J.A.C. 2:76-6:15(a)(7), the regulation also authorizes owners of preserved farms to undertake activities that, in effect, may alter the soil.”

Quaker Valley Farms, at 63.

The New Jersey Supreme Court stated that agricultural development must “coexist” with soil conservation. Id., at 45. The New Jersey Supreme Court noted that reconciliation of the deed of easement terms must be such that a reasonable person would have understood the term at the time the parties agreed to the deed of easement. Id. at 59. It follows that the S.A.D.C. is not authorized to retroactively sacrifice agricultural development for soil conservation:

The deed's terms must be read reasonably to achieve their aims, so that one is not sacrificed for another. That requires that the terms be reconciled in a manner that a reasonable person would have understood at the time the parties agreed to the deed of easement.

Id., at 59 (emphasis added). Again, the New Jersey Supreme Court had to reconcile conflicting terms which did not include the 1994 solution of farm conservation planning.

The New Jersey Supreme Court explained that it would have been unable to rule in favor of the S.A.D.C. if it were not for its finding that the degree of “permanent” soil destruction was extreme enough to put a reasonable person on notice that the deed of easement would be violated. Id., at 60. In other words, the New Jersey Supreme Court also cautioned the S.A.D.C. that it would not uphold S.A.D.C. enforcement actions against farmers engaging in otherwise permissible activities if the alleged violations would not have been understood by a reasonable person at the time the parties agreed to the deed of easement.

On these facts, the Quaker Valley Farms holding is narrow: while a preserved farm owner is permitted to construct new structures for agricultural purposes and those structures may disturb soil, the permanent destruction of soil, whereby the soil is no longer available for a variety of future agricultural production, violates the preservation deed of easement if it exceeds the limit that a reasonable person would have understood at the time of preservation. *See, Quaker Valley Farms*, at 41, 59 (“Although Quaker Valley had the right to erect hoop houses, it did not have the authority to permanently damage a wide swath of premier quality soil in doing so (emphasis added)”)(“While the use of preserved farmland for nursery production is plainly a permitted use under the deed.... While Quaker Valley had a right to construct hoop houses, it did not have the right to needlessly destroy so much prime soil.”(emphasis added)). Destruction and disturbance are not the same.

If the adequacy of existing regulations were not squarely before the New Jersey Supreme Court, its *in dicta* comments can by no means be construed as a mandate to promulgate additional regulations. Existing soil and water conservation practices through farm conservation planning are adequate.

There already exists an extensive body of technical guidance for soil and water conservation projects and methods of conserving soil during agricultural development. In its 2023 soil disturbance proposed rulemaking summary, the S.A.D.C. noted that it:

“consulted best management practices and standards issued by the United States Department of Agriculture (USDA), Natural Resources Conservation Service, on topsoiling, land grading, earth fill and gravel fill specifications, geotextiles, and land reclamation. * * * Other technical resources that informed these regulations are applicable provisions in the New Jersey Soil Erosion and Sediment Control Act standards, N.J.A.C. 2:90; the New Jersey Department of Environmental Protection’s New Jersey Stormwater Best Management Practice Manual, available at dep.nj.gov/stormwater/bmp-manual/; the S.A.D.C.’s agricultural management practices, N.J.A.C. 2:76-2A and 2B; the New Jersey Uniform Construction Code, N.J.A.C. 5:23....”

All such sources of technical expertise for soil conservation may already be relied upon to develop a farm conservation plan. Farm conservation planning is also an alternate compliance tool under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 and its regulations at N.J.A.C. 2:90-1.1, which are implemented by the Soil Conservation District. The Soil Conservation District is also responsible for reviewing major agricultural development under the Stormwater Management Rules, N.J.A.C. 7:8-5.2(k). Farm conservation plans are also the planning tool for agricultural development in the Highlands Preservation Area when the new impervious cover increases cumulatively by at least three percent (3 %) percent and not more than nine percent (percent 9 %), and resource management systems plans are the planning tool for new impervious cover that cumulatively increases by over nine percent (9 %). N.J.S.A. 13:20-31; N.J.A.C. 2:92-1.1 et seq. Both farm conservation plans and resource management system plans are developed with the assistance of the Natural Resource Conservation Service local field office. These plans must conform with the June 1, 2005 N.R.C.S. New Jersey Field Office Technical Guide (NJ-FOTG). A.R.D.A. requires that the local soil conservation district approve soil and water conservation projects which receive grants. N.J.S.A. 4:1C-24. The S.A.D.C. already utilizes farm conservation planning as a preserved farm compliance mechanism in some cases of alleged deed of easement violations.

