

STATE AGRICULTURE DEVELOPMENT COMMITTEE

**Eligibility of Equine Activities for Right to Farm Protection;
Agricultural Management Practice for Equine Activities on Commercial Farms;
Agricultural Management Practice for On-Farm Compost Operations**

Adopted Amendment: N.J.A.C. 2:76-2A.8

Adopted New Rules: N.J.A.C. 2:76-2A.10; 2B.3

Proposed: JULY 16, 2007 at **39 N.J.R. 2561(a)**

Authorized By: State Agriculture Development Committee, Susan E. Craft, Executive Director.

Adopted: _____

Filed: _____

Authority: N.J.S.A. 4:1C-5f and 4:1C-9i and 10.4.

Effective date:

Expiration date:

Summary of Public Comments and Agency Responses:

The State Agriculture Development Committee (SADC) received comments from 49 organizations and people during the public comment period, which took place July 16 to September 14, 2007. Eighteen of these commenters were co-signers on a single letter (commenters #32-49). Nine other people sent in carbon copies of another letter (commenters #23-31). Altogether, comments were submitted by:

1. State Soil Conservation Committee (Jim Sadley, Executive Secretary)
2. New Jersey Department of Agriculture (NJDA) Division of Agricultural and Natural Resources (Monique Purcell, Director)
3. NJDA Division of Marketing and Development (Karen Kritz)
4. Pinelands Commission (Stacey P. Roth, Esq., Senior Counselor)
5. State Board of Agriculture (Mary Jo Herbert, President)

6. Burlington County Agriculture Development Board (CADB) (Phil Prickett, Chairman)
7. Mercer CADB (Dan Pace, Administrator)
8. Monmouth CADB (Joseph McCarthy, Chairman)
9. Morris CADB (Katherine Coyle, Assistant Director)

10. Somerset CADB (Tara Kenyon, Senior Planner)
11. Monmouth County Board of Agriculture (Stephen Dey, President)
12. Township of Boonton (Barbara Shepard, Administrator/Municipal Clerk)
13. Township of Mendham (Stephen P. Mountain, Administrator)
14. Township of Readington Open Space Advisory Board (John Klotz)

15. NJ Farm Bureau (Rich, Nieuwenhuis, President)
16. NJ State League of Municipalities (William G. Dressel, Jr., Executive Director)
17. Standardbred Breeders/Owners of NJ (Leo McNamara, Executive Administrator)
18. Make Your Voice Heard, Inc. (William M. Condon (Boonton Twp. organization))

19. George C. Koenig – Morris county resident
20. Barb Sachau
21. Allison C. Gross – Rutgers University, Department of Biological Sciences
22. Earlen Haven – Pilesgrove, NJ farmer

23. Wendy D. Martin (Heritage Hill Farm)
24. Stephen P. Dey (Heritage Hill Farm)
25. David J. Hayes (Heritage Hill Farm)
26. Margaret K. Dey (Heritage Hill Farm)
27. Elizabeth S. Dey (Heritage Hill Farm)
28. (illegible signature) (Heritage Hill Farm)
29. (illegible signature) (Heritage Hill Farm)
30. Kathleen R. Lair (Trotters Rest)
31. Patricia Lawyer (Northview Farm)

32. Alison Mitchell, Policy Director, New Jersey Conservation Foundation
33. Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network
34. Jeff Tittel, Director, NJ Sierra Club
35. Jaclyn Rhoads, Director for Conservation Policy, Pinelands Preservation Alliance
36. Troy Ettl, Director of Conservation and Stewardship, New Jersey Audubon Society
37. Sandy Batty, Executive Director, Association of NJ Environmental Commissions
38. Amy Goldsmith, State Director, NJ Environmental Federation
39. Mark Canright, Comeback Farm
40. Andrew J. Riehl, Spokesperson, Hunterdon Coalition
41. David Wheeler, Director of Operations, Edison Wetlands Association
42. Julia Allen, Committee Member, Readington Township Committee
43. Cindy Ehrenclou, Executive Director, Upper Raritan Watershed Association
44. Styra Avins, Agricultural Liaison, Bethlehem Township

- 45. Fred Akers, River Administrator, Great Egg Harbor Watershed Association
- 46. Tom Koven, Vice President, Musconetcong Mountain Conservancy
- 47. Walt Trommelen, Past President, Save the Environment of Morristown
- 48. Eric Sween, Chair, Bethlehem Township Environmental Commission
- 49. Constance Stroh, President, Upper Rockaway River Watershed Association

2:76-2A.8 Agricultural management practice for on-farm compost operations

2:76-2A.10 Agricultural management practice for equine activities on commercial farms

2:76-2B.3 Eligibility of equine activities for right to farm protections

2:76-6.15 Deed restrictions

2:76-6.24 Common farmsite activities

General comments

1. COMMENT: The SADC has received a number of general comments both supporting and opposing the rules. The Burlington CADB commented that it “considers the proposed rules a necessary step forward in granting the equine industry long awaited right-to-farm protections and in more fully embracing equine uses on preserved farms.” Similar sentiments were expressed by the Mercer CADB, Monmouth CADB, Monmouth County Board of Agriculture, State Board of Agriculture, and commenters #23-31. They used language such as “long awaited and long needed changes,” “eager to see them implemented,” “extend their full support,” “supportive and hopes to see them implemented,” “enthusiastically support,” and “long overdue.” The Morris CADB, the only other CADB that submitted comments, expressed a number of concerns with the rules.

Some general sentiments from other commenters, who opposed the rules, included the following: the Township of Boonton felt there were aspects of the

proposal “which continue to trouble the Township”; the Township of Mendham said it “opposes the proposed rules” and went on record in support of the position taken by the Morris CADB; commenters #32-49 said they had “serious concerns” with the proposal; Make Your Voice Heard “strongly oppose the adoption of these new rules”; George Koenig called the proposal “poorly developed from a long-term perspective at so many levels”; and Barbara Sachau said she did not “accept guidelines of SADC choosing.”

General comments were also provided by the New Jersey Farm Bureau, which said it “supports the rule” with the exception of the equine-related infrastructure section, and Alison C. Gross, who supported the proposal.

RESPONSE: The SADC has worked with the agricultural community and public on this proposal for more than four years. It further appreciates and has taken into consideration all of the comments submitted during the public comment period, and will provide responses targeted to the parties’ more specific comments in this document.

2. **COMMENT:** Allison C. Gross and the New Jersey Farm Bureau (NJFB) submitted comments supporting the proposal in light of the economic and other benefits of the equine industry to New Jersey.

Ms. Gross said that based on information in the proposal and her independent research, she felt there were “economic and societal benefits associated with equine activities.” Economically, she said the proposal would increase the desirability of preserved farms among horse owners and that it will

benefit New Jersey's hay farmers who provide feed for horses. Ms. Gross also cited how the 1996 Equine Survey identified the value of horses and equine-related assets at \$3.2 billion, found that horses contribute \$698 million annually to the state's GNP, and found that the equine industry employs 5,783 people. Regarding societal benefits, Ms. Gross mentioned the benefits associated with therapeutic riding programs for the disabled. She also felt the proposal will not be detrimental to preserved farms, as "equine activities require multiple acres of open, undeveloped land, and only 15% of each plot of preserved farmland may be used" for equine-related infrastructure. She noted how the proposal also mentioned that "properties still need to meet the criteria of the Right to Farm Act (p 6)."

NJFB agreed that "the equine industry is a significant contributor to the economy and quality of life in New Jersey and the proposed rules contribute nicely to protecting this vital and growing industry." Economically, NJFB cited statistics from a more recent economic impact study by Rutgers University and the Equine Science Center, noting that the industry generates \$1.1 billion, including \$502.3 million from New Jersey's racetracks and the remaining \$647 million from non-racing and breeding operations. NJFB also mentioned how an estimated \$160 million in federal, state, and local taxes are paid annually; that "approximately one fifth of New Jersey's 790,000 farm acres are dedicated to the equine industry"; and that there are 42,500 horses in New Jersey, 30,000 of which are non-racing or pleasure/recreational horses.

RESPONSE: The SADC agrees with the comments of NJFB that the

equine industry provides New Jersey with many positive economic and other benefits. The industry's economic impact is outlined well in the report to which NJFB referred. This report, published by Rutgers University's Equine Science Center, is titled "The New Jersey Equine Industry, 2007, Economic Impact" and is available online at

http://www.esc.rutgers.edu/news_more/PDF_Files/2007_Equine_Economic_Impact_Study_Report.pdf.

As explained in these Responses to Comments #45-54, the SADC has determined not to adopt the proposed amendments to N.J.A.C. 2:76-6.15 and the proposed new N.J.A.C. 2:76-6.24 at the present time, and will revisit this issue through the development and adoption of standards for soil disturbance in connection with construction of agricultural infrastructure on preserved farmland. Such standards will address the issues of soil disturbance and infrastructure development for all aspects of agricultural use, not those limited to equine production and equine related activities.

The SADC believes that even in light of its decision to not adopt the rules pertaining to preserved farmland, however, the Right to Farm Act does not permit the owner of a preserved farm to cover any specific portion of a preserved farm with structures, or provide a minimum allowable amount of infrastructure that will be allowed on those farms, since that question is separately governed by the Farmland Preservation Program deed of easement. As such, the SADC believes that adopting the amendment to N.J.A.C. 2:76-2A.8 and adopting new N.J.A.C.

2:76-2A.10 and 2B.3 is appropriate and will provide much needed Right to Farm protection to non-preserved and preserved farms throughout the state.

- 3. COMMENT:** The State Board of Agriculture, in addition to citing the ‘number of horses in New Jersey’ statistic, noted how New Jersey has 7,200 equine operations supporting 176,000 acres of agricultural land. With this in mind, the State Board said the proposal “will touch many lives” and be beneficial to the state’s equine industry.

RESPONSE: The SADC agrees with the comments of the State Board of Agriculture that the equine industry is important to the State of New Jersey and that the proposed rules will have many positive economic and other benefits.

- 4. COMMENT:** The Burlington CADB, feeling there will be significant challenges ahead in the implementation of the rules, requested that the SADC, in conjunction with relevant partner agencies, conduct training sessions to help CADBs implement the rules fairly and properly.

The Mercer CADB similarly requested the SADC conduct an educational campaign to explain the rules to the agricultural community and mitigate potential confusion on topics such as the how the equine-related infrastructure standard for Right to Farm protection may differ from county to county, and how these standards may differ from the standard for Farmland Preservation.

RESPONSE: The SADC agrees with the Burlington and Mercer CADBs regarding the importance of helping CADBs, other partner agencies, and the

agricultural community as a whole to understand and properly apply the rules. The SADC made a number of outreach presentations about the rules during the rule proposal process, and it will continue to work with its partners in the agricultural community to ensure proper application of the rules. The SADC intends to hold necessary education meetings to explain the rules and provide guidance on their application and implementation.

