

RESOLUTION 4-2024 CADB

RESOLUTION CERTIFYING COMMERCIAL FARM OPERATION AND RECOMMENDING SITE
SPECIFIC AGRICULTURE MANAGEMENT PRACTICE FOR BAYSIDE SHELLFISH
COMPANY, MIDDLE TOWNSHIP BLOCK 132.02, LOTS 10

WHEREAS, the State of New Jersey has enacted N.J.S.A. 4:1C-11 known as the "Agriculture Retention and Development Act"; and,

WHEREAS, the County of Cape May has created the "Cape May County Agriculture Development Board" pursuant to the aforesaid Statute; and,

WHEREAS, the Agriculture Retention and Development Act known as the Right to Farm Act as amended on July 2, 1998 and in accordance with N.J.A.C. 2:76-2.3(a) requires that the County Agriculture Development Board recommend site specific agricultural management practices; and,

WHEREAS, Luke Williams of Bayside Shellfish Company ("Applicant") petitioned the Cape May County Agriculture Development Board to certify as a shellfish commercial farm, as defined by N.J.S.A. 4A:1C-3 and N.J.A.C. 2:76-2.1, the farm located at Block 132.02, Lot 10, commonly known as [REDACTED] in the Township of Lower, County of Cape May, State of New Jersey (Farm), and is further seeking a Site Specific Agriculture Management Practice for the operation of a shellfish hatchery, nursery, and related on-site activities, which include, propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging, and marketing ("Application"); and,

WHEREAS, the County subsequently received Right to Farm Dispute - Application for Hearing from Krista Parker (April 13, 2024), Eric Parker (April 16, 2024), Melvin Brody (April 22, 2024), Miles Truesdell, Jr. (April 26, 2024), Thomas Sovin (April 28, 2024), Anita and Ugo Sensoy (May 9, 2024), and Joanne Willis (May 15, 2024) (collectively, "Complaints" and "Complainants"),

WHEREAS, aquaculture is an acceptable form of agriculture in New Jersey pursuant to N.J.A.C. 17.12-1.12; and

WHEREAS, N.J.A.C. 2:76-2A.11 outlines the adopted AMP for Aquaculture and incorporates the publication of "Recommended Management Practices for Aquatic Farms;"

WHEREAS, N.J.A.C. 2:76-2A.13 details the adopted AMP for On-Farm Direct Marketing Facilities, Activities, and Events; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b), the CADB notified the SADC and Township of Middle of the Application and Complaints; and

WHEREAS, Applicant is engaged in the aquaculture production of shellfish on the Farm, and presented evidence for the Board to find that the Farm is a shellfish commercial farm as defined by N.J.S.A. 4A:1C-3 and N.J.A.C. 2:76-2.1; and

WHEREAS, Applicant presented Resolution 15-2303, dated June 4, 2015, and Resolution 15-2303R, dated September 13, 2018, of the Zoning Board of Adjustment of the Township of Middle granting a variance to the Applicant as proof that the Farm is located in an area in which, as of December 31, 1997 or thereafter, aquaculture has been a permitted use under the Municipal Zoning Ordinance of Middle Township, and is consistent with the Middle Township Master Plan; and

WHEREAS, Applicant submitted a Commercial Shellfish Aquaculture Permit, Permit #915-172-001, and a Permit for Hatchery to Produce and Grow Seed or for a Nursery to Grow See, Permit #914-172-001, issued to the Applicant from the New Jersey Department of Environmental Protection; and

WHEREAS, a site inspection of the Farm was conducted on May 16, 2024 and June 10, 2024; and

WHEREAS, on June 12, 2024, the Board considered testimony from the Applicant and members of the public in support of the designation as a shellfish commercial farm and proposed SSAMP for the Farm, from Complainants Miles Truesdell and Eric Parker in opposition, as well as from Middle Township Solicitor Matthew Rooney; and

WHEREAS, the following exhibits were admitted and marked into evidence:

Applicant's Exhibits

- B-1: Applicant's Request for Site Specific Agricultural Management Practice, Application for Hearing, and supporting documents;
- B-2: Invoices from Bayside Shellfish Company from February 20, 2024, March 18, 2024, and May 7, 2024 in the amounts of \$13,659.50, \$14,412.25, and \$16,397.40, respectively;
- B-3: Checks payable to the Applicant from January 23, 2024, February 13, 2024, February 20, 2024, March 13, 2024, and May 8, 2024, in the amounts of \$17,824.50, \$6,276.75, \$10,119.75, \$5,292.00, and \$16,397.40, respectively; and
- B-4: Site Plan by Brian J. Murphy of MV Engineering, LLC, and survey by William Sweeney, for the Farm.

