

**MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
RESOLUTION 2013-03
REQUEST FOR A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE
LANDI SIMONE
GOOSEROCK FARM
MONTVILLE AND BOONTON TOWNSHIPS, MORRIS COUNTY, NEW JERSEY**

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. and the State Agriculture Development Committee's ("SADC") Right to Farm Rules, N.J.A.C. 2:76-2.1, et seq., 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 operation or practice; and

WHEREAS, on April 26, 2012, the Morris County Agriculture Development Board ("Morris CADB") received a written request from Ms. Landi Simone for a site-specific agricultural management practice ("SSAMP") for her agricultural operation, Gooserock Farm, located in the Townships of Montville and Boonton (A-8); and

WHEREAS, on May 15, 2012, the Morris CADB advised Ms. Simone that due to a conflict of interest, the Morris CADB would not be developing a SSAMP for her apiary operation and would request assistance from the SADC with respect to the application (B-1); and

WHEREAS, on May 21, 2012, the Morris CADB advised the SADC that due to a conflict of interest, the Morris CADB would not be developing a SSAMP for Ms. Simone's apiary operation and requested the SADC's assistance with respect to the application (B-2); and

WHEREAS, on May 31, 2012, the Morris CADB supplemented its May 21, 2012 submittal to the SADC by providing copies of the following documents: April 2, 2012 letter from Mr. Douglas Cabana to Mr. & Mrs. William Ford, April 4, 2012 letter from Ms. Simone to Mr. Cabana, photograph of a stockade fence and apiary location at the Ford's farm submitted by Ms. Simone (B-3); and

WHEREAS, on July 19, 2012, the Morris CADB received a letter from Ms. Susan Payne, Executive Director of the SADC, informing the Morris CADB that it should request a formal advisory opinion from the Local Finance Board ("LFB") as to whether a conflict of interest exists that would prohibit the Morris CADB from addressing Ms. Simone's application (B-4); and

WHEREAS, on July 23, 2012, Ms. Katherine Coyle, Director of the Morris CADB, forwarded Ms. Payne's correspondence (B-4) to Ms. Simone advising that the Morris CADB would request a formal advisory opinion from the LFB (B-5); and

WHEREAS, on July 23, 2012, W. Randall Bush, Esq., Morris County Counsel, submitted a request to the LFB for a formal advisory opinion as to whether a conflict of interest exists that would prohibit the Morris CADB from addressing Ms. Simone's application (B-6); and

WHEREAS, on October 15, 2012, the LFB advised the Morris CADB that the Local Government Ethics Law would not preclude individual members of the Morris CADB from acting on the Simone application (B-7); and

WHEREAS, on October 24, 2012, Ms. Coyle forwarded the LFB's determination to Ms. Simone and advised her that the Morris CADB would review the determination at its November 29, 2012 monthly meeting (B-8); and

WHEREAS, on December 3, 2012, Ms. Coyle informed Ms. Simone that based on the LFB's determination, the Morris CADB agreed to proceed with addressing Ms. Simone's application for a SSAMP for her apiary operation and asked Ms. Simone to submit additional information about each of the parcels that comprise her operation so that the Morris CADB could determine whether the operation is a "commercial farm" as defined by the Right to Farm Act (B-9); and

WHEREAS, on December 5, 2012, pursuant to N.J.A.C. 2:76-2.3(c), the Morris CADB formally notified the SADC, the Township of Montville and the Township of Boonton of Ms. Simone's application (B-10); and

WHEREAS, on January 28, 2013, Ms. Simone submitted to the Morris CADB a "CADB Income Worksheet" (A-9); and

WHEREAS, information provided by Ms. Simone as Exhibit A-9 was used to create Exhibit B-11.