The interests of farmers, the farmland preservation program, and conserving soil for a variety of future agricultural uses would be better served by advocating for adequate grants and human resources to

assist farmers and soil conservation districts with developing and updating farm conservation plans in accordance with best management practices. Today, any preserved farm owner may use these tools to confirm deed of easement compliance when developing more intensive agricultural infrastructure. Yet, without such adequate resources, the effectiveness and fairness of the farm conservation planning requirement is compromised. However, the lack of such grants and resources, and arguable underutilization of farm conservation planning in some cases, does not legally authorize retroactive revisions to the deed of easement contract or development of new regulations that place even more burdens on the farmers, boards, agency, and staff that must implement them.

In response to the Quaker Valley Farms decision, the State has demonstrated its ability to map all New Jersey preserved farms, send notices to all New Jersey preserved farm owners, schedule visits to all preserved farms with greater disturbance, and engage in extensive dedication of time and resources to workshop soil conservation. Yet, it appears preserved farm owners continue to operate without an equally promoted knowledge or facilitated understanding of site-specific guideposts and regulatory compliance across multiple programs to be achieved using the farm conservation planning tool. And, these plans might have the added benefit of qualifying preserved farm owners for grant programs. There appears to be a missed opportunity, here.

The Quaker Valley Farms decision does not mandate that the S.A.D.C. retroactively place an arbitrary limit on the extent of otherwise permissible agricultural development or require the development of new and retroactive limitations. The Quaker Valley Farms decision cautions the S.A.D.C. to not enforce the deed of easement in a manner that would not have been understood by a reasonable person at the time of preservation. The proposed rules should be rescinded and a more farm-friendly approach to balancing agricultural development and enabling farm conservation planning should be pursued with careful consideration of the reasonable expectations of the farm owner at the time of preservation. This is the site-specific conservation planning which the majority of farmers agreed to at the time of preservation. Again, the state's lack of support and investments in promoting conservation practices through existing compliance mechanisms does not justify a retroactively applicable and unduly burdensome disturbance limit which arbitrarily restricts agricultural development rights.

Thank you for your attention to these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nicole L. Voigt', with a long horizontal line extending to the right.

Nicole L. Voigt

Encl: (1) Matthews DOE

Cc: BY EMAIL ONLY

Voigt Law, LLC, Preserved Farm Clients and Colleagues

New Jersey State Department of Agriculture, Joe Atchison, III, Assistant Secretary of Agriculture

New Jersey State Board of Agriculture, Linda Walker, Executive Assistant

New Jersey Farm Bureau, Allen Carter, President

Farm Credit East, Stephen Makarevich, Branch Manager

John Showler, State Erosion Control Engineer, New Jersey Department of Agriculture

Frank Pinto, Farmland Preservation Consultant, Pinto Consulting

Atlantic County Agriculture Development Board, Ranae Fehr, Administrator

Bergen County Agriculture Development Board, Nancy Witkowski, Administrator
Burlington County Agriculture Development Board, Brian Wilson, Administrator
Camden County Agriculture Development Board, Janina Robinson, Administrator
Cape May County Agriculture Development Board, Barbara Ernst, Administrator
Cumberland County Agriculture Development Board, Matthew Pisarski, Administrator
Gloucester County Agriculture Development Board, Eric Agren, Administrator
Hunterdon County Agricultural Development Board, Bob Hornby, Administrator
Mercer County Agricultural Development Board, Leslie R. Floyd, Administrator
Middlesex County Agriculture Development Board, Laurie Sobel, Administrator
Middlesex County Agriculture Development Board, Brady Smith, Administrator
Monmouth County Agriculture Development Board, Amber Mallm, Administrator
Morris County Agriculture Development Board, Katherine Coyle, Administrator
Ocean County Agriculture Development Board, Timothy Gleason, Administrator
Passaic County Agriculture Development Board, Salvatore Presti, Administrator
Salem County Agriculture Development Board, Kris Alexander, Administrator
Somerset County Agriculture Development Board, Katelyn Katzer, Administrator
Sussex County Agriculture Development Board, Maggie Faselt, Administrator
Warren County Agriculture Development Board, Corey Tierney, Administrator

