

RESOLUTION 2008-01

BERGEN COUNTY AGRICULTURE DEVELOPMENT BOARD

DECISION APPROVING A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE (AMP) IN ACCORDANCE WITH THE NEW JERSEY RIGHT TO FARM ACT

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3, a commercial farm owner or operator may make a request to the County Agriculture Development Board to determine if his or her operation constitutes a generally accepted Agricultural Management Practice (“AMP”); for protected activities under the Right to Farm Act; and

WHEREAS, on February 2, 2007, Chris Cipriano (“Cipriano”), as the managing partner of the Cipriano Farms L.L.C. [the farm] located at _____ (Block 18 Lot 22) in Mahwah, applied to the Bergen County Agriculture Development Board [the Board] pursuant to N.J.A.C. 2:76-2.3 requesting a determination as to whether the proposed uses of the Property as a commercial farm and structures as set forth hereinafter constitute generally accepted Agricultural Management Practices with regard to: the production of agricultural and horticultural crops and the processing and packaging of the agricultural output of the commercial farm (hereinafter referred to as “Site-Specific AMP Request”); and

WHEREAS, the Farm’s Site-Specific proposals were set forth in its application and on Exhibit A-4 below; and

WHEREAS, on January 19, 2008 Cipriano Farms amended/reasserted its intention to utilize Greenhouse(s); and

WHEREAS, the Board is familiar with the site having conducted three publicly advertised site inspections in compliance with the New Jersey Statutes and the Open Public Meetings Act on the following dates:

- April 11, 2006
- March 5, 2007
- May 22, 2007

WHEREAS, the Board members present during the site visits made observations including but not limited to the location of proposed fields, existing and proposed structures, parking, etc.; and

WHEREAS, the Board noticed public hearings for December 3, 2007 and March 3, 2008 in compliance with the Open Public Meetings Act and a quorum of the Board being present at the aforesaid meetings, the Board considered the application; and

WHEREAS, Bruce E. Whitaker, Esq., appeared before the Board on behalf of Cipriano Farms, LLC, and Nilufer DeScherer Esq. of Herten Burstein, appeared before the Board on behalf of the Township of Mahwah; and

WHEREAS, on December 3, 2007 the Board heard the sworn testimony of Chris Cipriano as to farm and related activities and the sworn testimony of Thomas Mulvey, Mahwah's Zoning Official; and

WHEREAS, the hearing was closed on December 3, 2007 when no members of the public attended, but Board requested, and Cipriano consented to the reopening of the matter for an additional public hearing on March 3, 2008 at which time members of the public testified; and

WHEREAS, the Board received the following Exhibits into evidence:

A-1A Application for Right to Farm Protection dated February 2, 2007

A-1B Letter dated January 28, 2008 regarding proposed Greenhouse

A-2 Natural Resource Conservation Service ("NRCS") Plan dated June 26, 2006

A-3 Deed of Ownership dated May 31, 2006 recorded in Book 9091 at Page 339

A-4 Growing Area Layout Plan and Location Survey for Cirpiano Farms L.L.C., "Tax Lot 22 Block 18, _____, Township of Mahwah, Bergen County, New Jersey" dated May 6, 2006 last revised January 29, 2007 and prepared by Peter C. Kirch P.L.S. of Surveying Technologies, Inc. as Job No 5981. The Growing Area Layout Plan notes:

- A. Proposed Greenhouses
- B. Herbaceous Perennial Container Growing, Propagation & Division Area
- C. Field Grown
 - Trees
 - Woody Ornamentals
 - Herbaceous Plants
- D. Field Grown

- Trees
- Herbaceous Plants

E. Field Grown Bamboo and Ornamental Grass (Herbaceous Plants)

F. Aquatic Plants Grown in Existing Pond

- A-5 Application for Farmland Assessment pursuant to N.J.S.A. 54:4-23.1 which provides that: "Land shall be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetable; nursery, floral, ornamental and greenhouse products
- A-6 Schedule for District Use Regulations - Township of Mahwah.
- A-7 Plant Dealer Certificate # 08007435 from the NJ Department of Agriculture
- A-8 Invoices documenting sales in excess of \$2,500.00
- A-9 List of Tagged Plant Material
- A-10 Photographs of the farm property, fields, structures, entrances & exits, parking, etc.
- A-11 Cipriano Farms Delivery Instructions
- A-12 Calculations of Area Two - 48,650 sq. ft. by Peter C. Kirch P.L.S. of Surveying Technologies, Inc. and depiction of 30 x 88 foot greenhouse.
- A-13 Photographs of Area Two - balled and burlapped trees and shrubs

WHEREAS, the Board took judicial notice of:

1. Mahwah Zoning Ordinance
2. Mahwah Zoning Map
3. Mahwah Master Plan

WHEREAS, the Board has considered the farm's application and exhibits and the Township's complaint as well as zoning ordinances, etc.