WHEREAS, on February 15, 2013, the Morris CADB received a letter from Mr. Cabana regarding Ms. Simone's operation (C-1); and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b), upon the receipt of a request for a SSAMP, the Morris CADB must determine whether an applicant's agricultural operation is a "commercial farm" as defined at N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, the Morris CADB considered Ms. Simone's request during the Morris CADB's March 14, 2013 meeting with the Ms. Simone and David C. Frank, Esq., Ms. Simone's attorney, present; and

WHEREAS, during the March 14, 2013 Morris CADB meeting, a Staff Report drafted by Ms. Coyle, dated February 4, 2013, was reviewed by the Morris CADB (B-12); and

WHEREAS, during the March 14, 2013 meeting, the Morris CADB reviewed exhibit A-8, A-9, B-1 through B-12, and C-1, as well as a presentation by Ms. Simone and Mr. Frank; and

WHEREAS, during the March 14, 2013 meeting, Mr. Frank requested (and the Morris CADB agreed) that Ms. Simone's application be tabled until the Morris CADB's April meeting to allow Mr. Frank time to prepare a legal brief; and

WHEREAS, on March 22, 2013, the Morris CADB received a letter from Mr. Frank (1) advising

that Mr. and Mrs. William and Marjorie Ford were submitting a Right to Farm application for an apiary operation, which they intend to operate in the identical location as Ms. Simone's apiary and (2) requesting the Morris CADB to consider the Ford application before the Simone application at the Morris CADB's April meeting (A-10); and

WHEREAS, on March 27, 2013, Mr. Bush informed Mr. Frank that (1) at its April 11, 2013 meeting, the Morris CADB would complete its review of the Simone application (which had commenced at the March 14, 2013 meeting) before it considers the Ford application, and (2) requested that additional information regarding both applications be submitted to the Morris CADB by April 4, 2013 (B-13); and

WHEREAS, on April 8, 2013, the Morris CADB received an email from Mr. Cabana regarding Ms. Simone's operation (C-2); and

WHEREAS, on April 8, 2013, the Morris CADB received a letter brief from Mr. Frank regarding the Simone application (A-2); and

WHEREAS, on April 11, 2013, the Morris CADB received an email from Mr. Cabana regarding his EpiPen prescription (C-3); and

WHEREAS, during the April 11, 2013 Morris CADB meeting, a Staff Report drafted by Ms. Coyle, dated April 10, 2013, was reviewed by the Morris CADB (B-14); and

WHEREAS, during the April 11, 2013 meeting, Mr. Frank and Ms. Simone submitted the following documents: "January through December 2012 Sales by Item Summary" (A-1), "How to Pay" (A-3), "Honey House Sales" (A-4), "January through December 2012 Profit and Loss Standard" (A-5), "January through December 2011 Sales by Item Summary" (A-6), and "Nuc Sales 2011 & 2012" (A-7); and

WHEREAS, during the April 11, 2013 meeting, the Morris CADB reviewed exhibit A-1 through A-7, A-10, B-13, B-14, C-2 and C-3, as well as a presentation by Ms. Simone and Mr. Frank; and

WHEREAS, the minutes of the March 14, 2013 Morris CADB meeting were compiled by Morris CADB staff (B-15); and

WHEREAS, the minutes of the April 11, 2013 Morris CADB meeting were compiled by Morris CADB staff (B-16); and

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Exhibits from the Applicant Marked at Morris CADB's April 11, 2013 Meeting:

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<u>Unmarked Exhibits from the Applicant:</u>	
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March 22, 2013 letter from David Frank, Esq. to the Morris CADB (with attachments)	A-10
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Exhibits from the Public:

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April 11, 2013 email from Douglas Cabana to Katherine Coyle (with attachment).....C-3

NOW THEREFORE BE IT RESOLVED, after having considered the presentations submitted by Ms. Simone and Mr. Frank on March 14, 2013 and April 11, 2013, and exhibits A-1 through A-10, B-1 through B-16, and C-1 through C-3, the Morris CADB makes the following determinations:

1. Pursuant to N.J.A.C. 2:76-2.3(b), upon the receipt of a request for a SSAMP, the Morris CADB must determine whether the agricultural operation is a commercial farm as defined at N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3.
2. Pursuant to N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, "commercial farm" means (1) 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," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).
3. Pursuant to N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, "farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise; and
4. Ms. Simone is the owner and operator of Gooserock Farm, an apiary operation. The operation consists of 10 parcels, which total 0.25211 acres. Seven of the parcels are located in Montville Township and three are located in Boonton Township.

