RESOLUTION OF DETERMINATION BY THE
SOMERSET COUNTY
AGRICULTURE DEVELOPMENT BOARD
IN THE MATTER OF THE
ROLLING ACRES FLOWER FARM RIGHT-TO-FARM CASE
BLOCK 79 – LOT 8
TOWNSHIP OF BRANCHBURG

WHEREAS, Bob Eurick as owner of Rolling Acres Flower Farm (hereinafter "Mr. Eurick") is the current record owner of Block 79, Lot 8 located in the Township of Branchburg, County of Somerset (hereinafter the "Premises"); and

WHEREAS, pursuant to the Right to Farm Act N.J.S.A. 4:1C-1, et seq. and regulations promulgated by the State Agriculture Development Committee (hereinafter "SADC"), a commercial farm owner or operator may make a request to the Somerset County Agriculture Development Board (hereinafter "SCADB") seeking a determination for the creation and recognition of a Site Specific Agriculture Management Practice (hereinafter "SSAMP"); and

WHEREAS, on August 19, 2008, Mr. Eurick on behalf of Rolling Acres Flower Farm (hereinafter "RAFF") filed a written request with the SCADB for the creation and recognition of a SSAMP associated with his then existing poultry operations conducted on the Premises; and

WHEREAS, SCADB staff thereafter reviewed the RAFF SSAMP Application to evaluate eligibility for Right to Farm Act protection, as defined at N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1, and made the initial determination that the SCADB should exercise its "primary jurisdiction" to evaluate RAFF's eligibility for Right to Farm Act protections as concerned Mr. Eurick's then existing poultry operations conducted on the Premises; and

WHEREAS, on September 8, 2008, the SCADB held an appropriately noticed and advertised public hearing concerning the RAFF SSAMP Application; and

WHEREAS, at the public hearing on September 8, 2008, the SCADB found that the development and use of the Premises as described in the RAFF SSAMP Application was in conformance with the Right to Farm Act definition of "commercial farm" (See N.J.S.A. 4:1C-3); and

WHEREAS, after evaluating the evidence submitted at the public hearing on September 8, 2008, the SCADB found that Mr. Eurick's then existing poultry operations conducted on the Premises as described in the RAFF SSAMP Application constituted a "generally accepted agricultural operation and practice" which operation and practice did not pose a direct threat to public health and safety (See N.J.S.A. 4:1C-9); and

WHEREAS, at the public hearing on September 8, 2008, the SCADB approved the RAFF request for a SSAMP related to Mr. Eurick's then existing poultry operations conducted on the Premises; and

WHEREAS, the SCADB decision granting the RAFF SSAMP was memorialized by way of SCADB letter to Mr. Eurick dated September

15, 2008 **(marked into evidence at the May 12, 2014 SCADB hearing as Rolling Acres Flower Farm-2 and attached hereto at Exhibit A)**; and

WHEREAS, in October 2009, two property owners abutting the Premises, Mr. Frank Magrosky and Mr. John Mazellan, filed complaints with the SCADB complaining of noise related to Mr. Eurick's poultry operations conducted on the Premises; and

WHEREAS, SCADB staff reviewed documentation submitted by Complainants Magrosky and Mazellan, and a SCADB member conducted a site inspection to observe conditions related to Mr. Eurick's then existing poultry operations conducted on the Premises; and

WHEREAS, at its November 9, 2009 meeting, the SCADB heard evidence and made its determination that Mr. Eurick's then existing poultry operations conducted on the Premises were entitled to the protections afforded under the Right to Farm Act; and

WHEREAS, the SCADB decision issued at its November 9, 2009 meeting was memorialized by way of SCADB letter to Mr. Eurick dated November 13, 2009 **(marked into evidence at the May 12, 2014 SCADB hearing as Rolling Acres Flower Farm-3 and attached hereto at Exhibit B)**; and

WHEREAS, in or about November 2009, Complainant Magrosky appealed the SCADB decision granting the protections afforded under the Right to Farm Act to Mr. Eurick's poultry operations conducted on the Premises; and