NOW THEREFORE BE IT RESOLVED, that the Board makes the following determinations:

PROCEDURAL BACKGROUND

1. On February 2, 2007, Cipriano Farms, L.L.C. filed for a Site-Specific Agricultural Management Practice (AMP) determination by the Bergen County Agriculture Development Board (BCADB), pursuant to the Right to Farm Act, that it has a right to engage in agricultural activities set forth in N.J.S.A. 4:1C-11 of the “Agricultural Retention and Development Act”:

a. “Agricultural use” means the use of land for common farmsite activities, including but not limited to: production, harvesting storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

2. On January 29, 2008, Cipriano Farms filed an amended application to reassert its intention to utilize Greenhouse(s).

3. In general, Cipriano Farms seeks to engage in any and all agriculture activities including but not limited to the following *italicized* activities set forth in N.J.S.A. 4:1C-9 of the “Right of Farm Act” set forth below and to do so as a wholesale farm market as set forth in N.J.A.C. 2:76-2.1:

“a. *Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial classification for agriculture, forestry, fishing and trapping;*

b. Process and package the agricultural output of the commercial farm;

c. *Provide for the wholesale and retail marketing of the agricultural output of the commercial farm, and related products that contribute to farm income, including the construction of building and parking areas in conformance with municipal standards;*

d. *Replenish soil nutrients and improve soil tilth;*

e. *Control pests, predators and disease of plants and animal;*

f. *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 wetlands areas; and*

g. Conduct on-site disposal of organic agricultural wastes.”

THRESHOLD FINDINGS OF FACT

4. The Board finds that it has jurisdiction of this matter based upon the following, threshold finding:

A. Cipriano Farms is located on approximate ten-acre site located at [redacted], Mahwah (Block 18 Lot 22). The property contains a single family home together with farm buildings. Nine of the ten acres have a farmland assessment from the Tax Assessor of the Township of Mahwah.

B. The property was operated as a farm (the Gardner Tree Farm) for many years prior to July 2, 1998. Cipriano Farms leased the premises for a number of years before acquiring title from Kenneth Gardner on June 13, 2006.

C. The farm is located in an R-40 Zone which permits farms in existence on December 31, 1997 or thereafter. Agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan.

D. The Farm sells more than \$2,500.00 of agricultural product each year.

E. Based upon the above, the Farm is a “commercial farm” as defined by the statute as “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,’ ... [N.J.S.A.] 54:4-23.1 et seq.” N.J.S.A. 4:1C-3; see N.J.S.A. 54:4-23.1 to -23.23.

LEGAL ANALYSIS

5. This matter arises under the provisions of the Right to Farm Act, *N.J.S.A.* 4:1C-1 to -10.4. The legislative policy behind the Act is stated in *N.J.S.A.* 4:1C-2 as follows:

The Legislature finds and declares that:

A. The retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State;

B. Several factors have combined to create a situation wherein the regulations of various State agencies and the ordinances of individual municipalities may unnecessarily constrain essential farm practices;

C. It is necessary to establish a systematic and continuing effort to examine the effect of governmental regulation on the agricultural industry;

D. All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;

E. It is the express intention of this act to establish as the policy of this State the protection of commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey.

6. Prior to the Right to Farm Act, the general rule of law was that a municipal governing body is vested with the ultimate responsibility of establishing the essential land use character of the municipality through the adoption of zoning ordinances that divide the municipality into districts, identify the uses permitted in each district, and impose general limitations on construction.

7. The Right to Farm Act (N.J.S.A. 4:1C-1 et seq.), as amended in 1998, renders its provisions *preeminent* to “any municipal or county ordinance, resolution, or regulation to the contrary,” N.J.S.A. 4:1C-9. The New Jersey Supreme Court affirmed, in Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002), that the Farm Act's provisions as preeminent over a municipality exercising its powers under the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -112...and that the Act was designed “to promote to the greatest extent practicable and feasible, the continuation of agriculture in the State of New Jersey while recognizing the potential conflicts among all lawful activities in the State.” Senate Natural Res. and Agric. Comm. Statement No. 854- L. 1983, c. 31 (N.J.1998).

