

DECISION ON AN APPLICATION FILED PURSUANT TO THE NEW JERSEY RIGHT TO FARM ACT FOR A DETERMINATION OF A SITE SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE (AMP)

**WHEREAS** pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and the State Agriculture Development Committee (hereinafter referred to as “SADC”) regulations, N.J.A.C. 2:76-2.3, a commercial farm owner or operator may file a request to the County Agriculture Development Board to determine if his or her operation constitutes a generally accepted agricultural management practice (“AMP”) or to determine if his or her operation complies with a specific AMP if the SADC has promulgated one related to the activity in question; and

**WHEREAS** pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1, and the State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3, any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable County Agriculture Development Board prior to filing an action in court; and

**WHEREAS** Mr. Jeffrey White (hereinafter referred to as “White”), as the owner and operator of White Pines Farm located at [redacted], West Milford, NJ, Block 5306; Lot 4.01, referenced on the tax map of the Township of West Milford (hereinafter referred to as “township”), installed a fence to protect his farm from deer and bears;

**WHEREAS** the height of the fence (8 foot electrical fence) exceeds the height allowed by the township’s regulations (4-6 feet) and electrical fences are not permitted according to the township’s

interpretation of the said regulations; and

**WHEREAS** the township issued a notice of violation and subsequently a summons against White because of alleged noncompliance with the aforementioned township regulation; and

**WHEREAS** on November 13, 2006 White applied to the Passaic County Agriculture Development Board (hereinafter referred to as "PCADB") pursuant to N.J.A.C. 2:76-2.3 requesting a determination as to whether the proposed use of the property as a commercial farm with an 8 foot electrical fence as set forth hereinafter constitutes a generally accepted agricultural management practice (hereinafter referred to as "Site-Specific AMP Request"); and

**WHEREAS** a site review was conducted by the PCADB members and staff in which the Board members and staff present during the site visit made observations concerning the nature and extent of the agricultural activity occurring; and

**WHEREAS** the PCADB noticed a meeting for December 20, 2006 in compliance with the Open Public Meetings Act and a quorum of the Board being present at the aforesaid meeting, the PCADB considered the application; and

**WHEREAS** the Township of West Milford received notice of the December 20, 2006 meeting, but there was no appearance by the Township at the said meeting; and

**WHEREAS** White provided testimony on his Site Specific AMP Request application to the PCADB; provided the PCADB with a brief history and explanation of the agricultural activities conducted on the property; and he provided further testimony as to the necessity

and benefits of the erecting a maintaining an 8 foot electrical fence, that being: 1) to prevent deer and bear from entering the farm; and 2) to protect the farm's fruit and vegetable crop; and

**WHEREAS** the PCADB acknowledged the written communication from the Township, noting that the said communication did not proffer any health and safety issues with the construction of the electrical fence, however, said written communication recommended that visible signs be erected to warn the public of the existence of an electrical fence at the site at hand;

**WHEREAS** the Right to Farm Act states that a commercial farm operation can engage in certain agricultural activities notwithstanding any municipal ordinances to the contrary if the operation satisfies the eligibility criteria of the Act, N.J.S.A. 4:1C-9; and

**WHEREAS** through meaningful deliberations, PCADB considered whether the electric fence meets the eligibility criteria of the Act, including the impact of the agricultural activity on public health and safety, in order to determine whether Mr. White may install the electric fence notwithstanding the township's ordinance prohibiting such a fence.

**NOW THEREFORE BE IT RESOLVED** that the PCADB hereby approves the Site Specific AMP application based on the following determinations:

A. White Pines Farm is a "commercial farm" as defined by statute as a "farm management unit of no less than five acres producing agricultural products worth \$2,500.00 or more annually,

and satisfying the eligibility criteria for differential property taxation pursuant to the 'Farmland Assessment Act of 1964';

B. Agriculture is a permitted use on the farm under the Township's municipal zoning ordinance;

C. The operation is in compliance with relevant state and federal statutes;

D. The operation does not pose a direct threat to public health and safety;

E. The agricultural activity at issue, that being electrical fencing installation, conforms with the existing promulgated AMP, specifically N.J.A.C. 2:76-2A.9, entitled "Fencing installation agricultural management practice for wildlife", as adopted by the State Agriculture Development Committee, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.;

F. White may erect an 8 foot electrical fence on the site at issue notwithstanding the township's ordinance prohibiting same because: (1) White has demonstrated to the PCADB that he meets the eligibility criteria of the Act (A through E above); (2) White has demonstrated a legitimate agriculturally based reason to construct electrical fencing at a height which exceeds the township's requirement; (3) the Township has not proffered any concerns, including those related to health and safety, other than the suggestion noted above; and (4) PCADB has carefully weighed and analyzed White's agricultural reasons for constructing the fence against the Township's ordinance and written communications in

accordance with the dictates of Township of Franklin v. den Hollander, 172 N.J. 147 (2002) and found that White's agricultural interests outweigh the Township's interests.

**BE IT FURTHER RESOLVED** that approval of this application is subject to the following condition:

1. Appropriate signage be installed near the fence to alert residents to the fact that the fence is electrified.

JDP:lc

APPROVED AS TO FORM AND  
LEGALITY:

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WILLIAM J. PASCRELL, III  
PASSAIC COUNTY COUNSEL

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CARL QUAZZA, CHAIR  
PASSAIC COUNTY AGRICULTURAL  
DEVELOPMENT BOARD