5. Because Ms. Simone's apiary/farm management unit consists of less than 5 acres, in order to meet the Right to Farm Act's definition of a "commercial farm," it must produce agricultural or horticultural products worth \$50,000 or more annually and must otherwise satisfy the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

The SADC's February 23, 2012 final decision in the case of Tibor Sipos and Cecily Gentles vs. the Hunterdon CADB (OAL DKT. NO.: ADC 5173-11; AGENCY REF. NO.: SADC #1272) ("Sipos case") provided a clarification regarding the Right to Farm Act's eligibility requirements for farm management units consisting of less than 5 acres. Pursuant to the SADC's decision, a farm management unit, which consists of less than 5 acres must meet the following requirements in order to qualify for the protections of the Right to Farm Act as a commercial farm:

- a) the farm management unit, as a whole, must produce at least \$50,000 of agricultural or horticultural products per year; and
- b) each individual parcel within the farm management unit must comply with all Farmland Assessment Act requirements (except for the minimum parcel size) – it is actively devoted to agricultural or horticultural use, and has been so devoted for at least 2 successive years immediately preceding the tax year in question.

According to Exhibit A-9, the following two parcels within Ms. Simone's farm management unit do not meet the eligibility requirements of the Right to Farm Act:

- 1) Three J's: parcel is not eligible because it has not been actively operated for the last 2 years; and
- 2) Ford: parcel is not eligible because it has not been actively operated for the last 2 years.

Since each parcel of the farm management unit must satisfy the criteria established in 4b) above, then a parcel that does not satisfy these criteria cannot be considered part of the farm management unit. Accordingly, since the Three J's and Ford parcels do not meet the eligibility requirements of the Right to Farm Act, they cannot be considered part of Ms. Simone's farm management unit.

6. Mr. Frank's April 8, 2013 letter brief (A-2) states that notwithstanding the fact that Ms. Simone has not actively operated the Ford parcel as part of her apiary farm management unit for the last 2 successive years, he believes that the parcel is eligible for Right to Farm as part of Ms. Simone's farm management unit because:

- a) Ms. Simone's bees were on the parcel in 2009 and prior; and
- b) the Ford parcel (owned by William and Marjorie Ford) is Farmland Assessed.

The Right to Farm Act and the Sipos case do not support Mr. Frank's argument. Specifically, the

Right to Farm Act's definition of a "commercial farm" refers to individual "farm management units." Therefore, the Act requires us to make a determination whether the applicant's farm management unit, evaluated individually, meets the definition of a "commercial farm". It is irrelevant whether the Ford's farm management unit meets the standards of the Act. The sole question is whether Ms. Simone's farm management unit meets the standards of the Act. Ms. Simone never claimed that her operation and the Ford operation are part to the same farm management unit. In a letter dated March 22, 2013 from Mr. Frank to the Morris CADB (A-10), Mr. Frank specifically states that the Ford operation and the Simone operation operate as separate farm management units.

Ms. Simone operates her apiary on 525 square feet (0.01205 acres) of the Ford property. Her current operation on the Ford parcel began in 2012. While Ms. Simone operated her apiary on this parcel in 2009 and prior, she did not operate it in 2010 and 2011. Accordingly, she has not actively operated the parcel as part of her apiary farm management unit for the last 2 successive years. Therefore, the Ford parcel fails to satisfy the statutory requirements of the Right to Farm Act and cannot be considered part of Ms. Simone's farm management unit.

In his April 8, 2013 letter brief (A-2), Mr. Frank asserts that since William and Marjorie Ford's farm management unit is eligible for Right to Farm due to its eligibility for Farmland Assessment and the value of agricultural products produced by the Fords, the Ford lot is eligible for Right to Farm as part of Ms. Simone's farm management unit.

The Right to Farm Act and the Sipos case do not support Mr. Frank's argument. Specifically, the definition of a "commercial farm" and thus the eligibility for Right to Farm is based and depends on the "farm management unit". Whether a farm management unit meets the definition of a "commercial farm" is related to the value of agricultural products produced by that individual farm management unit and that individual farm management unit's eligibility for Farmland Assessment. It cannot be based on another farm management unit's commercial farm status. Whether William and Marjorie Ford's farm management unit qualifies is irrelevant since it is not part of the Simone farm management unit.

7. To determine whether a farm management unit meets the definition of a "commercial farm," the production value from eligible parcels is added together and if it totals at least \$50,000, then the farm management unit meets the definition of a "commercial farm". Since the Three J's and Ford parcels do not meet the eligibility requirements of the Right to Farm Act and cannot be considered part of Ms. Simone's farm management unit, their production value cannot be used to determine whether the farm management unit meets the definition of a "commercial farm".