8. The Court acknowledged the difficulty and complexity of the agriculture board's assignment, observing: "The potential for conflict between farming interests and public health and safety exists. Nevertheless, we repose trust and discretion in the agricultural boards to decide carefully future disputes on a case-by-case basis and to balance competing interests." It also cautioned that in the exercise of jurisdiction over agricultural practices, the county agriculture development board is limited by public health and safety concerns. These issues of health and public safety must also be given due consideration by the agricultural agencies citing the appellate court's finding that:

“We consider the statutory language in the Act which speaks to conduct that poses a '*direct threat to public health or safety*' must be considered broadly, and

not as a narrow limitation in considering complaints of an aggrieved party that local land use or other relevant ordinances are being violated by the conduct of the commercial farm operator. In sum, in exercising its authority under the Act, the CADB or SADC must afford a local agency comity in recognition that the municipality interests must be appropriately acknowledged and considered.”

9. Lastly, the New Jersey Supreme Court recognized that the Right to Farm Act may preempt municipal regulations, but directed the CADBs and SADC to consider relevant municipal standards and, in instances where the ordinance “has a peripheral effect on farming that does not directly conflict with farming practices,” defer to the ordinance. Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), aff’d. 172 N.J. 147, 151-152 (2002). CADBs and the SADC are also required to consider the impact of the agricultural activity on public health and safety “and temper their determinations with these standards in mind.” Ibid.

10. As a result of the den Hollander case, agriculture boards, such as the Bergen County Agriculture Development Board, have primary jurisdiction over municipal/farm disputes but do not have unlimited authority regarding issues that directly affect public health and safety. In other words the Board must give appropriate consideration to municipal concerns - including but not limited to hours of operation, lighting, traffic and parking - where they are implicated and balance the commercial agricultural operation, activity or structure which conforms to agricultural management practices against the governmental regulation and any direct threats to public health and safety. N.J.S.A. 4:1C-10.

11. For a farm to receive this protection, the appropriate CADB must determine that the activity at issue conforms with agricultural management practices (AMPs) adopted by the SADC pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. or that it constitutes a generally accepted agricultural operation or practice. Thus, when an agriculture board issues an AMP, on a case-by-case basis, it creates an “irrebuttable presumption” that any activity of a commercial farm that is determined by the CAB “to constitute a generally accepted agricultural operation or practice [cannot]...be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property,” provided the operation or practice “does not pose a direct threat to public health and safety.” N.J.S.A. 4:1C-10.

ANCILLARY LEGAL ANALYSIS

12. In addition to the den Hollender case the Board has reviewed the following decisions in arriving at its independent determination of the facts and its interpretation of the Right to Farm Act as it applies to the facts in this matter.

A. Joseph Bartonek, L.L.C. v. Edison Township (Superior Court of New Jersey Appellate Division Docket No. A6898-02T3). In Bartonek, the Court found that a nursery qualified as a farm for purposes of obtaining tax exemption under the Farmland Assessment Act.

The owner of the nursery indicated that a portion of the plants at the nursery were delivered in containers and sold from the property without being removed from those containers.

The Court in *Bartonek* relied, in part, on the testimony of Dr. John Martin, a horticultural expert. Dr. Martin testified that in the United States “approximately 80% of the nursery production is done in containers” and described horticultural production as “active participation of turning a plant into something else more valuable and then selling it.” The test for production, according to Dr. Martin, is “the activity of both the grower and the plants,” and recognized that Barton Nursery was “an ordinary type of operation, performing normal tasks that occur at a nursery of this size.” According to Dr. Martin, those tasks include “watering and caring for plants and growing plants for sale where value is added.” Dr. Martin summarized production as growing a plant for a period of time, doing things to it, shaping it, pruning it, training it, turning it into something else, and then selling it.” Accordingly, a plant does not need to actually be placed in the ground for the act of nurturing of the plant to constitute “production.”

Finally, in the *Bartonek* decision, the Court held that the language “devoted for the production for sale” contained in the statutory definition of horticultural use encompasses making crops ready for sale, including storage pending the sale (*Van Wingerden v. Lafayette Township*, 18NJ Tax 81, 90 (Tax Court 1999) affirmed 335 NJ Super 560 (Appellate Division 2000)).

