LAFAYETTE TOWNSHIP,

Petitioner,

vs.

SUSSEX COUNTY AGRICULTURE DEVELOPMENT BOARD and 56 & 58 SUNSET INN ROAD, LLC,

Respondents.

STATE AGRICULTURE DEVELOPMENT COMMITTEE

OAL DOCKET NO. ADC 16892-2016
AGENCY REF. NO. SADC ID #1761

FINAL DECISION

FACTUAL BACKGROUND

By resolution dated September 19, 2016, the Sussex County Agriculture Development Board (SCADB) granted a site-specific agricultural management practice (SSAMP) determination to 56 & 58 Sunset Inn Road, LLC (Sunset) for on-farm direct marketing activities, including a farm-to-table restaurant, in relation to two properties it owns in Lafayette Township (Township). The activities are located on Sunset's residentially-zoned, 1-acre lot that adjoins its 40+ acre farm parcel. The Township appealed the SCADB's approval on November 2, 2016, and on November 4, 2016, the State Agriculture Development Committee (SADC) transmitted the matter as a contested case to the Office of Administrative Law (OAL), where it was assigned to an administrative law judge (ALJ).

While the OAL appeal was pending, the parties mediated their dispute through the SADC's agricultural mediation program. See, N.J.A.C. 2:76-18.1, et seq. The mediation was successful, and the parties' written agreement dated January 25, 2017 was presented to the ALJ, approved by him, and attached to the judge's March 31, 2017 Initial Decision.

SETTLEMENT AGREEMENT

In summary, the fully-executed "Settlement Agreement", a copy of which is attached to this Final Decision, requires Sunset to record the document in the county clerk's office; return the residentially-zoned lot to a residential use should the farm market activities cease, including removal of certain amenities supporting the

market; and maintain the 2 lots in common ownership, and the 40+ acre lot as a commercial farm, so long as the farm market activities continue.

On February 3, 2017, a "Deed of Memorandum" reciting the existence of the settlement agreement was recorded in the Sussex County Clerk's Office in Deed Book 3417, Page 389.

LEGAL DISCUSSION

The Initial Decision by the ALJ recommends approval of the written and executed settlement agreement based on findings that it was entered into voluntarily, was consistent with law, and disposed of all issues in controversy.

N.J.A.C. 1:1-19.1 provides, in pertinent part, as follows:

> ***1:1-19.1 Settlements***
>
> *(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:*
>
> *1. In writing, by consent order or stipulation signed by all parties or their attorneys; or*
>
> *2. Orally, by the parties or their representatives.*
>
> *(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.*

It is well established that the settlement of litigation is encouraged as a matter of public policy by courts and administrative agencies. Settlements permit litigants to resolve their disputes on mutually-acceptable terms rather than risk exposure to an adverse result, save the parties considerable time and expenses, and facilitate the administration of justice by conserving government

resources. DEG, LLC v. Township of Fairfield, 198 N.J. 242, 259 (2009).

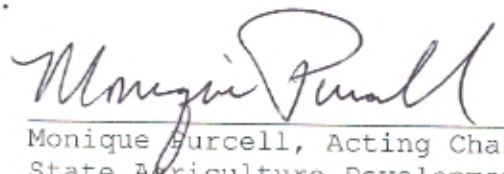
Notwithstanding the foregoing, the SADC observes that the ALJ, in approving the settlement agreement, did not conduct detailed findings of fact related to some of the SCADB's key determinations in its resolution approving the SSAMP including, for example, upon what evidence Sunset satisfied commercial farm eligibility criteria; the amount(s) of on-farm agricultural products used at the farm-to-table restaurant; how the farm's agricultural output would be part of value-added and supplementary products offered for retail consumption; and how proposed educational classes at the farm market facility were related to marketing the farm's agricultural output.

CONCLUSION

For the reasons set forth above, the SADC **ADOPTS** the Initial Decision approving the parties' settlement agreement, but it makes no substantive determination whether Sunset is a commercial farm or whether its proposed farm market and farm-to-table activities are entitled to protection under the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. and the on-farm direct marketing regulations at N.J.A.C. 2:76-2A.13.

IT IS SO ORDERED.

