

The Right to Farm Act in New Jersey



NEW JERSEY
State Agriculture Development Committee
P.O. Box 330
Trenton, NJ 08625-0330

phone: 609-984-2504
fax: 609-633-2004
email: sadc@ag.nj.gov
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



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 Process (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



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. . .





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:

“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.” *Township of Franklin v. den Hollander, Superior Court of N.J., Appellate Division (2001)*

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: Farm management unit (FMU) is



5 acres, satisfying 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: 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
- 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)

- 13 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 > 10 feet to ground water

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, N.J.

Supreme Court (2002)

“The required attention to public health & safety imposes a limitation on such jurisdiction and requires a CADB to consider the impact of municipal land use ordinances, deferring to the municipality when appropriate.”

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

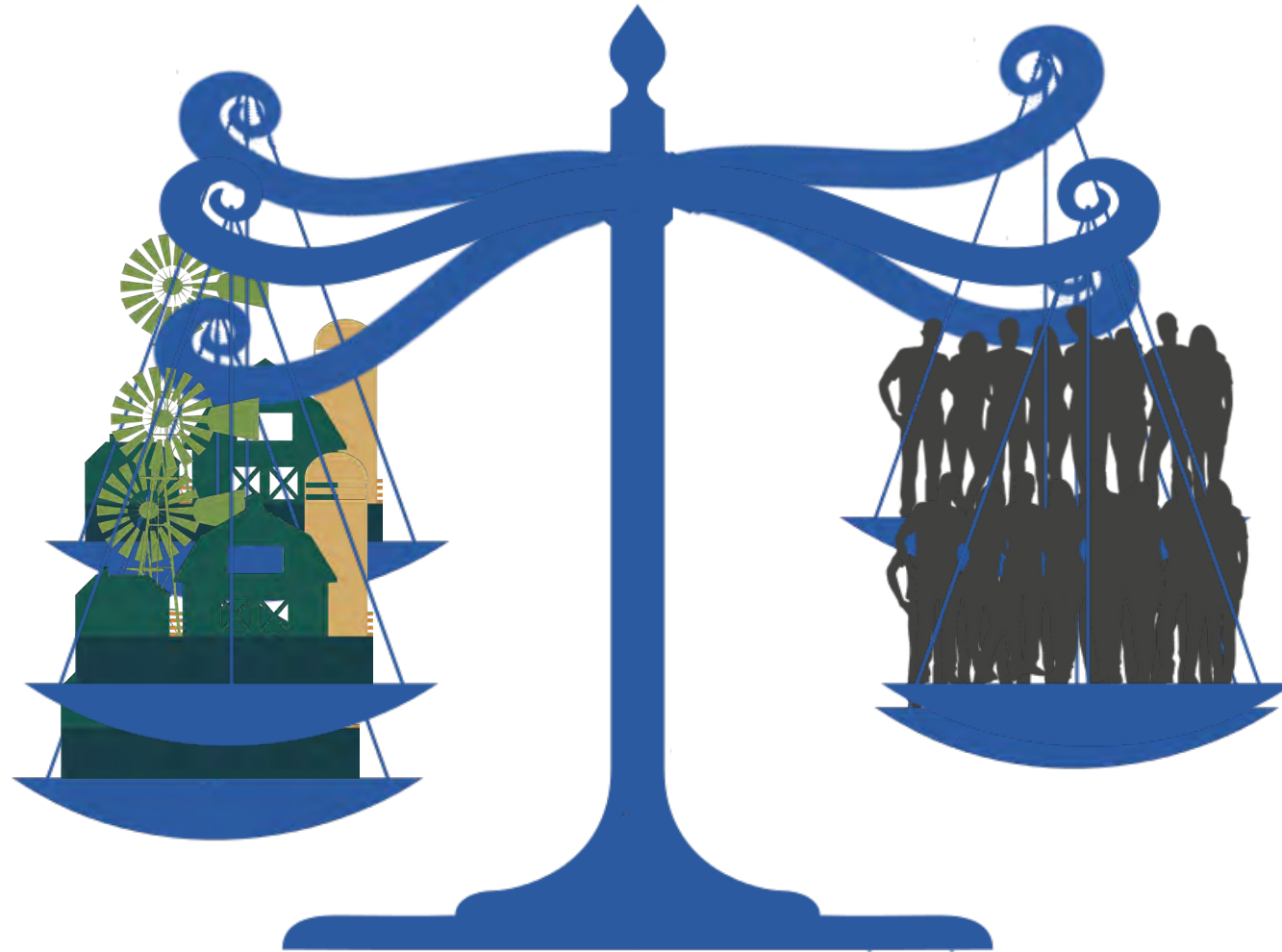
Preemption of Local Regulations

A wooden gavel is positioned vertically on a stack of books. In the foreground, a wooden block with the word 'REGULATIONS' is visible. Another wooden block with the word 'SETTLEMENT' is partially visible to the right. The background is a blurred stack of books.

- ✓ 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?

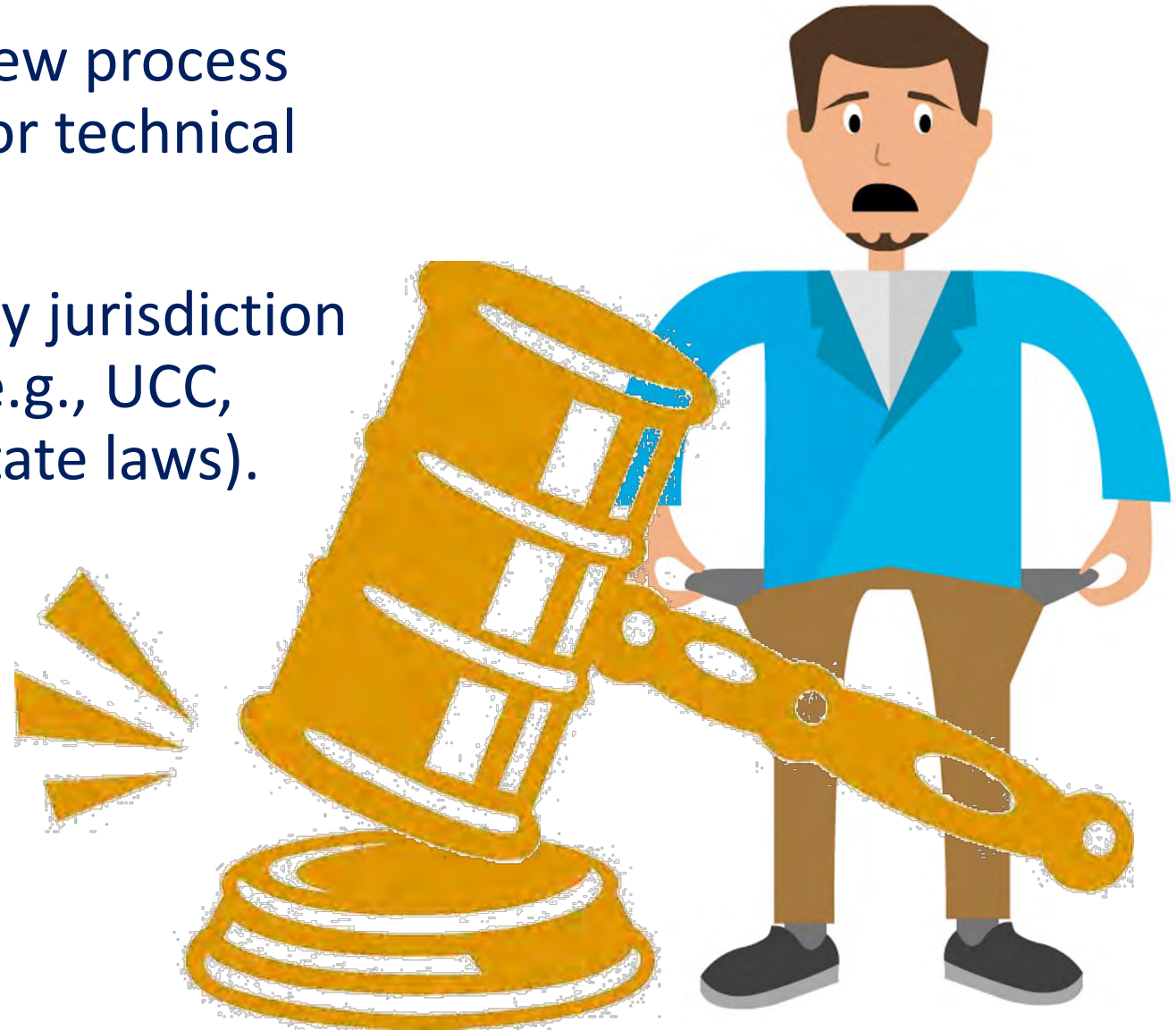
- Review of site plan elements is often needed (particularly for on-farm direct marketing facilities).
- CADBs maintain primary jurisdiction over local regulations, such as when SSAMP requests are made,