B. *Elenbe Associates, LP v. Township of Scotch Plains*. (Appellate Court appeal from the Tax Court (March 2000)). In *Elenbe*, the Court held that property qualified for tax exemption under the Farmland Assessment Act because the activities on the property constituted horticultural use of the property. The court also found that the proprietors had a right to use the farm products for their off site landscaping operations.

In reviewing the language of the statute, the Court stated that the term “horticulture,” as defined in the dictionary, is the “science of growing vegetables, flowers and ornamental shrubs or trees,” and that the term “cultivate,” under the dictionary definition, is “work by stirring, fertilizing, sowing and reaping, bestowing labor and care upon for the purpose of aiding and improving growth.” In essence, the Court determined that horticulture “encompasses the aiding and improving of plant growth.” The Tax Court Judge determined that placing plants in containers did not constitute production, but rather constituted warehousing, and the Appellate Division reversed the decision of the Tax Court indicating that caring and improving growth of a plant constituted the production regardless of whether that growing process is in the ground or in containers stored on the ground.

C. *Matter of Wendell and Leslie Nanson*. (Monmouth County Agriculture Board Resolution 2001-11-02). In *Nanson*, the proprietors owned a captive farm which provided horticultural products for use by their landscape maintenance business doing work at Newark and Kennedy Airports and other New York and New Jersey Port Authority facilities. The

Nansons proposed to plant, grow and harvest nursery stock including greenhouse grown flowers, which would be primarily used to supply their ground maintenance business with plant materials.

The equipment used in support of the ground maintenance business was stored at other facilities but the Board did recognize that, in order to make efficient and economical use of equipment owned by the maintenance company, some of the equipment from the maintenance operation, when it was needed and available, was often used in connection with the farming operations. It was further recognized that workers for the maintenance company were not dispatched from the property that was the subject of the commercial farm operation.

The Nanson Board determined that the use of such equipment is an efficient use of capital that benefits the farming operation. The Board made the determination that the property used for the nursery and other plantings proposed by the Applicant are accepted agricultural management practice relative to a farming operation. In short, the Nanson case holds that there is no prohibition in regards to the sale of plants being propagated on a farm site to be sold to another company owned by the same principals, nor is there any relevancy pertaining to the ownership of equipment used for the efficient management and operation of the farm so long as those plants are grown on-site, the companies are separate and distinct from one another, and the farm entity does not operate a landscaping business from the farm property.

D. Gro-Rite, Inc. v. Township of Pequannock (SADC Resolution #FY04R4(16) April 22, 2004). In Gro-Rite, the State Agriculture Development Committee found that a landscape nursery business which sold not only plants grown on site, but other nursery related products, was eligible for protection under the Act because the disputed activities conform with the generally accepted Agricultural Management Practices.

FACTUAL DISCUSSION

13. The Cipriano Farm is in the shape of a trapezoid. The front of the farm borders Darlington Avenue and has a curb cut sufficiently wide for ingress/egress by trailer trucks. The rear portion of the farm borders Route 287. The remaining boundaries abut residential property.

14. Prior to and at the start of the subject proceedings and during the proceedings the Township and local residents expressed concern that Chris Cipriano the owner of Cipriano Farms, L.L.C. also owned Cipriano Landscaping, and that the Farm was being utilized to support commercial landscaping and construction activities which are not protected by the Right to Farm Act and are also contrary to permitted activities in the Township's R-40 zone.

15. The neighbors' complaints included but were not limited to:

A. Cipriano Landscaping trucks coming and going at early and late hours.

- B. Truck traffic in general and 18 wheelers full of mulch in particular.
- C. 6:30 a.m. starts Monday through Saturday.
- D. Diesel trucks revving engines.
- E. Advertisements of a landscaping business with reference to a 10-acre farm.
- G. Garbage from resident tenants on the property, etc.
- H. On-site equipment.
- I. Wholesale sales of gravel, mulch and sand not related to plants and trees grown on site, etc.

16. The Township of Mahwah also expressed concern including but not limited to an air compressor, cement mixer, dumpsters, large metal shipping containers, landscaping and construction materials, pallets of bricks and slate slabs, cinder blocks, large rocks, top soil, gravel, sand, the installation of ornamental walkways and gardens which the Township alleged were for the benefit of retail landscaping customers and not in support of protected farming activity.