As explained in these Responses to Comments #45-54, the SADC has determined not to adopt the proposed amendments to N.J.A.C. 2:76-6.15 and the proposed new N.J.A.C. 2:76-6.24 at the present time, and will revisit this issue through the development and adoption of standards for soil disturbance in connection with construction of agricultural infrastructure on preserved farmland. Such standards will address the issues of soil disturbance and infrastructure development for all aspects of agricultural use, not those limited to equine production and equine related activities.

- 5. COMMENT:** Earlen Haven asked if there were times when the public could discuss their concerns with the SADC. She wrote, “I am a member of a number of horse organizations including the NJ Horse Council and I don’t think I have seen any open forums held to get input from the actual horse community. Perhaps there were such forums and I somehow missed seeing them advertised. I would be interested in attending such, if there is such a forum.”

RESPONSE: The SADC worked on this equine proposal for more than four years, during which time the SADC involved and sought input from the

agricultural community and public in many ways. In addition to relying on research conducted by a team of Rutgers Cooperative Extension agricultural experts, the SADC based its proposal on the recommendations of an Equine Working Group whose members included a veterinarian and other equine experts, and representatives from County Agriculture Development Boards, the State Board of Agriculture, Rutgers' Equine Science Center, and the SADC.

In terms of informing people about the proposal, Equine Working Group members provided updates on the proposal to the New Jersey Equine Advisory Board, of which the NJ Horse Council is a member. SADC staff also provided the agricultural community with updates during Right to Farm presentations made at various large agricultural conferences, such as the State Agricultural Convention and the SADC Farmland Preservation Summit. New Jersey's major agricultural organizations, including the Equine Advisory Board and NJ Horse Council, were also notified whenever the SADC circulated a formal or informal draft of the equine proposal for comments.

Public comment was also sought when the SADC proposed earlier iterations of the proposal. In July 2004, the SADC issued an equine rule proposal in the NJ Register, and the proposal included a standard 60-day public comment period. Comments which had been submitted on that version, along with comments submitted on another pre-proposal version in 2005, raised concerns that resulted in significant changes in the current proposal. In particular, the current proposal for the first time includes a limit on the degree to which equine related infrastructure can occupy the total useable area of a farm seeking right to

farm protection in response to previous public concerns about the extent to which the previous rule proposal afforded protection of such infrastructure without limits. The current proposal, published in the NJ Register in July 2007, also provided for a standard 60-day public comment period.

6. COMMENT: George Koenig explained that he opposes the proposal because it will have a negative impact on the value of residential properties adjacent to equine farms, and because the proposal offered residential landowners no compensation. Mr. Koenig indicated that he felt there would be negative impacts on real estate values of surrounding properties due to the operation of these commercial businesses in what are essentially residential zones, whose impacts are not adequately addressed by economic studies. He indicated that he felt the proposal should provide financial funding for any loss of real estate values, and the additional costs to a municipality to support such commercial businesses in a residential zone, and compared this to what he characterizes as similar flaws in the Highlands Act.

RESPONSE: The SADC disagrees with Mr. Koenig's opinion of the negative impact of the rules' promulgation. The purpose of the Right to Farm Act is to achieve a balance between the needs of the farmers and those of the surrounding community. It does so by allowing limited preemption of municipal ordinances and other local regulation where the conditions set by the statute are met. Moreover, the Right to Farm Act only applies to farms where agriculture is a permitted use under existing zoning, or where the farm was in existence and was

zoned for agriculture at the time the Act was adopted. Thus, the statute, as interpreted by the New Jersey Supreme Court and other judicial decisions, has established the extent to which local zoning will remain effective.

The SADC believes that farms, including equine farms, add to and enhance the State's, and the State's many communities', quality of life, and this benefit was recognized by the Legislature when it adopted the Right to Farm Act. The SADC disagrees that landowners living adjacent to equine farms will see a loss of value to residential real estate. The standards provided by these rules are based on a balancing of the interests of agricultural operators and those of the surrounding community, and are designed to be sensitive to the nature of development in the surrounding community by allowing the CADB's to establish the upper limit of allowable equine-related infrastructure. The rule sets forth a limit for the extent of equine-related structures that may be constructed on farms seeking Right to Farm protection. This limit is a maximum of between 15% and 25% of the net usable farmland on the property, with the precise maximum to be set by the County Agriculture Development Board based on its determination of the degree of compatibility of equine-related agricultural operations and the general land use patterns of the county.

7. COMMENT: George Koenig felt that going forward, the SADC would use the equine proposal as a standard to create similar, unacceptable standards for other types of animal operations.

RESPONSE: For the reasons set forth in the response to Comment #6

above and elsewhere in this document, the SADC disagrees with Mr. Koenig's comment that the equine standard is unacceptable. Moreover, the SADC does not have any plans at this time to apply the equine standards to other agricultural sectors.

8. COMMENT: George Koenig commented that the land should be saved for "green and clean" and that the SADC should be supporting organic farming as opposed to livestock farming. He wrote that New Jersey will never be able to compete with other areas of the United States in production of cattle, horses, and cows, and that the SADC should support organic farming supported by local residents, which is the trend in agriculture.

RESPONSE: The SADC agrees that organic farming and the organic industry are growing sectors of New Jersey's agricultural industry and supports them. The SADC disagrees, however, that other agricultural sectors and methods of production in New Jersey cannot compete with other farming areas in other areas of the United States and elsewhere. New Jersey is among the top five states in terms of production of cranberries, blueberries, peaches, bell peppers, and lettuce. Further, equine operations provide the basis for New Jersey's equine industry and provide meaningful equine-related educational and recreational opportunities including pleasure and trail riding and equine-assisted therapy to New Jersey residents. In short, the Right to Farm Act is designed to protect all varieties of reasonable agricultural operations as described in N.J.S.A. 4:1C-9 a through i, and is not limited to organic farming operations.

N.J.A.C. 2:76-2A.10(c) Standards for farm stocking rates

N.J.A.C. 2:76-2A.10(f) Fencing standards

- 9. COMMENT:** Barbara Sachau commented that stocking rates should never be left open because profiteers will fully stock and overstock. As an example, she referred to the crowding of millions of chickens in one building, and pig farms that cause huge manure lagoons.

RESPONSE: The SADC disagrees with Ms. Sachau’s perspective on the proposal’s stocking rate standards as well as her characterization of farm business operators in New Jersey.

N.J.A.C. 2:76-2A.10(c), which establishes the agricultural management practice standards for equine stocking rates, does not ‘leave open’ the number of horses that a farm may have. Rather, it says stocking rates shall be determined on a case-by-case basis and specifies a list of factors and management practices that stocking rates must be based upon. Furthermore, this management standard is based on, and is the result of, extensive research conducted by Rutgers Cooperative Extension. If a farm were not to comply with these standards – in Ms. Sachau’s words, to ‘overstock’ – then the farm would not be eligible for Right to Farm protection.

- 10. COMMENT:** Commenters #23-31 submitted identical comments. Two of their four comments concerned stocking rate standards and were as follows: 1) The use of three horse management schemes – pasture, dry lot, and stable with working as exercise – is “justified in a highly urban state”; and 2) “The 70%

figure for vegetative cover is a standard that can easily be measured.”

Another of their four comments concerned the equine agricultural management practice standards (AMP) in general. It said that the equine AMP, N.J.A.C. 2:76-10, will provide CADBs with a template that “will make it easier to handle Right to Farm complaints and reduce the number of site specific meetings.”

RESPONSE: New Jersey’s equine industry is diverse in terms of the type, size, scope, and management regime of its many equine farms, and it is therefore appropriate that N.J.A.C. 2:76-2A.10(c) reflects this diversity. Further, these stocking rate standards, as is true of all the standards in the AMP rule, are based on extensive research conducted by Rutgers Cooperative Extension, including a review of equine-related literature, focus groups, and discussions with growers and other members of the equine industry with specialized equine knowledge or expertise.

The SADC agrees that the AMP standards will aid County Agriculture Development Boards and others manage Right to Farm related issues.

- 11. COMMENT:** The Morris County Agriculture Development Board (CADB) felt that N.J.A.C. 2:76-2A.10 lacks clarity and is unenforceable, because it provides guidelines rather than actual numerical standards, citing the proposal’s standards for stocking rates and fencing as examples. The CADB felt the rule would not adequately help CADBs when making Right to Farm determinations. As an example, the Morris CADB criticizes the failure of the rule to set a specific

maximum number of horses permitted on farms for any of the rule's three management regimes. The CADB also opined that the rule would be difficult to apply if a mixture of regimes is used, such as a combined pasture and drylot regime, and that it would be difficult to determine compliance with AMPs based on monitoring of turnout times, the percentage of vegetative cover, yield potential of pasture, pasture management techniques, drainage, soil types, and outdoor temperatures. The CADB stated that that if farm stocking rates are determined on a case-by-case basis using the standards in the rule, there is no need for a general AMP, because each case will require a site-specific AMP recommendation.

The CADB also felt the fencing section was not sufficiently specific to be helpful in determining qualification for RTF protection.

The CADB contrasted the SADC's proposal with the equine policy the CADB had developed on its own, which it said sets clear standards regarding animal density, total floor space of equine-related structures, and manure management. The CADB policy sets an animal density (stocking rate) standard of one animal unit per acre, and an equine-related structure standard capping the area occupied by such structures at 3.5% of the farm's gross area.

RESPONSE: The SADC respectfully disagrees with the Morris CADB and feels that N.J.A.C. 2:76-2A.10 does set clear and adequate guidelines and standards for use with Right to Farm matters. These standards take into account the health and safety interests of the surrounding community without unnecessarily constraining the farm operator. These standards also acknowledge the great variety in size, intensity and management practices of equine facility

operators. The SADC believes the standards do provide guidance to apply to specific sites, and complement the Right to Farm process that allows for site specific determinations of agricultural management practice compliance. In response to the CADB's comments that the AMP rule lacks clarity and is unenforceable, the SADC reiterates its statement in the rule proposal's summary that "the AMP is not a rule with which all horse farms are required to comply. Rather, it is a gauge upon which CADBs and/or the Committee will use to determine if a farm is eligible for right-to-farm protection. Such determinations will be dependent upon the representations of the farmers as well as a site visit to the farm by an equine expert to verify the farmer's representations. If, after a farm is granted right-to-farm protection, the CADB is notified that the farmer changed his horse management scheme or implemented a different scheme, then the CADB would investigate the matter, with the assistance of equine experts. Failure to comply with any conditions in an AMP or right-to-farm approval granted by the CADB or Committee means that the farm is no longer entitled to right-to-farm protection."

The rules provide standards by which a CADB hearing a right-to-farm matter will apply its expertise to the specific set of facts in accordance with the criteria set forth in the rule. For example, whether a fence's setback is 'sufficient' will be determined by addressing site specific conditions in light of the factors enumerated in N.J.A.C. 2:76-2A.10(f). The CADB, to make its determination, may also consult with an equine or other agricultural expert. The idea that CADBs may benefit from experts' input during right-to-farm matters is in fact

recognized by the SADC's existing Right to Farm Act regulations. N.J.A.C. 2:76-2.3(d) and 2:76-2.10(b)1.i.

