

Sussex County Agriculture Development Board

Right to Farm Resolution

Certifying Commercial Farm Operation and
Recommending Site Specific Agriculture Management Practice
For Brodhecker Farm LLC, Hampton Township

Dated: January 19, 2010

Whereas, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the State Agriculture Development Committee regulations N.J.A.C. 2:76-2.3, a commercial farm owner or operator may make a request to the County Agriculture Development Board (hereinafter "CADB" or "Board") to determine if his or her operation constitutes a generally accepted management practice; and

Whereas, on August 30, 2007, a request was made by Brodhecker Farm LLC requesting designation as a commercial farm under Right to Farm definition and a site specific agriculture management practice (hereinafter "SSAMP") for a farm market; and

Whereas, Brodhecker Farm LLC had submitted a second request on February 24, 2009 for a site specific AMP; and

Whereas, a determination of whether Board members had a conflict with hearing this request due to the fact that the Board Chairperson is co-owner of the farm operation in question was requested to be made by the Board of Local Finance; and

Whereas, a lengthy delay was incurred while waiting for a determination from the Board of Local Finance whose charge is to make a decision whether or not there was a conflict of interest; and

Whereas, Sussex County Counsel, Dennis McConnell invoked the Doctrine of Necessity to expedite the SSAMP process after waiting for approximately 20 months for a determination from the Board of Local Finance at the regularly scheduled Sussex CADB meeting on May 18, 2009; and

Whereas, Board members did not receive any determination from the Board of Local Finance until July 10, 2009 at which point the Board of Local Finance expressed the following to some, but not all Board members, "it is the opinion of the Board that the nature of your relationship with Brodhecker Farm does not rise to the level of constituting a direct or indirect financial or personal involvement that might reasonably be expected to impair your objectivity or independence of judgment. Therefore, you would **not** be prohibited from voting/ruling on the Right to Farm issue between Hampton Township and Brodhecker Farm", and

Whereas, at the May 18, 2009 meeting, Brodhecker Farm LLC provided proof pursuant to N.J.A.C. 2:76-2.3(b) that the farm is a commercial operation, proof of which is attached hereto, and the Board determined that the proof was sufficient, and recognized that Brodhecker Farm LLC satisfied the requirements to qualify for Right to Farm protection as a commercial farm operation; and

Whereas, the information provided by Brodhecker Farm LLC as part of their SSAMP requested approval of their existing farm market/agricultural operation which includes the following:

- a. Agricultural and Horticultural Products produced:
 - i. Sale of livestock
 - ii. Sale of livestock shelters, sheds and gazebos
 - iii. Sale of animal feed and crops, and livestock supplies
 - iv. Sale of seed, lime and fertilizer for crops
 - v. Sale of feeders, manure spreaders, waterers, hay wagons, trailers, tractors and related equipment
 - vi. Sale of muck boots
 - vii. Sales of fences, gates and fencing supplies
 - viii. Proposed new barn for additional storage space and sale of additional accessory items, including clothing, boots and feed
 - ix. Permitted Agricultural Operations
 1. Agricultural output may be processed and packaged on location or elsewhere for marketing on the farm.
 2. Farmer-to-Consumer direct marketing includes farm marketing facilities which may range from temporary/seasonal structures or apparatus to single/multipurpose structures
 3. Farmer-to-Consumer direct marketing enterprise site has a direct connection between the use of land in growing agricultural commodities and the marketing of those commodities to consumers.
 4. Agricultural marketing also includes the sale of related products that contribute to farm income and are designed to attract customers as an integral part of the marketing enterprise, including complimentary items: items commonly used in conjunction with or for preparation of the agricultural output of the farm: and supplementary items: commodities produced by other farms, specialty products with a relationship to the farming operation, and appropriate food and drink items (AMP for Farmer-to-Consumer Direct Marketing on Farms in NJ adopted 2/24/94).
- b. Operation of the Farm Market
 - i. Generally
 1. Retail operation meets the 51% criterion pursuant to N.J.A.C. 2:76-2.1
 - ii. Site Plan
 1. Buildings and parking areas design and construction conform with appropriate municipal standards designed to protect public health and safety.