17. In short both the neighbors and the Township asserted, among other things, that:

- A. Landscaping and landscaping related activities were occurring on site.
- B. Landscaping and landscaping related activities are not recognized agricultural management practices and are not authorized by the Right to Farm Act.
- C. Commercial landscapers should not be allowed to subvert the laws that are meant to protect the right to grow and produce agricultural and horticultural products.

18. In response to the aforesaid concerns during the mediation sessions and site visits, the Farm took the following actions:

- A. Temporary displays and temporary stone walls were made permanent and herbacious plants were planted around them.
- B. Removed construction materials including but not limited to pallets of stone, stone sampling walls, landscape product; had removed/relocated construction materials, ornamental sample stone walls, pallets of bricks, large rocks, pallets of slate slabs, and construction debris used for such debris, cement mixers, and

temporary outhouses. The dumpsters that are on the site are for collecting the debris generated by the farm and the additional dumpsters that remain on the site are those dumpsters used for the farm roll-off equipment that is owned by the farm.

C. Confirmed that the Cipriano landscaping business office is operated from [redacted] Ramsey, New Jersey and has operated from that location since the year 2000.

D. Assembled and assigned all landscape workers from the [redacted], Ramsey, New Jersey location and the Molly Court, Mahwah, New Jersey location.

E. Relocated the landscaping equipment and trucks registered to Cipriano Landscaping, LLC to Molly Court, Mahwah which is zoned for commercial usage. Some of the relocated equipment consists of four Colorado pick up trucks, one F-350 pick up truck, one Chevy dump truck and a maintenance trailer.

F. Widened the ingress and egress from Darlington Avenue, so that tractor trailers could easily make the turn into the property and would no longer park along the road. In addition, the Farm agreed to schedule appointments for trucks to pick up and/or deliver products, so that trucks will not park on Darlington Avenue.

19. In response to Mahwah's request and the neighbor's complaints, Cipriano Farms also agreed to stipulate that:

A. Hours of operation will be from 7:00 a.m. to 5:00 p.m., Monday-Friday; and 7:00 a.m.- 4:00 p.m. on Saturdays.

B. Cipriano Farms L.L.C. will direct all vendors to limit deliveries and pickups to weekdays between 7:00 a.m. and 5:00 p.m., Monday-Saturday and that delivery/pickup trucks shall not park on [redacted]

C. Farm equipment will be housed on the rear of the property which abuts Route 287 to reduce the noise of idling and to allow diesel engines to warmup without disturbing neighbors.

D. Current Farm equipment is:

- (1) Mason dump truck
- (2) Ford Ranger pickup truck
- (3) 644 front end loader
- (4) LW80 front end loader

- (5) John Deere large excavator
- (6) Peterbuilt rolloff with multiple truck beds
- (7) Volvo rolloff with multiple truck beds
- (8) skid steerers
- (9) air compressor
- (10) metal storage containers

E. Storage of gravel will be located in the rear of the property and will be used only for on-site ground maintenance.

F. Area Four, dedicated to balled and burlapped trees and shrubs, will not increase in size unless and until the Farm applies for an amended AMP, which AMP is approved by this Board.

G. Cipriano Farms will computer tag its inventory for tracking and sale purposes.

H. Cipriano Farms recognizes that a landscape operation is not protected under the Right to Farm Act.

I. No landscape service company is operated from the Farm. It is understood that Christopher Cipriano is a Principal in a landscape company which is operated from a different location.

J. All equipment related to other business entities, including but not limited to Cipriano Landscaping, L.L.C., will be located and stored off site.

K. Personnel in connection with other business entities, including but not limited to Cipriano Landscaping will not assemble on site.

L. Vehicles, equipment and materials including construction materials utilized in connection with other business entities, including but not limited to Cipriano Landscaping (e.g., slabs of slate, decorative quarry stone and boulders, etc.) will not be stored on the property.

20. Chris Cipriano testified that the following activities take place in Areas One through Seven:

Area One: Container growth for herbaceous plants, perennials, grasses.

Area Two: Field grown trees and shrubs planted according to American Nurseryman Standards. Greenhouse.

Area Three: Ornamental growing area for specimen trees planted according to American Nurseryman Standards.

Area Four: Nursery growing area for “balled and burlapped” trees and shrubs.

