

The Right to Farm Act in New Jersey

A large, two-story white house with a green roof and a well-manicured lawn. In the foreground, a red tractor is pulling a red trailer filled with hay, with a person driving it. The scene is set in a rural area with trees and a clear sky.

phone: 609-984-2504

web: www.nj.gov/agriculture/sadc

RTF Act: Dual Protections for Eligible Farms



From Restrictive Local Regulations

Preemption of municipal and county ordinances.



From Neighbor & Municipal Nuisance Suits

Irrebuttable presumption that no commercial agricultural operation constitutes a public or private nuisance.

Lee Turkey Farm
East Windsor, Mercer County

Google

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RTF Act: Process



1. Conflict Resolution

- Complaint against a farmer is filed with CADB by municipality (regarding zoning or other ordinances) or by neighbor (nuisance).

2. Site-Specific Agricultural Management Practice (SSAMP) Request

- Application is made by farmer to CADB; if no CADB exists, application is made to SADC.
- Acts as a proactive “shield” for farm owner/operator.

3. A combination of the above

- Complaint can lead to SSAMP request in the same proceeding before CADB.

Agricultural Mediation

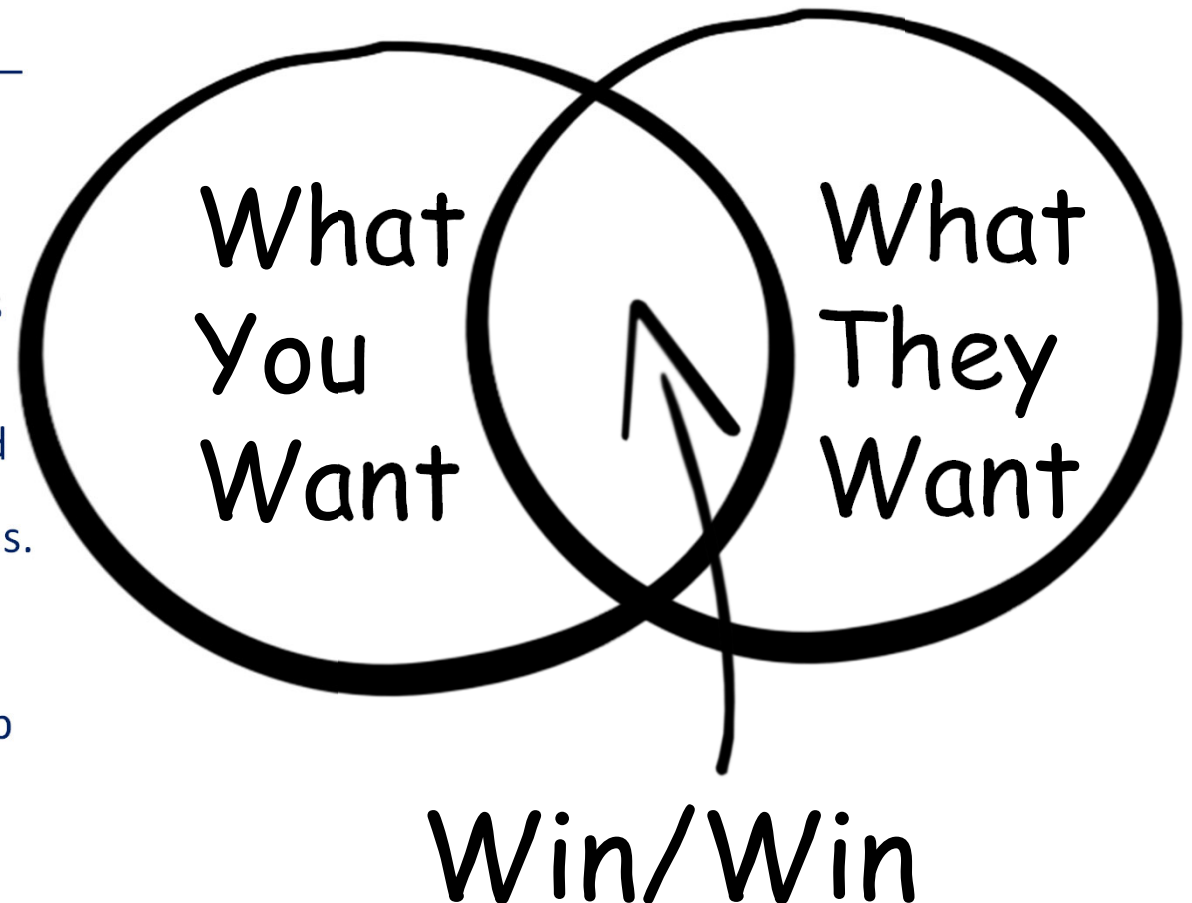
Parties can also use mediation, an alternative to the formal RTF process.

