



# New Jersey Right to Farm

Farmland Preservation Summit  
March 2, 2007

# Protections

- Nuisance complaints from neighbors
- Onerous municipal/county regulations



# Criteria To Receive Protections

- Is it a “commercial farm?”
- Is area zoned for agriculture or was farm in operation as of July 2,1998?
- Is operation consistent with “generally accepted agricultural management practices” or AMPs adopted by SADC?
- Is operation in violation of any federal or State laws or regulations?
- Does operation pose a direct threat to public health & safety?

# Definition of Commercial Farm

## If greater than 5 acres:

- produce agricultural or horticultural products worth **\$2,500** or more annually
- satisfy eligibility requirements of Farmland Assessment Act

## If less than 5 acres:

- produce agricultural or horticultural products worth **\$50,000** or more annually
- satisfy eligibility requirements of Farmland Assessment Act (other than size requirement)

# Commercial Farm -- Production Requirements (Recent Court Decision)

## Horse Breeding

- Value of horse bred on farm, owned by farmer, can be used to satisfy production requirement
- As long as farmer can provide clear proof of sale of horse or an existing contract to sell horse

*In re Tavalario, N.J. Superior Court (Appellate Division 2006)*

# Operation Can't Violate State or Federal Law

- If there is an outstanding violation against farm operation issued by another State or federal agency, SADC will not grant right-to-farm hearing until violation is resolved
- Issue currently pending before OAL: Township filed RTF complaint against landowner; DEP issued violations; SADC denied hearing pending resolution of violations; landowner appealed SADC denial of hearing

# Procedures

## ➤ Conflict Resolution

- complaint is filed against farmer with CADB

## ➤ Site-Specific AMP Request

- application made by farmer to CADB

# Municipal Regulations

## Agricultural activities can preempt municipal regulations

During CADB/SADC review:

- appropriate consideration and deference given to municipal standards
- balance agricultural needs against municipal public health and safety concerns
- farmer has to show “legitimate agriculturally-based reason” for not complying with municipal regulations

*Township of Franklin v. den Hollander, N.J. Supreme Court (2002)*



# Protected Activities

- Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry
- Process and package agricultural *output of farm*
- Farm markets – buildings and parking areas to be in conformance with municipal standards
- Control pests, predators and diseases of plants and animals
- On-site disposal of organic agricultural wastes
- Agriculture-related educational and farm-based recreational activities – related to marketing of agricultural output of farm

# Activities Not Protected

- Landscaping business and activities
- Processing agricultural products not grown on the farm  
(Example: processing firewood from trees grown on someone else's property)

*(continued)*

# Activities Not Protected

## ➤ Agricultural Labor Housing

Court found:

- Cannot preempt municipal ordinances
- Not included in Act's list of protected activities
- Housing approvals involve public health & safety issues not involved in other agricultural buildings
- Outside expertise of SADC

*In the Matter of Karen Wilkin and James Urbano, New Jersey Superior Court (Appellate Division 2006)*

# Current Issues

- Equine Rule (not yet proposed)
  - Goal is to provide RTF protection to equine service activities (boarding, training, lessons)
  - AMP to be simultaneously proposed
- Agritourism AMP (pending)
- Greenhouses AMP (pending)



# NUISANCE COMPLAINT (Case Example)

- Liquid propane cannon used to scare predators from sweet corn crop
- Neighbor filed complaint with Monmouth CADB regarding noise
- Practice included in AMP for vegetable production
- SADC and CADB found farmer complied with AMP, including requirement that he obtain noise permit from DEP
- CADB considered public health & safety concerns of neighbors and addressed concerns by imposing reasonable conditions on use of cannon, including hours of operation
- Neighbors appealed SADC decision to New Jersey Superior Court, Appellate Division
- Court upheld SADC and CADB findings and conclusions

*In re Samaha, New Jersey Superior Court (Appellate Division 2006)*