

**RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
REGARDING OPERATIONS RELATED TO A RIGHT TO FARM COM-
PLAINT FOR BLOCK 97, LOTS 80 AND 80.01
IN THE TOWNSHIP OF FREEHOLD**

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

WHEREAS, on April 20, 2022, [REDACTED] (the "Complainants") filed for a Right to Farm Complaint Form ("Complaint") alleging [REDACTED] (the "Operator" or "Respondent") the operator of property located at Block 97, Lots 80 and 80.01 in the Township of Freehold (the "Property") improperly drained (and continues to improperly drain) sprinkler water, failed to maintain a chain link fence, and failed to maintain the buffer strip between the properties; and

WHEREAS, the Monmouth County Agriculture Development Board ("MCADB" or "Board") initially heard the Commercial Farm portion of this matter and, after deeming the Operator's Property a Commercial Farm, referred the remainder of the matter to the State Agriculture Development Committee's ("SADC" or "Committee") for review of the activities subject to the Complaint; and

WHEREAS, the SADC returned the matter to the MCADB for further evaluation of the Commercial Farm criteria and also offered guidance related to reviewing the activities subject to the Complaint; and

WHEREAS, during this period, the Operator submitted a farm conservation plan, which would allow the MCADB to review the matter pursuant to the Natural Resource Conservation Agricultural Management Practice (N.J.A.C. 2:76-2A.7); 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 rules; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b) the Board advised the Committee and the Operator of the Complaint; and

WHEREAS, pursuant to 4:1C-10.1 any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court; and

WHEREAS, in the event the dispute concerns activities that are addressed by an agricultural management practice recommended by the committee and adopted pursuant

to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the county board shall hold a public hearing and issue findings and recommendations within 60 days of the receipt of the complaint; and

WHEREAS, the Complaint originally asked the Board to evaluate improperly drained sprinkler water, chain link fence not properly maintained, and a buffer strip between the properties that was also not properly maintained; however, during the hearing, the Complainant voluntarily dismissed portions of the Complaint related to the fencing and buffer area as those issues had been resolved between the Parties; and

WHEREAS, the only issue before the Board on August 1, 2023 focused on improperly drained sprinkler water or irrigation on the Operator's property; and

WHEREAS, the MCADB found, pursuant to Resolution No. 2023-8-3, that the Operator'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

WHEREAS, the Board further found pursuant to Resolution No. 2023-8-3, the farming activities met several of the enumerated permissible activities within N.J.S.A. 4:1C-9; and

WHEREAS, the agricultural products sold included container nursery stock and balled and burlap nursery stock; and

WHEREAS, the irrigation activities subject to the Complaint related directly to the agricultural products sold on the farm; and

WHEREAS, the following documents comprise a list of exhibits and materials submitted for the Board's consideration for the September 6, 2022 hearing; the December 6, 2022 hearing; and the August 1, 2023 hearing;

Exhibits from Objector:

- O-1 Request for Right to Farm Conflict Resolution – Complaint Form Initial Submission of April 20, 2022
- O-2a-n Photographs
- O-3a-e Videos, Video Screenshots
- O-4 Mosquito Control Division Inspection
- O-5 Email Correcting Staff Report
- O-6 June 20, 2023, Objector Email

Exhibits from the Respondent:

- R-1 Request for Right to Farm Conflict Resolution – Part 1 Commercial Farm Designation Questionnaire, Initial Submission of May 4, 2022
- R-2 [REDACTED] Receipts from March and April 2021
- R-3 Application for Farmland Assessment June 28, 2021
- R-4 [REDACTED] Certificate of Formation Filed July 23, 1999
- R-5 Aerial Photographs of [REDACTED]
- R-6a Tract Cropland USDA Map of [REDACTED]
- R-6b [REDACTED] Underground Outlet Plan View, Profile and Quantities
- R-7a-h Photographs of Fencing at Front and Side of Property
- R-8 [REDACTED] Operating Agreement
- R-9 Subject Property NRCS 2022 Conservation Plan

Exhibits from the Monmouth CADB:

