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RESOLUTION OF THE MIDDLESEX COUNTY AGRICULTURE DEVELOPMENT BOARD
RIGHT TO FARM CONFLICT RESOLUTION FINDINGS AND RECOMMENDATIONS
COMPLAINT FILED BY [REDACTED] AND RESPONSE AND APPLICATION FILED ON BEHALF OF LANDOWNER
[REDACTED] FOR A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE DETERMINATION FOR
PROPERTY KNOWN AS LOT 2.03 IN BLOCK 21 ON THE TAX MAP OF THE TOWNSHIP OF CRANBURY

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and the regulations promulgated by the State Agriculture Development Committee, N.J.A.C. 2:76-2.1 et seq., any person aggrieved by the operation of a commercial farm must first file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee ("SADC") where no county board exists, prior to filing an action in court; and

WHEREAS, in accordance with N.J.S.A. 4:1C-3, a "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 of 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.); and

WHEREAS, pursuant to N.J.S.A. 4:1C-9, the commercial farm must be in an area in which as of December 31, 1997 or thereafter, agriculture was a permitted use under the municipal zoning ordinance, or the commercial farm has to have been in operation since July 2, 1998; and

WHEREAS, the commercial farm must be performing an activity that is or are included in one or more of the activities set forth in N.J.S.A. 4:1C-9; and

WHEREAS, on December 22, 2020, a complaint ("Complaint") with supporting documentation was submitted in writing to the Middlesex County Agriculture Development Board ("MCADB") by property owners [REDACTED] ("Complainants") of [REDACTED] neighboring property owners to property known and designated as Block 21, Lot 2.03, commonly known as [REDACTED] in the Township of Cranbury (the "Property"), alleging that the Property owner built a new berm of roughly 3 to 4 feet in height that changed the original topology of the land resulting in a diversion of rain runoff that historically drained to a culvert on the Property but is now redirected onto Complainant's property causing significant erosion; and

WHEREAS, in response to receiving the above complaint, a letter dated February 8, 2021 was sent by the MCADB to [REDACTED] purported owner of the Property, informing him of the Complaint; advising that the MCADB was required to contact the farm operator and requesting that the owner and or farm operator provide evidence that the Property upon which disputed activities are being conducted is a "commercial farm" pursuant to N.J.S.A. 4:1C-3, and operating an activity permitted by N.J.S.A. 4:10-9; advising of the Right to Farm process that would commence; and provided a commercial farm determination questionnaire to complete with instructions to return the requested information within thirty (30) days of receipt of the notice; and

WHEREAS, on March 28, 2021, additional information and photographs with descriptions were submitted by Complainants; and

WHEREAS, on April 7, 2021, [REDACTED] submitted to the MCADB a Commercial Farm Determination Questionnaire (the "Application") and supporting documentation from [REDACTED] Co. Inc., farm operator of the Property, seeking commercial farm determination for the Property; and

WHEREAS, by correspondence dated May 21, 2021, MCADB counsel provided a letter to Robert Merenich, Esq., counsel for [REDACTED] and [REDACTED] husband and wife [REDACTED] being the



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Property owner and [REDACTED] being authorized to act on her behalf, requesting additional information and/or clarifications concerning the Application filed; and

WHEREAS, by correspondence dated June 2, 2021, counsel for [REDACTED] provided the requested information; and

WHEREAS, the Commercial Farm Determination submitted by [REDACTED] (collectively, the "Applicant") and related sworn testimony were considered by the MCADB at its meeting on June 16, 2021; and

WHEREAS, after additional information was provided to the MCADB, the MCADB by Resolution duly adopted by the MCADB on October 13, 2021, determined that there was reasonable, sufficient and credible evidence that the Property is a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-3; and

WHEREAS, on or about December 10, 2021, a Request for Site Specific Agricultural Management Practice ("AMP") was submitted by [REDACTED] for a determination that the augmentation of a berm on the Property by [REDACTED] constitutes a generally accepted agricultural management practice with regard to the prevention of soil erosion on the Property and with regard to the production of agricultural crops, namely straw, corn and soybean on the Property, (the "Site Specific AMP Request" or "SSAMP"); and

