

VERONICA and ED PRICE and THE
TOWNSHIP OF UPPER,

OAL DKT. NO. ADC 01543-2023
AGENCY DKT. NO. SADC ID #2000

Petitioners,

v.

FINAL DECISION

CAPE MAY COUNTY AGRICULTURE
DEVELOPMENT BOARD; and
MICHAEL E. and ROBIN HALPERN,

Respondents.

I. Overview

This case arises from a July 1, 2023 decision by the Cape May County Agriculture Development Board (CMCADB or board) granting approval of a site-specific agricultural management practice (SSAMP) enabling Michael and Robin Halpern (Halperns) to operate a winery on their property. The appeal was filed by the Township of Upper (Township) and a group of 20 neighboring property owners (Objectors).

The SADC transmitted the appeal to the Office of Administrative Law (OAL) in September 2023. In February 2024 the Township, Objectors, Halperns and CMCADB entered into a written settlement agreement (Agreement or settlement agreement) dismissing the appeal.

The Agreement was approved by an administrative law judge (ALJ) who found, in an "Initial Decision Approving Settlement" (Initial Decision), that the settlement was voluntary, consistent with law and dispositive of all of the issues in dispute. Because the Initial Decision did not explain how the ALJ arrived at those findings, the SADC is unable to determine if the settlement is consistent with the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. (RTFA), dispositive of all issues raised in the appeal, and whether the settlement was voluntary. Accordingly, we **REJECT** the Initial Decision's approval of the Agreement, **REJECT** that part of the settlement providing for attorney fee shifting for a prevailing party in RTFA proceedings, **MODIFY** the Initial Decision in respect to enforcement of the Agreement, and **REMAND** the case to the OAL

for further findings of fact and conclusions of law. A copy of the Agreement accompanies this Final Decision.

II. Factual Background and Procedural History

The Halperns' property is located at [REDACTED] and designated as Block 723, Lot 37 in Upper Township (the property). The property is approximately 5.27 acres, has been farmed since the early 1970's, and was preserved by the CMCADB in 2005, the same year the Halperns purchased it. In 2007 the SADC provided a cost share grant to the county for preserving the farm.

On July 1, 2021, the Halperns submitted an application to the board for an SSAMP that would permit the operation of a winery. The application, accompanied by a site plan and other materials, sought approval for the "operation of a grape growing, wine production and an associated tasting, marketing and retail sales facility." To conduct these activities, the Halperns proposed to retrofit an existing pole barn. The Halperns are the owners and operators of Ocean City Winery, LLC, the business entity established for the growing of grapes and wine production on the property.

CMCADB staff and some board members conducted a site visit prior to the board's October 14, 2021 public hearing on the SSAMP application. At the hearing, the board, by a 4-1 vote, found that the property qualified as a "commercial farm" pursuant to N.J.S.A. 4:1C-3 and was eligible to obtain RTFA protection. SADC staff inspected the farm in November 2021, finding the property in compliance with the farmland preservation deed of easement.

On March 31, 2022, the board held a hearing to consider the merits of the SSAMP application. At this hearing, attorneys for the Township and the Objectors asserted that the Halperns' initial notice for the October 2021 hearing was defective, claiming that there was a right-of-way providing access to the property from Route 9 on a separate lot not included in the application and that property owners within 200' of the right-of-way did not receive notice. The Township and the Objectors also disputed that the property was eligible for RTFA protection because the Halperns' farm property was less than five acres and, therefore, did not meet the "commercial farm" acreage criterion.

In June 2022, following consideration of the parties' written arguments, the board found that the initial hearing notice was adequate. The Township and the Objectors appealed the decision to the SADC. On September 30, 2022, the SADC determined that the appeal was premature because the CMCADB had not yet adopted a resolution containing findings of facts and conclusions of law pertaining to the SSAMP application.

The parties subsequently had discussions about mutually agreeable modifications to the application to address the Objectors' concerns. Halpern amended the SSAMP application and site plan which, among other changes, eliminated the previously proposed wine tasting room.

The revised SSAMP application was considered by the CMCADB on February 27, 2023. The Objectors offered testimony and made arguments about the adverse effects the winery operation would have on the neighborhood. At the hearing's conclusion, the board approved the SSAMP. The approval was memorialized in CMCADB Resolution 2-2023 adopted on July 31, 2023.

The Objectors and Township appealed the resolution approving the SSAMP to the SADC on September 12, 2023. The SADC transmitted the appeal as a contested case to the OAL.