Area Five: Field grown ornamental trees, specimen trees; some herbaceous plants planted according to American Nurseryman Standards.

Area Six: Container growing, mainly shrubs.

Area Seven: Herbaceous plants, field grown shrubs, bamboo, growing, ornamental trees.

21. Chris Cipriano testified that planting medium such as pine bark soil conditioner and topsoil, mulch and fertilizers used in connection with the trees, shrubs and plants were also sold as related, ancillary products.

22. Chris Cipriano also testified to the following matters:

A. The Farm tags its inventory to track its control and growth.

B. During the winter the farm site is under construction with excavating and earth moving equipment, to prepare the greenhouse site and to prepare areas for future plantings.

C. That Farm equipment is sometimes used off site when not needed on site.

D. Gravel and sand are used on site only for drainage, stabilization and for filling potholes.

E. The Farm utilizes, but does not store Cipriano Landscaping equipment on an as needed basis and that the equipment includes but is not limited to the following (which are housed off-site):

- (1) Cement mixer
- (2) Lawn maintenance equipment
- (3) Dirt roller
- (4) Tree chipper
- (5) Compactors
- (6) Pipe Trencher

FINDINGS OF FACT - INTERPRETATION OF "PRODUCTION"

23. The Board is familiar with the site from multiple site inspections and with the changing nature of the Farms operation in connection with the Boards mediation efforts.

24. The Board finds that "production" as set forth in N.J.S.A. 4:1C-9(a) of the "Right to Farm Act" means farm practices which "grow" trees/shrubs/plants pursuant to a Conservation and Management Plan that provides for:

- A. Nutrition
- B. Watering
- C. Pruning
- D. Monitoring for pests and pest management, i.e., spraying
- E. Soil testing (on occasion)

25. In addition to the above the Board finds that value is added in the manner that trees/shrubs/plants are held and handled. For example, seeds and/or sprouts which receive nutrition, waterings, etc. and are repotted into a larger container meet the standard of "production." Similarly, trees/shrubs/plants which are planted in the ground and receive nutrition, watering, pruning, etc. for a growing season (based upon that particular tree/shrub/plant's season) has value added to point that they clearly qualify as "production" of agriculture.

26. Based upon the above, the Board finds that the uses and activities testified and stipulated to in Areas One through Seven (excluding Area Four) clearly comply with generally accepted Agricultural Management Practices and meet the standard of "production."

27. The crux of the matter involves the operation of Area Four as shown on Exhibit A-4 (the Survey). Area Four houses balled plants with burlap bags as well as trees and shrubs that are not planted directly into the soil. This area is commonly referred to as the "B&B" area.

28. The Township and neighbors assert that the use of Area Four for balled and burlapped agricultural products which are grown off-site and the rapid retransfer of same constitutes an outdoor warehouse/staging area for a commercial landscaping business. In short, the neighbors assert that Area Four of the Farm is a fictive entity that is nearly, if not wholly, dedicated to Cipriano Landscaping, L.L.C. and that such activity is not protected by the Right to Farm Act.

29. An analysis of Area Four finds that the balled and burlapped trees in Area Four can be divided into three categories wherein the Farm will water, prune, shape, spray and fertilize.

- A. There are trees and shrubs removed from the soil on the Farm placed in burlap, and stored within this area for eventual sale and removal from the site. Cipriano testified that between 2006 and 2007, between 10 percent and 20

percent of the trees percent of balled and burlapped trees in Area Four where grown on the Farm.

B. There are trees and shrubs in this area that are grown off-site and delivered, nurtured and eventually planted on the Farm and/or are heeled in on the Farm. These trees and shrubs receive watering, nurturing, pruning etc. Cipriano testified that 50 percent of the trees were heeled in during recent winters.

C. There are trees and shrubs grown off-site which are delivered in a balled and burlap condition and which remain on the site and are nurtured until the point of sale to wholesaler buyers - whether immediate or very shortly thereafter. These trees and shrubs are sold and shipped in less than a growing season. Cipriano testified that there was no way to predict what the demand for trees would be from year to year.

30. The Board finds that the balling and burlapping of trees and shrubs grown on the Farm and placed into the Area Four for sale and shipment and trees grown off-site which are balled and burlapped for a period of time (i.e., a growing season or heeled in over the winter) and which also receive significant watering, nurturing, pruning etc. clearly qualify as agriculture production.

