



MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD

P.O. Box 900 Morristown, NJ 07963-0900
(973) 829-8120 • FAX (973) 326-9025 • WEBSITE: [Website: http://planning.morriscountynj.gov/](http://planning.morriscountynj.gov/)
Office located at: 30 Schuyler Place, Morristown, NJ

MEMORANDUM

To: Morris CADB
From: Katherine Coyle, Director
Date: January 6, 2022
Re: Right to Farm Act - Complaint
Backer Farm
Block 109, Lot 23
Township of Mendham

The Morris County Agriculture Development Board (“Morris CADB”) received complaints filed by Mr. Peter Banos, Mr. David Rainis and Ms. Melissa Rainis, and Mr. Barrett and Ms. Barbara Kolton, against Backer Farm. The complaints concern noise and traffic related to a live concert that took place on the farm on September 11, 2021.

On November 9, 2021, the Morris CADB received correspondence from Nicole Voigt, Esq., on behalf of Backer Farm, LLC, in response to the filed complaints (F-1).

On December 9, 2021, the Morris CADB determined that the Backer Farm operation is a commercial farm pursuant to the Right to Farm Act (“RTF Act”), N.J.S.A. 4:1C-3, and that the dispute concerns activities that are included in one or more of the permitted activities set forth in the RTF Act and addressed by an agricultural management practice regulation adopted by the State Agriculture Development Committee (SADC).

Pursuant to N.J.A.C. 2:76-2.7(d), if the CADB determines that the farm is a commercial farm and that the dispute concerns activities that are addressed by an agricultural management practice recommended and adopted by the SADC, the CADB shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

INDEX OF EXHIBITS

Exhibits from Farmer:

November 11, 2021 letter from Nicole Voigt.....F-1

OFFICERS: Dale Davis III, *Chairman* • Aimee Ashley Myers, *Vice Chairman* • Harvey Ort, Jr., *Secretary*
MEMBERS: Frank Carrajat • Thomas Galfo • Jay Thomson
STAFF: Katherine Coyle, *Director*

Exhibits from the Morris CADB:

N.J.A.C. 2:76-2A.13B-1

STAFF REVIEW

Compliance with an agricultural management practice

According to the complaints, on September 11, 2021, Backer Farm held a concert with three rock bands. The music was amplified and heard for several hours. The event was marketed as a concert. A \$20 fee was charged to all who attended the concert. The complainants submitted photos and videos of the concert and the parking area to demonstrate the noise levels and the scale of the event, as well comments from other local residents impacted by the event.

The dispute concerns activities that are addressed by an agricultural management practice adopted as a regulation by the SADC, N.J.A.C. 2:76-2A.13, "Agricultural management practice for on-farm direct marketing facilities, activities, and events" (B-1).

1. Pursuant to the Right to Farm Act, N.J.S.A. 4:1C-9, the owner or operator of a commercial farm may:

"Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm."

2. N.J.A.C. 2:76-2A.13, "Agricultural Management Practice for On-farm Direct Marketing Facilities, Activities, and Events", sets forth the standards for on-farm direct marketing facilities, activities, and events with which commercial farms must comply to receive the protections of the RTF Act. Pursuant to N.J.A.C. 2:76-2A.13, commercial farms may engage in the following activities as defined in the regulations, subject to conditions listed in the regulations:

- Agriculture-related educational activities,
- Ancillary entertainment-based activities,
- Farm-based recreational activities,
- On-farm direct marketing activities and
- On-farm direct marketing events.

"Agriculture-related educational activities" means on-farm educational offerings that have an agricultural focus and are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm by enhancing the experience of purchasing agricultural products for the purpose of attracting customers to the commercial farm. Examples of agriculture-related educational activities may include, but are not limited to: school trips, hands-on farming activities, educational displays, farm tours, farm task experiences, wine tastings, agriculture-related lectures for clubs, farm open house days, and agriculture-related classes on topics, such as, but not limited to: canning, freezing, cooking with fresh produce, pie making, pruning, beekeeping, animal care, and gardening.

"Ancillary entertainment-based activities" means non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities that are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products. Examples of ancillary entertainment-based activities include, but are not limited to: background live or recorded music, face painting, story telling, sandbox area, small swing set or playground equipment, pedal carts for children, and picnic tables. Such activities may have a fee associated with them, but such fees shall be de minimis compared to the income generated from the sale of the agricultural output of the commercial farm.