DEED OF EASEMENT

BOOK 1096 PAGE 0679

STATE OF NEW JERSEY
AGRICULTURE RETENTION AND DEVELOPMENT PROGRAM

This Deed is made September 22, 1993

BETWEEN HAROLD F. MATHEWS AND ROSALIE LILLIAN J. MATHEWS, Tenants in Common
Whose address is P.O. Box 113, Pittstown, New Jersey 08867
and is referred to as the "Grantor";

AND THE COUNTY OF HUNTERDON
Whose address is Attn: Board of Chosen Freeholders, Administration Building,
Flemington, New Jersey 08822
and is referred to as the "Grantee" and/or "Board".

The Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns grants and conveys to the Grantee a development easement on the Premises, located in the Township of Franklin County of Hunterdon described in the attached Schedule A, incorporated by reference in this Deed of Easement, for and in consideration of the sum of Four Hundred Two Thousand Six Hundred Eighty Dollars and 07/100 (\$402,680.07) Dollars. Any reference in this Deed of Easement to "Premises" refers to the property described in Schedule A.

The tax map reference for the Premises is:

Township of Franklin

Block(s) 37

Lot(s) 42

WHEREAS, the legislature of the State of New Jersey has declared that the development of agriculture and the retention of farmlands are important to the present and future economy of the State and the welfare of the citizens of the State.

NOW THEREFORE, THE GRANTOR, GRANTOR'S HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL OR LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS PROMISES that the Premises will be owned, used and conveyed subject to, and not in violation of the following restrictions:

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 farmite 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.
3. Grantor certifies that at the time of the application to sell the development easement to the Grantee the following nonagricultural uses indicated on attached Schedule (B) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Deed of Easement.
4. All nonagricultural uses, if any, existing on the Premises at the time of the landowner's application to the Grantee as set forth in Section 3 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:
 - i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;
 - ii. No change in the pre-existing nonagricultural use is permitted;
 - iii. No expansion of the pre-existing nonagricultural use is permitted;

Prepared by: GAETANO M. DE SAPIO, ESQ.
HUNTERDON COUNTY COUNSEL

Revised 7/92

COUNTY OF HUNTERDON
CONSIDERATION 402,680.07
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DATE 9-24-93 BY ASD

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iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

5. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used. Grantor retains and reserves all oil, gas, and other mineral rights to the land underlying the Premises, provided that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.

6. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

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.

8. Grantee and Committee and their agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this Deed of Easement. Grantee agrees to give Grantor, at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week.

9. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this Deed of Easement or as otherwise provided by law.

11. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this Deed of Easement.

12. 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, bogs, agricultural buildings, or reservoirs as may be necessary.

13. At the time of this conveyance, Grantor has (one (1)) existing single family residential buildings on the Premises and (one (1)) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

i. Improvements to agricultural buildings shall be consistent with agricultural uses;

ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and

iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

14. Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor; and

ii. To construct a single family residential building anywhere in the Premises in order to replace any single family residential building in existence at the time of conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.

R. S. M
2/27/71

iii. One (1) residual dwelling site opportunity(ies) have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17. Upon the intent of the Grantor to exercise a residual dwelling site opportunity, the Grantee shall be notified of the intent to exercise a residual dwelling site opportunity and the proposed location of the residual dwelling site. The Grantee may review the proposed location and submit comments to the Grantor and the municipal planning review body regarding the impact of the operation. Approval of the location of the residual dwelling site shall be made by the municipal planning review body and meet the following standards established by the Committee:

1. The boundaries and configuration of the residual dwelling site shall minimize the adverse impact on the agricultural operation;
2. The location of the residential unit within the residual dwelling site shall provide for a minimum of 100 foot setback from land currently under agricultural production; and
3. The construction and use of a residential unit shall not be permitted unless the Grantee and the Committee certify that the construction and use of the residential unit shall be for agricultural purposes. No other residences shall be permitted.

