

**RESOLUTION OF THE  
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD  
REGARDING A SITE-SPECIFIC AGRICULTURAL MANAGEMENT  
PRACTICE DETERMINATION FOR  
BLOCK 12, LOT 25 IN THE TOWNSHIP OF COLTS NECK**

Mr. Potter offered the following resolution and moved its adoption:

WHEREAS, Justus H. Cooley and Rosemarie Cooley, are the current owners of Block 12, Lot 25 in the Township of Colts Neck; and

WHEREAS, on December 23, 2021, the Applicant applied for a Site-Specific Agricultural Management Practice ("SSAMP") recommendation for Block 12 Lot 25 in the Township of Colts Neck that included requests for relief from certain municipal ordinances, such as location of animal shelters (for pigs and turkeys); and; and

WHEREAS, in Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002), standards had been set allowing the protection given under the Right to Farm Act to trump municipal land use law when appropriate. As per the Court, when exercising primary jurisdiction, the County Agriculture Development Board ("CADB") must first determine whether the Applicant's activities fall within the purview of agricultural management practices. Once established and, upon assuming jurisdiction, the CADB, where appropriate, must consider not only the impact of such practices on the municipality, but the standards established by local ordinances, all within the scope of the CADB's statutory obligation to consider public health and safety. If the CADB determines that the proposed activity falls within the scope of agricultural management practices, it may override the local ordinance; and

WHEREAS, N.J.S.A. 4:1C-1 et seq. is known as the Right to Farm Act; and

WHEREAS, N.J.A.C. 2:76-2.1 et seq. details the State Agriculture Development Committee's ("Committee") rules; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b) the Board advised the Committee and the Township of Colts Neck of the application and request; and

WHEREAS, the MCADB conducted a site visit to view the subject property and the proposed operation prior to scheduling a public hearing on the matter. The site visit was held on March 31, 2022 and attended by a minority of Board members, MCADB staff, and the Applicant; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (c), (d), upon receipt of a request for an

SSAMP, the Board must determine whether the Applicant's agricultural operation is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, on May 3, 2022, after deliberation at the public hearing, the MCADB found that the Applicant's operation is a "commercial farm" as defined by the Right to Farm Act, set forth in N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, and memorialized its findings in Resolution No. 2022-5-1; and

WHEREAS, the Applicant now requests approval for an SSAMP determination from the Board for certain structures located on the farm; and

WHEREAS, notice of the request and public hearing for the SSAMP was provided pursuant to N.J.A.C. 2:76-2.3(b) and 2:76-2.8(c); and

WHEREAS, the following documents comprise a list of exhibits and materials submitted for the Board's consideration for the May 3, 2022 hearing and the August 2, 2022:

Applicant's Exhibits:

- A-1 Request for Right to Farm Site Specific Agriculture Management Practice Recommendation Initial Submission of December 23, 2021
- A-2 Additional Documents Submitted January 13, 2022
- A-3 Email to Harriet Honigfeld January 24, 2022
- A3a-f Photographs
- A-4 Turkey Egg Receipts
- A-5 Duck Egg Receipts
- A-6 Pig Pre-slaughter Receipts
- A-7 Cattle Pre-slaughter Receipts
- A-8 AWMP Declaration Page Dated April 4, 2022
- A-9 Woodland Management Plan for March 16, 2022 - March 15, 2032
- A-10 Cooley Property Stream and Wetland Buffer Map
- A-11 Cooley Property Stand Map

A-12 Redacted Version of Letter from Jay and Rosie Cooley Dated July 15, 2022

A-13 Monmouth Plumbing and Heating Estimate for 80' Water Line

A-14 Proof of Expenditures to Date

A-15 P.E.C.C. Electrical Contracting Estimate

A-16 May 2, 2022 Letter from Kelly Steimle to Justus and Rosemarie Cooley Exhibits from the Monmouth CADB:

B-1 January 5, 2022 Request for Additional Exhibits

B-2 January 14, 2022 Email from Harriet Honigfeld Requesting Additional Exhibits

B-3 Tally of 2021 Production Receipts

B-4 Aerial Map for Block 12 Lot 25

B-5 Context Map for Block 12 Lot 25

B-6 Category I Stream Buffers Map

B-7 Staff's March 31, 2022 Site Visit Notes and Photos

Exhibits from the Public:

O-1 Morgan Engineering and Surveying Survey of Bl. 12 L. 9 Dated 10/1/21; and

WHEREAS, the MCADB heard testimony, reviewed submissions and exhibits, and considered the Applicant's request during the Board's public meetings on May 3, 2022 and August 2, 2022; and

WHEREAS, the Applicant was represented by Nancy Holm, Esq. of Surenian, Edwards & Nolan, LLC; and

WHEREAS, Justus H. Cooley and Rosemarie Cooley, the owners of the Property, served as witnesses for the Application. They described the site, locations of the animal shelters and placement of feeding structures within the side yard setback. Testimony was also given regarding restrictions of the property for building any structures particularly in the Category 1 Stream and buffer area that comprised a majority of the subject property. At the August 2, 2022 hearing, Rosemarie Cooley further testified regarding the feasibility of relocating the farm structures. She indicated the costs would prevent the



applicant from relocating the structures. Further, she testified that she spoke to local officials regarding the feasibility of moving the structures to a different part of the property but had been advised there were no other viable locations for the shelters and feeding structures.

