RESOLUTION OF DETERMINATION BY THE
OCEAN COUNTY AGRICULTURE DEVELOPMENT BOARD
IN THE MATTER OF MANUEL PEREIRA, SR.
RIGHT-TO-FARM ELIGIBILITY
BLOCK 52 LOT 1.01
TOWNSHIP OF BARNEGAT

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. and the State Agriculture Development Committee ("SADC") regulations, 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 ("Board") to determine whether the operation of a commercial farm is protected from municipal and county land use authority pursuant to N.J.S.A. 4:1C-9-10; and

WHEREAS, on October 8, 2013, Ronald L. Bennardo, Esq., on behalf of Manuel Pereira, Sr., owner of property located at 511 Route 72, and identified as Block 52, Lot 1.01 on the official tax map of the Township of Barnegat, made a request in writing to the Board for a determination as to whether Mr. Pereira was afforded protection pursuant to the Right to Farm Act from violations issued by the Township of Barnegat; and

WHEREAS, in order to be afforded the protections of the Right to Farm Act, a commercial farm owner must first meet certain eligibility requirements; and

WHEREAS, N.J.S.A. 4:1C-3 defines a "commercial farm" as (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' 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'; and

WHEREAS, Mr. Pereira submitted FA-1 Farm Land Assessment Applications to the Barnegat Township Tax Assessor for the Tax Years 2013 and 2014 as evidence of producing agricultural or horticultural products worth $2,500 or more annually; and

WHEREAS, the FA-1 Farm Land Assessment Application submitted by Mr. Pereira for the tax year 2013 identified the following agricultural products harvested in the year 2012:

Field Crops	Acres
Oats	9.75
Forage Rad Org (sp)	9.75
Ornamental Crops	Acres
Windbreak	2.0
Pollinators Species	1.6
Livestock	Avg. No.
Bee (hives)	8; and

WHEREAS, the FA-1 Farm Land Assessment Application submitted by Mr. Pereira for the tax year 2014 identified the following agricultural products were harvested or were to be harvested in the year 2013:

Field Crops	Acres
Oats	9.5
Wheat	9.5
Oats-Winter Wheat	9.5
Green Manuue (sp)	9.5

Fruit Crops	Acres
Blueberries	1.6

Ornamental Crops	Acres
Flowers (Cut)	3.0

Livestock	Avg. No.
Bee (hives)	6

Vegetable Crops	Acres
Cabbage	2
Carrots	2
Lettuce	1
Onions	2
Garlic	1 and;

WHEREAS, on November 4, 2013, Mathew B. Thompson, Esq., on behalf of the Board requested from Ronald L. Bennardo, Esq., additional documentation to establishing agricultural or horticultural production worth $2,500.00; and

WHEREAS, on November 8, 2013, Manuel Pereira submitted additional documentation seeking to establish the agricultural operation on the farm as a commercial farm as defined under N.J.S.A. 4:1C-3 and N.J.S.A. 2:76-2.1, et seq.; and

WHEREAS, the Board has reviewed the additional documents submitted by Mr. Pereira on November 8, 2013 and finds a majority of the receipts provided were for agricultural products not identified in either FA-1 Farm Land Assessment Applications filed with the Tax Assessor for the Township of Barnegat; and

WHEREAS, the Board will reserve any decision on the veracity of the receipts for any agricultural product identified in the FA-1 Farm Land Assessment Applications; and

WHEREAS, the Right to Farm Act protects qualified commercial farm operations against nuisance complaints and unreasonable municipal regulations and does not protect farming operations in violation of Federal or State laws and regulations, N.J.S.A. 4:1C-9; and

WHEREAS, on April 25, 2013, Mr. Pereira was issued Summons No. SC-003644 alleging a violation of Section 55-275 of Article XXXI entitled "Pinelands - Pinelands Commission Review and Approval of Development, Division 1 – Pineland- West of Parkway 55" of the Land Use Ordinances of the Township of Barnegat providing:

> Under the Pinelands Protection Act, the Pinelands shall have the authority to review or approve applications for development in the Pinelands Area. A zoning permit or subdivision approval shall not be issued or granted by the Zoning Officer or municipal agency having jurisdiction until such review has been made by or approval is given by the Pinelands Commission.
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> In addition to other development review procedures of Barnegat Township, no person shall carry out any development within the Pinelands without obtaining development approval in accordance with the procedures set forth in this Article.; and

