MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
RESOLUTION 2014-21

RIGHT TO FARM CONFLICT RESOLUTION
FINDINGS AND RECOMMENDATIONS

WILLIAM BENKENDORF
BLOCK 22, LOT 28
TOWNSHIP OF WASHINGTON, MORRIS COUNTY, NEW JERSEY

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1(a) and the State Agriculture Development Committee's Right to Farm Rules, N.J.A.C. 2:76-2.7(a), any person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable county agriculture development board or the State Agriculture Development Committee ("SADC") in counties where no county board exists, prior to filing an action in court; and,

WHEREAS, on June 19, 2014, the Morris County Agriculture Development Board ("Morris CADB") received a complaint filed by Ms. Barbara Margolese, Washington Township Zoning Officer, against Mr. William Benkendorf (M-1); and

WHEREAS, the complaint alleges that Mr. Benkendorf brings logs to the Snowbird Farm property from other locations and then stores, chips and mulches these logs at the farm property. The complaint also states that the NJDEP has issued a Notice of Violation (NOV) to Mr. Benkendorf for the operation of a solid waste facility without obtaining a SWF Permit; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(e), if the complaint concerns activities that are not addressed by an agricultural management practice recommended by the SADC or a site specific agricultural management practice adopted by the CADB, the CADB shall contact the farm owner to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.A.C. 4:1C-3; and

WHEREAS, July 15, 2014, the Morris CADB contacted Mr. Benkendorf to provide evidence that the operation is a commercial farm (B-1); and

WHEREAS, on August 1, 2014, the Morris CADB received Mr. Benkendorf's Commercial Farm Certification and supporting documentation (F-1 and F-2); and

WHEREAS, on August 4, 2014, the Morris CADB requested additional documentation from Mr. Benkendorf (B-2); and

WHEREAS, on August 29, 2014, the Morris CADB received additional documentation from Mr. Benkendorf (F-3).

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(e)1, the CADB shall determine whether the dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(a)1, the CADB shall determine whether a commercial

farm meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9; and

WHEREAS, if the CADB determines that the agricultural operation is a commercial farm pursuant to N.J.A.C. 4:1C-3, meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, and the dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the CADB shall forward the complaint to the SADC requesting the SADC's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice; and

WHEREAS, if the CADB determines that the dispute does not involve a commercial farm that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9 and/or agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the CADB shall dismiss the complaint; and

WHEREAS, on October 1, 2014, Ms. Katherine Coyle drafted a Staff Report regarding the complaint (B-8); and

WHEREAS, on October 1, 2014, Ms. Katherine Coyle forwarded the Staff Report to Mr. Benkendorf and Ms. Margolese (B-9); and

WHEREAS, during the October 9, 2014 meeting, the Morris CADB reviewed exhibits M-1, F-1 through F-3, and B-1 through B-9, as well as a presentation by Mr. Benkendorf; and

WHEREAS, on October 10, 2014, Ms. Katherine Coyle informed Mr. Benkendorf and Ms. Margolese that the Morris CADB's decision would be memorialized at the next monthly meeting (B-10); and

INDEX OF EXHIBITS

Exhibits from Washington Township:

June 16, 2014 complaint filed by Barbara Margolese, Zoning Officer M-1

Exhibits from William Benkendorf:

August 1, 2014 Commercial Farm Certification Form.....F-1

June 23, 2014 letters from Doug Travella, SAF, Consulting Forester, ...F-2
including 2015 Application for Farmland Assessment (with Woodland Data Form and invoice and check for sale of firewood)

August 29, 2014 additional documentation including:.....F-3

- Certificates of Incorporation
- 2012 U.S. Income Tax Returns
- "Item QuickReport" spreadsheets (due to size, only years 2011 through 2014 are attached)
- Description of log storage and processing activities

- Snowbird Acres Real Estate Lease
- November 5, 2013 letter from Bernd E. Hefele, Esq. to William Benkendorf including August 29, 2013 Administrative Consent Order
- Surveys of Block 800, Lot 37 in Mount Olive and Block 808, Lot 9 in Mine Hill, and tax map of Block 1502, Lot 1 and Block 1102, Lot 1 (not attached due to size)

Exhibits from the Morris CADB:

July 15, 2014 Morris CADB request for Commercial Farm Certification B-1

August 4, 2014 Morris CADB request for additional documentation.....B-2

Morris County Tax Board – Property Information for Tax Year 2014.....B-3

October 29, 2010, NJDEP Administrative Order B-4

November 4, 2010, NJDEP Administrative Order and Notice of Civil Administrative B-5
Penalty Assessment

August 29, 2013, NJDEP Administrative Consent Order B-6

August 5, 2014, NJDEP "Demand for Compliance" letter.....B-7

October 1, 2014 Staff Report drafted by Katherine Coyle (without exhibits).....B-8