Mediation is free, voluntary, confidential & easy



Agricultural Mediation Program

- **Agricultural Mediation Program** - The more informal way to resolve conflicts – free service offered by the SADC.
- **Mediation** is a voluntary process in which a trained, impartial mediator facilitates a discussion between parties with a dispute.
- Parties express their points of view and interests, and mediator helps them narrow the issues and look for solutions.
- CADBs and SADC encourage use of mediation before formal RTF process begins – confidential and easy, can help resolve issues quickly and foster better relationships.



Complaints Against Commercial Farms

N.J.S.A. 4:1C-10.1a.:

Any person aggrieved by the operation of a commercial farm **SHALL** file a complaint with the CADB or with the SADC in counties where no CADB exists **PRIOR TO FILING AN ACTION IN COURT.**

But some towns still file complaints in municipal court, and when that happens. . .



A photograph of a wooden desk with a white cup of coffee featuring a heart-shaped latte art. Next to the cup is a blue pen and a white piece of paper with a letter. The letter is from Brian D. Smith, Esq., Chief of Legal Affairs, SADC, to a Municipal Court Judge. It discusses a complaint against FARM and references several legal cases: *Township of Franklin v. den Hollander*, *Borough of Closter v. Abram Demaree Homestead*, and *Curzi v. Raub*. The letter states that the purpose of the communication is to advise that any complaint against FARM must be heard by the CADB as a matter of primary jurisdiction pursuant to the referenced cases. It also mentions that *Den Hollander* involved alleged municipal ordinance violations and *Closter* involved public nuisance allegations and *Curzi* involved private nuisance allegations. The letter concludes with a recommendation that the matter be dismissed with prejudice and provides a list of references: *Township of Franklin v. den Hollander*, 172 N.J. 147 (2002); *Borough of Closter v. Abram Demaree Homestead*, 365 N.J. Super 338 (App. Div. 2004); and *Curzi v. Raub*, 415 N.J. Super. 1 (App. Div. 2010).

To: Municipal Court Judge

CC: Prosecutor, CMA, Zoning Officer

From: Brian D. Smith, Esq., Chief of Legal Affairs, SADC

The purpose of this communication is to advise that any complaint against FARM must be heard by the CADB as a matter of primary jurisdiction pursuant to *Township of Franklin v. den Hollander*, *Borough of Closter v. Abram Demaree Homestead* and *Curzi v. Raub*.

Den Hollander involved alleged municipal ordinance violations; *Closter* involved public nuisance allegations and *Curzi* involved private nuisance allegations.

The Supreme Court and Appellate Division unequivocally stated that any complaint against a farm must first be heard by the CADB pursuant to the Right to Farm Act (RTFA), to determine whether the landowner is operating a "commercial farm" and, if so, whether the disputed activities constitute an agricultural operation or practice that can be protected under the RTFA.

I recommend that Your Honor consider dismissing with prejudice the above matter pending before the municipal court. If Your Honor has any questions or needs anything further, then please contact me at your convenience.


Township of Franklin v. den Hollander, 172 N.J. 147 (2002)

Borough of Closter v. Abram Demaree Homestead, 365 N.J. Super 338 (App. Div. 2004)

Curzi v. Raub, 415 N.J. Super. 1 (App. Div. 2010)