WHEREAS, on April 25, 2013, Mr. Pereira was issued Summons No. SC-003645 alleging a violation of Section 55-276A(1)(d) of the Land Use Ordinances of the Township of Barnegat providing:

> A. Development Subject to and Approval. The Following types of development shall be subject to review or approval by the Pinelands Commission:
>
> (a) Any division of land in to five (5) or more lots

(b) Any construction or expansion of any housing development of five (5) or more dwelling units.
(c) Any construction or expansion of any commercial or industrial use or structure on a site of more than three (3) acres.
(d) Any grading, clearing, or disturbance of an area in excess of five thousand (5,000) square feet; and

WHEREAS, on April 25, 2013, Mr. Pereira was issued Summons No. SC-003646 alleging a violation of Section 55-277E(1) of the Land Use Ordinances of the Township of Barnegat providing:

E. Review by the Pinelands Commission

(1) Upon Receipt by the Pinelands Commission of the notice of approval pursuant to paragraph C. above, the application for development approval shall be reviewed in accordance with the provisions in N.J.A.C. 7:50-4.37 through N.J.A.C. 7:50-4.42. The approval of the Township shall not be effective and no development shall be carried out prior to a determination of whether the development approval will be reviewed by the Commission. If the applicant is notified that the Commission will review the application for development, no development shall be carried out until such review has been completed.; and

WHEREAS, on April 25, 2013, Mr. Pereira was issued Summons No. SC-003647 alleging a violation of Section 55-298 of the Land Use Ordinances of the Township of Barnegat which provides in part:

Development shall be prohibited in all wetlands and wetlands transition areas in the Pinelands Area except as provided below:

A. Horticulture of native Pinelands species and berry agriculture shall be permitted in all wetlands subject to the requirements of 55-299. Bee Keeping shall be permitted in all wetlands.; and

WHEREAS, the core of the violations contained in the Township of Barnegat Municipal Summons Number SC-003644 through SC-003647 allege the improper development within the Pinelands National Reserve; and

WHEREAS, the United States Congress enacted the National Parks and Recreation Act of 1978, 16 U.S.C.A. 471i establishing over one million acres as the Pinelands National Reserve; and

WHEREAS, the National Parks and Recreation Act was designed to conserve areas of ecological sensitivity, natural beauty and cultural importance through land use controls in a cooperative framework including Federal, State and Local governments, N.J.S.A. 13:18A-1; and

WHEREAS, the National Parks Act, 16 U.S.C. § 471i(c), directed the Secretary of the Interior to request the State of New Jersey to develop a Comprehensive Management Plan ("CMP") for the Pinelands National Reserve. 16 U.S.C. § 471i(d); N.J.A.C. 7:50-1 et seq.; and

WHEREAS, Pursuant to the National Parks Act, the New Jersey State Legislature enacted the Pinelands Protection Act, thereby designating the Pinelands Commission to be the regional planning and management entity contemplated by the National Parks Act. *See* N.J.S.A. 13:18A-8, -9; N.J.A.C. 7:50-1.11; and

WHEREAS, The Pinelands Commission implements the CMP and regulates all activities within the Pinelands National Reserve. *See* N.J.S.A. 13:18A-6, -27, -29; N.J.A.C. 7:50-8.1; and

WHEREAS, The CMP provides that those who wish to engage in "development" in the Pinelands National Reserve must first obtain approval from the appropriate local authority and the Pinelands Commission. N.J.S.A 13:18A-15; N.J.A.C. 7:50-2.11; and

WHEREAS, the Pinelands Protection Act and CMP contemplate that local governments such as the Township of Barnegat will be the principal management entities implementing the CMP, with the Pinelands Commission providing technical assistance to local authorities, monitoring development review and updating the Plan N.J.A.C. 7:50-3.1a ; and

WHEREAS, N.J.S.A. 13:18A-27 expressly provides that any law, rule or regulation, must yield to the Pinelands Protection Act and the CMP, see also Uncle v. N.J. Pinelands Comm'n, 275 N.J. Super. 82, 90 (App. Div. 1994); and