Thus, the SADC does not agree that the rule should set a numerical setback standard for items such as fencing. By instead using an operational performance standard, the rule provides commercial farm operators with the flexibility to site fencing in ways that best suit their operations, and allows the CADB to consider issues specific to the region or the nature of the area in which the farm is located. This approach is consistent with the Right to Farm statute, which not only authorizes the adoption of AMPs, but expressly authorizes the CADBs to make "site specific" determinations as to whether a particular practice is an AMP.

Regarding the CADB's comment that 'there is no need for a general AMP if stocking rates are to be determined on a case-by-case basis,' the SADC disagrees and believes that right-to-farm matters will be more readily resolved with the promulgated AMP. The AMP rule establishes the generally accepted practices and standards with which farms must comply to be entitled to Right to Farm protection by identifying the concerns and standards and providing guidance for how they must be met. Having a promulgated AMP rule also streamlines the Right to Farm conflict resolution process, as outlined in N.J.A.C. 2:76-2.10, by eliminating the requirement for an initial, extra SADC public hearing, which otherwise is required for all third party complaints where there disputed practice is not covered by an existing AMP rule or site specific AMP.

The SADC appreciates the Morris CADB's efforts to research and create

its own equine farm standards. The SADC feels confident, however, that the standards it establishes in this rule are appropriate and adequate, as the rule is based on extensive research conducted by Rutgers Cooperative Extension. Based on its research, the SADC feels that the stocking rate and equine-related infrastructure standards outlined in the Morris CADB's policy could be unduly restrictive of commercial equine farms if implemented on a statewide basis.

The rules also adequately address the Morris CADB's concern as to how to treat an operation in which a mixture of regimes is used. If the regimes are such that they can be viewed as separate operations, under the rules the CADB could review each aspect of the operation based on the standards applicable to it. If the operation falls within none of the specific categories of regimes, N.J.A.C. 2:76-2B.2(g) provides that activities not addressed by the rules shall be given a site specific analysis in accordance with the authority provided by N.J.S.A. 4:1C-9.

12. COMMENT: The New Jersey Department of Agriculture's (NJDA's) Division of Marketing and Development commented that the rule proposal may be in conflict with a particular statute that discusses fencing. NJDA wrote, "NJSA 4:20-1 through 11 already establishes criteria for fencing and in particular contains more stringent language for barbed fencing than is included in the rule proposal."

RESPONSE: The SADC has reviewed N.J.S.A. 4:20 and does not feel there is a conflict between the statute and SADC proposal regarding standards for

fencing with barbed wire. The SADC notes that one of the eligibility criteria of the Right to Farm Act is that a commercial farm must conform to “all relevant federal or State statutes or rules and regulations.” Therefore, fencing would also have to comply with this and any other applicable statute, as well as the SADC’s rules, to receive Right to Farm protections.

13. COMMENT: The Morris CADB disagreed with the how the rule states that fencing should be set back from property lines at a distance sufficient to prevent neighbors from having impermissible access to horses. The CADB wrote that farmers cannot prevent people from trespassing onto their property and cannot be held responsible for the actions of trespassers.

RESPONSE: The intent of the rule language is to incorporate distances that will discourage impermissible access to the horses, assuming neighbors are not trespassing on the farm owner’s property. Of course, no rule or regulation can completely prevent the illegal or inappropriate behavior of others; however, placement of the fence far enough back from the property line will act to minimize such conflicts. These sufficiency determinations may be made in light of the farm’s location and the nature of its surroundings.

N.J.A.C. 2:76-2A.10(d) Manure management

14. COMMENT: The State Soil Conservation Committee (SSCC) and the New Jersey Department of Agriculture's (NJDA's) Division of Agricultural and Natural Resources felt the rule should incorporate by reference the Best Management Practices (BMPs) manual, "On-Farm Strategies to Protect Water Quality." This manual, published in 2003, is a planning and assessment tool for BMPs published by the New Jersey Association of Conservation Districts, in cooperation with NJDA, SSCC, and the United States Department of Agriculture-Natural Resource Conservation Service.

Both commenters wrote that this manual will be incorporated by reference in NJDA's "Animal Waste Management Rules," which NJDA noted are "currently under final phases of development" and SSCC noted are "soon to be proposed". SSCC further suggested that the rule proposal delete its incorporation by reference of the Penn State Agronomy Guide, 2007-2008 at N.J.A.C. 2:76-2A.10(d)2ii and replace it with an incorporation by reference of "On-Farm Strategies to Protect Water Quality." SSCC noted that the Animal Waste Management Rules "will require that animal operations develop and implement certified animal waste management plans for animal operations in the state. Horse operations will likely be the most affected animal operation in New Jersey."

RESPONSE: The SADC thanks NJDA and SSCC for its suggestions and supports the proper development of NJDA's animal waste management rules. As stated in N.J.A.C. 2:76-2B.3(g), one of the eligibility criteria of the Right to Farm

Act is that a commercial farm must conform to “all relevant federal or State statutes or rules and regulations.” See N.J.S.A. 4:1C-9. Farms seeking Right to Farm protection are thus bound to comply with duly adopted statutes and regulations regardless of whether they are referenced in the regulation. Should NJDA promulgate its Animal Waste Management Rule through the rulemaking process, that rule would become another ‘relevant State rule or regulation’ with which commercial equine farms would need to comply to be eligible for Right to Farm protection.

15. COMMENT: The State Soil Conservation Committee (SSCC) requested that “and water” be deleted from “...local soil and water conservation district...” at N.J.A.C. 2:76-2.10(d)1.ii(2).

RESPONSE: The SADC accepts SSCC’s comment and will make this change to reflect the correct district terminology.

16. COMMENT: NJDA’s Division of Agricultural and Natural Resources commented that the manure management section should “include measures for all vector and fomite controls, not only flies,” and “minimize odor both at the storage and application sites.”

RESPONSE: The SADC agrees with NJDA’s comment about vector and fomite controls and has revised the proposal’s three references to flies accordingly. N.J.A.C. 2:76-2A.10(d)2.iii(3), the standards for short-term storage of manure, now reads, “Manure shall be kept as dry as possible to minimize the

breeding of breeding of flies, vectors, and other fomites.” N.J.A.C. 2:76-2A.10(d)2.iv(2), the standards for long-term storage of manure, now reads, “Farmers shall make reasonable efforts to minimize the breeding of flies, vectors, and other fomites.” N.J.A.C. 2:76-2A.10(e)3.i, the standards for riding and training areas, now reads, “Manure, shavings and straw shall not be placed in arenas, as these materials can increase the amount of dust in the arena and serve as a breeding area for flies, vectors, and other fomites.”

The SADC agrees with NJDA’s comment about manure management and has revised the proposal accordingly. New N.J.A.C. 2:76-2A.10(d)1.iv is added and reads, “The primary goal of manure management is to minimize odor at storage and application sites, as odors can never be completely eliminated.”

17. COMMENT: The New Jersey Farm Bureau (NJFB) supported “the inclusion of the composting, sale, and distribution of manure as part of this proposal as well as the standards related thereto that are outlined for these activities. This byproduct is an important resource of the farm that can add to the overall farm viability of the farm.” NJFB added, “The standards for manure management are reasonable and consistent with other animal agriculture manure management guidelines.

RESPONSE: The SADC agrees with NJFB’s comments. As noted in the proposal’s summary, many State and Federal governmental entities have been promoting on-farm composting as a way for equine farms to manage their nutrient production. They have also promoted using the compost on-site or making it

available for off-farm users.

18. COMMENT: Commenters #32-49 recommended that N.J.A.C. 2:76-2A.10(d)3 be amended so that the proposal's 100-foot buffer requirement between manure storage and composting facilities and waters of the State be increased to a 300-foot buffer requirement, which is the buffer distance required from Category One streams in the Stormwater Management Rule. The commenters said riparian buffers protect streams' "integrity, quality and overall ecological health," and they listed additional specific benefits as identified by the Army Corps of Engineers, such as "stabilizing streambank integrity; providing erosion control and critical organic matter for aquatic organisms; serving as nutrient sinks for the surrounding watershed; providing shading and thus water temperature control; reducing flood peaks; and serving as key recharge points for renewing groundwater supplies." After adding that the Army Corps of Engineers recommends a minimum riparian buffer of 300 feet for birds, the commenters concluded by saying it is imperative to protect water quality for irrigation purposes and drinking water supplies.

RESPONSE: The SADC appreciates the commenters' suggestion but does not revise the proposal. The manure management practice standards specified in N.J.A.C. 2:76-2A.10 are based on extensive research conducted by Rutgers Cooperative Extension. The 100' buffer requirement represents a minimum separation distance and was taken from the Natural Resource, Agriculture, and Engineering Service (NRAES) publication, "Field Guide to On-

Farm Composting.” The SADC, through the rulemaking process, has already incorporated this publication by reference into its promulgated Agricultural Management Practice for On-Farm Compost Operations, N.J.A.C. 2:76-2A.8. NRAES is an official activity of fourteen land grant universities and the U.S. Department of Agriculture.

N.J.A.C. 2:76-2A.10(d) requires that manure management, including the siting and size of storage areas and composting facilities, must comply with a farm conservation plan approved by the soil conservation district and prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG). In addition, the Right to Farm Act itself requires compliance with all relevant State and Federal laws. The SADC believes that the 100’ buffer requirement, in combination with these additional requirements, sufficiently addresses the commenters’ concerns regarding water quality protection.

- 19. COMMENT:** In his opposition to the proposal, George Koenig cited environmental concerns. Mr. Koenig stated his belief that the agricultural management practice standards for manure management are not based on any true science. He also said the proposal does not address the environmental impact of horse urine, stating that one horse produces 25-40 gallons of urine a day, and that under the SADC’s dry lot approach, a 7-acre farm could probably handle 100 horses and that would equate to the discharge of 2,500 to 4,000 gallons of horse urine a day topically onto land.

Mr. Koenig added that the local health department won't be able to enforce against this "point pollution" if the agricultural agencies determine that such activities are acceptable agricultural management planning, and stated his opinion that the SADC's standard are inconsistent with the standards that would be applied by the DEP and local, county, and state health boards. Mr. Koenig further expressed his belief that traditional agriculture stocking rates of 1 animal unit per acre better address the pollution issues with respect to the environment. Mr. Koenig stated that the SADC is making special rules for farmers who wish to profit.