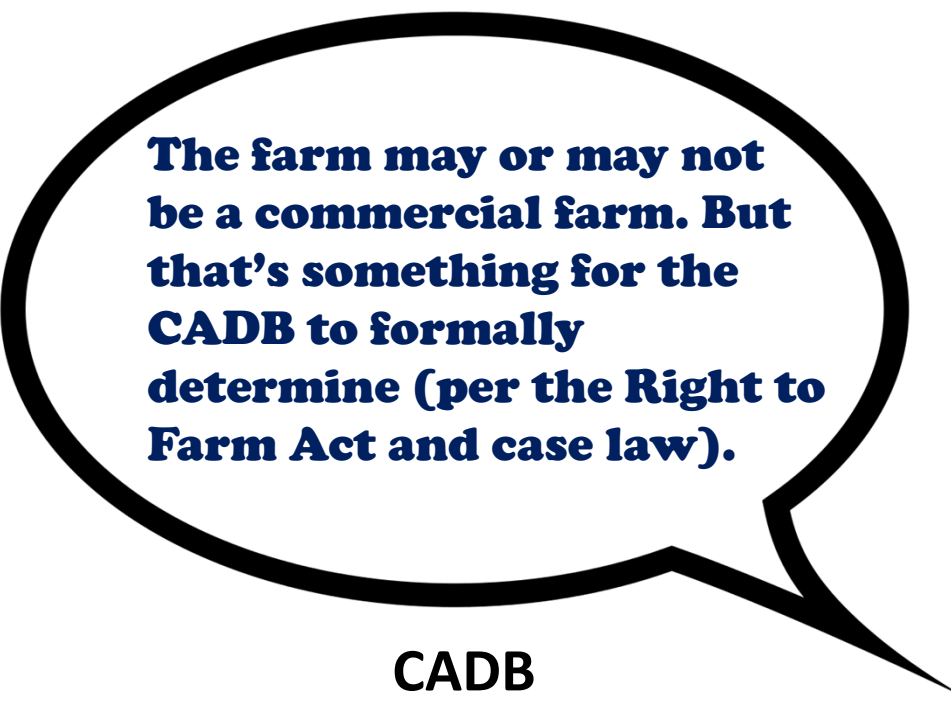
CADB Primary Jurisdiction

The CADB gets to decide whether the farm is a commercial farm. It also determines whether the Right to Farm Act's additional threshold criteria are met and whether protection and preemption are warranted.



But it's not a commercial farm, so we can go to court anyway.

Municipality



The farm may or may not be a commercial farm. But that's something for the CADB to formally determine (per the Right to Farm Act and case law).

CADB

CADB Primary Jurisdiction

- **Abram Demaree Homestead** opinion:

“We hold now that when a farming operation arguably meets the definition of a commercial farm under N.J.S.A. 4:1C-3, it is the CADB or SADC that must first decide whether the farm actually meets the definition. The agency is deprived of jurisdiction only when the operation clearly cannot meet the definition of a commercial farm under the Farm Act.” 365 N.J. Super. at 349-51.

- **Den Hollander** opinion (Appellate Decision, 2001):

“There may be instances where a CADB or the SADC concludes that an issue is beyond the jurisdiction of the agency, that adherence to local land use ordinances is appropriate, or even that there is no preemption on a specific issue, however that determination shall be made by the CAB or SADC *in the first instance*, rather than by the municipality or a court.” 338 N.J. Super at 392.

RTF Act: Criteria to Receive Protections

The Right to Farm Act's threshold criteria are formally determined by CADB (or by SADC where no CADB exists)

Criterion #1: Farm meets the definition of COMMERCIAL FARM in N.J.S.A. 4:1C-3: A farm management unit (FMU) that is:



5 acres, satisfying Farmland Assessment (FA) criteria, & producing products worth **\$2,500 or more annually**; or



5 acres, otherwise satisfying FA criteria, & producing products worth **\$50,000 or more annually**; or



FMU that is a **beekeeping operation** producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth **\$10,000 or more annually**.

RTF Act: Criteria to Receive Protections

The Right to Farm Act's threshold criteria are formally determined by CADB (or by SADC where no CADB exists)

Criterion #2: LOCATION – The farm is located in an area which, as of 12/31/97 or thereafter, agriculture is a permitted use, OR was in operation as of 7/2/98 (N.J.S.A. 4:1C-9).

Criterion #3: PROTECTED ACTIVITY – The activity is included in the list of protected activities in N.J.S.A. 4:1C-9.

RTF Act: Criteria to Receive Protections

What about new farmers starting out?
And farming just a few acres?
Or a small plot in a residential area?
Or a small lot in an urban area?