October 1, 2014, K. Coyle letter to Mr. Benkendorf and Ms. Margolese B-9

October 10, 2014, K. Coyle letter to Mr. Benkendorf and Ms. Margolese B-10

NOW THEREFORE BE IT RESOLVED, after having considered exhibits M-1, F-1 through F-3, and B-1 through B-9, as well as a presentation by Mr. Benkendorf, the Morris CADB makes the following determinations:

Commercial Farm Eligibility:

1. Pursuant to N.J.S.A. 4:1C-3, "commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

   The SADC's February 23, 2012 final decision in the case of Tibor Sipos and Cecily Gentles vs. the Hunterdon CADB (Sipos) provided a clarification regarding the Right to Farm Act's eligibility requirements for farm management units consisting of 5 acres or more. Pursuant to the SADC's decision, a farm management unit equal to or greater than 5 acres must meet the

following requirements in order to qualify for the protections of the Right to Farm Act as a commercial farm:

- must produce at least $2,500 of agricultural/horticultural product per year;
- each individual parcel within the 5 or more acre farm management unit must comply with all Farmland Assessment Act requirements (land is not less than 5 acres, is actively devoted to ag/hort use, and has been so devoted for at least 2 successive years immediately preceding the tax year in question).

Because Mr. Benkendorf's operation consists of more than 5 acres, it must produce at least $2,500 of agricultural/horticultural product per year and each individual parcel within the FMU must satisfy the eligibility criteria of the Farmland Assessment Act.

2. Pursuant to N.J.S.A. 4:1C-3, " farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

3. According to the Commercial Farm Certification Form and additional documents submitted (F-1, F-2, and F-3), Mr. Benkendorf farms the following parcels:

Block/Lot	Municipality	Ownership	Product/operation	Acres
B102, L48 (former B58, L53.2)	Roxbury	William & Gudrun Benkendorf Garden Center	Forestry, fish	10.15
B800, L37	Mt. Olive	Sea Alice LLC % M. Benkendorf	Forestry, fish, shrubs	9.59
B808, L9	Mine Hill	William & Gudrun Benkendorf	Trees, shrubs, bedding plants, special soils, firewood	5.12
B906, L5	Mine Hill	B&G Land Management LLC % Benkendorf (Benkendorf Garden Center)	Trees, shrubs, bedding plants, special soils, firewood	5.84
B22, L28	Washington	Martin & Vikki Siegel (Snowbird Farm)	Firewood, hay, equine, special soils, fish	62.04
B1502, L1 & B1102, L1	Mine Hill	Tarzan, Inc.	Special soils, trees, shrubs, firewood	81.17

4. Mr. Benkendorf submitted a 2015 Farmland Assessment Form for Block 102, Lot 48 (former Block 58, Lot 53.02) in Roxbury Township (F-2).

Mr. Benkendorf did not submit Farmland Assessment forms for any of the other parcels listed on his Commercial Farm Certification Form.

Data obtained from the Morris County Tax Board (B-3) shows that the following parcels are not Farmland Assessed:

Block/Lot	Municipality	Farmland

		Assessed?
B800, L37	Mt. Olive	No
B808, L9	Mine Hill	No
B906, L5	Mine Hill	No

Mr. Benkendorf provided no documentation to prove that these parcels are actively devoted to agricultural/horticultural use, and have been so devoted for at least 2 successive years immediately preceding the tax year in question.

Accordingly, the Morris CADB cannot consider these parcels as part of Mr. Benkendorf's farm management unit for the purposes of the Right to Farm Act and income generated from these parcels cannot be used to establish "commercial farm" eligibility.

5. Mr. Benkendorf provided no documentation to prove that Block 1502, Lot 1 and Block 1102, Lot 1 in Mine Hill are part of his farm management unit.

   On September 10, 2014, Mr. John Paschal (Tarzan, Inc.), owner of Block 1502, Lot 1 and Block 1102, Lot 1 in Mine Hill, informed Morris CADB staff that Mr. Benkendorf does not farm any portion of his property. Mr. Paschal indicated that in the past, Mr. Benkendorf stored equipment and vehicles on his property.

   Accordingly, the Morris CADB cannot consider these parcels as part of Mr. Benkendorf's farm management unit for the purposes of the Right to Farm Act.

6. Mr. Benkendorf provided a copy of his Real Estate Lease with Ms. Vickie Siegel, the owner of Snowbird Farm, Block 22, Lot 28, in Washington Township (F-3).

7. According to the Snowbird Farm Real Estate Lease, Ms. Vickie Siegel leases a portion of the property to Mr. Benkendorf for:

   - Composting of manure.
   - Soil recycling.
   - Mulching operations and similarly related uses.