RESPONSE: The SADC respectfully disagrees with Mr. Koenig's comments, statistics, and characterizations. The proposal's manure and other management practice standards are based on science and extensive research conducted by Rutgers Cooperative Extension. This research has indicated that a 1000-pound horse, on average, produces 2-4 gallons of urine per day, not 25-40 gallons as stated by Mr. Koenig. Logistically, a horse may release some of this urine while inside in a stall, and some of it while outside, such as in a pasture or somewhere else. It is also unlikely that a farm as small as 7-acres would be able to accommodate 100 horses in compliance with all the requirements of these rules for Right to Farm protection. Further, the manure management standards and the requirement of compliance with a farm conservation plan specified in N.J.A.C. 2:76-2B.3(d) would address any potential impact of horse manure or urine on a given farm.

For a farm to be eligible for Right to Farm protection, its activities must

also not pose a direct threat to public health and safety, and the farm must be in compliance with relevant state regulations, including those adopted by DEP. The SADC is not making ‘special rules’ for farmers, but rather setting agricultural management practice standards for what constitutes the responsible operation of a commercial farm. These standards go beyond the simple and outdated one-horse-per-acre standard, which was not based on science and has not been, in and of itself, a guarantee of responsible farming.

Further, the power of a local health department is not ‘usurped’ by the SADC’s rules. The New Jersey Supreme Court has upheld the Right to Farm Act’s ability to preempt local regulations, but cautioned that CADBs and the SADC do not have ‘carte blanche’ to impose their views, and directed the agencies to consider the public health and safety, which includes a consideration of local ordinances and regulations designed to protect these interests by regulating an agricultural activity. The decision whether municipal ordinances should be preempted depends on the outcome of this analysis. In addition to the authority to make these site specific determinations, the Right to Farm Act also authorizes the SADC to adopt AMPs as regulations. When the SADC acts in this manner, the standards established by the rule similarly reflect its balancing of local and agricultural interests.

N.J.A.C. 2:76-2B.3(e) and (f)

Income that may or may not be used to satisfy the production requirements in the Right to Farm Act's definition of commercial farm (N.J.S.A. 4:1C-3)

20. COMMENT: The Burlington CADB requested clarification on “whether the income from the sale of a horse via a claims race would be considered ‘income from the sale of a horse that has been bred from a mare owned by the farm operator or owner.’” The CADB felt this income should be considered qualifying income for Right to Farm protection.

RESPONSE: So long as the horse that is being sold meets the relevant criteria specified in N.J.A.C. 2:76-2B.3(e), the income from that sale of that horse could be used to satisfy the production requirements in the definition of commercial farm. Selling a horse via a claims race is one of many ways for a commercial farm to advertise and sell a horse that it has bred, trained, or raised. However, any purse given in connection with a claims race would not be considered income from the sale of agricultural products, and so could not be used to meet the Act's income requirements.

21. COMMENT: The Somerset CADB requested that the rules be amended to allow farms to use the following sources of income to qualify for Right to Farm protection: fees from boarding, driving lessons, riding lessons, training lessons, and equine-assisted therapy; and monetary proceeds from racing. The CADB felt that any income generated from the activities to be protected under the new rules should be allowed to be used. It further felt that income generated through the

training and education of people who wish to ride or own horses is important to the equine industry.

The Somerset CADB pointed out that farmers who breed, board, or train horses specifically for the purposes of racing rely on monetary proceeds of races, and that preparation for these races requires horses to be boarded, trained, and exercised on the property.

The League of Municipalities felt that income from riding and driving lessons and equine-assisted therapy should be allowed to satisfy the production requirements in the definition of commercial farm.

Earlen Haven stated that the RTF Act revolves around the ‘sale’ of something agricultural, yet all the definitions of farm and agriculture revolve around the ‘raising’ of livestock. She stated that profits from raising livestock could also result from a variety of activities involving the livestock, such as riding lessons, training, competitions, or clinics, which are activities that do not involve ‘selling.’ After discussing and analyzing the Webster Dictionary definitions of agricultural, farm, farming, and agriculture, Ms. Haven added that “lessons, training, rehab, sales, breeding, etc. all increases the ‘value’ of the livestock whether or not the livestock that is being raised is for sale...Training of a boarder’s horse increases the value of a horse.” She concluded by asking why only agricultural production is counted for purposes of establishing the Right to Farm Act’s income requirements.

RESPONSE: The SADC appreciates the Somerset CADB, League of Municipalities, and Earlen Haven’s comments, and it agrees that many types of

equine activities and sources or income are important to equine farms. The SADC is bound by the definition of “commercial farm” in the Right to Farm Act, however, and cannot change N.J.A.C. 2:76-2B.3(e) and (f), which it had included for clarification purposes. To qualify as a commercial farm, N.J.S.A. 4:1C-3 requires that a farm must produce agricultural or horticultural products worth at least \$2,500 annually (if the farm is five acres or more) or at least \$50,000 annually (if the farm is less than five acres).

Only income from production activities can be used to satisfy these production requirements. Because boarding, training, riding and driving lessons, and equine-assisted therapy have been deemed agricultural service activities, fees from these activities cannot be used to satisfy the production requirements. Monetary proceeds from racing (i.e. prize winnings) likewise are not deemed production income and therefore cannot be used.

In specifically outlining in N.J.A.C. 2:76-2B.3(e) and (f) which income may or may not be used to satisfy the production requirements in the definition of commercial farm, the SADC was furthermore careful to maintain consistency with the concepts of agricultural production established under the Farmland Assessment Act, which, like the Right to Farm Act, bases eligibility on the existence of some form of agricultural or horticultural production. The Farmland Assessment Act, for instance, recognizes fees from raising horses as production income, but not fees from training horses. For this reason, N.J.A.C. 2:76-2B.3(f)5 specifies that fees from training cannot be used to satisfy the production requirements of the Right to Farm Act. It is true that training a horse adds value

to the horse. While these increased sale receipts count as production income, however, fees paid to the trainer or the farm owner or operator for the service of training cannot be used to reflect the horse's increase in value. What can be used to reflect the increase in value from training are the proceeds from the ultimate sale of the horse. In this way, the production aspect of training is captured. As N.J.A.C. 2:76-2B.3(e)3 states, the following may be used to satisfy the production requirements in the definition of commercial farm: "Income from the sale of a horse that was trained or raised on the commercial farm for at least 120 days prior to the time of sale." This is consistent with the definition of training, which describes training as a production activity when the purpose of the training is to add value to a horse with the intent of selling the horse for a profit.

22. COMMENT: Earlen Haven had concerns with the requirement in N.J.A.C.2:76-2B.3(e)3-4 that a horse that is for sale must be on the property for 120 days. Ms. Haven said "some horses are at a stage where their value could be increased through training in much less than 120 days. Training a horse is not like planting a crop. One horse can increase in value in a very short time while another may take a very long time because of a variety of factors."

RESPONSE: N.J.A.C. 2:76-2B.3(e)3 says that "income from the sale of a horse that was trained or raised on the commercial farm for at least 120 days prior to the time of sale" may be used to satisfy the production requirements in the Right to Farm Act's definition of commercial farm. The SADC based this 120-day standard on the recommendations of an Equine Working Group, which had

discussed the matter and reached the consensus that such a time-period was appropriate and reasonable. Members of the Equine Working Group felt that the 120 day standard would help prevent people from circumventing the definition of commercial farm who might try to qualify, for instance, through the simple act of buying and reselling horses (without any training or raising or adding value to them). To qualify as a commercial farm under the Right to Farm Act, there needs to be some production activity which will generally result in an increase in value. The 120-day time period is meant to help ensure this and exclude operations that do not have a production element, such as an operation that only auctions horses.

23. COMMENT: Earlen Haven requested clarification on the importance of horse ownership, asking whether, in order for income from raising, keeping, boarding, training, and rehab of horses to be counted for the \$2500 income requirement, the horses must be owned by the farm owner and sold.

RESPONSE: N.J.A.C. 2:76-2B.3(e) and (f) specify which sources of income may or may not be used to satisfy the production requirements in the definition of commercial farm. Keeping horses is not in itself a production activity, and fees received for boarding, training, and rehabilitating horses may not be used. However, a farm that keeps, boards, trains, or rehabs horses could still qualify as a commercial farm, for instance, through sufficient imputed income from pasturing horses. Income from the sale of a horse (regardless of ownership) that was raised or trained on the commercial farm for at least 120 days could also be used to satisfy the production requirement. Similarly, income from

fees associated with raising a horse (such as one that a person does not own) on the commercial farm for at least 120 days could be used. Such fees might represent a direct payment for the raising-services provided, or they might include amounts paid later as a commission to the commercial farm's trainers, who might receive a percentage of the sale price of the horse.

24. COMMENT: Earlen Haven asked the SADC to give “one example each (raising, keeping, boarding & training) that does qualify and one example of each of the above that would not qualify.”

RESPONSE: It is not clear from the comment whether it seeks examples of activities that would qualify as income or as agricultural management practices. N.J.A.C. 2:76-2B.3 expands the list of activities eligible for protection under the Right to Farm Act and specifies that many activities, including the raising, keeping, boarding, and training of horses, are eligible for protection. For a farm on which these activities are taking place to receive Right to Farm protection, the farm must conform with the equine agricultural management practice standards outlined in N.J.A.C. 2:76-2A.10, meet the eligibility criteria for equine activities specified in N.J.A.C. 2:76-2B.3, and meet the remaining eligibility criteria of the Right to Farm Act. These criteria are reiterated at N.J.A.C. 2:76-2B.3(g).

If a farm fails to meet any of these standards or eligibility criteria, then the farm and its activities would not be eligible or qualify for Right to Farm protection. For example, if a farm is raising, keeping, boarding, and training horses, but the farm is not managing its manure in compliance with a farm

conservation plan, as specified in N.J.A.C. 2A-10, the farm and its activities would not be eligible for Right to Farm protection. If a farm has a greater percentage of equine-related infrastructure than specified in N.J.A.C. 2B.3, the farm and its activities would not be eligible for Right to Farm protection. If the farm fails to meet any of the Right to Farm Act's eligibility criteria, such as the need to be a commercial farm, then the farm and its activities would not be eligible for Right to Farm protections.

For instance, a 10-acre farm that was primarily a boarding operation probably would not qualify for Right to Farm protection because the farm would not be producing agricultural or horticultural products worth at least \$2,500 annually (as required to qualify as a "commercial farm" under the Right to Farm Act). The farm could likely identify some production income through imputed income from pasturing horses. Imputed income from pasture is currently valued at roughly \$100/acre, however, meaning the total would not surpass the \$2,500 threshold. The farm would therefore not meet the definition of commercial farm, and the farm and its equine activities would not be eligible for protection.

Conversely, if an equine farm did meet the definition of commercial farm (and satisfied the other eligibility criteria), then any equine activity occurring on the farm and eligible for protection under N.J.A.C. 2:76-2B.3 – such as raising, keeping, boarding, and training – would be eligible for Right to Farm protection.