The same criteria apply for all farms.

Criterion #1: All farms must meet the definition of **COMMERCIAL FARM** in N.J.S.A. 4:1C-3 to be eligible for protection.

Criterion #2: The farm is **located** in an area which, as of 12/31/97 or thereafter, agriculture is a permitted use, OR was in operation as of 7/2/98 (N.J.S.A. 4:1C-9).

Criterion #3: The activity is included in the **list of protected activities**.

RTF Act: Other Eligibility Requirements



Question - What if someone farms 3 acres by their home and another 4 acres nearby?

Can you combine the parcels to make a 'farm management unit' and a RTFA-eligible 'commercial farm' that's greater than 5 acres?

Sipos RTF Decision: Each noncontiguous parcel (in a 'farm management unit' over 5 acres in size) must be eligible for Farmland Assessment (FA) on its own in order for the FMU to qualify for RTF protection as a commercial farm. (This decision was based on how the FA Act prohibits combining noncontiguous parcels for the purpose of meeting the FA's 5-acre minimum eligibility requirement.)

RTF Act: Activities Eligible for Protection

Protected Activities under N.J.S.A. 4:1C-9:



- Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities with SIC classifications for agriculture, forestry, fishing and trapping.
- Process and package agricultural output of farm.
- Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards.
- Replenish soil nutrients and improve soil tilth.
- Control pests, predators and diseases of plants and animals.

RTF Act: Activities Eligible for Protection

Protected Activities under N.J.S.A. 4:1C-9:



- Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas.
- Conduct on-site disposal of organic agricultural wastes.
- Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm.

RTF Act: Activities Eligible for Protection

Protected Activities under N.J.S.A. 4:1C-9:



- Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of, and the rules and regulations adopted pursuant to, P.L. 2009, c.213.
- House any full-time, year round equine-related farm employee in the same building or facility as the horse(s) (“full-time, year round equine-related farm employee” does not include migrant, seasonal or temporary employee)
- Engage in any other agricultural activity as determined by the SADC and adopted by rule.

RTF Act: Other Eligibility Requirements

Criterion #4: Compliance with applicable State and federal laws and regulations

Examples:

Stormwater management

Uniform Construction Code

Freshwater wetlands

Animal waste management



RTF Act: Other Eligibility Requirements

Criterion #5: Does not pose a direct threat to public health and safety

Example:

- CSA entrance/exit driveway creates a traffic hazard on intersecting public road



RTF Act: Other Eligibility Requirements

Criterion #6: Activity conforms to generally accepted agricultural management practices (AMPs)

- 12 adopted AMPs; can also get Site-Specific AMP



RTF Act: Agricultural Management Practices (AMPS)/ Regulations



- Apiaries
- Poultry manure
- Land application of food byproducts
- Commercial vegetable production
- Commercial tree fruit production
- Natural resource conservation
- On-farm composting
- Fencing for wildlife control
- Equine activities
- Aquaculture
- Solar energy
- On-farm direct marketing
- Pick Your Own operations (eligible for RTF)

State Laws/Regs. Delegated to Towns

- State laws & regulations must **STILL** be complied with by the commercial farm even though enforcement has been delegated to the municipality or county & is set forth in a local ordinance or county resolution.
- BUT, if municipality or county requirements exceed State standards, preemption is possible
Example #1: Municipality's storm water management ordinance exceeds State standards and requires a 1,000 foot setback to streams
Example #2: Municipality adopts a septic code requiring > 4 feet to a groundwater
CADB must still balance local laws with farmer's legitimate need to engage in the agricultural activity
- AND CADBs have the right to defer issues back to the municipality if too complex for the CADB

Limits to CADB's Jurisdiction

Health and Safety

“...although the CAB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have *carte blanche* to impose their views. Because the authority of the CAB is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practice with these standards in mind.”

Township of Franklin v. den Hollander, 172 N.J. at 151. (Supreme Court, 2002)

“The legislative imperative requiring attention to public health & safety imposes a limitation on such jurisdiction and requires a CADB to consider the impact of municipal land use ordinances.”