"Farm-based recreational activities" means recreational offerings that are uniquely suited to occurring on a farm and also may include common outdoor recreation activities that are compatible with the agricultural use of the farm, where such offerings and activities are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of the commercial farm by enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm. Examples of farm-based recreational activities uniquely suited to occurring on a farm may include, but are not limited to: corn, sunflower, and other crop mazes; hayrides and wagon rides; agricultural animal display or petting areas; farm tours; horseback riding; pony rides; and tractor pulls. Examples of farm-based recreational activities considered common outdoor recreation activities that are compatible with the agricultural use of the farm include, but are not limited to: hiking; bird watching; sleigh rides; hunting and fishing; and bonfires. Activities and related infrastructure not considered farm-based recreational activities include, but are not limited to: athletic fields; paintball; go-karting and other similar racetracks; carnival-type amusement rides; and the flying of hobby, private, or commercial aircraft.

"On-farm direct marketing activity" means an agriculture-related happening made available by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products and include, but are not limited to: agriculture-related educational activities, farm-based recreational activities, and ancillary entertainment-based activities.

"On-farm direct marketing event" or "event" means an agriculture-related function offered by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such events are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products, may include on-farm direct marketing activities as components, are either product-based or farm-based, and occur seasonally or periodically. Product-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: an apple, peach, strawberry, pumpkin, wine, or other agricultural or horticultural product festival held at a commercial farm that produces that particular product. Farm-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: seasonal harvest festivals held at a commercial farm that produces such seasonal farm products, farm open house events, CSA membership meetings, and farm-to-table events that showcase the agricultural output of the commercial farm.

3. While a variety of marketing efforts are eligible for the protections of the RTF Act, they must be:
 - related to marketing the agricultural output of the farm;
 - designed to attract customers to the farm by enhancing the experience of purchasing agricultural products;
 - incidental components of on-farm direct marketing activities that are accessory to, and serve to increase, the direct-market sales of the agricultural output of the farm; and
 - may have a fee associated with them, but such fees shall be de minimis compared to the income generated from the sale of the agricultural output of the farm.

STAFF RECOMMENDATION

Based on information provided by the complainants and information gathered during the SADC and CADB site visit that took place on October 22, 2021, staff recommends that the Morris CADB should determine that:

1. The concert that took place on September 11, 2021 on the Backer Farm did not comply with N.J.A.C. 2:76-2A.13, SADC regulations for on-farm direct marketing facilities, activities, and events, because the primary purpose of the event was to host a concert. Music, including background live or recorded music, is a permitted "ancillary entertainment-based activity" only if it is an incidental, accessory component of marketing the output of the farm. In this case, the concert was the primary activity.
2. The SADC had determined that the concert was a violation of the Backer Deed of Easement, and as such, a violation of N.J.A.C. 2:76-6.15, Deed Restrictions. Repeat and continued violations of the Deed of Easement may result in ineligibility of Backer Farm from the protections of the Right to Farm Act.

PROCEDURES

CADB Decision/ Appeal Process:

Pursuant to N.J.A.C. 2:76-2.7(d),

1. The decision of the CADB, containing its findings and recommendations, shall be forwarded to the SADC, the aggrieved person, the municipality in which the commercial farm is located, and the commercial farm owner, and the commercial farm operator, if applicable.
2. Any person aggrieved by the decision of the CADB shall appeal the decision to the SADC within 10 days of the receipt of the CADB's final decision. The SADC shall schedule a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and make a determination within 90 days of receipt of the petition for review.
 - i. The decision of the SADC shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.
 - ii. Any decision of the CADB that is not appealed shall be binding.