Upon approval of the location of the residual dwelling site by the municipal planning board review body, the landowner shall:

1. Prepare or cause to be prepared, a legal metes and bounds description of the location of the residual dwelling site; and
2. Submit a copy of the legal metes and bounds description to the Grantee and the Committee for general recordkeeping purposes.

In the event a subdivision of the premises occurs in compliance with deed restriction No. 15 below, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the Grantor.

iv. For the purpose of this Deed of Easement, a "residual dwelling site" means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

v. For the purpose of this Deed of Easement, "residential unit" means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.

15. The land and its buildings which are affected may be sold collectively or individually for continued agricultural use as defined in Section 2 of this Deed of Easement. However, no subdivision of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. In order for the Grantor to receive approval, the Grantee and Committee must find that the subdivision shall be for an agricultural purpose and result in agriculturally viable parcels. Subdivision means any division of the Premises, for any purpose, subsequent to the effective date of this Deed of Easement.

16. In the event of any violation of the terms and conditions of this Deed of Easement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purpose of this Deed of Easement by a prior failure to act.

17. This Deed of Easement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this Deed of Easement.

18. This Deed of Easement is binding upon the Grantor, the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as a restriction running with the land and shall be binding upon any person on whom title to the Premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.

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R.S.M

19. Throughout this Deed of Easement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

20. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns.

21. Wherever in this Deed of Easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words, heirs, executors, administrators, personal or legal representatives, successors and assigns have been inserted after each and every designation.

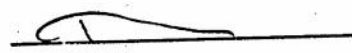
22. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns further transfer and conveys to Grantee all of the nonagricultural development rights and development credits appurtenant to the lands and Premises described herein. Nothing contained herein shall preclude the conveyance or retention of said rights by the Grantee as may be permitted by the laws of the State of New Jersey in the future. In the event that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee (.60%) percent of the value of the development rights as determined at the time of the subsequent conveyance.

The Grantor signs this Deed of Easement as of the date of the top of the first page. If the Grantor is a corporation, this Deed of Easement is signed and attested to by its proper corporate officers, and its corporate seal, if any, is affixed.

Witness:



Harold F. Mathews (L.S.)
HAROLD F. MATHEWS



Rosalie Lillian J. Mathews (L.S.)
ROSALIE LILLIAN J. MATHEWS

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SCHEDULE A

Description of Tract of Land for
Harold Mathews
Block 37, Lot 42
situated in
Franklin Township, Hunterdon County, New Jersey

Beginning at an old stone found for a corner, as recorded in Deed Book 690, Page 480, in line of land of Helen Neave, Lot 41.03, corner to land of Shirley Rueter and Geary Wolven, Lot 40; and running thence (1) along said Rueter and Wolven and also along land of Roger Warr, Lot 39, North $01^{\circ}05'30''$ West, a distance of five hundred eighty-three and thirty-five one-hundredths feet (583.35') to an iron pin set for a corner, in line of said Warr, corner to land of Thomas Stryker, Lot 51; thence (2) along said Stryker, South $88^{\circ}25'48''$ West, a distance of eight hundred thirty and seventy-six one-hundredths feet (830.76') to an iron pipe found for a corner to the same, corner to land of David Weston, Lot 31.02; thence (3) along said Weston, South $88^{\circ}24'07''$ West, a distance of five hundred twelve and twenty-five one-hundredths feet (512.25') to an iron pipe found for a corner to the same; thence (4) along the same, South $00^{\circ}06'02''$ West, a distance of one hundred thirty-two feet (132.00') to an iron pipe found for a corner to the same; thence (5) along the same, South $86^{\circ}06'17''$ West, a distance of ninety-three and eighty-seven one-hundredths feet (93.87') to an iron pipe found for a corner to the same; thence (6) still along the same, North $00^{\circ}15'17''$ East, a distance of five hundred forty-eight and eighty-eight one-hundredths feet (548.88') to an iron pin set for a corner in line of the same, corner to land of David Den Hollander, Lot 35; thence (7) along said Den Hollander, North $89^{\circ}16'46''$ West, a distance of nine hundred twenty-five and sixteen one-hundredths feet (925.16') to an iron pin found for a corner to the same, corner to land of Orville Barrick, Lot 47.10, and corner to other land of Orville Barrick, Lot 47; thence (8) along said other land of Orville Barrick, Lot 47, South $00^{\circ}18'23''$ West, a distance of two hundred fifty-eight and forty-three one-hundredths feet (258.43') to an iron pipe found for a corner to the same, corner to land of Stephen Limpert, Lot 46; thence (9) along said Limpert and also along said other land of Orville Barrick, Lot 47, and also along land of Dale Harding, Lot 46.01, South $00^{\circ}19'05''$ West, a distance of three thousand one hundred five and sixty-two one-hundredths feet (3,105.62') to an iron pipe found for a