   In exchange, Mr. Benkendorf agreed to provide the following services to Ms. Siegel:

   - Weekly maintenance of grass around main house and farm house.
   - Bi-weekly field maintenance.
   - Plow all access roadways and roadway to main house.
   - Composting of all manure created on the property by the Landlord's operation.

8. Mr. Benkendorf submitted Certificates of Incorporation for the following (F-3):

   a. Benkendorf Garden Center, Inc.
   b. Andy Matt, Inc.
   c. Benks Land Services, Inc.
   d. Beautiful Garden Services, Inc.

9. Mr. Benkendorf submitted a copy of his 2012 U.S. Income Tax Returns (F-3).

- According to Schedule E - Supplemental Income and Loss, Part II - Income or Loss from Partnerships and S Corporations, Mr. Benkendorf owns/operates Benkendorf Equipment Holding, Benkendorf Grounds Pro, Inc., Benkendorf Motor Corp, and Andy-Matt, Inc.
- According to the documents submitted, Mr. Benkendorf did not file Schedule F, Profit or Loss from Farming, for 2012.
- Mr. Benkendorf's 2012 U.S. Income Tax Returns show no income from farming.

10. Mr. Benkendorf submitted "Item QuickReport" spreadsheets for the following businesses (F-3):

- Benkendorf Garden Center, Inc. (for January 2001 through December 2004)
- Benks Land Service, Inc. (for January 2002 through December 2010)
- Beautiful Garden Services, Inc. (for January 2011 through December 2013)
- Andy Matt, Inc. (for January 2014 through August 29, 2014)

Based on records for September 2011 through August 2014:

- "Item QuickReport" spreadsheets for Beautiful Garden Services, Inc. show sales of topsoil, mulch, hay and plants; and

- "Item QuickReport" spreadsheets for Andy Matt, Inc. show sales of plant material, firewood, hay, mulch, and topsoil.

11. Mr. Benkendorf provided sufficient evidence that he produced $1,687 worth of firewood on Block 102, Lot 48 in 2013 - invoice and check for sale of firewood (F-2). Mr. Benkendorf did not provide proofs of income for this parcel for 2014.

12. Mr. Benkendorf did not provide sufficient evidence that he produced any agricultural or horticultural products on Block 22, Lot 28 in 2013 or 2014.

13. Mr. Benkendorf's 2012 U.S. Income Tax Returns show no income from farming. 2013 U.S. Income Tax Returns were not provided.

14. Firewood, hay, mulch and plants are considered agricultural products and income generated by the sale of these products can be considered towards the RTF Act's income requirement, if eligible. However, Mr. Benkendorf did not provide sufficient evidence that the firewood, hay, mulch and plants listed on the "Item QuickReport" spreadsheets for Beautiful Garden Services, Inc. and Andy Matt, Inc. were produced on parcels that are part of his farm management unit and that are part of a "commercial farm" as defined in the RTF Act.

15. Based on the foregoing determinations, the Morris CADB finds that Mr. Benkendorf did not provide sufficient evidence that his operation is a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-3.

<u>Agricultural Activity:</u>

1. Pursuant to N.J.S.A. 4:1C-9, the owner or operator of a commercial farm may:

   (a) "Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System."

   (b) "Process and package the agricultural output of the commercial farm."

2. The Washington Township complaint alleges that Mr. Benkendorf transports logs to the Snowbird Farm property from other locations and then stores, chips and mulches these logs at the farm property (M-1).

3. The production and processing of trees and forest products are on the list of permitted activities set forth in N.J.S.A. 4:1C-9.

4. Mr. Benkendorf provided sufficient evidence that he produced firewood on Block 102, Lot 48 in 2013. No documents were provided for 2014.

5. The Morris CADB requested that Mr. Benkendorf provide detailed information about the log storage and processing activities on the Snowbird Farm, Block 22, Lot 28, including, but not limited to, where the logs are obtained, how the logs are stored and processed, and how the final material is disposed of (B-1 and B-2).

   In his August 29, 2014 submittal (F-3), Mr. Benkendorf indicated the following:

   "We gather timber and logs from our various locations and take to one central location then process as time allows. See Snowbird lease."

6. Mr. Benkendorf did not provide sufficient evidence to show that the logs that are stored and processed on Block 22, Lot 28 were produced on parcels that are part of his farm management unit and that are part of a "commercial farm" as defined in the RTF Act.

7. Based on the foregoing determinations, the Morris CADB finds that Mr. Benkendorf did not provide sufficient evidence that the dispute involves activities that are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

<u>Right to Farm Act Eligibility:</u>

1. In determining whether a commercial farm meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, the CADB and/or the SADC must determine that the farm:

   - is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal

master plan, or that the commercial farm was in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.);

- conforms to agricultural management practices adopted by the SADC or has been determined by the CADB to constitute a generally accepted agricultural operation or practice;

- conforms to all relevant federal or State statutes or rules and regulations; and

- does not pose a direct threat to public health and safety.