Township of Franklin v. den Hollander, 338 N.J. Super. at 392 (Appellate Division, 2001)

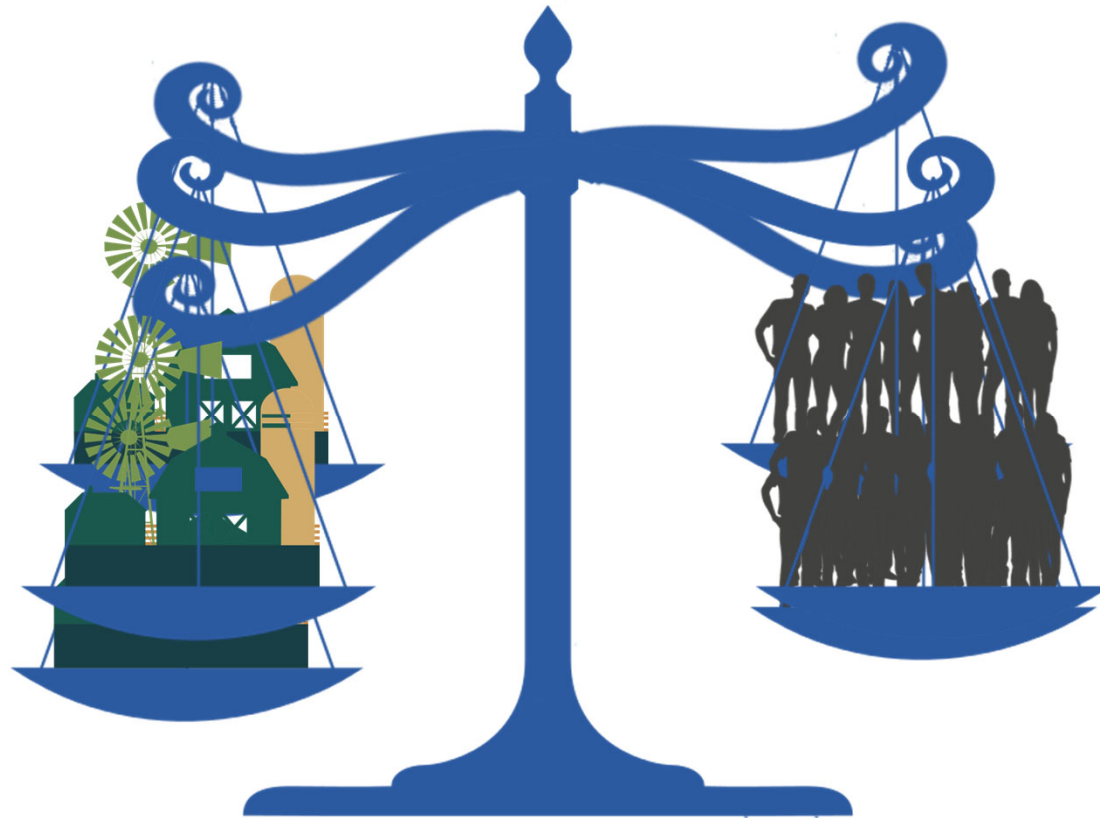
Preemption of Local Regulations

- ✓ Agricultural activities MAY preempt municipal and county regulations.
- ✓ Appropriate consideration and deference MUST be given to local standards.



Balancing Test

Balance
agricultural
needs...



...against
municipal
public
health and
safety
concerns

Farmer has to show "legitimate agriculturally-based reason" for not complying with municipal regulations

Site Plan Review

But what about SITE PLAN REVIEW?