31. The Board finds that trees and shrubs which are delivered in a balled and burlap state and which are sold within a growing season do not necessarily constitute "production" but qualify for protection in the totality of the Farm's operation, as a permitted, "related" activity in connection with the usage of the Farm as a wholesale farm market as set forth in N.J.A.C. 2:76-2.

WHOLESALE FARM MARKET

32. N.J.S.A. 4:1C-9c lists, as a permissible activity, the operation of a farm market.

33. N.J.A.C. 2:76-2.1 provides that "Farm market" means a facility used for the *wholesale* or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51 percent of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51 percent of the sales area shall be devoted to the sale of the agricultural output of the commercial farm, ..." The Board notes that while there is a means test of 51 percent of product or 51 percent of income for retail farms, no such means test exists for wholesale farm markets.

34. The Board finds that the sale of balled and burlapped trees and shrubs and together with mulch, soil, fertilizer, and pots used in connection with the aforesaid trees and shrubs constitute a

related ancillary, horticultural activity which is an integral part of a farm operation, and hence falls within the parameters of an acceptable agricultural management plan.

35. Lastly, the Board finds that even if the entire production of the Farm was dedicated to resale to landscapers in general and Cipriano Landscaping in particular, the end user of agricultural production is not relevant under the statute in determining acceptable agricultural management practices.

CONCLUSIONS AND ISSUANCE OF AMP

36. In accordance with title 4:1C-1 et. seq., the Board has considered the farm's operation in regard to protected activities as well as relevant municipal public health and safety standards including those which might have a peripheral effect on farming but do not directly conflict with farming practices. It has also considered the concerns of the parties, exhibits and stipulations and, after weighing the facts and circumstances, makes the following findings and rulings:

A. The proposed uses and improvements to the Property are appropriate to the Agricultural Management Practice (AMP) uses of the Property as hereinafter set forth:

(1) Site Plan.

- (a) The site plan designated on Exhibit A-4 and A-12 is approved.
- (b) No signs, displays or structures shall interfere with sight distances for ingress and egress.
- (c) All plants and shrubs on [redacted] shall be 24 inches or less in areas that affect sight distance. Bamboo is currently growing on [redacted]. However, this bamboo does not impede sight distance.

(2) Site Operation

- (a) The hours of operation shall be 7:00 a.m. to 5:00 p.m. Monday through Saturday.
- (b) The Farm's signage, shall be set back 15 or more feet from the curb and the locations and number of signs shall be consistent with the depiction the Location Survey (Exhibit A-4).
- (c) All signs shall comply with the Mahwah Zoning Ordinance.

(3) Building Permits and Certificates of Occupancy.

The Cipriano Farms shall comply with the Uniform Construction Code.

(4) Health and Fire Codes.

The operation of Cipriano Farms shall comply with applicable health and fire codes.

B. The fact that Mr. Cipriano is a Principal in a landscape company does not negate the ability for Cipriano Farms, L.L.C. to obtain an Agricultural Management Practice determination by the Board pursuant to the Right to Farm Act.

C. Approval is subject to the following conditions, which conditions regarding the operation of the Farm were stipulated to by the Applicant during the course of the hearings:

- (1) Hours of operation will be from 7:00 a.m. to 5:00 p.m., Monday-Friday; and 7:00 a.m.- 4:00 p.m. on Saturdays.
- (2) Cipriano Farms L.L.C. will direct all vendors to limit deliveries and pickups to weekdays between 7:00 a.m. and 5:00 p.m., Monday- Saturday and that delivery/pickup trucks shall not park on
- (3) Farm equipment will be housed on the rear of the property which abuts Route 287 to reduce the noise of idling and to allow diesel engines to warmup without disturbing neighbors.
- (4) Storage of gravel will be located in the rear of the property and will be used only for on-site ground maintenance.
- (5) Area Four, dedicated to balled and burlapped trees and shrubs, will not increase in size unless and until the Farm applies for an amended AMP, which AMP is approved by this Board.
- (6) Cipriano Farms will computer tag its inventory for tracking and sale purposes.
- (7) Cipriano Farms recognizes that a landscape operation is not protected under the Right to Farm Act.
- (8) No landscape service company is operated from the Farm. It is understood that Christopher Cipriano is a Principal in a landscape company which is operated from a different location.