- B-1 Email Communications Between Freehold Township and Objector
- B-2 Aerial Google Map of [REDACTED]
- B-3 Freehold Township Zoning Map Published March 9, 2018
- B-4 Freehold Township Zoning Regulations R-40, R-R Zones, Schedule C
- B-5 Aerial GIS Map
- B-6 Contour Map
- B-7 Staff Notes from Site Visits
- B-8 Staff Photos from Site Visits
- B-9 NJSA 4:1C-9 Commercial Farm Owners, Operators; Permissible Activities
- B-10 NAICS Codes for Agricultural, Forestry, Fishing and Trapping
- B-11 Fencing Installation AMP for Wildlife Control

- B-12 High-tensile Woven Wire Fences for Reducing Wildlife Damage;
- B-13 Vertical 7-Wire Deer Control Fence Construction Specifications;
- B-14 NRCS Site Visit Report July 10, 2023; 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. Two site visits were held, one on July 14, 2022 attended by MCADB staff and the Operators, and one July 18, 2022 attended by a minority of board members, MCADB staff, the owners of the property, and the Freehold Township Engineer; and

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

WHEREAS, the MCADB heard testimony from the Operator, reviewed submissions and exhibits, and considered statements presented by the public during the Board's public meeting on August 1, 2023; and

WHEREAS, the Complainant presented her case and indicated her property has been subjected to heavy flooding for a number of years. She opined the flooding was a combination of rain water and overflow of irrigation water from the Operator's property. The flooding occurred multiple times a year during heavy storms and lead to the flooding of the entirety of the Complainant's property. The Complainant attempted to build a wall to prevent, or at least alleviate, some of the flooding and took other measures to remedy, as she was not able to obtain any assistance from the Township of Freehold. The Complainant did indicate that in 2022 the flooding did improve significantly, in that she did not observe any major flooding during heavy storms that normally would have occurred in prior years; and

WHEREAS, the Board, in consideration of the testimony of the Complainant and Operator as well as the review of the evidence provided, made the following findings of fact; and

1. N.J.A.C. 2:76-2A.7, the Natural Resource Conservation Agricultural Management Practice "establishes a generally accepted agricultural management practice for the implementation of a farm conservation plan for the conservation and development of soil, water and related natural resources on the farm."
2. The Operator testified that he has implemented the conservation plan on the subject property (implementation occurred in approximately the last 18 months), and the Complainant corroborated this statement when she testified that the flooding has decreased significantly since early 2022.
3. Clare Flanagan, District Conservationist for the USDA-NRCS, further opined that the remedial steps taken by the Operators were consistent with the remediation plan outlined by the NRCS for the property and should resolve the issue of excess water from impacting the neighboring properties.

4. The implementation of the conservation plan related to the irrigation issues and adherence to the NCRS recommendations constitutes an acceptable agricultural management practice and, thus, would entitle the Operator to right to farm protection pursuant to the Act.
5. Offsite stormwater management does not fall within the jurisdiction of the MCADB but rather falls within the jurisdiction of the municipality and, as such, the MCACD does not make any finding related to stormwater management in the surrounding community.

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

1. The irrigation and drainage issues presented in the Complaint have been properly mitigated and found by the MCADB to be a generally accepted farm management practice under the scope of N.J.A.C. 2:76-2A.7 and therefore a permissible activity for a Commercial Farm, under the New Jersey Right to Farm Act.

BE IT FURTHER RESOLVED that the implementation of the conservation plan and activates related to the same 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 and the United States Department of Agriculture; 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 and those provisions pursuant to the conservation plan, 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 State Agriculture Development Committee, the Township of Freehold, the Complainant, and the Operator.

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 10 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 10 days, this resolution is binding.

Seconded by Mr. Holmes 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. Volpe*				X

* Alternate member in 2023

I do hereby certify that the foregoing is a true copy of a resolution adopted on the 1st of August, 2023 and memorialized by the Monmouth County Agriculture Development Board at a meeting on the 5th of September, 2023.


 Gary DeFelice, Secretary