- 25. COMMENT:** The Standardbred Breeders and Owners Association of New Jersey (SBOANJ) commented that it has member farms that breed and board

horses commercially but receive a significant portion of their income from boarding customers' horses. It appears this cannot be used to satisfy the production requirements, because these operations only breed from February through June, and for the rest of the year provide any equine related services that their clients need. The SBOANJ also asks whether a farm that only provides boarding services as a satellite farm to breed to NJ stallions will meet the requirements of the Right to Farm. The SBOANJ feels that the regulations seem to carve out certain equine operations as non-complying and they lose protection under the Act, which, it says, seems unfair and serves no one. The SBOA further indicates that the 120 day restriction is difficult for a farmer to implement because farms need to provide services for whatever timeframe the client needs.

RESPONSE: The SADC disagrees with the SBOANJ's comments that the rule is unfair and disqualifies certain equine operations. To qualify for Right to Farm protections, all farms must meet the same standard: the Right to Farm Act's definition of commercial farm. That means farms must produce agricultural or horticultural products worth at least \$2,500 annually (if the farm is 5 acres or greater) or at least \$50,000 annually (if the farm is less than 5 acres). If a farm only provides boarding services, then it would not be producing any agricultural or horticultural products, therefore it would not meet the definition of commercial farm and would not be eligible for Right to Farm protection. N.J.A.C. 2:76-2B.3 specifies that boarding is an activity that is eligible for Right to Farm protection, however all farms seeking its protection must first meet the productivity threshold in the definition of commercial farm through some type of equine related

agricultural production activities. The SBOANJ's comments about the 120-day standard appear to reflect a misunderstanding of the standard's function and meaning. This standard is not a requirement that farms must follow, nor does it dictate how long a client must allow their horses to be trained or raised on a given farm. Rather, the standard is designed to clarify what income may or may not be used to satisfy the production income requirements in the Right to Farm Act's definition of commercial farm. The SADC and members of its Equine Working Group determined that 120 days was an appropriate and reasonable amount of time to ensure that sufficient production had occurred in conjunction with raising or training a horse for sale.

26. COMMENT: The New Jersey Department of Agriculture's (NJDA's) Division of Marketing and Development noted that although the proposal references imputed income from pasturing horses, "the proposal does not include a resource from which to extract the values." NJDA suggested the proposal could reference the imputed grazing values established by the Farmland Evaluation Advisory Committee (FEAC), which publishes this information annually for local tax assessors.

RESPONSE: The SADC agrees with NJDA's comments and revises N.J.A.C. 2:76-2B.3(e)2 accordingly. This section now states that "imputed income from pasturing horses, as determined by the productivity values set annually by the State Farmland Evaluation Advisory Committee," is one source of income that may be used to satisfy the production requirements in the Right to

Farm Act's definition of commercial farm. Local tax assessors have long relied on the State Farmland Evaluation Advisory Committee's (FEAC's) productivity values for assistance when assessing taxes, and the SADC already references the FEAC when defining "production area" in N.J.A.C. 2:76-2B.3.

27. COMMENT: Earlen Haven raised concerns with the Right to Farm Act's requirement that, in order to be a commercial farm, a farm of five acres or more must produce agricultural products worth at least \$2,500 annually. Ms. Haven said it sometimes takes longer than a year to train a horse for its ultimate sale at a value increased by training. She added that the annual production requirement may be difficult to meet because sales may be delayed by a horse's soundness problems or by injuries to trainers which delay training. Ms. Haven suggested offering a choice of \$2500 income per year or an 'averaged' income over the life of the farm, using more than one year's income.

RESPONSE: The SADC appreciates Ms. Haven's comments but remains bound by the need for a clear display of production when making 'commercial farm eligibility criteria determinations' in Right to Farm matters. It is typically the income from the sale of a horse that indicates to the SADC and CADBs how much production has occurred, and the Act requires that this income be identified on a yearly basis. The period of production in some cases may last longer than a year, but until a horse that has been bred, raised, or trained is ultimately sold, the horse's increase in value is difficult to verify.

N.J.A.C. 2:76-2B.3(b) Activities eligible for Right to Farm protection

28. COMMENT: The State Board of Agriculture supported the proposal's acknowledgement that Right to Farm protection is not only important to the equine production activities of breeding and pasturing, but also to equine service activities such as boarding and training that currently do not enjoy right-to-farm protection.

The Burlington CADB similarly supported how the proposal would grant "long awaited right-to-farm protection." The CADB stated that equine production and equine related service activities are important to the viability of Burlington County agriculture.

RESPONSE: The SADC agrees with the State Board of Agriculture and Burlington CADB's comments

29. COMMENT: The New Jersey Farm Bureau (NJFB) felt that 2:76-2B.3 takes a significant step forward to address Right to Farm protection for the complex and varied activities that take place on equine farms. It explained that complementary activities such as clinics, open houses, demonstrations, educational camps, farm events, competitions and rodeos are all activities commonly used to market animals that are bred or trained on the farm. These activities also educate the public about horses and allow the local residents to enjoy first-hand the state's official animal. Farm Bureau felt that inclusion of these service-oriented activities with others related to education and marketing of the farms' output in this rule will help address the nuisance complaints and

confusion about acceptable equine-related activities that have arisen over the years.

RESPONSE: The SADC agrees with NJFB's comments.

30. COMMENT: The League of Municipalities (LOM) noted that horse riding and driving lessons had been included in the list of protected activities in N.J.A.C. 2:76-2B.3 in the July 2004 proposal, but that they were omitted from this proposal. The LOM felt that riding and driving lessons should remain in the list, because they reliably consume agricultural products produced on agricultural land, and serve to ensure a stable and viable economic benefit to agricultural production in the State. The LOM added that they provide a market for agricultural products that isn't subject to other broader market forces, influences, whims, and price fluctuations.

RESPONSE: The SADC appreciates the League of Municipalities' comments and agrees that riding and driving lessons provide ancillary support to the State's agricultural industry through the purchases made by horse farm owners (e.g. for feed, bedding, and other agricultural products). As noted in the proposal's summary, riding and driving lessons were omitted from N.J.A.C. 2:76-2B.3 in order to bring the activities that are protected under the RTF act, which applies to "commercial farms" engaged in agricultural production, into consistency with the concepts of agricultural production established under the Farmland Assessment Act. The Farmland Assessment Act recognizes a number of activities as constituting agricultural activities and uses for the purposes of

Farmland Assessment, however riding and driving lessons are not among them.

31. COMMENT: Boonton Township’s Environmental Committee felt that the expanded list of activities that would be eligible for Right to Farm protection is “inconsistent with the original intent of the Right to Farm Act. While the Right to Farm Act might protect existing farms from nuisance suits by residents of new development, existing residents should not be barred from filing nuisance suits against new, unanticipated farm development of the magnitude, land use intensity and impervious coverage allowed by the proposed rules.”

RESPONSE: The SADC disagrees that the list of equine activities eligible for Right to Farm Act protection is inconsistent with the intent of the Act. The Act is designed to protect commercial farms engaged in agricultural activities. The Right to Farm Act charges the SADC with the obligation to identify protected activities either on a site specific basis or by rule. Equine production is clearly encompassed within the agricultural activities identified at N.J.S.A.4:1C-9. Further, the Act authorizes the SADC to use the rulemaking process to add agricultural activities to the list of activities eligible for Right to Farm protection, N.J.S.A. 4:1C-9(i). Moreover, “raising” horses is recognized as a production activity by the Farmland Assessment Act and, like horse training as defined by the rule, is an activity that adds value to the equine product. Recreational activities undertaken as part of the marketing of horses is expressly encompassed by N.J.S.A. 4:1C-9h. Boarding is similarly recognized by the Farmland Assessment Act for limited purposes.

In addition, the Right to Farm Act specifies that anyone aggrieved by the operation of a commercial farm may file a complaint with the CADB. The rule as proposed does not bar residents from filing complaints against farms. If and when a complaint is filed, the farm, in order to be afforded the significant protections of the Right to Farm Act, would need to satisfy the Act's significant eligibility criteria by meeting the definition of commercial farm and complying with the agricultural management practice standards outlined in N.J.A.C. 2:76-2A.10.

32. COMMENT: Earlen Haven requested clarification on the complimentary equine activities that would be entitled to Right to Farm protection. She felt most horse people thought such activities were being covered 'carte blanche', but the proposal stated they were only covered if the activity was related to the marketing of a horse. Ms. Haven asked for an example of how a clinic or a competition (or any other complementary activity) would be related to the sale of a horse.

RESPONSE: As stated in N.J.A.C. 2:76-2B.3(b)2, complementary equine activities are eligible for Right to Farm protection if the activities are "related to the marketing of horses that are raised, bred, kept, boarded, trained or rehabilitated on the farm, and are in compliance with municipal requirements." The language requiring complementary equine activities to be related to the marketing of a farm's horses has been added to the rule since the SADC's original July 19, 2004 proposal. This new language is intended to maintain consistency with the Right to Farm Act's conception of complementary agricultural activities. The Act specifies that "agriculture-related educational and farm-based

recreational activities” are eligible for protection, however these activities must be “related to marketing the agricultural or horticultural output of the commercial farm” N.J.A.C. 4:1C-9(h).

One example of how a clinic, competition, or other such activity could be related to marketing a farm’s horses is the following: A 20-acre farm, which raises, trains, and boards horses, also hosts monthly team-penning competitions. These competitive events bring a number of people to farm, be they spectators who come to watch the team-penning occur or people who attend to directly participate in it. As a natural part of the event, the attendees are exposed to horses that have been raised and trained on the farm and that are for sale. Some people later purchase these horses as a result of the exposure and marketing. In this way, the event fulfills the Right to Farm requirement that complementary equine activities be related to marketing the productive output of the farm.

33. COMMENT: Barbara Sachau commented that the Right to Farm Act should not be enlarged to include equine activities. She states that agriculture is an ‘industry’ and a business of camps, competitions, shows, which are not farming, and which need to be regulated.

RESPONSE: The SADC disagrees with Ms. Sachau’s comments. N.J.S.A. 4:1C-9(i) provides that the SADC may use the rulemaking process to expand the list of activities eligible for Right to Farm protection. However, by identifying camps, competitions, and shows as three examples of activities that are often used by equine farms to market the agricultural output of the farms,

N.J.A.C. 2:76-2B.3(b)2, the SADC is not adding activities that may be protected by the Act, but rather is implementing the specific provision of N.J.S.A. 4:1C-9h, which protects such activities when used to market the output of the farm. The SADC also disagrees with the assertion that these activities are not regulated. The Right to Farm Act requires the SADC to balance the interests of agriculture and public health and safety, which it has provided for in these rules. Moreover, N.J.A.C. 2:76-1B.3(b)2 requires that these activities be undertaken in conformity with municipal requirements.

N.J.A.C. 2:76-2B.3(c) Equine-related infrastructure limits in terms of eligibility for Right to Farm protection

- 34. COMMENT:** The Morris CADB commented that N.J.A.C. 2:76-2B.3 was unclear on whether a CADB could limit Right to Farm Act approval of the area occupied by equine-related infrastructure to less than 15%. The CADB felt the rule should be revised and clarified by allowing CADBs to set their own percentages, at any point up to but not surpassing 25%, to better address local conditions.