**SHANAHAN
& VOIGT LLC**
ATTORNEYS AT LAW

Robert J. Shanahan, Jr., Esq. Partner
Nicole L. Voigt, Esq. Partner
James R. Grimes, III, Esq. Associate
Britt T. Long, Esq. Associate
Raritan Commons, 200 NJ-31, Suite 207
Flemington, NJ 08822

robert@legalcounselnj.com
nicole@legalcounselnj.com
jim@legalcounselnj.com
britt@legalcounselnj.com
908-751-1551
www.legalcounselnj.com

November 9, 2021

BY EMAIL

Morris County Agriculture Development Board
Attn: Katherine Coyle, Director
PO Box 900
Morristown, NJ 07963-0900

**Re: Right to Farm Complaint Filed by Peter Banos, David Rainis, and Melissa Vinci-Rainis
Backer Farm Mendham, LLC, d/b/a/ Backer Farm
32 Ironia Road, Mendham, New Jersey 07945
Block 109, Lots 23 and 23 QFARM, Mendham Township, Morris County**

Dear Chairman, Members of the Board, and Ms. Coyle:

Kindly recall that my firm represents the interests of BF Partners, LLC and Backer Farm Mendham, LLC, d/b/a Backer Farm (“Backer Farm”). This letter pertains to complaints filed by Peter Banos, David Rainis, and Melissa Vinci-Rainis with respect to an event held at Backer Farm on September 11, 2021 (9-11 event). Backer Farm presently operates a farm market, community supported agriculture, and pick-your-own pumpkin weekends. The 9-11 event occurred during the peak season of harvest with the intention of marketing the upcoming weeks of pick-your-own pumpkin sales. With respect that event, Mr. Banos is accurate in his reflection that the 9-11 event was an anomaly in Backer Farm’s long-standing history of direct-to-consumer marketing and sales. (See, Banos complaint: **“We believe this is the first time in the decades that the Backers – or anyone else in this neighborhood – had a concert like this.”**).

Backer Farm intends to use amplified background music as a farm-marketing tool only in compliance with: 1) the Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities, and Events, N.J.A.C. 2:76-2A-13; and 2) New Jersey standards for continuous noise as set forth at N.J.A.C. 7:29-1.2 (Backer Farm will not rely on the agricultural exemption to these standards). Backer Farm has engaged Jack Zyburka, P.E., INCE Bd. Cert., Acoustical Engineer, of Lewis S. Goodfriend & Associates, to use acoustical modeling techniques to determine the optimal location and orientation of background music to reduce noise impact on surrounding residential properties. Mr. Zyburka will establish one or more reference points, as needed, to allow self-monitoring of the sound levels during outdoor, amplified, background music.

Backer Farm observed Mr. Banos attending its 9-11 event and observed him taking sound measurements. To date, Backer Farm has not been advised of any specific sound readings. Further, Backer Farm was advised that, prior to the event, a neighbor alerted NJDEP. Apparently, this resulted in a NJDEP noise control officer reviewing the matter the day prior to the event. Apparently, the NJDEP officer made himself available on Saturday, September 11th should a complaint come in that required sound measurements during the event. Based upon all appearances, the event proceeded without any problematic sound measurements being collected despite the fact that it appears NJDEP was ready and willing to conduct such measurements upon request by the complaining neighbor, and Mr. Banos,

himself, was also measuring the volume of the music. The implication to Backer Farm was that the sound levels were reasonable.

Backer Farm reports that it only made money from its food truck, farm stand, and pop-up farm market, where at least 51% of the products sold were farm products or food prepared using farm ingredients. Upon subsequently reviewing this event along with the complaints received with its professionals, Backer Farm advised as follows: While Backer Farm, itself, only made money via farm-market sales and did not rent its farm as a “venue” to the bands, Backer Farm believed it permissible to allow the bands, who played successively, to collect a combined cover charge, and was told a portion of that cover charge went to 9-11 charity.

Based upon the recommendations of its professional team, prior to any further farm-marketing activities which use outdoor, amplified music as a farm-marketing tool, Backer Farm will draft and submit to the municipality in accordance with N.J.A.C. 2:76-2A-13(n) an annual Event Management Plan. The Event Management Plan will memorialize Backer Farm’s professionally prepared protocol for voluntary compliance with the standards for continuous noise as set forth at N.J.A.C. 7:29-1.2. The Event Management Plan will further reiterate that fees, if any, will only be collected by Backer Farm and will be *de minimus* relative to the income from sale of farm products as detailed in the Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities, and Events, N.J.A.C. 2:76-2A-13 and subject to applicable rules, regulations, and determinations with respect to farm-marketing fees and/or charitable fundraising.