The parties agreed to settle the appeal while it was pending in the OAL. The Agreement was executed by the Halperns and all of the Objectors who participated in the appeal in February 2024. The settlement agreement was also approved by resolutions of the Township and the CMCADB on April 8 and June 12, 2024, respectively.

III. The Agreement

The Township and the Objectors consented to dismiss their appeal of the CMCADB approval of the SSAMP allowing for the operation of a winery. The Agreement provided that the Halperns would plant red cedars between their property and two properties to the east and two properties to the west of Allendale Road, would not use the herbicide Paraquat in their farming activities, and would notify adjoining property owners and other persons and entities, identified in an exhibit to the Agreement, about the future use of other EPA-restricted herbicides.

The Agreement states that the "status quo of the approved Site Plan/Resolution/Use/Restrictions/SSAMP will be maintained for ten years", but that if the property were to be sold by the Halperns in an arm's length transition within this so-called "status quo period", then the "status quo period" would be reduced to seven years. The Agreement also provided that neighboring property owners reserved the right to object to the "five-acre status" of the farm management unit upon the expiration of the "status quo period".

The Agreement further addressed any actions that may be necessary to enforce the Agreement and/or the SSAMP. The parties agreed, to the extent possible, to follow SADC rules relating to the disposition of complaints made by any person aggrieved by the operation of a commercial farm pursuant to N.J.A.C. 2:76-2.7 and the hearing procedures adopted for RTFA cases before a county agriculture development board set forth at N.J.A.C. 2:76-2.8. In addition, the parties agreed that the prevailing party in any such action would be awarded attorney fees paid by the losing party. In the event of an appeal, the prevailing party was "entitled to payment of fees determined by the [administrative law judge]".

IV. Initial Decision

Counsel for the parties submitted a joint certification reporting to the OAL that a settlement had been reached and submitted the Agreement for approval. The joint certification did not contain further explanation about the terms of the settlement. On July 31, 2024, the ALJ approved and incorporated the settlement in an Initial Decision concluding, without further articulation, that the settlement was voluntary, consistent with law, and fully dispositive of all issues in dispute. The Initial Decision was forwarded to the SADC on July 31, 2024, and the OAL granted the SADC an extension to issue a Final Decision no later than October 28, 2024.

V. SADC Analysis of the Settlement

The Initial Decision recommends approval of the Agreement without making specific findings of fact and conclusions of law that the settlement comported with N.J.A.C. 1:1-19.1, which states in relevant part as follows:

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or

2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

It is well-established public policy to encourage the settlement of legal disputes. See, DEG, LLC v. Township of Fairfield, 198 N.J. 242, 259 (2009); I/M/O Fish, Morris County Agriculture Development Board, OAL Dkt. No. ADC 08330-14, SADC ID #1446. Here, the Agreement reflects the considerable effort expended by the parties to amicably resolve their dispute. However, without further clarification as to the meaning of certain provisions of the Agreement and the consideration of issues that were not fully addressed in the Initial Decision, the SADC cannot, at this time, approve the settlement. The SADC, therefore, **REJECTS** the "Initial Decision Approving Settlement" and remands the case to the OAL for consideration of the following matters.

A. Settlement agreement ambiguity. The Agreement's phrase "maintenance of the status quo" is ambiguous and susceptible to differing interpretations. Without clarification of the phrase's meaning, the SADC is unable to determine if the settlement disposes of all issues and is consistent with law.

The Agreement states that the "status quo" afforded by the SSAMP's approval of the winery will be maintained for a period of ten years. A plain reading of this settlement term might suggest that the parties contemplated that the SSAMP is only valid for ten years and, upon expiration of such time period, the Halperns would lose RTFA protection to operate the winery and would be required to reapply to the CMCADB for renewal of the existing SSAMP or for a new SSAMP approval. This interpretation appears consistent with another settlement term stating that the Objectors, "after the

[end of the] status quo time period", retain the right to object to the "5-acre [commercial farm] status" of the property.

On the other hand, the Agreement can be read to reflect an understanding that the Objectors may not bring an RTFA complaint against the Halperns or a subsequent arms-length purchaser during the applicable "status quo period" so long as the winery is operated in accordance with the SSAMP.