2. Adequate directional and identification signs, in conformance with municipal standards.
- c. Agricultural-related and Farm-based Recreational Facilities
 - i. Tours and educational programs provided
 - ii. Continuing educational opportunities
 - iii. Agritourism, and

Whereas, Brodhecker Farm LLC additionally cited that they were in conformance with accepted agricultural management practices including the raising and selling of livestock and the sale of agriculturally related products; and

Whereas, the Board noticed a public hearing on this matter for Monday, June 15, 2009; and

Whereas, said hearing was not completed during the June 15, 2009 meeting and was carried to the July 20, 2009 and August 17, 2009; and

Whereas, during this entire process, Brodhecker Farm LLC was represented by Richard Clark, Esq. of Laddey, Clark and Ryan; and

Whereas, Hampton Township has had its' position represented by Steven Roseman, Esq. and Francis McGovern, Esq. of McGovern and Roseman; and

Whereas, evidence was submitted on behalf Brodhecker Farm LLC and the Township of Hampton and testimony was provided by Brodhecker Farm LLC and the Township of Hampton and the parties were provided the right to cross examination witnesses and the public was provided opportunities to be heard and to question the witnesses; and

Whereas, the following individuals testified during the course of the hearing:

Tom Brodhecker and Phil Brodhecker on behalf of Brodhecker LLC.

David Troast, PP, AICP. Mr. Troast was asked to testify on planning and zoning issues on behalf of Hampton Township.

Wesley Powers, Fire Subcode Official on behalf of Hampton Township.

Andrew Law, Emergency Management, Rural Development, USDA, retired on behalf of Hampton Township.

David Pierson, Hampton Township resident.

Edward Brown, Hampton Township resident, and

Whereas, the following exhibits were presented to the Board and marked as follows:

- A-1 A two page survey of the applicant's farm market prepared by Daniel Kent, Licensed Land Surveyor showing current site conditions.
- A-2 A profit and loss sales analysis showing the percentage of sales generated on behalf of the farm in sales and agricultural output and sales of related items.
- M-1 A statement by Eileen Klose, Hampton Township Administrator commenting on the initial draft report submitted to Rutgers Extension Service of Sussex County.
- M-2 A transcript of a hearing at the Board of Adjustment of Hampton Township on July 25, 2007.
- M-3 A series of pictures depicting the farm market initially marked as A-3 through A-12.
- M-4 A nineteen page print out of the Brodhecker website.
- M-5 The complete transcript of proceedings at the Hampton Township Zoning Board of Adjustment for the date of August 28, 2007; and

Whereas, a site inspection was conducted by Rutgers Cooperative Extension office agents from Sussex and Hunterdon Counties with the following findings:

Brodhecker Farm LLC owns 164 acres plus farms an additional 900 acres, they are a commercial farm as defined by N.J.S.A. 4:1C and N.J.C.A. 2:76-2.1 and they have been in operation since 1969; and

Whereas, Rutgers Cooperative Extension cited the following factual findings based on a site inspection conducted on May 18, 2009 and subsequent information gathered during interviews with the Brodhecker family:

- i. Brodhecker Farm, LLC is a vertically integrated agricultural farming operation utilizing the land base for the production of grains, forages, livestock and related product sales and marketing, inclusive of ancillary products that are directly related to the sustainability of the entire farm operation known as Brodhecker Farm, LLC.
- ii. Brodhecker Farm, LLC is a state-licensed feed manufacturer of home grown grains as livestock feeds. They also sell hay and hay products, livestock minerals and supplements, related feeding equipment and supplies that are complimentary to the livestock industry and subsequent sales of items essential to consumers purchasing products from Brodhecker Farm, LLC, i.e. feeding equipment, tools, fencing materials, portable housing sheds, hay wagons, hay feeders, farm implements and ancillary products designed to stimulate and increase consumer traffic to promote the sale of farm products.
- iii. Brodhecker Farm, LLC is a diversified livestock farm operation (beef, sheep, swine, poultry) with farm activities devoted to the breeding, rearing, finishing, marketing and final distribution of on-farm grown products, both as live and as

- processed products. Brodhecker Farm LLC maintains a 48 head beef cow herd, 20-30 beef animals on an on-going basis for finishing, 40-48 breeding ewes and serviceable rams for the production of breeding and market animals, and 30-40 hogs purchased and raised for finishing and marketing as processed hog products.
- iv. Brodhecker Farm LLC merchandizes meat products as a “value added production” system, direct to consumers utilizing home grown feeds and feedstuffs. These animals are marketed directly from the farm requiring the maintenance and management of feed lots as an important component of their marketing strategy.
 - v. Brodhecker Farm LLC utilizes a USDA Certified Processing Facility to harvest and process their home grown meat animals for the value added sales to consumers.
 - vi. Brodhecker Farm LLC has on file with the Natural Resource Conservation Service (USDA-NRCS) a farm conservation plan and a certified comprehensive nutrient management plan. All aspects of these plans including animal densities, conservation practices and nutrient management appeared to be incorporated into the daily practice on-farm. Brodhecker Farm LLC maintains both new and old farm structures in the pursuit of their on-farm activities in order to perform the farm related businesses. Structures are designed to provide storage and holding of both on-farm produced products and complementary farm products as part of the marketing plan.
 - vii. Brodhecker Farm LLC utilizes land/properties adjacent and around the buildings on the farm to display and hold items for sale. Some of these products are also incorporated into the daily farming activities.
 - viii. Brodhecker Farm LLC has designed room for egress to the property in order to conduct on-farm activities and associated sale of the farm products. The sale area for the value-added products, livestock, grain, and sheds and out buildings was in close proximity to a prepared roadway and area used for parking.
 - ix. The above activities are similar in scope to many diverse agricultural operations in New Jersey; and