Addressing the remaining concerns, note that Backer Farm has not yet applied to the Division of Alcohol Beverage Control for a limited brewery license, and it did not sell, serve, or deliver alcoholic beverages during the event. There is no license or license application to provide to Mr. Banos, and certainly none is being withheld. Such application will be made at a later time. Regarding food and beverages consumed onsite, picnicking is a permitted activity. Backer Farm food products (meat and produce) (processed and unprocessed), were also sold at the event, as well. These sales are permitted. And the agricultural management practice permit the use of portable toilets during events such as the 9-11 event.

Respectfully, Backer Farm believes the within response addresses all concerns raised in the complaints. Again, prior to utilizing the permitted marketing tool of outdoor, amplified, background music, Backer Farm will complete the acoustical study and the preparation of an event management plan detailing compliance with not only the On-Farm Direct Marketing Facilities, Activities, and Events, N.J.A.C. 2:76-2A-13, but also voluntarily compliance with the state standard for continuous noise.

Please forward this response to Peter Banos, David Rainis, and Melissa Vinci-Rainis, and contact me if further discussions are required or helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nicole L. Voigt', with a long horizontal line extending to the right.

Nicole L. Voigt

Cc: Backer Farm Mendham, LLC, by email and its team.
Staci Santucci, Esq., Morris County Counsel

NEW JERSEY ADMINISTRATIVE CODE
Copyright (c) 2014 by the New Jersey Office of Administrative Law

*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 46, No. 19, October 6, 2014 ***

TITLE 2. AGRICULTURE
CHAPTER 76. STATE AGRICULTURE DEVELOPMENT COMMITTEE
SUBCHAPTER 2A. AGRICULTURAL MANAGEMENT PRACTICES: GENERALLY ACCEPTED OPERATIONS AND PRACTICES

N.J.A.C. 2: 76-2A.13 (2014)

§ 2: 76-2A.13 Agricultural management practice for on-farm direct marketing facilities, activities, and events s

(a) This section, which is an agricultural management practice, sets forth the standards for on-farm direct marketing facilities, activities, and events that commercial farms must comply with to receive the protections of the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. This section is designed to support and protect on-farm direct marketing operations by identifying safe, effective, and economically viable agricultural management practices for commercial farms seeking the protections of the Act.

(b) As used in this section, the following words and terms shall have the following meanings:

"Agricultural output of a commercial farm" means the items specified in N.J.S.A. 4:1C-9.a that a commercial farm produces and the value-added or processed products produced from those items, provided that the primary and predominant ingredients used to produce such products are grown or raised by the commercial farm. Examples of unprocessed agricultural output include, but are not limited to: fruits, vegetables, nursery stock, bedding plants, cut flowers, Christmas trees, and forest and livestock products. Examples of value-added or processed agricultural output include, but are not limited to: meat products, dairy products, cider, canned goods, baked goods, prepared foods, cut firewood, and wreaths.

"Agriculture-related educational activities" means on-farm educational offerings that have an agricultural focus and are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm by enhancing the experience of purchasing agricultural products for the purpose of attracting customers to the commercial farm. Examples of agriculture-related educational activities may include, but are not limited to: school trips, hands-on farming activities, educational displays, farm tours, farm task experiences, wine tastings, agriculture-related lectures for clubs, farm open house days, and agriculture-related classes on topics, such as, but not limited to: canning, freezing, cooking with fresh produce, pie making, pruning, beekeeping, animal care, and gardening.

"Ancillary entertainment-based activities" means non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities, that are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products. Examples of ancillary entertainment-based activities include, but are not limited to: background live or recorded music, face painting, story-telling, sandbox area, small swing set or playground equipment, pedal carts for children, and picnic tables. Such activities may have a fee associated with them, but such fees shall be de minimis compared to the income generated from the sale of the agricultural output of the commercial farm.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Buffer" means a setback distance and/or screening utilized by a commercial farm in conjunction with its on-farm direct marketing facilities, activities, or events.

"Commercial farm" means:

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, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.); 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, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.).

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Community supported agriculture (CSA) operation" means an on-farm direct marketing method in which the retail sale of the agricultural output of a commercial farm is provided through a paid subscription.

"Complementary products" means items commonly used to facilitate the use or consumption of the agricultural output of the commercial farm and promotional items that help market the commercial farm. Examples of promotional items include, but are not limited to, souvenir items such as commercial farm-branded shirts, hats, and bags.

"CSA market and distribution area" means an on-farm direct marketing facility used by a CSA operation to organize and dispense CSA operation members' farm product shares and to market products that contribute to farm income.