WHEREAS, Complainant Magrosky's appeal and the factual background associated therewith was memorialized by way of SCADB letter to Mr. David Kimmel of the SADC dated November 30, 2009 **(marked into evidence at the May 12, 2014 SCADB hearing as Rolling Acres Flower Farm-4 and attached hereto at Exhibit C)**; and

WHEREAS, Complainant Magrosky's appeal formed the subject of an Initial Decision rendered by Administrative Law Judge Solomon A. Metzger, A.L.J. dated October 19, 2010 **(marked into evidence at the May 12, 2014 SCADB hearing as Rolling Acres Flower Farm-5 and attached hereto at Exhibit D)**; and

WHEREAS, by way of his Initial Decision, Judge Metzger specifically held that "[t]hrough the Right to Farm Act, the Legislature has sought to protect farming in an increasingly suburban environment. N.J.S.A. 4:1C-10 creates an irebuttable presumption that farming conducted according to generally accepted practice is exempt from nuisance ordinances. The SCADB has determined that Mr. Eurick is operating according to accepted practice and there is nothing in the record to the contrary. I am therefore bound by the legislative policy balance and thus the morning call of roosters is simply part of living in proximity to a farm." **(See Exhibit D, pg. 2)**; and

WHEREAS, Complainant Magrosky's appeal formed the subject of a Final Decision rendered by the SADC on December 9, 2010 **(marked into evidence at the May 12, 2014 SCADB hearing as Rolling Acres Flower Farm-6 and attached hereto at Exhibit E)**; and

WHEREAS, by way of its Final Decision, the SADC specifically held that "[t]he raising and keeping of poultry, and the production of eggs for hatching and human consumption, are specifically recognized

as protected agricultural activities in N.J.S.A. 4:1C-9a. We are satisfied that the evidential record supports the finding that Eurick's poultry operation at Rolling Acres is an acceptable agricultural management practice specific to his Branchburg Township property." **(See Exhibit E, pg. 4)**; and

WHEREAS, by way of its Final Decision, the SADC further specifically held that "[t]he Agency further finds that Eurick's efforts to minimize or eliminate the potential for nuisance arising from noise associated with his poultry business were reasonable under the circumstances." **(See Exhibit E, pg. 4)**; and

WHEREAS, by way of letter dated March 2, 2011, Complainant Magrosky filed yet another noise-related complaint with the SCADB pertaining to Mr. Eurick's poultry operations conducted on the Premises; and

WHEREAS, on March 14, 2011, the SCADB staff also received two additional letters from neighboring property owners, Mr. John Mazellan and Mr. Walter Sliwa, reflecting complaints similar in nature to Complainant Magrosky's March 2, 2011 complaint; and

WHEREAS, at its March 14, 2011 meeting, the SCADB reviewed the recently received written complaints from Complainants Magrosky, Mazellan and Sliwa and made the determination that "[n]o new information has been presented to show that the source and nature of the complaints is significantly different from what has already been determined as protected by the Right to Farm Act by the Somerset CADB, the Office of the Administrative Law Judge and the SADC in December 2009."; and

WHEREAS, the SCADB decision rendered at its March 14, 2011 meeting was memorialized by way of SCADB letter to Frank Magrosky dated April 14, 2011 wherein the SCADB advised that "if Mr. Eurick has since significantly changed his operation in accordance with the Site Specific Agricultural Management Practice (SSAMP) accepted by the SADC in December 2009, you then have the right to file another Right to Farm complaint with the Somerset CADB". **(marked into evidence at the May 12, 2014 SCADB hearing as Rolling Acres Flower Farm-7 and attached hereto at Exhibit F)**; and

WHEREAS, in December 2011, the SCADB received additional complaints from Mr. Magrosky and Mr. Mazellan, now stating that the amount of birds on the property had doubled, and that the noise was significantly increased; and

WHEREAS, although the neighbors were advised to submit complete Right-to-Farm complaints demonstrating how the operation had "significantly changed", no such formal complaints were received; and

WHEREAS, the SCADB received a letter dated April 14, 2014 from Thomas Leach, Zoning Officer for Branchburg Township, stating that his Office had received two complaints regarding the noise, specifically "the incessant and continuous chirping and screeching of poultry", from the Rolling Acres Flower Farm. **(marked into evidence at the May 12, 2014 SCADB hearing as Rolling Acres Flower Farm-1 and attached hereto at Exhibit G)**; and