Accordingly, on **REMAND**, the ALJ must determine the answers to the following questions: Is it the parties' intent that the SSAMP approval shall be valid only for the length of the "status quo period"? Or is it the parties' intent that the SSAMP approval is valid so long as the operation is in compliance with the SSAMP, as modified by the settlement agreement, but that the parties are foreclosed from bringing a complaint against the operation until the expiration of the "status quo period"? Did the parties mean something else and, if so, what did they intend with regard to this portion of the Agreement? Further, pursuant to the settlement agreement, are the Halperns allowed to bring SSAMP requests for other potential agricultural practices on the property not addressed by the approved SSAMP?

B. Enforcement of the Agreement and SSAMP.

(1) The Agreement does not address the venue in which the Agreement will be enforced. The Agreement confusingly refers to "[a]n action to enforce *this Consent Order*. . ." (Emphasis added), but the record does not reflect that a consent order was entered into by the parties and ALJ. Instead, the ALJ issued an Initial Decision approving the settlement agreement. To the extent parties need to enforce a settlement agreement in this matter, we **MODIFY** the Initial Decision by holding that an action to enforce a settlement agreement should be venued in the Superior Court, Law Division pursuant to R. 4:67-6(a)(2).

(2) The Agreement includes the SSAMP within the enforcement ambit of the incorrectly described "Consent Order". SSAMP compliance issues remain within the jurisdiction of the county agriculture development boards as a matter of primary jurisdiction. Township of Franklin v. den Hollander, 338 N.J.Super. 373, 393 (App.Div. 2001), aff'd 172 N.J. 147 (2002). To the extent parties need to enforce an SSAMP in this matter, we

MODIFY the Initial Decision by holding that an action to enforce an SSAMP for the Halperns' winery should be venued with the CMCADB

C. Consistency with the RTFA.

(1) *Attorney fee shifting.* The Agreement provides that the prevailing party in any proceeding to enforce the settlement is entitled to an award of attorney's fees paid by the other party. The RTFA does not provide for the payment of counsel fees in any RTFA matter heard by a board or the SADC. Given this lack of statutory authorization, we **REJECT** that part of the settlement providing for attorney fee shifting for a prevailing party in RTFA proceedings. Nor do we believe that the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (APA) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1, et seq. (UAPR), provide for counsel fee awards, but **REMAND** that issue to the OAL for clarification.

(2) *The 10-year status quo period.* As discussed above, the settlement agreement may reflect the understanding of the parties that the SSAMP is to be valid only for a specified period of time. Whether this limitation is consistent with the RTFA must also be considered on **REMAND**.

D. Whether the settlement is fully dispositive of all issues in controversy. The notice of appeal filed by counsel for the Objectors argued that the property "is not a five-acre commercial farm" and expressly identified that issue to be decided on appeal. However, the Agreement states that the Objectors "retain the right to object to the 5-acre status of the property after the status quo time period." These two provisions cannot be reconciled. Because the Objectors expressly retain the right to subsequently object to an issue that they raised on appeal, the settlement does not appear to be fully dispositive of all issues in dispute. This finding must be reconsidered on **REMAND**.

E. Whether the parties voluntarily waived statutory rights and protections afforded by the RTFA. As this Final Decision notes, the Agreement provides for counsel fee shifting in favor of the prevailing party in any subsequent proceeding relating to the Agreement or the SSAMP. Fee shifting in RTFA matters is not authorized by the statute and parties in Right to Farm cases are not liable to pay attorney's fees to a prevailing party.

Similarly, provisions relating to maintaining the status quo contained in the settlement agreement may be inconsistent with RTFA rights and protections provided to both commercial farms and to persons who may be aggrieved by the farm's operations. The Agreement, as discussed above, may limit for the Halperns or any subsequent purchasers the time within which the SSAMP remains in effect. The RTFA does not permit any such temporal limitations on SSAMPs. Likewise, the Agreement may prohibit the Objectors from filing RTFA complaints, pursuant to N.J.S.A. 4:1C-10.1, should they become aggrieved by future agricultural operations on the farm unrelated to the SSAMP.

N.J.A.C. 1:1-19.1 requires that an ALJ determine if a settlement is voluntary. The SADC understands this requirement to include that the parties to a settlement must knowingly and voluntarily waive the benefit of any statutory rights to which they may be entitled. Waiver is the voluntary and intentional relinquishment of a known right. A valid waiver requires not only that parties "have full knowledge of [their] legal rights," but also that the party "clearly, unequivocally, and decisively" surrendered those rights. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242, 258 (2013).

Based on the above, and after the terms of the settlement agreement are clarified, the ALJ must determine whether the parties have agreed to any waivers of their rights and whether such waivers are consistent with the RTFA. On **REMAND**, the rights that are waived must be specifically identified.