"Farm-based recreational activities" means recreational offerings that are uniquely suited to occurring on a farm and also may include common outdoor recreation activities that are compatible with the agricultural use of the farm, where such offerings and activities are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of the commercial farm by enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm. Examples of farm-based recreational activities uniquely suited to occurring on a farm may include, but are not limited to: corn, sunflower, and other crop mazes; hayrides and wagon rides; agricultural animal display or petting areas; farm tours; horseback riding; pony rides; and tractor pulls. Examples of farm-based recreational activities considered common outdoor recreation activities that are compatible with the agricultural use of the farm include, but are not limited to: hiking; bird watching; sleigh rides; hunting and fishing; and bonfires. Activities and related infrastructure not considered farm-based recreational activities include, but are not limited to: athletic fields; paintball; go-karting and other similar racetracks; carnival-type amusement rides; and the flying of hobby, private, or commercial aircraft.

"Farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

"Farm market" means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51 percent of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51 percent of the sales area shall be devoted to the sale of agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least \$ 2,500.

"Hours of operation" means the time during which an on-farm direct marketing facility, activity, or event is open or offered to the public.

"On-farm direct marketing" means the on-farm facilities, activities, and events that are used to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income.

"On-farm direct marketing activity" or "activity" means an agriculture-related happening made available by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products and include, but are not limited to: agriculture-related educational activities; farm-based recreational activities; and ancillary entertainment-based activities.

"On-farm direct marketing event" or "event" means an agriculture-related function offered by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such events are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products; may include on-farm direct marketing activities as components; are either product-based or farm-based; and occur seasonally or periodically. Product-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: an apple, peach, strawberry, pumpkin, wine, or other agricultural or horticultural product festival held at a commercial farm that produces that particular product. Farm-based events provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: seasonal harvest festivals held at a commercial farm that produces such seasonal farm products, farm open house events, CSA membership meetings, and farm-to-table events that showcase the agricultural output of the commercial farm.

"On-farm direct marketing facility" or "facility" means a type of farm market including the permanent, temporary, and/or moveable structures, improvements, equipment, vehicles, and apparatuses necessary to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. Such facilities include various types and sizes of direct marketing operations, including, but not limited to: farm stands; farm stores; CSA market and distribution areas; and pick-your-own (PYO) market areas. A facility may include one or more structures or a portion of a structure, and a facility may utilize new or existing structures. A facility's structures may also be used for the commercial farm's other farm purposes, for instance: equipment storage, equipment maintenance, and the production, processing, packaging, storage, or wholesale marketing of the agricultural output of the commercial farm.

"Pick-your-own (PYO) operation" means an on-farm direct marketing method wherein retail or wholesale customers are invited onto a commercial farm in order to harvest and pay for agricultural or horticultural products. Examples of PYO operation crops include, but are not limited to, fruits, vegetables, flowers, and Christmas trees.

"Products that contribute to farm income" means complementary or supplementary products that are sold to help attract customers to the farm market through a broadening of the range of products available and an enhancement of the experience of purchasing the agricultural output of the commercial farm.

"PYO market area" means an on-farm direct marketing facility used by a PYO operation to set up PYO activities and collect money for PYO crops harvested by customers. PYO market areas may be stand-alone facilities or part of other on-farm direct-marketing facilities. In some cases, such as when a commercial farm has a CSA operation or component, PYO operations may not necessarily involve the collection of money following harvesting, as PYO crops may be one of the benefits of a CSA membership.

"Sales area" means the indoor, outdoor, covered, and uncovered areas of an on-farm direct marketing facility whose primary and predominant use is the display, marketing, and selling of the agricultural output of a commercial farm and products that contribute to farm income. Sales areas do not include: PYO and other production fields; pastures and other areas occupied by livestock on a regular basis; non-public areas, such as areas used for the storage of equipment and other items; and areas dedicated to farm-based Recreational activities. Covered sales areas include sales areas inside structures and sales areas underneath tents, awnings, and other canopies.

"Sanitary facilities" means restrooms or portable toilets.

"Supplementary products" means the agricultural output of other farms, and additional customary food and drink items.