Dated: April 28, 2017



Monique Purcell, Acting Chairperson
State Agriculture Development Committee

S:\RIGHTTOFARM\Cases\SUSSEX\1761 - Wesling -Lafayette\Final Decision OAL Settlement.doc

SETTLEMENT AGREEMENT

BY AND BETWEEN:

THE TOWNSHIP OF LAFAYETTE, with an address of 33 Morris Farm Road, Lafayette, New Jersey 07848 (hereinafter "**Lafayette**") and 56 & 58 SUNSET INN ROAD LLC, by its Managing Member, Leonard Wesling, having an address of 56 Sunset Inn Road, Lafayette, New Jersey 07848 (hereinafter "**Sunset**").

WHEREAS, **Sunset** obtained Approval on June 20, 2016, from the Sussex County Agriculture Development Board (hereinafter "SCADB") approving a Site Specific Agricultural Management Practice (hereinafter "SSAMP") for an on-farm direct marketing facility with 25 parking spaces and related site, and

WHEREAS, on September 19, 2016, the Approval was adopted by Resolution of the SCADB (hereinafter "the Approved SSAMP")(attached hereto as Exhibit A), and

WHEREAS, on November 1, 2016, **Lafayette** appealed the Approval to the State of New Jersey Office of Administrative Law under Docket# SADC ID#1761, and

WHEREAS, the parties have agreed to resolve their differences by this Settlement Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. **Sunset**, through its Managing Partner, Leonard Wesling, consents to filing a

Deed of Memorandum referencing this Settlement Agreement in the Book of Deeds in the Sussex County Clerk's Office, thereby placing future purchasers on notice of the terms and conditions pursuant to which the Approved SSAMP can be operated.

2. **Sunset** agrees if the Approved SSAMP activities cease and Block 9, Lot 18.03 (the "Premises") is returned to a residential use, the improvements made to the Premises that are not residential in character will be removed; i.e., gravel parking lot returned to lawn, signs removed, outdoor tables on front porch removed (the aforementioned list is illustrative but not all inclusive). The term "cease" shall mean that if there is a failure to operate the Approved SSAMP for a period of two (2) calendar years a rebuttable presumption of abandonment of the Approved SSAMP shall arise.

3. **Sunset** agrees that the Premises will remain in common ownership as hereinafter defined as long as the Approved SSAMP activities are being conducted on Lot 18.03, Block 9. Common Ownership is defined as "owned by the same individuals, and/or business entity, or by their immediate family members as Lot 18, Block 9," with the intent of this provision to be that the Farm on Lot 18, Block 9 shall always be operated as a commercial farm and that the Right to Farm Criteria for the Approved SSAMP shall be in compliance on Lot 18.03, Block 9.

4. Nothing in this Agreement requires Lot 18.03 and Lot 18 in Block 9 continue in common ownership, if the Approved SSAMP activities are no longer being conducted. In that event, this Agreement will then terminate.

5. **Sunset** acknowledges their responsibility to meet all Lafayette Township Property Maintenance Codes and requirements while conducting the Approved SSAMP activity.

6. This Agreement may be signed in counterparts.

SIGNTURES, the parties hereto have hereinafter executed this Agreement on the date(s) indicated below.

WITNESS/ATTEST:	THE TOWNSHIP OF LAFAYETTE	DATE
_____	BY: _____	_____
AnnaRose Fedish, Mun. Clerk	Gregory Corcoran, Mayor	
	56 & 58 SUNSET INN ROAD LLC	
_____	BY: _____	1/25/17
Debra Lynn Nicholson, Esq.	Leonard Wesling, Managing Member	

6. This Agreement may be signed in counterparts.

SIGNTURES, the parties hereto have hereinafter executed this Agreement on the date(s) indicated below.

WITNESS/ATTEST:	THE TOWNSHIP OF LAFAYETTE	DATE
AnnaRose Fedish AnnaRose Fedish, Mun. Clerk	BY: Gregory J. Corcoran Gregory Corcoran, Mayor	1/25/17
	56 & 58 SUNSET INN ROAD LLC	
_____ Debra Lynn Nicholson, Esq.	BY: _____ Leonard Wesling, Managing Member	_____