WHEREAS, Mr. Ray Malak, neighbor to the applicant, appeared pro se at the May 3, 2022 meeting and alleged the structures were too close to his property line and were built after he purchased his property – stating the farm structures were not in existence for a long period of time. Mr. Malak further testified that the farm animals, specifically the pigs, were causing his son health concerns while his son lived at his father's property, and the close proximity of the farm structures were exacerbating his son's health issues. At the August 2, 2022 hearing, Mr. Malak retained Mark Cohen, Esq. to represent his interests. Mr. Malak testified further regarding his son's health concerns and presented evidence alleging the structures sought for protection were not in existence prior to Mr. Malak purchasing his property that again is adjacent to the subject property; and

WHEREAS, the Board carefully considered the testimony of the Applicant and witnesses in making its determination; and

WHEREAS, the Board had made requests for additional material to be submitted by the Applicant regarding feasibility of the farm structures to be relocated on a different part of the property to mitigate the side yard setback issue; and

WHEREAS, the Board also suggested Applicant seek a determination on whether DEP Permit-by-Rule sections 54, 55, and 57 would be applicable and could assist in identifying other parts of the property that the farm structures could be placed within the Category 1 Stream and buffer area; and

WHEREAS, after considering the testimony given and the exhibits presented at the hearing, the Board makes the following findings of fact:

1. Block 12, Lot 25 comprises of 16 acres and is situated at [REDACTED];
2. The property is located within the AG District of Colts Neck that permits agriculture;
3. The Applicant is engaged in the agricultural production and wholesale of livestock, firewood and chicken eggs;
4. The SSAMP request seeks relief from municipal ordinances as follows:
  - a. Side yard setback of existing animal shelters for pigs currently at a distance of 9', where 100' is permitted/required per Ordinance 102-48-e;

- b. Side yard setback of existing animal shelters for turkeys currently at a distance of 7.5', where 100' is permitted/required per Ordinance 102-48-e;

NOW, THEREFORE, BE IT RESOLVED, based on exhibits presented, testimony given and the aforesaid findings of fact, that the Monmouth County Agriculture Development Board makes the following determinations:

1. The side yard setback for the animal shelters for the pigs at a distance of approximately 9' is found to be acceptable – said structures cannot further encroach on the side yard more than what currently exists at the passing of this resolution. The deviation from the ordinance was approved based on the area of the shelters being the only feasible location on the property outside of the Category 1 Stream and buffer area;
2. The side yard setback for the animal shelters for the turkeys at a distance of approximately 7.5' is found to be acceptable – said structures cannot further encroach on the side yard more than what currently exists at the passing of this resolution. The deviation from the ordinance was approved based on the area of the shelters being the only feasible location on the property outside of the Category 1 Stream and buffer area;

BE IT FURTHER RESOLVED that the activities on the farm must conform to all relevant Federal and State statutes, rules and regulations, including, but not limited to the New Jersey Department of Agriculture, the New Jersey Department of Environmental Protection, Freehold Soil Conservation District, and any other entity with jurisdiction over the farm; and

BE IT FURTHER RESOLVED the approval is contingent on the proper certification for manure management being submitted to Board Staff; and

BE IT FURTHER RESOLVED that if over time the subject Farm substantially changes its operations to deviate from the provisions agreed upon in these resolutions, the Applicant, municipality or any other aggrieved party would be entitled to return to the Board to request relief; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Applicant through counsel, the State Agriculture Development Committee, the Township of Colts Neck, and the Applicant.

BE IT FURTHER RESOLVED that any person aggrieved by this resolution may appeal to the SADC in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 45 days from the receipt of this resolution. The decision of the SADC shall be considered a final administrative agency decision. If this resolution is

not appealed within 45 days, this resolution is binding.

Seconded by Mr. DeFelice and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Mr. Bullock		X		
Ms. Burry				X
Mr. Buscaglia			X	
Mr. Clayton			X	
Mr. DeFelice	X			
Mr. Giambrone	X			
Mr. Holmes			X	
Mr. Mathews		X		
Mr. Pettyjohn*				X
Mr. Potter	X			

\* Alternate member in 2022

I do hereby certify that the foregoing is a true copy of a resolution adopted on August 2, 2022 and memorialized by the Monmouth County Agriculture Development Board at a meeting on the 6<sup>th</sup> of September, 2022.

  
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Gary DeFelice, Secretary