(c) The hours of operation allowed for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. On-farm direct marketing facilities and activities may be open or offered on weekdays, weekends, holidays, seasonally, for part of the year, or year-round.
2. On-farm direct marketing events may be offered on weekdays, weekends, holidays, seasonally, or for part of the year.
3. Hours of operation may be between 6:00 A.M. and 10:00 P.M. These hours may be temporarily extended to 11:00 P.M. in conjunction with seasonal on-farm direct marketing sales, activities, or events.

(d) The standards for lighting of on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. When an on-farm direct marketing facility, activity, or event is open or offered after dark, a commercial farm shall provide, unless specified otherwise in this section, lighting for areas used by customers, such as: walkways, parking areas, sales areas, activity areas, and event areas. This lighting shall provide, at a minimum, the amount of light necessary for customer safety.
2. All lighting shall be provided with lights focused either downward or with an orientation designed to minimize light spilling off the site and to minimize impacts on adjacent off-farm residential buildings and streets. Lights shall not be focused directly onto public roads.
3. Any temporary lighting shall be removed within 30 days after the activity or event has ended.
4. Lighting for on-farm direct marketing purposes shall be turned off within half an hour of the close of business.
5. In addition to lighting referenced in (d)1 through 4 above for on-farm direct marketing purposes, a commercial farm may use lighting for other farm management purposes, for example, for security. Security lighting may be used to help protect a farm's products or other physical or natural resources and to discourage trespassing and vandalism and is subject to the provisions in (d)2 above.

(e) The requirements for sanitary facilities at on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. A commercial farm shall provide sanitary facilities in the following cases:
 - i. If indoor seating space, outdoor picnic tables, or other areas are made available to enable customers to consume food on-site;
 - ii. If an on-farm direct marketing activity or event promotes customers staying on-site for more than 90 minutes; and
 - iii. When required pursuant to N.J.A.C. 8:24, the Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, or N.J.A.C. 5:23, the New Jersey Uniform Construction Code.
2. The number of sanitary facilities provided shall be sufficient to accommodate, without causing long queues, the volume of visitors expected in conjunction with on-farm direct marketing facilities, activities, or events.
3. A commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of the sanitary facilities. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations.
4. Sanitary facilities shall be located and managed with an appropriate cleaning schedule, so as to prevent adverse impacts on adjacent properties, such as odors.

(f) The requirements for safety for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. A commercial farm shall provide visitors with any rules or safety procedures associated with the on-farm direct marketing facilities, activities, and events that are provided, offered, or held. This information may be conveyed by farm staff, through posted signs or written handouts, or through other appropriate means, and may include notice that visitors share in the responsibility for their own safety, such as being aware of inherent risks, using common sense, and wearing farm-appropriate attire.

2. Hazardous materials shall be safely stored in a secure location and in compliance with relevant State and Federal laws, rules, and regulations.

(g) The standards for the use of signs for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. A commercial farm may use permanent and temporary signs to promote its on-farm direct marketing facilities, activities, and events.

i. Examples of signs include, but are not limited to, directional signs; advance signs; signs promoting the products available for sale; and facility, activity, and event signs.

2. The following general standards shall apply to all signs used for on-farm direct marketing facilities:

i. Signs shall be installed and maintained in a manner that does not pose a direct threat to public health and safety. Signs shall not interfere with sight distances at street intersections, ingress and egress points to or from parking areas, and other locations;

ii. Signs may be attached to farm buildings, fences, or other structures or be freestanding;

iii. Signs may have information on both sides.

iv. The use and location of signs shall comply with relevant Federal and State laws, rules, and regulations;

v. Along the approach to the farm on the road on which the on-farm direct marketing facility, activity, or event is located, a commercial farm may install advance signs up to one-half mile away from the farm's entrance. Advance signs are designed to alert drivers of an approaching on-farm direct marketing facility, activity, or event and are generally located in close proximity to one another along the road approaching, and leaving, the site upon which the facility, activity, or event is located;

vi. Directional and other signs may be installed at key intersections or other important locations;

vii. A commercial farm shall obtain the permission of the appropriate landowner or easement holder when locating signs at off-farm locations;

viii. Temporary signs promoting a seasonal on-farm direct marketing facility, activity, or event may be installed up to one month prior to the facility, activity, or event's seasonal opening and shall be removed within 15 days of seasonal closing; and

ix. Internally-lit and neon-type signs are not eligible for Right to Farm protection.