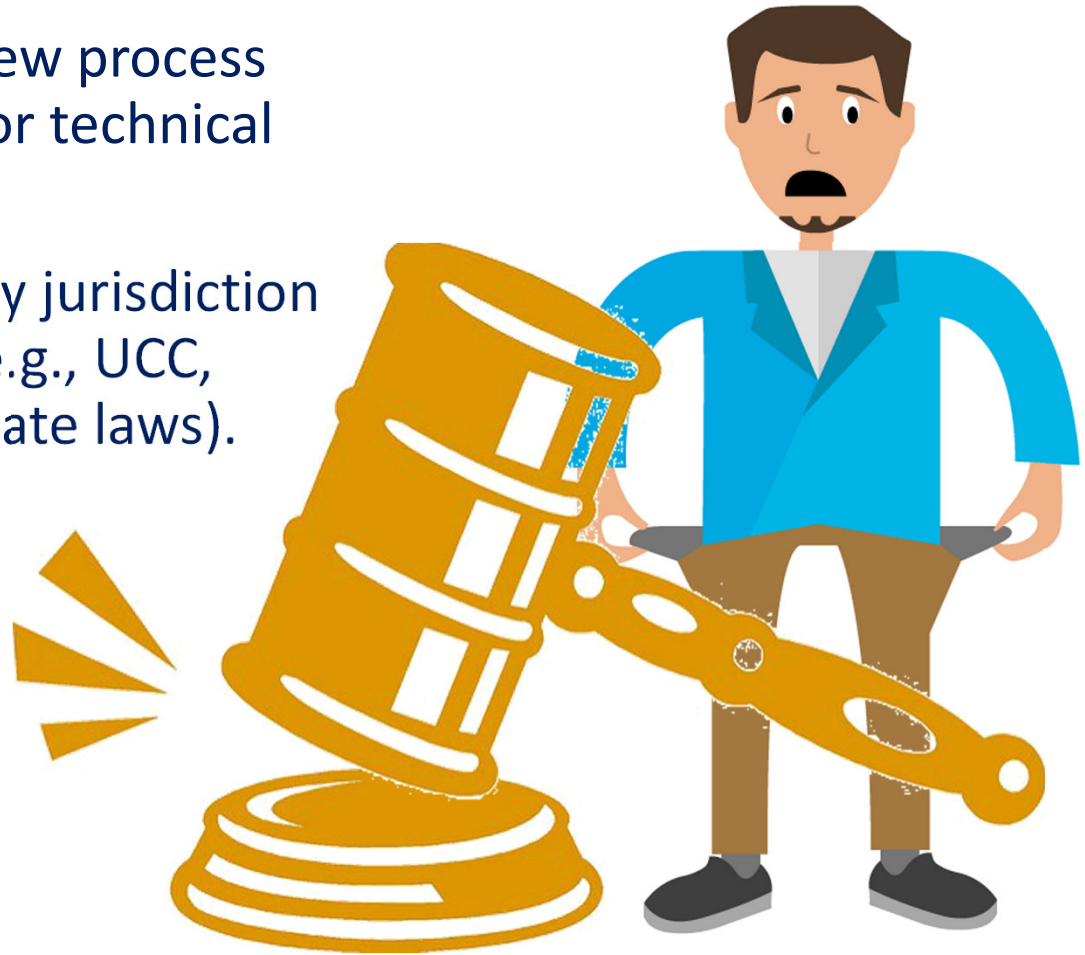
- Review of site plan elements is often needed (particularly for on-farm direct marketing facilities).
- CADBs maintain primary jurisdiction over local regulations, such as when SSAMP requests are made,

But..



Site Plan Review

- Complexity of site plan review process might exceed the financial or technical capabilities of CADBs.
- CADBs do not have statutory jurisdiction to review some elements (e.g., UCC, ADA requirements, other State laws).



Site Plan Review

Farmers may:

Apply to CADB for SSAMP – and CADB can give approval of many site plan elements, but deferring to local review over others.



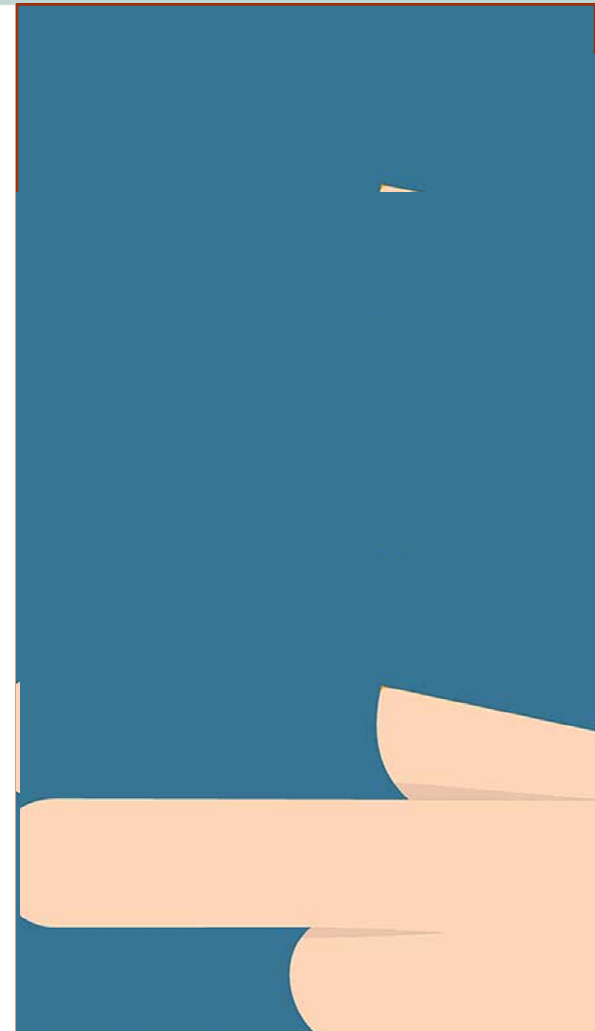
Apply to municipality for site plan review – and seek relief from specific requirements with the CADB afterward.