2. On December 18, 2006 and April 2, 2008, the NJDEP Bureau of Coastal and Land Use Compliance and Enforcement (CLUE) issued a Notice of Violation (NOV) for operating a topsoil facility, an unauthorized regulated activity, pursuant to the Highlands Water Protection and Planning Act (HWPPA).

3. On August 17, 2009, CLUE issued a NOV for unauthorized regulated activities pursuant to the Freshwater Wetlands Protection Act (FWPA) and the HWPPA.

4. On October 26, 2009, NJDEP Bureau of Watershed Regulation (BWR) issued a Highlands Applicability Determination (HAD), which stated that the unauthorized activities were not exempt from the HWWPPA.

5. On July 27, 2009, NJDEP Bureau of Solid Waste Compliance and Enforcement (SWCE) issued an Administrative Order and Notice of Civil Administrative Penalty Assessment to Mr. Benkendorf for the operation of a solid waste facility at the site without NJDEP approval.

6. On October 26, 2010, SWCE issued an NOV to Mr. Benkendorf for continuing to operate a solid waste facility without NJDEP approval.

7. On October 29, 2010, the NJDEP issued an Administrative Order, which required that all regulated activities on the site shall immediately cease and that all disturbed areas shall be stabilized. In addition, the Order required that a restoration plan be submitted to CLUE within 30 days (B-4).

8. On November 4, 2010, the CLUE issued an Administrative Order and Notice of Civil Administrative Penalty Assessment to Mr. Benkendorf for the unauthorized regulated activities (B-5).

9. On December 21, 2010, SWCE issued another NOV.

10. On April 16, 2012, SWCE issued another NOV.

11. On August 29, 2013, the NJDEP issued an Administrative Consent Order (ACO), which required an immediate removal of all materials and any portion of the topsoil operation. In addition, the Order required that a restoration plan be submitted to CLUE within 30 days (B-6). The ACO was made final on October 19, 2013.

12. The Washington Township complaint states that the New Jersey Department of Environmental Protection (NJDEP) issued a NOV to Mr. Benkendorf for the operation of a solid waste facility on the Snowbird Farm without obtaining a SWF Permit (M-1).

    The NOV states that "the operator is receiving, processing and storing Class B material" and that during an October 22, 2013 inspection, the following were observed:

    - One large pile of logs (380' L x132' W x 7' high) with an approximate volume of 13000 c.y.
    - One pile of wood chips (60' L x 54' W x 12' high) with an approximate volume of 1440 c.y.
    - One pile of compost (37' L x 18' W x 6' high) with an approximate volume of 148 c.y.

13. On August 5, 2014, the NJDEP issued a "Demand for Compliance" letter to Bernd Hefele, Esq., Mr. Benkendorf's attorney (B-7). The letter states that the site plan submitted by Mr. Benkendorf in response to the October 19, 2013 ACO was deemed deficient by CLUE and that "revisions were required by July 7, 2014 in order to satisfy the conditions set forth by the ACO". As of August 5, 2014, CLUE had not received the required revisions and "as a result, Benks Land Services has failed to comply with the ACO and in accordance therewith the Bureau may assess stipulated penalties".

14. Based on the foregoing determinations, the Morris CADB finds that Mr. Benkendorf's operation on Block 22, Lot 28, the Snowbird Farm property, is in violation of state statutes, rules and regulations.

BE IT FURTHER RESOLVED, that the Morris CADB lacks jurisdiction over Mr. Benkendorf's activities occurring on the Snowbird Farm property and dismisses the complaint. Mr. Benkendorf's activities occurring on the Snowbird Farm property are outside the purview of the Morris CADB and remain under the jurisdiction of applicable municipal, state or federal agencies.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.7(g), certified copies of this resolution will be forwarded to the following individuals and agencies:

Barbara Margolese, Washington Township Zoning Officer
Andrew Coppola, Washington Township Administrator
William Benkendorf
State Agriculture Development Committee
Morris County Board of Chosen Freeholders

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.7(k), any person aggrieved by the Morris CADB's decision may appeal the decision to the SADC within 10 days from the receipt of the CADB's decision. The SADC shall schedule a hearing and make a determination within 90 days of the receipt of the petition for review.

1. The decision of the SADC shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

2. Any decision of the Morris CADB that is not appealed shall be binding.

Gregory Keller, Chairman
Morris CADB

Nov. 13, 2014
Date

	Yes	No	Abstain	Absent
Ms. Ashley Myers	✓			
Mr. Davis	✓			
Ms. Davis	✓			
Mr. Desiderio	✓			
Mr. Keller	✓			
Mr. Ort	✓			
Mr. Wightman				✓

I hereby certify the above to be a true copy of a resolution adopted by the Morris County Agriculture Development Board at a meeting held on November 13, 2014.

Attorney at Law State of New Jersey