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corner in line of said Harding, corner to land of Irvin Taylor, Jr., Lot 42.01; thence (10) along said Taylor, Jr., North $88^{\circ}49'08''$ East, a distance of five hundred seventy-seven and sixty-three one-hundredths feet (577.63') to an iron pin set for a corner to the same; thence (11) along the same, South $01^{\circ}19'17''$ East, a distance of three hundred seventy-nine and eighty-two one-hundredths feet (379.82') to a railroad spike set for a corner to the same in the public road known locally as Old Franklin School Road; thence (12) along said Old Franklin School Road, North $88^{\circ}44'21''$ East, a distance of three hundred and fifteen one-hundredths feet (300.15') to a railroad spike found for a corner in the same, corner to land of Peter Demicco, Lot 41.01; thence (13) along said Demicco, North $01^{\circ}19'15''$ West, a distance of eight hundred thirty-six and twenty one-hundredths feet (836.20') to an iron pin set for a corner to the same; thence (14) along the same and also along land of Peter Quartel, Lot 41.06, North $88^{\circ}49'10''$ East, a distance of seven hundred thirty-six and fifty-six one-hundredths feet (736.56') to an old stone found for a corner to said Quartel; thence (15) along said Quartel, land of John Sendelsky, Lot 41, land of Alfredo Cruz, Jr. and Maria Almerinda, Lot 41.08, land of Elliot Greenbaum, Lot 41.05, and land of the aforementioned Helen Neave, Lot 41.03, North $01^{\circ}22'00''$ West, a distance of one thousand nine hundred forty and ten one-hundredths feet (1,940.10') to an old stone found for a corner to said Neave; thence (16) along said Neave, North $78^{\circ}28'20''$ East, a distance of one hundred ninety-seven and eighteen one-hundredths feet (197.18') to an iron pin found for a corner to the same; thence (17) along the same, South $04^{\circ}02'10''$ East, a distance of eighty-one and sixty-two one-hundredths feet (81.62') to an old stone found for a corner to the same; thence (18) still along the same, North $89^{\circ}15'30''$ East, a distance of six hundred thirty-two and sixty-eight one-hundredths feet (632.68') to the place of beginning and containing one hundred nineteen and eight thousand one hundred sixteen ten-thousandths acres (119.8116 Ac.) being the same more or less as surveyed and described by Bohren and Bohren Engineering Associates, Inc., in December, 1992.

All bearings herein refer to Course #3 of Tract #1 in Deed Book 690, Page 479.

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Together with the rights granted to Frank Mathews, his heirs and assigns to use the lane from Locust Grove Road for ingress and egress as recorded in Deed Book 403, Page 440.

Together with and subject to the rights in the lane from Old Franklin School Road as recorded in Deed Book 403, Page 439 and Deed Book 847, Page 615.