WHEREAS, these newly filed complaints, submitted by Mr. Magrosky and Mr. Mazellan, alleged that Mr. Eurick's poultry operation now consisted of 300 guinea hens and 525 chickens at the time of submittal. **(See Exhibit G, pg. 1)**; and

WHEREAS, on April 24, 2014, these newly filed complaints were scheduled to be heard as part of the May 12, 2014 SCADB meeting on notice to David Kimmel, Right-to-Farm Specialist at the SADC, Susan Payne, Executive Director of the SADC, Scott Rodgers, Counsel for the SCADB, Bob Eurick, owner and operator of Rolling Acres Flower Farm, John Mazellan, neighbor and complainant, Frank Magrosky, neighbor and complainant, Thomas Leach, Zoning Officer for the Township of Branchburg, and Gregory Bonin, Administrator for the Township of Branchburg ; and

WHEREAS, on May 12, 2014, the SCADB heard testimony from Complainants Mazellan and Magrosky regarding their newly filed noise complaints and from Mr. Eurick in response thereto; and

WHEREAS, on June 5, 2014, SCADB members, Thomas Leach, Tara Kenyon, Principal Planner for the Somerset County Planning Division and Staff for SCADB, and Scott Rodgers, Counsel for the SCADB performed a site inspection of Mr. Eurick's poultry operations conducted on the Premises; and

WHEREAS, as part of that site inspection, all present also performed site inspections at the Magrosky property and the Mazellan property, for the purpose of listening to noise emanating from Mr. Eurick's poultry operations conducted on the Premises; and

WHEREAS, the subject newly filed noise complaints were placed on the agenda for the June 9, 2014 SCADB meeting; and

WHEREAS, at the June 9, 2014 SCADB meeting, after Complainants Magrosky and Mazellan, Mr. Eurick, and Branchburg Municipal Land Use Officer, Thomas Leach provided additional testimony and/or statements, the SCADB held an open discussion concerning all issues raised in connection with the subject newly filed noise complaints;

NOW, THEREFORE, BE IT RESOLVED, that based upon the documents submitted by all parties, testimony received at the May 12, 2014 hearing, observations made during the June 5, 2014 site inspection, and testimony and statements received during the June 9, 2014 hearing, the SCADB hereby makes the following findings of fact and legal determinations:

(1) The RAFF still qualifies as a "commercial farm" entitled to protections afforded under the Right to Farm Act;

(2) Mr. Eurick's now existing poultry operations conducted on the Premises involve approximately 16 coops arranged centrally on the Premises in such a way as to minimize the noise (to the extent possible) affecting his neighbors;

(3) Mr. Eurick's poultry operations involve approximately 12 roosters and 150 other birds being present at any given time on the Premises;

(4) Mr. Eurick's now existing poultry operations conducted on the Premises are still considered a permitted use under Branchburg Municipal Zoning Ordinances as said poultry operations have not evolved into an "intensive poultry farming" operation;

(5) Based upon the foregoing, Mr. Eurick has not "significantly changed" his poultry operations conducted on the Premises in such a way that would warrant voiding the SSAMP already accepted by the SCADB and affirmed by the SADC in 2009.

BE IT FURTHER RESOLVED, that any parties aggrieved by this action by the SCADB can appeal this decision to the SADC within ten (10) days of the publication of this memorializing resolution.

BE IT FURTHER RESOLVED, that the SCADB shall forward a copy of this resolution to Bob Eurick, owner and operator of Rolling Acres Flower Farm, Frank Magrosky, neighbor and complainant, John Mazellan, neighbor and complainant, Thomas Leach, Zoning Officer for the Township of Branchburg, the SADC, and any other individuals or organizations deemed appropriate by the Board within 30 days of this recommendation.

I hereby certify that the above is a true copy of the resolution adopted by Somerset County Agriculture Development Board at their meeting of July 14, 2014.

Mark W. Kirby

Mark W. Kirby, Chairman
Somerset County Agriculture Development Board