WHEREAS, at a special meeting on December 11, 2013 and advertised in compliance with the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) the Board reviewed Mr. Pereira's eligibility for Right to Farm Protection; and

THEREFORE BE IT RESOLVED, the Ocean County Agriculture Development Board has reviewed the Application with supporting documents submitted on behalf of Manuel Pereira, Sr. together with additional documentation submitted on November 8, 2013 and makes the following determinations:

1) Mr. Pereira is the owner/operator of a property located on a 9.49 acre parcel of property located in the Township of Barnegat; and
2) Mr. Pereira acquired the property by deed on May 1, 2006; and
3) At the time of Mr. Pereira's acquisition the property was not developed. Sometime in 2009, Mr. Pereira clear cut the native trees and plants; and
4) In accordance with the Pinelands Comprehensive Management Plan and the Land Use Ordinances of the Township of Barnegat, the property is located in the Township's PA Preservation Zone permitting in part:

   > Agriculture and horticulture of native plants and other agricultural activities compatible with the existing soil and water conditions that support traditional Pinelands berry agriculture.

5) Pursuant to N.J.A.C. 2:76-2.3, upon the receipt of a request for a determination of eligibility for Right to Farm protection, the Board must determine whether the agricultural operation is a "commercial operation" as defined by N.J.A.C. 2:76.1 and N.J.S.A. 4:1C-3; and
6) N.J.A.C. 2:76.1 and N.J.S.A. 4:1C-3 define a "commercial farm" as (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' 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'; and
7) Mr. Pereira has submitted to the Board FA-1 Applications for Farmland Assessment for the tax years 2013 and 2014 together with a copy of an estimated tax bill reflecting the property as farmland assessed for the tax year 2013. Mr. Pereira has further submitted copies of receipts seeking to demonstrate the production of agricultural or horticultural products worth

$2,500. The Board determines many of the receipts cannot be reconciled with the crops identified in Mr. Pereira's FA-1 filings. The Board further finds the receipts which can be reconciled with the crops identified in Mr. Pereira's FA-1 filings only demonstrate transactions between Mr. Pereira and one of his companies. Notwithstanding the same, the Board reserves a decision as to whether Mr. Pereira has satisfactorily demonstrated the production of agricultural or horticultural products worth $2,500. ; and

8) The Board determines §§ 55-275, 55-276A(1)(d), 55-277E(1), and 55-298 of the Land Use Ordinances of the Township of Barnegat are consubstantial with the rules and regulations provided for and contained in the National Parks Act, the New Jersey Pinelands Protection and the Pineland's CMP; and

9) The Board finds N.J.S.A. 13:18A-27 expressly provides that any law, rule or regulation, must yield to the Pinelands Protection Act and the Pineland's CMP; and

10) The Board hereby determines that the Right to Farm Act does not pre-empt the violations issued on behalf of the New Jersey Pinelands Commission and refers the matter back to Municipal Court for further proceedings; and

BE IT FURTHER RESOLVED that, based upon the foregoing determinations, the Board is without jurisdiction to hear the Application for Right to Farm Protection arising under Summons Numbers SC-003950, SC-003955, and SC-003956; and

BE IT FURTHER RESOLVED, that the Board shall forward a copy of this Resolution to the Applicant, the Township of Barnegat, the New Jersey Pinelands Commission, the State Agriculture Development Committee and any other individuals or organizations deemed appropriate by the Board within 10 days; and

BE IT FURTHER RESOLVED that any person aggrieved by this Resolution may appeal 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 10 days from the receipt of this Resolution. If this Resolution is not appealed within 10 days, the Resolution is binding.

Doug Hallock, OCADB Chairman

12/11/13
Date

Seconded by Mr. Hunter and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Mr. Hallock	X			
Mr. Adams	X			
Mr. Dancer	X			
Mr. Hunter	X			
Ms. Sucharski				X
Mr. Vodak	X			
Mr. Perry	X			

I do hereby certify that the foregoing is a true copy of the resolution adopted by the Ocean County Agriculture Development Board at a meeting on the 12th of December, 2013.

Christine L. Bell, Secretary