WHEREAS, The Board discussed each of the items requested in the Brodhecker SSAMP separately and voted by motion on each section separately.

NOW, THEREFORE BE IT RESOLVED that based upon the testimony, the report of Rutgers Cooperative Extension and the evidence submitted, the Board finds as follows:

1. That Brodhecker Farm LLC, operates a commercial farm in accordance with the requirements of N.J.S.A. 4:1C-9 as determined by the Board at their May 18, 2009 meeting.
2. The Brodhecker Farm LLC has been a farm operation since 1969.
3. That Brodhecker Farm LLC satisfies the Right to Farm income criteria based on the submitted profit and loss statement which cites that 51% of the annual gross sales of the retail farm market were generated from the agricultural output of the farm.
4. That Brodhecker Farm LLC also satisfies that 51% of their sales area is devoted to selling agricultural output of the farm.

The Board further makes the following findings as to each of the number sections of the SSAMP submitted by Brodhecker Farm LLC :

- i. Sale of livestock is an accepted agricultural practice.
- ii. The sale of livestock shelters, sheds and gazebos is an accepted agricultural practice. The end use of a shed can be for livestock; there is no way to specifically know that at time of sale. Gazebos are utilized by equine operations as center locations for people judging events, etc. They also may be part of the aesthetics of the farm. There should be no restriction on number of the aforementioned units or their location on the farm. It is part of a standard marketing plan to have your goods where people can see them; this encourages visitation to the farm market and resulting sales. The 51% rule will be the restricting factor.
- iii. Sale of animal feed and crops and livestock supplies is an accepted agricultural practice.
- iv. Sale of seed, lime and fertilizer for crops is an accepted agricultural practice.
- v. The sale of feeders, manure spreaders, waterers, hay wagons, trailers, tractors and mechanized related equipment is an accepted agricultural practice. The 51% cap will be limiting the amount of equipment present at the farm since it would be economically impractical to have more inventory than can be sold.
- vi. The sale of muck boots – see viii below.
- vii. The sale of fences, gates and fencing supplies is an accepted agricultural practice.
- viii. The use of the new barn for additional storage space and sale of additional accessory items including farm work clothing and farm work boots (muck or other) are ancillary products designed to stimulate and increase consumer traffic to promote the sale of farm products and can be considered as value-added products.

The Board further finds that the request for approval of “Permitted Agricultural Operations” set forth in section ix., numbers 1, 2 and 3; of the requested SSAMP are specifically approved as Permitted Agricultural Operations as follows:

1. Agricultural output may be processed and packaged on location or elsewhere for marketing on the farm.
2. Farmer-to-Consumer direct marketing includes farm marketing facilities which may range from temporary/seasonal structures or apparatus to single/multipurpose structures
3. Farmer-to-Consumer direct marketing enterprise site has a direct connection between the use of land in growing agricultural commodities and the marketing of those commodities to consumers.
4. Agricultural marketing also includes the sale of related products that contribute to farm income and are designed to attract customers as an integral part of the marketing enterprise, including complimentary items; these items are commonly used in conjunction with or for preparation of the agricultural output of the farm. This also includes supplementary items which are commodities produced by other farms and specialty products with a relationship to the farming operation, and food and drink items produced by other commercial farms in New Jersey, and

BE IT FURTHER RESOLVED that the operation of the farm market, including the construction of any building(s) and parking area(s) must be in conformance with municipal standards; and

BE IT FURTHER RESOLVED that no activities on Brodhecker Farm LLC can pose a direct threat to public health or safety; and

BE IT FURTHER RESOLVED that the Board shall forward a copy of this resolution as its written recommendation of this site specific agriculture management practice to the State Agriculture Development Committee, the Township of Hampton, Brodhecker Farms LLC, and Mr. David Pierson, within 30 days.

Certified as a true copy of the
Resolution adopted by the Sussex
County Agriculture Development
Board on the 19th day of January 2010.

Lorelee S. Day, Vice Chairperson
Sussex County Agriculture Development Board