The CADB felt this is needed to provide it with the authority and the flexibility to consider local constraints and differences in management standards when reviewing equine proposals. The Morris CADB stated that it needs to be able to restrict equine-related infrastructure to levels below 15% to comply with the New Jersey Supreme Court decision in the case of Township of Franklin v. David den Hollander, which directs the SADC and CADBs to consider relevant municipal standards when making decisions related to agricultural management practice issues.

RESPONSE: The SADC appreciates the Morris CADB's comments. In developing N.J.A.C. 2:76-2B.3, the SADC included a provision to allow CADBs to determine the maximum permissible equine-related infrastructure eligible for Right to Farm protection within a range of 15-25% of the total usable area of the farm. The SADC did not write the rule with the intention to allow – and disagrees with the Morris CADB's suggestion that the rule be amended to allow – CADBs to establish limits on the area occupied by equine-related infrastructure to

percentages that are less than 15%.

The SADC further disagrees with the implication that under N.J.A.C. 2:76-2B.3(c), relevant municipal standards will not be able to be (or have not been) considered when making decisions related to agricultural management practice issues. The SADC has considered this issue and is aware that some municipalities have land use coverage standards which specify limits lower than those found in N.J.A.C. 2:76-2B.3(c). The SADC has contemplated such conflicts and determined that the 15-25% standard does not pose a threat to public health and safety. The SADC has also determined there are legitimate, agriculturally based reasons that commercial equine farms have or may wish to have equine-related infrastructure occupying as much as 15-25% of the farm's total usable area as evidenced by the site-specific research conducted by the SADC in support of development of this rule proposal.

Upon further review of the rule, the SADC agrees that the proposal's language is not entirely clear regarding whether CADBs would be able to establish their own percentages outside (less than) the 15-25% range. It therefore amends N.J.A.C. 2:76-2B.3 as follows: "It shall be the responsibility of each county agriculture development board (CADB) to determine the maximum permissible percentage of total usable area occupied by equine-related infrastructure based on the level of, or proximity of the farm to, non-agricultural development. In counties where no CADB exists, it shall be the responsibility of the Committee to make this determination. This maximum permissible percentage shall not be less than 15% nor more than 25%."

35. COMMENT: Boonton Township’s Environmental Committee (EC) felt the rules would have a negative impact on Boonton Township. The Township also opined that the SADC had fallen far short in addressing the public’s concerns, as expressed during the public comment period for the SADC’s July 2004 equine proposal, with the “magnitude, land use intensity, and impervious cover associated with large structures built exclusively for equine service activities.” It said the land use conditions contained in the rules are more intense than those allowed by Section 102.171.2 of the Township’s land use ordinance, enacted to protect environmentally sensitive areas, especially groundwater recharge areas in Boonton, which permits total impervious cover of between 4.2% and 2.2% on lots between 10 and 100 acres in size.

RESPONSE:

The SADC disagrees with the Boonton Township Environmental Committee, feeling rather that N.J.A.C. 2:76-2B.3(c) does satisfactorily address concerns related to the magnitude, land use intensity, and impervious cover associated with large structures built for equine activities, whether they are purely agricultural or include service aspects.

To address these concerns raised, the SADC conducted a detailed analysis of commercial equine operations in the state and developed land use conditions which limit the extent to which equine-related infrastructure may occupy a farm’s total usable area, to be eligible for Right to Farm protection. N.J.A.C. 2:76 2B.3(c) sets forth these limits. The SADC has concluded that these limits, which

of course must also be interpreted in light of the requirements of State and Federal law and regulations, are appropriate statewide to supersede municipal ordinances or local regulation. They will also limit the amount of available infrastructure that could ultimately be converted to use for equine service activities or other non-agricultural uses.

Regarding the differences between the total lot coverage limits described by the Boonton Township EC and the equine-related infrastructure limits specified in N.J.A.C. 2:76-2B.3(c), the SADC first notes that these provisions are not entirely comparable. The limits referred to by the EC are based on a lot's total area, whereas N.J.A.C. 2:76-2B.3(c) looks at the total usable area. This usable area excludes wetlands areas not modified for agriculture and 'land under and land used in connection with farmhouses.' Boonton's definition of impervious surfaces is also not equivalent to the SADC's definition of equine-related infrastructure.

Regarding the protection of natural resources, the SADC notes that to be eligible for Right to Farm protection, a commercial equine farm must operate in conformance with a farm conservation plan and all State and Federal laws and regulations, including environmental laws and regulations. Farm conservation plans prescribe needed, practical land treatments designed to accomplish the following tasks: to conserve, protect and develop natural resources; to maintain and enhance agricultural productivity; and to control and prevent nonpoint source pollution.

36. COMMENT: The New Jersey Farm Bureau (NJFB) supports the rules, with the exception of the equine-related infrastructure section, N.J.A.C. 2:76-2B.3(c). NJFB objected to this section and felt it should be severed from the rule for further evaluation and reconstruction while the rest of the rule is adopted. One aspect NJFB disagreed with was the use of a range. NJFB felt the language in N.J.A.C. 2:76-2B.3(c)3 did not make sense.

NJFB also disagreed with the use of a 25% cap on equine-related infrastructure, which it said does not take into account farm specific situations that may require or result in a need for a greater percentage. NJFB commented it's unclear how the rules will affect an equine facility that meets all of the listed acceptable practices but has equine-related infrastructure that is greater than 25 percent of the total usable area. NJFB also felt that the cap on protected equine-related infrastructure penalizes smaller farms, particularly those under 25 acres, which may need a larger area of infrastructure relative to their size in order to be economically viable.

NJFB also commented that the rule summary lacks background information or research to explain how the SADC established the 15% to 25% criteria, or what resource the SADC is seeking to protect. NJFB asked whether the rule was meant to protect the land base, prime soils, or other environmental criteria such as water quality or stormwater, which issues NJFB felt were more than adequately addressed by proper site plan and farm design as well as the use of a conservation plan, NRCS FOTG, and the DEP GIS mapping of wetlands.

RESPONSE: The SADC appreciates NJFB's comments but disagrees

with NJFB's suggestion that the equine-related infrastructure section, N.J.A.C. 2:76-2B.3(c), be severed or reconstructed. The SADC feels it is necessary for N.J.A.C. 2:76-2B.3 to establish a maximum amount of total usable area that may be occupied by equine related-infrastructure. The 15-25% standard should address local concerns with the magnitude of equine-related infrastructure, and it is in line with generally accepted agricultural practices in the state.

As with other AMP criteria, the 15-25% cap on equine related infrastructure set forth in N.J.A.C. 2:76-2B.3 does not mean that the rules prohibit a farm exceeding this limit from continuing to operate, but rather that it will not be eligible to receive affirmative Right to Farm protection. The same is true for a farm that fails to achieve any of the equine agricultural management practice standards outlined in N.J.A.C. 2:76-2A.10, the other eligibility criteria for equine activities specified in N.J.A.C. 2:76-2B.3, or the remaining eligibility criteria of the Right to Farm Act (reiterated at N.J.A.C. 2:76-2B.3(g)).

The SADC agrees that smaller farms, such as those under 25 acres, may have equine facilities that are similar in size to those found on larger farms. Although this means that equine-related infrastructure on such smaller farms would occupy a comparatively greater percentage of total usable area, the SADC does not feel that N.J.A.C. 2:76-2B.3 unduly penalizes smaller farms. In the extensive research the SADC conducted on equine farms throughout the state, the SADC found that equine farms of many sizes and scopes would fall within the parameters of N.J.A.C. 2:76-2B.3(c).

As part of the process undertaken by the SADC to develop this rule,

different farms were identified by the Equine Working Group in order to analyze how the 15-25% standard could potentially impact the state's equine farms. The members of the Equine Working Group – which included a veterinarian and other equine experts, and representatives from County Agriculture Development Boards, the State Board of Agriculture, Rutgers' Equine Science Center, and the SADC – also identified farms for SADC staff to analyze. Resources used included direct-scanning of the “2006 Directory of Equine Facilities,” a guide published by the New Jersey Equine Advisory Board. SADC staff also solicited and received input from CADBs regarding farms to analyze. Altogether, the SADC made and reviewed GIS maps of 57 equine farms. The farms ran the gamut from smaller pleasure horse farms to larger training facilities.

Based on its review, the SADC feels that the 15-25% range as specified in N.J.A.C. 2 76-2B. 3(c)3 is an appropriate standard. The range is necessary in order to allow CADBs flexibility to fully address local considerations, as well as the needs of farmers.

37. COMMENT: Commenters #32-49 said they have serious concerns with the proposal. They felt the proposal did not adequately address future impacts on agricultural soils and other natural resources. To address these impacts, they urged the SADC to revise the proposal's provisions regarding the amount of equine-related infrastructure that would serve as a limit for Right to Farm protection.

The commenters urged the SADC to limit the impervious coverage,

including concrete, asphalt, and all equine- and production-related infrastructure, to no more than 8 percent on equine farms. They felt this revision would help minimize flood impacts. The commenters cited a number of studies to say that impervious cover has a negative impact on soil resources, infiltration, storm water runoff and flooding, stream health, and drinking water quality.

The commenters expressed concern about soil compaction, citing Article 37, Technical Note #108 from *Watershed Protection Techniques*. 1(4): 666-669, for the proposition that there is consensus among soil scientists that compacted soil is extremely difficult to restore its original structure, particularly if the compaction extends several feet below the surface. They also cited “Soil Quality Agronomy Technical Note No. 17, Soil Quality Institute, NRCS,” as authority for their concerns regarding the limits on soil function resulting from excessive soil compaction, which restricts infiltration, resulting in excessive runoff, erosion, nutrient loss, and potential water-quality problems, and can restrict nutrient cycling, resulting in reduced yields.

The commenters also cited the “EPA Mid-Course Review Recommendations for the proposition that a 1” rainstorm produces nearly 16 times more runoff over a paved acre of parking lot than over natural grassland, and that reducing impervious surfaces is key to good environmental design. The comment further stated that “studies have shown that there is an imperviousness threshold at which no Best Management Practice (BMP) can mitigate the additional pollutant load resulting from development.” They cite an EPA recommendation that State agencies make the limitation of impervious

surfaces a priority.

The commenters also cited a portion of “Impervious Surface Coverage, the Emergence of a Key Environmental Indicator (Arnold and Gibbons, 1996)” from the Journal of the American Planning Association, which they indicate states that impervious surfaces alter natural hydrology, prevent infiltration, and concentrate storm water runoff. They also comment that as the imperviousness of a watershed increases, the increased storm water may lead to more flooding and increase pollution to drinking water, streams, and aquifers. It also said that reduced infiltration would lead to less water being available for drinking water, streams, and aquifers.