Site Plan Review

CADB and/or municipality can:

Waive or reduce requirements based on site-specific considerations, for example:

- Scale
- Intensity
- Farm's Setting
- Road
- Minimum Improvements Needed For Safety



RTF Process/Procedures



**CADB hears
the matter
and issues a
decision**

Appeal

- To SADC**
- Within 10 days of receipt of resolution in a complaint case.
 - Within 45 days of receipt of resolution in an SSAMP case.



Appeal

**SADC forwards
appeal to OAL**

- OAL issues "Initial Decision"
- SADC issues "Final Decision"



**SADC's decision can
be appealed to the
Appellate Division
of Superior Court.**

Formal Right to Farm Determinations

RTF Complaints (Conflict Resolution matters)

www.nj.gov/agriculture/sadc/rtfprogram/formdet/conflictres/index.html

Site-Specific AMPs (SSAMPs)

www.nj.gov/agriculture/sadc/rtfprogram/formdet/ssamp/index.html

SADC Website Navigation

www.nj.gov/agriculture/sadc/
www.nj.gov/agriculture/sadc/rtfprogram/
www.nj.gov/agriculture/sadc/rtfprogram/formdet/



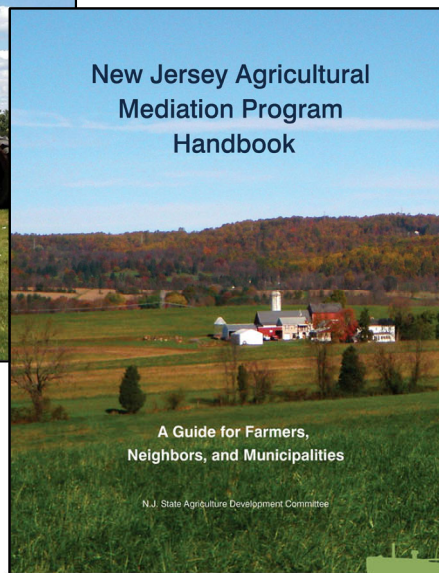
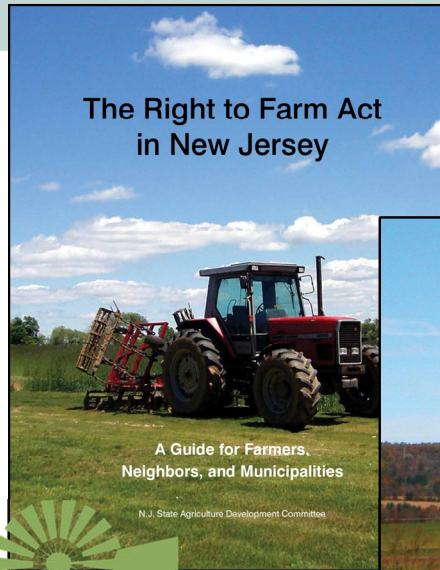
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For More Information...



- **Right to Farm website**
<http://nj.gov/agriculture/sadc/rtfprogram/>
- **Right To Farm Guidebook / Fact sheet**
- **Ag Mediation Guidebook / Fact sheet**
- **Contact your local CADB**
<http://nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html>
- **Contact the SADC**
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