WHEREAS, if a determination is made that the practice in the Site Specific AMP Request is an acceptable management practice, the Property may be entitled to Right to Farm ("RTF") Protection under the Right to Farm Act, N.J.S.A. 4:1(c)-10; and

WHEREAS, in order to receive RTF Protection, the MCADB must determine that the activity or practice at issue conforms with agricultural management practices ("AMPs") adopted by the State of New Jersey Agriculture Development Board ("SADC") pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or, that the activity or practice at issue constitutes a generally accepted agricultural operation or practice; and

WHEREAS, site visits to the Complainants' property and the Property were conducted by the members of the MCADB on various dates to avoid a conflict with the Open Public Meetings Act, and a site visit was also conducted by MCADB staff; and

WHEREAS, notice of the hearing of the SSAMP application was provided in accordance with N.J.A.C. 2:76-2.8(c); and

WHEREAS, a hearing on the matter was commenced at a regular meeting of the MCADB on March 9, 2022 and was continued at a meeting of the MCADB held on April 13, 2022 (the "Hearings"); and

WHEREAS, sworn testimony was provided at the Hearings by the following persons:

[REDACTED] Inc., commercial farm operator;

Clare Flanagan, NRCS; and
Jina Vandi, NRCS Engineer.

WHEREAS, the MCADB considered the following information in connection with the Complaint and SSAMP:

- a. Documents and information provided during the Commercial Farm Determination, including, Complaint filed by [REDACTED] dated December 22, 2020; Commercial Farm Determination Questionnaire and attachments submitted by [REDACTED] dated April 6, 2021; Additional information submitted by Robert Merenich, Esq., dated June 2, 2021 including Farmland Assessment Form FA-1, zoning map and zoning description; Copy of invoices from [REDACTED] Inc.; Sworn Testimony of [REDACTED] as presented to the MCADB at the June 16, 2021, hearing; Additional information provided by Robert Merenich, Esq., concerning the [REDACTED] Inc. farm management unit; Affidavit of [REDACTED] concerning the farm management unit;



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- b. Request for SSAMP dated December 6, 2021 submitted by [REDACTED] or the farm with an address of [REDACTED]
- c. Site Visit Report prepared by Brady Smith, Middlesex County Senior Environmental Planner;
- d. Submissions and presentations, as applicable, during the Hearings of [REDACTED] and [REDACTED]
- e. Such other information and observations deemed relevant by the MCADB; and

WHEREAS, the submissions, applications, complaints, testimony and proofs referred to herein and provided at the Hearings are incorporated herein by reference and form the basis of the MCADB determination herein.

NOW THEREFORE BE IT RESOLVED BY THE MIDDLESEX COUNTY AGRICULTURE DEVELOPMENT BOARD, that based on the testimony, submissions, arguments, comments and concerns presented during the Hearings and the exhibits and submissions made to the MCADB and after weighing the evidence presented, the MCADB makes the following findings:

1. In 2017, the Property and the Complainant's property started to experience stormwater runoff and soil erosion which did not originate from either property;
2. Both the Property and the Complainant's property are adjoined by a farm where the runoff is believed to originate;
3. The Property does not have a farm conservation plan prepared by NRCS;
4. The erosion affected the Property to the extent that [REDACTED] was no longer able to farm a portion of the Property;
5. [REDACTED] imported soil to the Property to fill in the three to four foot groove or ditch that had been created by the runoff;
6. Freeholder Soil Conservation District by letter dated June 11, 2020 indicated that the soil importation for the filling in of the groove was not subject to the requirements of the New Jersey Soil Erosion and Sediment Control Act;
7. [REDACTED] contacted the NRCS about the issue and received suggestions;
8. [REDACTED] developed a plan to address the soil erosion on the Property by constructing or augmenting a preexisting berm along the southerly border of the Property. The berm was an elevated compact of soil created to divert and guide the water run off to a certain area and not to have the water run onto the Property;
9. Whether the berm was pre-existing or not and whether or not an adjoining farmer increased the size of the berm, [REDACTED] implemented a practice whereby the berm was increased in size so that it would no longer allow water to runoff onto the Property;
10. The result of the berm creation or augmentation was that the stormwater runoff now was directed to the Complainant's property resulting in a larger flow, flooding and soil erosion on the Complainant's property;
11. The berms were not covered with any plantings so as to prevent rain run-off and stabilize the berm structure;
12. The berm as constructed by [REDACTED] was not directed to discharge to a stable outlet;
13. The berm has not been a successful practice of managing soil erosion on the Property as the stormwater runoff is breaching the berm onto the Property;
14. NRCS testimony is found credible indicating that the berm construction or reconstruction is not an acceptable management practice in that no cover was placed on the berm, the berm did not direct the water flow to a stable outlet and an acceptable management practice should have an average 10-year life span, i.e. there should be no fault in the system for ten years;
15. NRCS did not approve or recommend the berm construction or reconstruction implemented by [REDACTED];
16. NRCS has devised three (3) different plans to address the stormwater runoff on the Property and the Complainant's property;
17. The creation or augmentation of the berm by [REDACTED] poses a threat to public health and safety as it transfers the stormwater runoff to the Complainant's property; and
18. The creation or augmentation of the berm on the Property is not an acceptable agricultural management practice for the Property.
19. The creation or augmentation of the berm by [REDACTED] is not a generally accepted agricultural management practice pursuant to Natural Resource Conservation AMP, N.J.A.C. 2:76-2A.7 as there is no farm conservation plan for the Property; and

BE IT FURTHER RESOLVED, that, based on the aforesaid findings of fact, the Middlesex County Agriculture Development Board finds that the activity or practice of creating or augmenting a berm on the Property in the location that the berm was created or augmented by [REDACTED] on the Property line causing the discharge of stormwater runoff off Property is not a generally accepted agricultural management practice and does not approve it as an acceptable site-specific agricultural management practice;

BE IT FURTHER RESOLVED, that, based on the aforesaid findings of fact, the Middlesex County Agriculture Development Board finds that the Property does not have a farm conservation plan, a requirement of the Natural Resource Conservation AMP (N.J.A.C. 2:76-2A.7), thereby not entitling the Property to protection under the aforesaid AMP; and

BE IT FURTHER RESOLVED, that based on the aforesaid findings of fact, the Middlesex County Agriculture Development Board does not find that the Property has Right to Farm protection; and



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BE IT FURTHER RESOLVED, that the Middlesex County Agriculture Development Board recommends and encourages the Complainant, [REDACTED] and the owner of the adjacent farm to cooperate and enlist the assistance of the NRCS to develop a plan to address the storm water runoff and to cooperate in the implementation of such plan; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be forwarded to the Complainant, to [REDACTED] the owner of the adjoining farm property, the SADC and the Clerk and Planning Board Secretary of the Township of Cranbury within thirty (30) days hereof; and

BE IT FURTHER RESOLVED, that any party aggrieved of this decision, may appeal the decision to the State Agriculture Development Committee within forty-five (45) days from receipt of this decision; and

BE IT FURTHER RESOLVED, in accordance with N.J.A.C. 2:76-2.3, if this decision is not appealed within forty-five (45) days, it is binding.

<u>Recorded Vote:</u>	<u>Aye</u> 5	<u>No</u>	<u>Abstain</u>	<u>Absent</u> 2
James Giamarese	X			
Thomas Mancuso				X
Robert Von Thun	X			
Rodger Jany				X
Samuel Landy	X			
Peter Etsch	X			
Barbara Rogers	X			

DocuSigned by:

James Giamarese

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James Giamarese, Chairman

I hereby certify the above is a true copy of a Resolution duly adopted by the Middlesex County Agriculture Development Board at a meeting held on June 1, 2022 at which a quorum was present and acting throughout.

DocuSigned by:

Thomas Mancuso

Attest:

SAB57AE19920467

Thomas Mancuso, Secretary