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.



Or



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

Site Plan Review

CADBAs 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 re-hears the matter

(usually at an OAL Hearing)

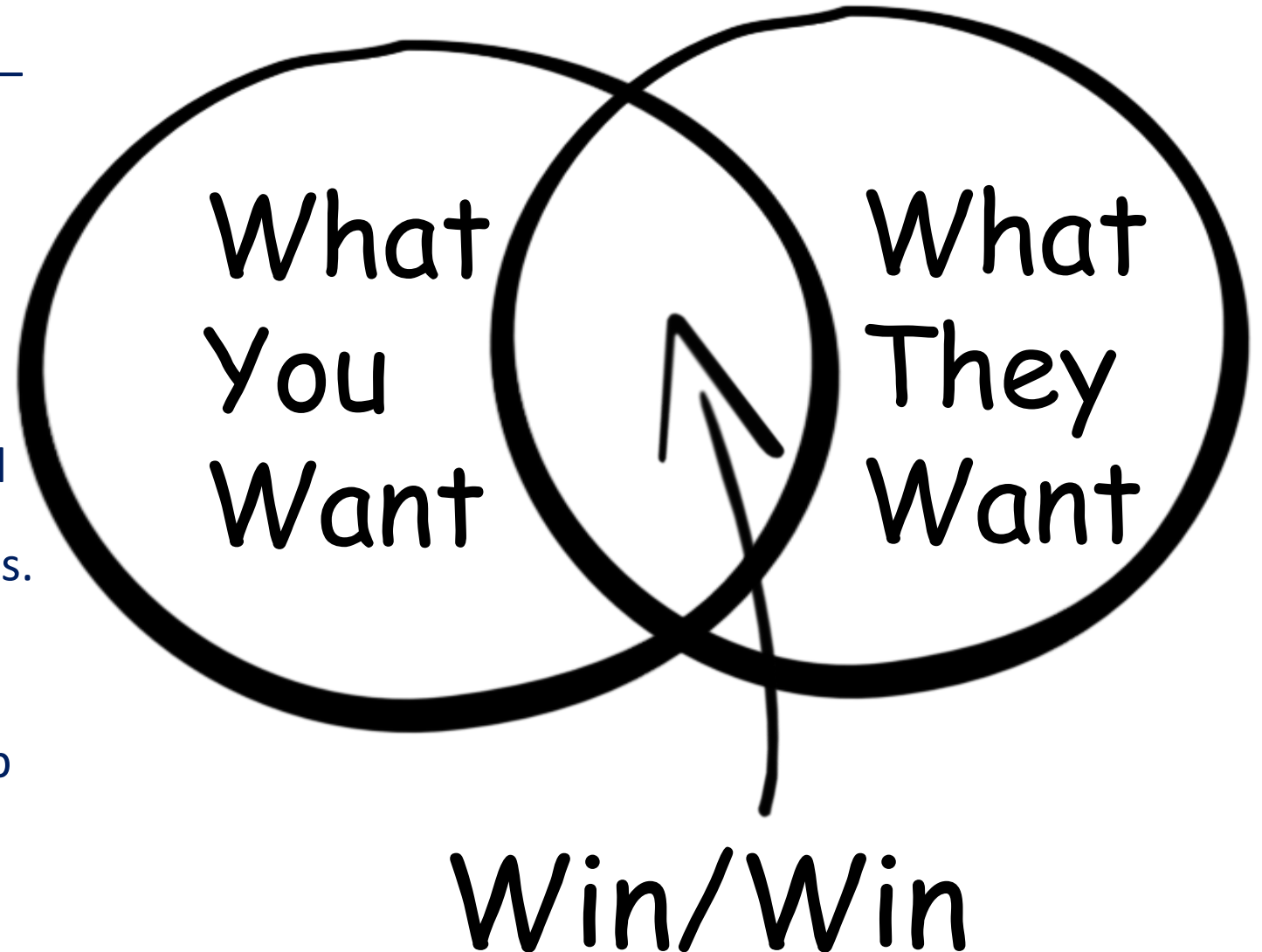
and issues a '***Final Agency Action***' (final decision).