VI. Conclusion

Except for our rejection of the counsel fee shifting provision in the Agreement, *supra*, p. 7, this Final Decision questions other aspects of the settlement reached by the parties and memorialized in the Agreement. We are required to remand this matter because there are significant legal and factual issues which were not addressed in the Agreement and in the Initial Decision approving it. Based upon the record before us, we are unable to discern the meaning and intent of the parties concerning various terms and phrases in the Agreement, which appear contrary to both the language and purpose of the RTFA.

In sum:

The SADC **REJECTS** the Initial Decision's approval of the settlement and the determination that the settlement was voluntary, consistent with the law and fully dispositive of all issues in controversy.

The SADC **MODIFIES** the Initial Decision by holding that an action to enforce a settlement agreement should be venued in the Superior Court, Law Division pursuant to R. 4:67-6(a)(2) and that an action to enforce an SSAMP for the Halperns' winery should be venued with the CMCADB.

The SADC **REMANDS** this case to the OAL for further review, pursuant to N.J.A.C. 1:1-18.7(a), of issues incompletely considered in the Initial Decision identified above. Specifically, the ALJ must reconsider the following issues on **REMAND**:

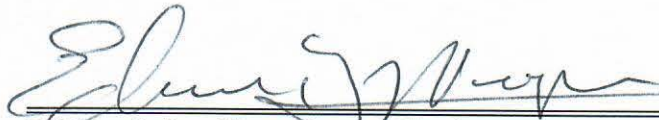
- (1) A determination regarding ambiguous terms in the Agreement, consistent with Paragraph V A. above, including the parties' intent and interpretation of the "status quo period" set forth in the Agreement and whether the SSAMP is considered valid only for a specified time period.
- (2) A determination, consistent with Paragraph V C. above, concerning whether and how (a) the Agreement's terms allowing for attorney fee shifting in enforcement proceedings is consistent with the APA and UAPR, and (b) any time limitation on the effectiveness of the SSAMP is consistent with the RTFA.
- (3) A determination, consistent with Paragraph V D. above, concerning whether the settlement is fully dispositive of all issues in controversy in view of the Agreement's purported reservation of the Objectors' right to object to the five-acre status of the farm management unit after the expiration of the status quo period.
- (4) A determination, consistent with Paragraph V E. above, concerning whether the settlement was voluntary and the

parties knowingly and voluntarily relinquished any rights afforded to them by the RTFA.

An **ORDER OF REMAND** accompanies this Final Decision.

IT IS SO ORDERED.

Dated: October 24, 2024



Edward D. Wengryn, Chairman

VERONICA and ED PRICE and THE
TOWNSHIP OF UPPER,

OAL DKT. NO. ADC 10543-2023
AGENCY DKT. NO. SADC ID #2000

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v.

ORDER FOR REMAND
[N.J.A.C. 1:1-18.7(a)]

CAPE MAY COUNTY AGRICULTURE
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Respondents.

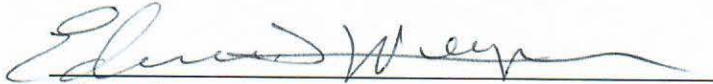
IT IS HEREBY ORDERED that the above-captioned matter be and hereby is remanded to the Office of Administrative Law for:

- (1) Findings of fact and conclusions of law regarding ambiguous terms in the Agreement, as further described in Paragraph V A. of the Final Decision, including the parties' intent and interpretation of the "status quo period" set forth in the Agreement and whether the SSAMP is considered valid only for a specified time period.
- (2) Findings of fact and conclusions of law concerning whether and how: (a) the Agreement's terms allowing for attorney fee shifting in enforcement proceedings is consistent with the APA and UAPR, and (b) any time limitations on the effectiveness of the SSAMP is consistent with the RTFA, as further described in Paragraph V C. of the Final Decision.
- (3) Findings of fact and conclusions of law concerning whether the settlement is fully dispositive of all issues in controversy in view of the Agreement's purported reservation of the Objectors' right to object to the five-acre status of the farm management unit after the

expiration of the status quo period, as further described in Paragraph V D. of the Final Decision.

- (4) Findings of fact and conclusions of law concerning whether the settlement was voluntary, and the parties knowingly and voluntarily relinquished any rights afforded to them by the RTFA, as further described in Paragraph V E. of the Final Decision.

Dated: October 24, 2024

A handwritten signature in blue ink, appearing to read "Edward D. Wengryn", written over a horizontal line.

Edward D. Wengryn, Chairman