8. According to Exhibit A-5, in 2012 Ms. Simone sold the following items: propolis, equipment, gift items (gift wrap, velvet bag, fabric gift), honey, cosmetics (e.g. lotion, soap, lip balm, hand cream, mouse, etc.), eggs, beeswax items (e.g. candles), and bees.

However, the Right to Farm Act distinguishes between the sales of the "agricultural or horticultural products" of the farm (which are eligible for the purpose of determining whether a farm is a "commercial farm") and the sales of the "agricultural output" of the farm (and the Right to Farm

Act's protections for farm markets). The Right to Farm Act's definition of "commercial farm" refers to "agricultural or horticultural products" while the definition of "farm market" refers to "agricultural output."

The Right to Farm Act at N.J.S.A. 4:1C-9 lists activities, which are protected by the Act. The first two activities listed are:

- 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 or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System;
- b) Process and package the agricultural output of the commercial farm.

Section a) refers to the production of agricultural and horticultural commodities "as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping" or "included under the corresponding classification under the North American Industry Classification System." While apiaries and bee farms (and bee products) are part of the Agriculture, Forestry, and Fishing division, candles and cosmetics (such as creams and lotions) are not.

While the Right to Farm Act protects both production and processing, they are listed separately.

With respect to bee products, the value of honey, pollen, beeswax or bees is considered to be the value of the "agricultural products" of the farm. Income from the sales of cosmetics (lotion, soap, lip balm, etc.) and beeswax candles is considered to be income earned from the sales of the "agricultural output" (items that have been processed for sale). Since the definition of "commercial farm" refers to the value of "agricultural or horticultural products", only the value of the agricultural products produced on the farm (honey, pollen, beeswax or bees) can count towards the Right to Farm income requirement. The value added through processing, which is adding other ingredients including labor, energy, and packaging, to create candles or cosmetics is not the value of the agricultural product and cannot be included. To establish "commercial farm" eligibility, income is calculated based on the value of bee products (honey, pollen, beeswax, etc.) harvested from the apiary before they are processed to make candles and cosmetics (soaps, lotions, etc.).

9. According to Exhibit B-11, the eligible 2012 income generated by Ms. Simone's farm management unit totals \$46,201.

10. Since the annual income generated by Ms. Simone's farm management unit does not total \$50,000, the operation does not meet the Right to Farm Act's definition of a "commercial farm" and is therefore ineligible for the protections of the Right to Farm Act.

BE IT FURTHER RESOLVED, based on the foregoing determinations, the Morris CADB finds that Gooserock Farm is not a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-9, et seq. and the SADC's Right to Farm Rules, N.J.A.C. 2:76-2.1, et seq.

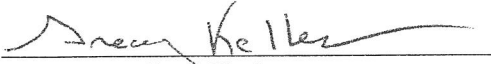
BE IT FURTHER RESOLVED, that since Gooserock Farm is not a “commercial farm”, it does not meet the eligibility criteria of the Right to Farm Act and is not entitled to the protection of the Right to Farm Act, and the Morris CADB lacks jurisdiction over the operation. The Morris CADB is unable to pursue Ms. Simone’s application for a SSAMP. All activities occurring as part of the Gooserock Farm operation are outside the purview of the Morris CADB and remain under the jurisdiction of applicable municipal, state or federal agencies.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.3(e), within 30 days of its adoption, certified copies of this resolution will be forwarded to the following individuals and agencies:

Landi Simone
 David Frank, Esq.
 Douglas Cabana
 State Agriculture Development Committee
 Township of Boonton
 Township of Montville
 Morris County Board of Chosen Freeholders

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.3(f), any person aggrieved by this resolution may appeal the resolution 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 45 days from receipt of this resolution.

1. The decision of the SADC shall be considered a final administrative agency decision.
2. If the Morris CADB’s resolution is not appealed within 45 days, the resolution is binding.


 Gregory Keller, Chairman
 Morris CADB

May 9, 2013
 Date

	Yes	No	Abstain	Absent
Ms. Ashley Myers	✓			
Mr. Davis	✓			
Ms. Davis	✓			
Mr. Desiderio	✓			
Mr. Keller	✓			
Mr. Ort	✓			
Mr. Wightman	✓			

I hereby certify the above to be a true copy of a resolution adopted by the Morris County Agriculture Development Board at a meeting held on May 9, 2013.