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

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.



Definitions: EVENTS

- ❑ **“On-Farm Direct Marketing Events”** - means ag-related functions that are accessory to, and serve to increase, the direct market sales of the agricultural output of the farm

- ❑ Events are designed to attract customers to the farm by enhancing the experience of purchasing agricultural products
 - May include OFDM activities as components;
 - Are either product-based or farm-based;
 - Occur seasonally or periodically



Definitions: EVENTS

- ❑ Some examples of OFDM events, provided they demonstrate the required relationship to marketing the farm's output, may include but are not limited to:
 - Ag product festival at a farm producing that particular product (e.g., apple, pumpkin, wine)
 - Seasonal harvest festival at a farm producing such seasonal products
 - Farm open house events
 - CSA membership meetings
 - Farm-to-table events that showcase the farm's agricultural output



AMP General Provisions

For Facilities, Activities, and Events

- ❑ Hours of operation – 6 am - 10 pm
(may be extended to 11 pm)

- ❑ Lighting – Need to provide when
open after dark

- ❑ Safety

Provide visitors with any OFDM-related rules/safety procedures; may include notice that visitors should also use common sense, be aware of inherent risks, and wear farm-appropriate attire



AMP General Provisions For Facilities, Activities, and Events

- ❑ **Sanitary Facilities** - Must provide facilities (restrooms/porta-potties) if providing seating for eating, if activities/events promote people staying on-site for more than 90 minutes, or if required by state retail food code or UCC
- ❑ **Signs** — Maximum size (16 sq. ft.); overall combined square footage (160 sq. ft.)
- ❑ **Parking** — must conform with municipals standards; in the absence of municipal standards applicable to facilities, AMP's standards apply
- ❑ **Buffers** — setbacks and screenings may be used; AMP provides setback standards for new or expanded OFDM facilities



Additional Provisions



- ❑ Existing and new structures or improvements may be used for activities and events
 - Existing – as long as use does not adversely affect continued use for ag production
 - New – as long as construction and use have negligible impact on continued use of land for ag production

- ❑ Land Use – Activities/events shall have negligible impact on continued use of land for ag production

- ❑ Overnight lodging – not protected

- ❑ Site-specific AMPs – Farms may request SSAMPs; SSAMP determinations must be consistent with the AMP

Events

- ❑ **Event Management Plans for Events**
 - ❑ If having a large event with significantly more traffic/visitors, need a plan for addressing potential public health and safety issues (emergency vehicle access, traffic management, and public health management)
 - ❑ Plan must be in writing and provided to municipality at least 30 days in advance as an advisory notice and to enable any coordination that may be necessary
 - ❑ Alternatively, a farm could also get a special events permit from the town, if the town has a provision for such permits

Are celebratory life events, such as weddings, graduations, birthdays and anniversaries eligible for Right to Farm protection?