The commenters also referred to studies cited in the Journal of Planning Literature, Vol. 16, No. 4 (May 2002), which found that at 3.6% impervious cover in a watershed, there were negative impacts for biotic measurements such as fish health, and that beginning at 4% impervious cover there were negative impacts for water quality and habitat characteristics.

RESPONSE: The SADC appreciates the commenters’ comments but disagrees that the proposal does not adequately address future impacts on agricultural soils and other natural resources in conjunction with providing Right to Farm protection. The Right to Farm Act is designed to protect farmers who engage in reasonable agricultural practices from undue local regulation and nuisance suits.

The public health and safety issues raised by the environmental impacts of equine infrastructure are adequately addressed by the proposed Right to Farm

rule. N.J.A.C. 2:76-2B.3 ensures this in part by limiting equine-related infrastructure on farms seeking Right to Farm protection to less than 75-85% of a farm's total usable area,

Further, 2:76-2B.3(g) requires a commercial equine operation to be in compliance with a farm conservation plan prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG) which also will act to ensure proper farmland stewardship of the agricultural resources present on the farm. Farm conservation plans prescribe needed, practical land treatments designed to accomplish the following tasks: to conserve, protect and develop natural resources; to maintain and enhance agricultural productivity; and to control and prevent nonpoint source pollution. These plans, which are developed site-specifically to address the needs and concerns of each farm, must be prepared in accordance with the NRCS's FOTG and must be approved by the local Soil Conservation District. The NRCS FOTG is a composite of national, regional, State and local data and natural resource standards derived primarily from local universities, NRCS, conservation district offices, and cooperating conservation agencies which administer natural resource conservation programs.

The SADC feels that a properly designed and implemented site-specific farm conservation plan should address the commenters' concerns related to the potential impacts of impervious cover on stormwater runoff, stream health, water quality, and soil resources.

38. COMMENT: Commenters #32-49 recommended that racetracks be included in the definition of equine-related infrastructure, saying “the soil on racetracks is severely compacted and as such should be included as impervious surface.”

RESPONSE: The SADC disagrees with the commenters, noting that the definitions and conceptions of “equine-related infrastructure” and impervious surfaces are not equivalent and interchangeable. The SADC does not define “equine-related infrastructure” in N.J.A.C. 2:76-2B.3 so as to help create an impervious cover limitation, but rather to help address local concerns with the magnitude of equine-related infrastructure and the scope of activities that may be protected by the Right to Farm Act.

39. COMMENT: Commenters #32-49 felt the proposal should allow for stronger local standards and control, an idea also expressed in comments submitted by Barbara Sachau, George Koenig, Make Your Voice Heard, the Townships of Boonton and Mendham, and the Morris CADB.

Commenters #32-49 felt that in N.J.A.C. 2:76-2B.3, CADBs, municipalities, and non-profits participating in the Non-Profit Farmland Preservation Program should “be permitted to adopt more stringent standards for regulating equine operations, which include horse shows and rodeos, than those adopted by the State. Intensive horse farming may not be appropriate for many rural areas of the state, where municipalities are not equipped to manage associated traffic, noise, and pollution problems.”

Barbara Sachau expressed her opinion that municipal regulation should always take precedence over the right to farm, which may protect businesses rather than real farms. Ms Sachau stated she believes that farming has to be fully regulated, and that she does not accept guidelines of SADC's choosing.

George Koenig stated his belief that the SADC has too much power in land use decision making, feeling the SADC was egregious in its use of power and that the rule does not provide sufficient due process and collaboration between the SADC and local governments. According to Mr. Koenig, the proposed rule takes away the cornerstone of any town's ability to control development through a locally developed impervious coverage limit that appropriately balances the rights of residents, the environment, and the farmers. Mr. Koenig suggested that the SADC respect Morris County's freeholders and 39 municipalities by allowing each town to decide its own impervious coverage standards for farm uses. Like Ms. Sachau he felt home rule should prevail, and that it is best for individual lot development in New Jersey. Mr. Koenig felt that one statewide plan, such as the SADC's, with rigid impervious coverage protection is bad land use planning. Opining that the SADC would apparently act despite Morris County's opposition, Mr. Koenig commented that the expertise of 566 variance boards and municipalities cannot be replaced with what he characterizes as poorly written land use rules.

Mr. Koenig suggested the SADC consider a "tiered approach" that would require farms in residentially-zoned areas to have their impervious coverage capped at the limit set by the town's ordinance for residential development. A

farmer could seek a higher limit through the variance process, during which the CADB could appear in support of the farmer. Mr. Koenig felt that this approach would respect the town and neighbors of farms. The second tier suggested by Mr. Koenig would permit farms in commercially-zoned areas to have up to 25% impervious coverage, so long as this permission came through the local variance process, during which there could again be CADB input. Mr. Koenig felt this was preferable since it includes everyone in the process and is based on a collaborative effort that is fair to all parties. He also felt townships should have the ability to set animal density standards. He stated that the Morris CADB's equine policy was not perfect, as its 3.5% impervious coverage limit was greater than his township's build out lot coverage standard, but this was balanced by its one animal unit per acre standard.

To support his position for more local input and control, Mr. Koenig offered Mendham Township as an example of good open space planning. He contrasted Mendham's plan, which he described as having a 2.5% impervious coverage limitation, with the SADC proposed rule, which he described as having a 25% limitation.

RESPONSE: The SADC appreciates the commenters' concerns and notes that municipalities do have the ability to adopt ordinances to address concerns they may have. However, the Legislature has determined in the Right to Farm Act that an ordinance which unduly restricts farming may be preempted. When the New Jersey Supreme Court upheld this preemption provision, it noted that CADBs and the SADC do not have 'carte blanche' to impose their views

and must consider relevant local standards such as those related to public health and safety and all state and federal statutes and regulations.

The SADC appreciates Mr. Koenig's suggestion regarding his two-tiered approach but feels that the processes already established pursuant to the Right to Farm Act (the site-specific agricultural management practice process and conflict resolution process), in conjunction with the newly promulgated rules, adequately and more appropriately address activities on commercial equine farms. Mr. Koenig's two-tiered approach would be in conflict with the authority afforded CADBs and the SADC under the Right to Farm Act. The SADC further notes that residential and agricultural (such as equine) uses are two different uses. Accordingly, it makes sense that these uses not be held to the same standards, but to different standards appropriate to and specifically created for each one. The Right to Farm Act enables the SADC to establish the generally accepted agricultural management practices for different activities, including equine.

40. COMMENT: George Koenig commented that he envisions the SADC's proposal would create an ongoing battle between townships and equine farms, and that its implementation would cause the Morris CADB to lose townships' support. Mr. Koenig envisioned that in response to the proposal, townships would pass "pro-residential ordinances" and develop "the most restrictive 'commercial business/farm ordinances allowable by law to insure as much compliance as possible with their individual master plans.'" He also envisioned

the proposal leading to more lawsuits.

RESPONSE: The SADC notes that only a few of the state's 566 municipalities submitted comments on or expressed concerns with the proposal. Further, the New Jersey League of Municipalities also submitted comments, and the few concerns it raised did not include the likelihood of a drastic anti-farming response from townships. With this in mind, the SADC does not anticipate many townships passing ordinances that would restrict farming or create an ongoing battle between municipalities and equine farms. Moreover, if a municipality were to pass an ordinance that was overly restrictive of agriculture, the ordinance could potentially be preempted pursuant to the Right to Farm Act.

41. COMMENT: Mr. Koenig commented that he believes that the SADC is primarily staffed by farmers and does not include anyone with significant land use planning experience or degrees. Mr. Koenig commented that this is not adequate training for the important and wide-ranging land use proposals being developed by this group. Mr. Koenig stated that the SADC acts by majority vote and, since the SADC is primarily made up of farmers, the process does not reflect normal democratic processes. Mr. Koenig recommended that the SADC have a land use planner on it and have equal representation of farmers and non-farmers.

RESPONSE: The SADC appreciates Mr. Koenig's comments but disagrees with his characterization of the SADC's staff experience and member representation. The SADC does have staff with land use planning expertise.

Currently three staff members, including the Executive Director, are licensed planners. The SADC consists of 11 members. By statute, these members include the following: 5 ex-officio members (the Secretary of Agriculture, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Treasurer, and the Dean of Rutgers' School of Environmental and Biological Sciences); and 6 citizens (4 of whom are actively engaged in farming and 2 of whom represent the general public). The SADC membership is thus very diverse and provides for roughly equal farmer and non-farmer representation. The representative of the Department of Community Affairs Commissioner typically is also a licensed planner.

42. COMMENT: George Koenig commented that there is nothing to stop the SADC from deciding at any time that 25% impervious coverage is too little and from moving toward an even higher number, such as 50% impervious coverage.

RESPONSE: The SADC disagrees with Mr. Koenig's comments and his characterization of the rule's equine-related infrastructure standard as an impervious coverage limitation. Any change to the equine-related infrastructure standard would require the SADC to publish a rule proposal in the New Jersey Register and solicit public comment pursuant to the rulemaking process. Regulatory adoptions are also subject to challenge in the courts.

43. COMMENT: The League of Municipalities commented that if already preserved farms have impervious coverage limits in their deeds of easement,

such limits should govern the amount of total usable area that may be occupied by equine related infrastructure for RTF protections. The League also said the rules should provide for the possibility that limits on the amount of total usable area below the standards identified in N.J.A.C. 2:76-2B.3(c) may be established prior to the sale of a development easement and RTF protections may be extended only to those adjusted limits.

RESPONSE: The SADC is not proposing, nor does it have the authority, to change existing preserved farms' deeds. Any restrictions that exist in current deeds of easement will not be changed and must be followed by the landowner. Any landowner who violates the terms of his Deed of Easement would be subject to enforcement action by the holder of the easement (such as the SADC or a CADB), and this would be something separate and apart from any processes established under the Right to Farm Act.

Further, as alluded to above, if a Farmland Preservation deed has an equine-related infrastructure limit that is less than the limit specified for Right to Farm Protection, the property is bound by the lower Farmland Preservation limit. This idea has nothing to do with the Right to Farm Act but rather with the requirement that landowners in the farmland preservation program abide by the terms of their deeds, which set forth the limitations on property rights to which the landowner agreed, and for which he received compensation. The Right to Farm Act does not provide insulation against enforcement of a Deed of Easement conveyed pursuant to the separate farmland preservation statutes, more specifically, the Agriculture Retention and Development Act and the

Garden State Preservation Trust Act. Farmland Preservation and Right to Farm are two different programs and acts, and thus they are governed by two different sets of regulations.

N.J.A.C. 2:76-2B.3(g) Eligibility criteria for Right to Farm protections

44. COMMENT: The Pinelands Commission (Commission) requested that the SADC amend the proposal to clarify that farms must be compliance with the Pinelands Protection Act and Pinelands Comprehensive Management Plan (CMP). Though these are state laws, and farms must conform to relevant state laws to be entitled to Right to Farm protection, the Commission felt that revisions should be made to eliminate confusion as to what the permitted agricultural uses and activities are in certain management areas.