Subject to the following exceptions:

Excepting and reserving the rights of the public as the same now exist in the use of Old Franklin School Road running along Course #12 in the above described lot and more fully detailed as follows:

Beginning at a point in the common property line of Irvin Taylor, Jr., Block 37, Lot 42.01 and Harold Mathews, Block 37, Lot 42, said point being 25' measured at right angles to the centerline of pavement of Old Franklin School Road as it now exists, and this new easement line shall run parallel to the existing roadway centerline and 25' distant therefrom for a total length of approximately three hundred and fifteen one-hundredths feet (300.15') to the common property line of Harold Mathews, Block 37, Lot 42 and Peter Demicco, Block 37, Lot 41.01 and containing an area of one thousand six hundred fifty-four ten-thousandths acres (0.1654 Ac.±) leaving a net tract area of one hundred nineteen and six thousand four hundred sixty-two ten-thousandths acres (119.6462 Ac.).

Subject to any and all easements of record.

R. S. M.
RSM

SCHEDULE B

Grantor certifies that at the time of the application to sell the development easement to the grantee no non-agricultural uses existed. Grantor further certifies that at the time of the execution of this deed of easement, no non-agricultural uses exist.

Harold F Mathews
HAROLD F. MATHEWS

Rosalie Lillian J. Mathews
ROSALIE LILLIAN J. MATHEWS

Dated: September 22, 1993

R.L.M.
R.L.M.


(INDIVIDUAL ACKNOWLEDGEMENT)

STATE OF NEW JERSEY, COUNTY OF HUNTERDON SS.:

I CERTIFY that on September 22, 19 93,

HAROLD F. MATHEWS and ROSALIE LILLIAN J. MATHEWS
personally came before me and acknowledged under oath, to my satisfaction, that
this person (or if more than one, each person):

- (a) is named in and personally signed this DEED OF EASEMENT;
- (b) signed, sealed and delivered this DEED OF EASEMENT as his or her act and deed;
- (c) made this DEED OF EASEMENT for and in consideration of mutual obligations and benefits to each party; and
- (d) the actual and true consideration paid for this instrument was \$ 402,680.07.



 THOMAS DI BIANCA, ESQ.
 An Attorney-at-Law of New Jersey

R.S.M
 W.F.C

(COUNTY AGRICULTURE DEVELOPMENT BOARD)

THE UNDERSIGNED, being Secretary of the Hunterdon County Agriculture Development Board, hereby accepts and approves the foregoing restrictions, benefits and covenants.

ACCEPTED AND APPROVED this 22nd day of September, 19 93

John Kellogg
JOHN W. KELLOGG Secretary
Hunterdon County Agriculture Development Board

STATE OF NEW JERSEY, COUNTY OF HUNTERDON SS.:

I CERTIFY that on September 22, 19 93,

JOHN W. KELLOGG personally came before me and acknowledged under oath, to my satisfaction that this person:

- (a) is named in and personally signed this DEED OF EASEMENT,
- (b) signed, sealed and delivered this DEED OF EASEMENT as the Board's act and deed; and
- (c) is the Secretary of the Hunterdon County Agriculture Development Board.

Gaetano M. De Sapiro
GAETANO M. DE SAPIO, ESQ.
An Attorney-at-Law of New Jersey

(STATE AGRICULTURE DEVELOPMENT COMMITTEE)

The State Agriculture Development Committee has approved the purchase of the development easement on the Premises pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and has authorized a grant of 60% of the purchase price of the development easement to Hunterdon County in the amount of \$ 241,608.04.

Donald D. Applegate
Donald D. Applegate Executive Director
State Agriculture Development Committee

September 22, 1993
Date

RECORDED
SEP 24 12 15 PM '93

STATE OF NEW JERSEY, COUNTY OF HUNTERDON SS. SEP 24 12 15 PM '93

I CERTIFY that on September 22, 19 93

DONALD D. APPLGATE personally came before me and acknowledged under oath, to my satisfaction, that this person:

- (a) is named in and personally signed this DEED OF EASEMENT,
- (b) signed, sealed and delivered this DEED OF EASEMENT as the Committee's act and deed, and
- (c) is the Executive Director of the State Agriculture Development Committee.

Gregory Romano
GREGORY ROMANO, ESQUIRE
Deputy Attorney General
An Attorney-at-Law of New Jersey

R. S. M
RSM

END OF DOCUMENT