Complainants' Exhibits

- C-1: Right to Farm Dispute - Application for Hearing filed by Miles Truesdell, Jr. and corresponding documents; specifically, May 1, 2017 Notice of Violation from Middle Township; May 24, 2017 Notice of Violation from Middle Township; January 12, 2018 Notice of Violation from the New Jersey Department of Environmental Protection, and correspondence between Miles Truesdell, Jr. and Michael Lutz of the New Jersey Department of Environmental Protection.

WHEREAS, the CADB received comments from the New Jersey Department of Environmental Protection that the Applicant received a denial of a Coastal Area Facilities Review Act (CAFRA), Waterfront Development and Coastal Wetland permit for the current activities from the NJDEP Division of Land Resource Protection and an AONOCAPA (violation of these State regulations) with penalties from our Bureau of Coastal and Land Use Compliance and Enforcement office, and that Applicant was appealing same, which comments the Applicant corroborated during the Public Hearing as well as that his appeal was presently pending; and

WHEREAS, the CADB carefully considered the testimony provided at the Public Hearing and the exhibits admitted into the record, and made the following findings of fact:

1. The Farm is a shellfish commercial farm as defined by N.J.S.A. 4A:1C-3;
2. The Farm is in an area that permits aquaculture;
3. The Farm's operation practices, activities, and structures:
 - a. Conform to generally-acceptable aquacultural management practices;
 - b. Complies with all relevant federal and state statutes and regulations; and
 - c. Do not pose a direct threat to public health and safety.

NOW, THEREFORE, BE IT RESOLVED by the Cape May County Agriculture Development Board that upon consideration of the entire record, which includes the paragraphs set forth above in the preamble, the Board makes the following determinations:

1. The Farm is a shellfish hatchery and nursery involved in the production, rearing, and harvesting of shellfish and, therefore, a shellfish aquacultural unit.

2. The Applicant demonstrated by sufficient, credible evidence that the Farm has produced aquacultural products worth \$40,000 or more annually.
3. Based upon the foregoing determinations, the Farm is a shellfish commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3.
4. The Farm's operation practices, activities, and structures:
 - a. Conform to generally-acceptable aquacultural management practices;
 - b. Complies with all relevant federal and state statutes and regulations; and
 - c. Do not pose a direct threat to public health and safety.

BE IT FURTHER RESOLVED, that based upon the Farm's qualification as a commercial farm, the Board has jurisdiction to review and approve a SSAMP as well as the site plan for shellfish hatchery and nursey operations at the Farm; and

BE IT FURTHER RESOLVED, the Farm's shellfish hatchery and nursery practices and operations constitute generally accepted agricultural management practices and are hereby approved.

BE IT FURTHER RESOLVED, that the Board's approval of the aquacultural practices and operations and the development of the operations in accordance with the site plan shall constitute a site-specific agricultural management plan ("SSAMP") for the Farm and therefore does not require site plan or municipal planning or zoning board approvals and the Township of Middle shall immediately issue all appropriate construction and other permits for the development; and

BE IT FURTHER RESOLVED, that the Board's approval of the SSAMP and site plan for the Farm is subject to the following additional conditions and those set forth above:

1. All retrofitting and construction approved by the SSAMP shall be done in accordance with the applicable construction and building code standards and shall be subject to inspection for compliance with applicable code requirements by the Township of Middle.
2. The Applicant's site plan shall be required to receive the approval of the Cape May County Planning Board. .
3. The Farm's operations and activities must conform to all relevant Federal and State statutes, rules, and regulations, including, but not limited to, New Jersey Department of Environmental Protections, New Jersey Department of Health, and Cape May County Department of Health.
4. If the Farm's operations substantially change or deviate from the provisions of this SSAMP in the future, the Applicant or any aggrieved party may return to the Board to seek appropriate relief as provided by law.

BE IT FURTHER RESOLVED, that the Board shall forward a copy of resolution to the Applicant, the Township of Middle, and the SADC within 30 days.



 Matthew P. Stiles, Chairman

Offered By: A. Fred Warkel sm
 Seconded By: Robert Schumann sm
 Yes: Natali Schumann, JP Horrel, Matthew Stiles
 No: Robert
 Absent: Kelly Keppel (Abstainee)
 Adopted: 7/29/24