The Commission stated that equine service activities, such as boarding, training, rehabilitation, riding lessons, driving lessons, and therapeutic riding lessons, do not meet the Pinelands CMP's definition of "agricultural or horticultural use" and would thus constitute "commercial uses." "Agricultural or horticultural use" is defined at N.J.A.C. 7:50-2.11 as "any production of plants or animals useful to man, including, but not limited to:...livestock, including,... horses,...and including the breeding and grazing of any and all such animals..." Since equine service activities are "commercial uses," they would not be permitted in the Preservation Area and Special Agricultural Area. They would also not be permitted as principle uses in Forest Areas and Agricultural Production Areas.

The Commission expressed concerned that people will confuse these distinctions and potentially clear land or construct residences or agricultural labor housing in violation of CMP regulations. Land clearing is exempt from needing an application to the Commission pursuant to N.J.A.C. 7:50-4.1 if the

clearing is solely for agricultural purposes and if the development of structures is intended exclusively for agricultural uses.

Overall, the Commission recommended the SADC amend the rules to “make clear that equine service activities, and any complementary activities associated therewith, that are eligible for the protections and benefits of RTF, may not be conducted within the Preservation Area and Special Ag Areas and may only be conducted in Forest Areas or Ag Production Areas if accessory to an agricultural use that meets the definition of such term contained within the Pinelands CMP and that such uses requires an application to the Pinelands Commission.”

RESPONSE: The SADC appreciates the Pinelands Commission’s comments requesting greater detail in the rule regarding permissible activities under the Pineland CMP. The SADC believes the best approach is to more simply include a reminder about the Right to Farm Act eligibility criterion that commercial farms must be in compliance with “all relevant federal or State statutes or rules and regulations.” Such a reminder is already provided at N.J.A.C. 2:76-2B.3(g)3. An attempt to create an exhaustive list of relevant federal and state regulations – and to reference them and correctly explain their relevant sections – would not be feasible and could invite error and confusion.

N.J.A.C. 2:76-6.15 and 6.24 Equine activities on preserved farms

45. COMMENT: The Readington Township Open Space Advisory Board agreed with N.J.A.C. 2:76-6.24 as long as the its conditions were implemented as stated, particularly the 15% limitation on equine related infrastructure and the exclusion of the complementary equine activities from the preserved agricultural production lands.

46. COMMENT: The State Board of Agriculture commented that the rule strikes the appropriate balance between ensuring that preserved farmland stays available to support agriculture’s future while being able to support the equine industry today.”

47. COMMENT: The New Jersey Farm Bureau objected to the 15% standard for preserved farms in N.J.A.C. 2:76-6.24 for the same reasons it objected to the 15-25% standard in N.J.A.C. 2:76-2B.3. (See Comment #36). NJFB felt that a stricter standard is not consistent with the goals of encouraging and expanding New Jersey agriculture, stating that the different standard would keep future owners of that land from competing on an equal footing with other farmland owners. NJFB also stated that many farmers apply directly to the state as an emergency application to settle estate matters, tax liability other urgent capital needs. NJFB thus felt the different standard “creates a prejudice against equine facilities on preserved farmland.” NJFB also felt the standards create a double standard for farms based whether farms were preserved through the county or

state program.

- 48. COMMENT:** The New Jersey Farm Bureau (NJFB), in its opposition to N.J.A.C. 2:76-2B.3(c), asked whether a farm with equine-related infrastructure greater than 25 percent of its total usable area would be ineligible for farmland preservation or have its farmland preservation ranking diminished.
- 49. COMMENT:** Commenters #32-49 said they had serious concerns with the proposal. As they similarly expressed in Comment #37, they felt the proposal did not adequately address future impacts on agricultural soils and other natural resources. Accordingly, they urged the SADC to limit the impervious coverage, by concrete, asphalt, and all equine- and production-related infrastructure to no more than 5% on preserved farms. Regarding the difference between this 5% standard for preserved farms and the 8% standard they recommended for Right to Farm eligibility N.J.A.C. 2:76-2B.3(c) (see Comment #37), the commenters said a substantial investment of public resources is made in preserved farmland, making it appropriate and important to have greater natural resource protections.
- 50. COMMENT:** The Mercer CADB requested clarification on how the deed of easement will be revised after the rule's adoption, and if existing deeds will need amending.

- 50. COMMENT:** The League of Municipalities expressed concern that N.J.A.C. 2:76-6.24 might take away rights already granted to preserved equine farms. It said the rule indicates that if a horse farm has already been preserved, it is exempt unless equine activities are expanded. Many preserved farms have secured written letters of interpretation and opinions from the State's Deputy Attorney General that future expansions of their operations are allowable, and these interpretations and opinions should be protected under the proposed rule.
- 51. COMMENT:** Make Your Voice Heard, Inc. (MYVHI), an organization from Boonton Township, opposed the rules, saying they could allow the complete commercialization of a local 53-acre preserved farm (35 usable acres). MYVHI said it would create serious environmental concerns and lead to the construction of large buildings and parking lots inappropriate for the area and an increase in traffic. MYVHI said such a facility is not suitable for a suburbanized township like Boonton and felt that the local and County authorities, who are in a better position than the state to judge what is appropriate locally, should have control of these matters.
- 52. COMMENT:** George Koenig opposed the proposal because he felt it would allow for the over-development or commercialization of preserved farms, a result that would conflict with his vision of how the farmland preservation program was originally presented to the public for its support. He felt the program was presented under the premise that saving farmland from developers

would yield the savings of ‘green scapes’ and less negative environmental issues than if the land were built for McMansions or other non-agricultural uses. He said the reference point for support of the farmland preservation program has mostly been traditional agriculture of one animal unit per acre along with open pastures and fields that yield beautiful views. Mr. Koenig felt that with this proposal, the SADC had overstepped its intended purpose or how it had presented farmland preservation to the public. Mr. Koenig felt that special interests might be one reason the rules are what they are and felt that the rules would lead to the arrival of more investors who will exploit the new impervious coverage limits and maximize impervious coverage and animal unit density beyond what the public supports, citing the recent Boonton case (referenced above in Comment #51) as a possible example. Overall, Mr. Koenig envisioned the rule leading to many family farmers either selling to investors or self-developing their land to maximize profits via more impervious coverage. He felt that farmers would add more commercial buildings and uses inappropriate to residential zones, thereby reducing the ‘clean and green’ image that the farmland preservation program was presented with and what the public expects and supports.

53. COMMENT: Boonton Township’s Environmental Committee (EC), George Koenig, and commenters #32-49 felt that the proposal would lead to decline in support for the Farmland Preservation Program.

The Boonton EC felt that expanding the list of equine activities eligible for Right to Farm Protection and permitted on preserved farms would seriously erode

public support for the Farmland Preservation Program. The Boonton EC referenced how, after a controversial proposal was made to the Planning and Zoning Boards of Adjustment regarding an equine farm in Boonton Township, the public soundly defeated an increase in the tax to preserve open space despite prior consistent support. The Boonton EC said that if the rules allow various equine activities to occur on a preserved farm that neither the farm's original owner or owner's neighbors had anticipated, support would be eroded.

George Koenig felt the rule proposal would lead to the over-development and commercialization of preserved farms, something that he saw being in conflict with how the Farmland Preservation Program had been presented to the public. As a result, he envisioned the proposal leading to less support for farm programs.

Commenters #32-49 said the farmland preservation program is not likely to continue to enjoy its historically high level of public support unless the proposal were to lower the amount of equine-related infrastructure it would permit on preserved farms. The commenters questioned whether 'allowing 15% impervious cover' on preserved farms retained open space and scenic beauty, things the proposal's summary had stated that equine farms do. The commenters added that previous referenda for farmland preservation funding have been promoted as a way to promote open land in the form of both farmland and open space and that the public spends substantial amounts of tax dollars on farmland preservation in exchange for benefits such as the environmental protections afforded by open land, the preservation of scenic views, and the protection of

prime soils to meet a variety of agricultural needs in the future. The commenters further felt that the public purposes of the Farmland Preservation Program cannot be met without limiting the building coverage on preserved farms to 5%.

54. COMMENT: Of how the proposal applies or does not apply to preserved farms, George Koenig said that if the proposal excludes any farms as a way to alleviate opposition to it, then the farms excluded which have no impervious coverage limits in their deeds would sue to have the same rights of large impervious coverage that are in the proposal. Mr. Koenig felt they would have a great case and upon winning, the appeasement clause would fall away and municipalities would be left with the rule applying to all farms. He felt that at that point, it would not be possible to revise the rules to arrive at different impervious coverage standards more appropriate to local conditions. He felt that residents and municipalities will suffer as a result of the proposal, while farmers and the SADC will benefit.

RESPONSE (To comments #45 through #54): The SADC acknowledges that the public has made a substantial investment in the permanent preservation of farmland through the State's Farmland Preservation Program, and that these lands must be maintained and utilized in accordance with the provisions and the legislative intent of the Agriculture Retention and Development Act, and where applicable the Garden State Preservation Trust Act, and in a manner that keeps

such farms viable for a variety of agricultural uses to support the economy of the State and the welfare of the citizens of the State in perpetuity

Upon deliberation of this issue, the SADC believes that further research must be done to determine the nature and extent of soil disturbance in connection with construction of agriculture related infrastructure that can be permitted on all preserved farmland, not limited to equine operations, without causing a material detriment to the State's interests in the farm, the agricultural resources present on the farm or the continued viability of the farm for a variety of agricultural uses.

As such, the SADC has determined not to adopt the proposed amendments to N.J.A.C. 2:76-6.15 and the proposed new N.J.A.C. 2:76-6.24 at the present time, and will revisit this issue through the development and adoption of standards for soil disturbance in connection with construction of agricultural infrastructure on preserved farmland. Such standards are intended to address the issues of soil disturbance and infrastructure development broadly, and will therefore address all aspects of agricultural use, not those limited to equine production and equine related activities.

Other comments

- 55. COMMENT:** Earlen Haven commented that the Right to Farm Act was unenforceable, saying recalcitrant townships can simply refuse to abide by a Right to Farm Act decisions. Ms. Haven summarized her own case with Pilesgrove Township to support this idea. Although she received a site-specific agricultural management practice determination from the Salem CADB regarding the

construction of a pole barn – in essence the necessary zoning approval that would enable the issuance of a building permit – the township would not issue the building permit. Pilesgrove instead made her go before the Planning Board in what became a further drawn out process, for which she has so far put “about \$15,000 into township fees and legal fees, which is over 50% of the cost of the barn.”

RESPONSE: The SADC appreciates Ms. Haven’s comments for improving the Right to Farm Act in ways beyond the scope of this equine proposal. In general, the SADC notes that the Act is a state law and all residents, farmers, municipalities, and other local government entities must abide by its provisions.

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