- (9) All equipment related to other business entities, including but not limited to Cipriano Landscaping, L.L.C., will be located and stored off site.
- (10) Personnel in connection with other business entities, including but not limited to Cipriano Landscaping will not assemble on site.
- (11) Vehicles, equipment and materials including construction materials utilized in connection with other business entities, including but not limited to Cipriano Landscaping (e.g., slabs of slate, decorative quarry stone and boulders, etc.) will not be stored on the property.

D. Should the facts testified and stipulated to in this matter change substantially, i.e., should Area Four be enlarged and/or an activity so that the dominant aspect of the farm is the receipt and reshipment of trees/plants/shrubs which are on-site for less than a growing season, then the Board will, upon application or petition, reconsider same pursuant to a de novo hearing.

E. The testimony and proofs given by the Applicant at the aforementioned public hearings and the Board's finding of fact and conclusions of law as set forth above are incorporated herein by reference and form the basis of this Board's determination herein.

- (1) In the event of any material deviation or change from the testimony, representations or findings of fact, the Board reserves the right and option to modify, alter, change or revoke the within approval.
- (2). If terms and conditions agreed to on the record below are omitted from this resolution, the Applicant and the Township are nevertheless bound to abide by same pursuant to Fieramosca V. Barnegat Tp., 335 N.J. Super, 526, 533-534 (Law Div.2000)).

NOW, THEREFORE, BE IT RESOLVED, that Cipriano Farms, L.L.C. is entitled to protection under the Right to Farm (N.J.S.A. 4:1C-10.1) and the State Agriculture Development Committee regulations (N.J.A.C. 2:76-2.3) for Right to Farm protected activities as herein approved.

PROVIDED FURTHER THAT, based on the aforesaid findings of fact and conclusions, the Bergen County Agriculture Development Board finds and issues an Agriculture Management Practice for the proposed operation of the Cipriano Farms, L.L.C. as set forth herein.

PROVIDED FURTHER THAT, that the applicant must comply with any rules and regulations adopted by the New Jersey Department of Environmental Protection as well as all other approvals and permits, if any, as required by law.

YES: Abma, Binaghi, James, Spath-Mercado

NO: None

ABSTAIN: None

ABSENT: Secor

I certify that the foregoing is a true copy of the Resolution of the Bergen County Agriculture Development Board, duly adopted at a regular meeting of the Board on May 21, 2008.

Dated: May 21, 2008

Evelyn Spath-Mercado,
Chairperson

RESOLUTION 2008-02

BERGEN COUNTY AGRICULTURE DEVELOPMENT BOARD

DECISION AMENDING RESOLUTION 2008-01 WHICH APPROVED A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE (AMP) IN ACCORDANCE WITH THE NEW JERSEY RIGHT TO FARM ACT

WHEREAS, on May 23, 2008 the Bergen County Agriculture Development Board (BCADB) adopted Resolution 2008-01 approving Agriculture Management Practices for Cipriano Farms L.L.C [the farm] located in Mahwah; and

WHEREAS, paragraph no. 36 C(2) of Resolution 2008-01 stated:

“Cipriano Farms L.L.C. will direct all vendors to limit deliveries and pickups to weekdays between 7:00 a.m. and 5:00 p.m., Monday - Saturday and that delivery/pickup trucks shall not park on Darlington Avenue.”

WHEREAS, the aforesaid paragraph contains an inconsistency in as much as Saturday is not a weekday; and

WHEREAS, the BCADB reviewed page 52 of the transcript which states:

“Shipments are only to be received Monday through Friday 7:30 a.m. and before 4:45 pm. There are no Saturday shipments unless instructed otherwise.”

NOW, THEREFORE, BE IT IS RESOLVED that the Bergen County Agriculture Development Board amends Paragraph 36 C(2) of Resolution 2008-01 to provide that:

“Cipriano Farms L.L.C. will direct all vendors to limit deliveries and pickups to between 7:30 a.m. and 4:45 p.m., Monday - Saturday and that delivery/pickup trucks shall not park on Darlington Avenue.”

PROVIDED FURTHER THAT, all provisions of Resolution 2008-01 which are not modified herein remain in full force and effect.

YES: Abma, Binaghi, James, Spath-Mercado

NO: None

ABSTAIN: None

ABSENT: Secor

I certify that the foregoing is a true copy of the Resolution of the Bergen County Agriculture Development Board, duly adopted at a regular meeting of the Board on June 23, 2008.

Dated: June 23, 2008

Evelyn Spath-Mercado,
Chairperson