See SADC response to comment at 46 N.J.R. 600:

Most “celebratory” events would not meet the definition of on-farm direct marketing events at N.J.A.C. 2:76-2A.13(b) in the AMP, and the SADC previously ruled that not every marketing tool employed to attract customers to a winery, including a “celebratory” event, is protected by the RTFA. (*In the matter of Hopewell Valley Vineyards, Hopewell Township, Mercer County*, SADC ID No. 786 (Hearing Officer’s Findings and Recommendations of the State Agriculture Development Committee, March 24, 2011, pages 21-23). While it is conceivable that an event such as a wedding could be protected as a type of retail marketing provided that an overwhelming majority of the food and beverages served were produced from the output of the farm, the SADC believes that protecting such uses would require promulgation of a separate AMP to address the conditions under which RTF protection could be available.

Preserved Farm Winery Law- N.J.S.A. 4:1C-32.7, et seq.

- ❑ Allows “special occasion events” to occur on farms preserved under the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, et seq. (ARDA)
- ❑ Defines “special occasion event” as “a wedding, lifetime milestone event, or other cultural or social event as defined by the appropriate county agriculture development board, and conducted pursuant to the requirements set forth in [N.J.S.A. 4:1C-32.8] . . .
- ❑ Original bill [S-837] attempted to provide RTF protection to “special occasion events” at wineries located on ARDA-preserved farms.

Preserved Farm Winery Law- N.J.S.A. 4:1C-32.7, et seq.

❑ S-837 was conditionally vetoed by Governor Christie:

The Right to Farm program is designed to allow farmers to undertake traditional agricultural production free from unnecessary and overly burdensome governmental interference. This bill, however, would extend Right to Farm protections to events and activities with minimal or no relationship to the agricultural output of a farm, such as weddings, festivals, fairs, and other social events. By including these new agricultural tourism activities into the Right to Farm rubric, these undertakings would be exempt from local ordinances and actions, even though such activities may have no relation to the farm's main agricultural business. As such, this extension of Right to Farm would reduce the farm itself to a mere backdrop for unrelated commercial activities.

❑ Adopted law removed Right to Farm protection for “special occasion events”.

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/



NEW JERSEY

State Agriculture Development Committee

P.O. Box 330

Trenton, NJ 08625-0330

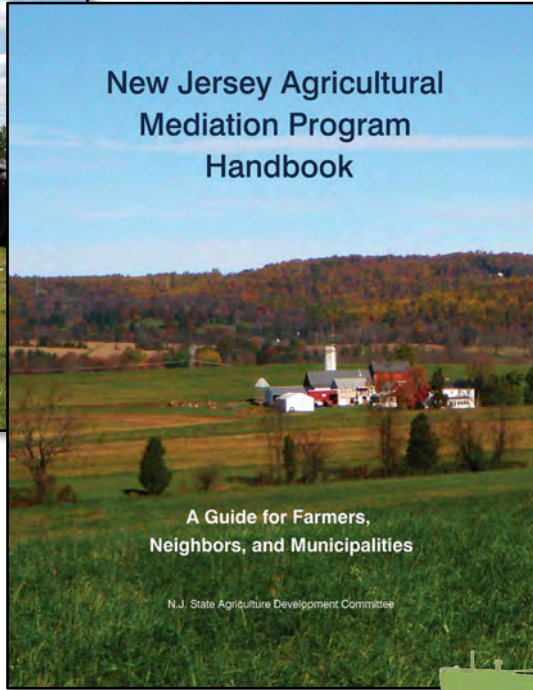
phone: 609-984-2504

fax: 609-633-2004

email: sadc@ag.nj.gov

web: www.nj.gov/agriculture/sadc

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**
(609) 984-2504
sadc@ag.state.nj.us
Brian D. Smith, Esq., Chief of Legal Affairs
Alison Reynolds, Esq., Legal Specialist
David Kimmel, Agricultural Resource Specialist



NEW JERSEY
State Agriculture Development Committee
P.O. Box 330
Trenton, NJ 08625-0330

phone: 609-984-2504
fax: 609-633-2004
email: sadc@ag.nj.gov
web: www.nj.gov/agriculture/sadc