3. A commercial farm's primary on-site farm business sign shall comply with the following standards (if the commercial farm has frontage on multiple roads, one primary on-site farm business sign may be placed on each frontage):

i. The sign is set back at least 10 feet from the paved portion of the street right of way;

ii. The maximum size (meaning the physical size of the sign and not the combined square footage of both sides) is 32 square feet; and

iii. The maximum height to the top of the sign does not exceed 15 feet from the ground.

4. The provisions of this subsection shall not apply to a commercial farm's primary on-site farm business sign(s), commercial billboards, New Jersey Department of Transportation Tourist Oriented Directional Signage (TODS), Farmland Preservation signs, signs whose sole purpose is to facilitate and provide for safe traffic movement directly onto or from the farm site, and signs within the interior of the farm that are not intended to be visible from a public right of way. A commercial farm's on-farm direct marketing facility, activity, and event signs shall meet the following criteria:

i. The maximum size of any one sign (meaning the physical size of the sign and not the combined square footage of both sides) is 16 square feet;

ii. The total combined square footage of the signs does not exceed 160 square feet (this is calculated by summing the physical sizes of the signs and not the square footage of the signs' front and back sides); and

iii. If a commercial farm has multiple distinct and separate on-farm direct marketing locations, such as two on-farm direct marketing facilities located on two different properties within the farm management unit, each on-farm direct marketing location may utilize a total combined square footage of signs of 160 square feet, as specified in (g)4ii above.

(h) In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this subsection shall apply to facilities' parking areas.

1. A commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events.

2. The following standards shall apply to all parking areas:

i. Safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events;

ii. Ingress and egress points, driveway areas, and parking areas shall be arranged, so as to provide for safe traffic circulation. This arrangement shall allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. On-farm direct marketing facilities need adequate driveway access to enable customers to reach the facility from the adjacent roadway; and

iii. Where applicable, on farms that allow buses, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers.

3. The types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.

4. The following standards shall apply to areas temporarily devoted to parking:

i. Areas temporarily devoted to parking shall require few or no improvements, so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases;

ii. Areas temporarily devoted to parking may include, but are not limited to, hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover, such that bare ground is not parked on;

iii. The slope of the land shall be considered to address issues related to drainage, puddles and pockets of standing water, and safety;

iv. During dry conditions, areas temporarily devoted to parking shall be mowed, so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles;

v. During wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction; and

vi. A commercial farm shall mark, sign, or indicate through staff direction or other means where vehicles should be parked.

(1) The standards for buffers for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. The general standards are as follows:

i. A commercial farm may utilize buffers as an effective tool to mitigate the impacts that on-farm direct marketing facilities, activities, or events may pose on adjacent properties, such as noise, dust, and light spillage.

ii. Buffers need not involve greater than the minimum setbacks and/or screening necessary to protect public health and safety and to mitigate unreasonably adverse impacts on adjacent properties.

iii. When making determinations regarding the necessity or extent of buffers, consideration shall be given to the following:

(1) The nature of the existing adjacent property uses;

(2) The nature and scale of the commercial farm's on-farm direct marketing facilities, activities, and events;

(3) The frequency of the commercial farm's activities and events;

(4) The physical features and constraints of the commercial farm property;

(5) The presence or absence of existing on- or off-farm buffers; and

(6) The economic feasibility of using buffers.

2. The setback requirements are as follows:

i. The standards in this paragraph shall apply to the location of building and parking areas for on-farm direct marketing facilities.

ii. The following standards shall apply to new or expanded facilities' permanent structures:

(1) A 50-foot front-yard setback from the paved portion of the road right of way;

(2) A 50-foot side-yard setback from the property line; and

(3) A 50-foot rear-yard setback from the property line;

iii. The following standards shall apply to new or expanded activities and events:

(1) A 25-foot front-yard setback from the paved portion of the road right of way;

(2) A 50-foot side-yard setback from the property line;

(3) A 50-foot rear-yard setback from the property line; and

(4) A 100-foot setback from an existing, occupied residence not located on the farm.

iv. The following standards shall apply to new or expanded areas permanently devoted to parking:

(1) A 25-foot front-yard setback from the paved portion of the road right of way;

(2) A 50-foot side-yard setback from the property line; and

(3) A 50-foot rear-yard setback from the property line.

v. Setbacks of a lesser distance than those specified in (i)2ii through iv above may be permissible provided the following is met:

(1) Screening is considered and, if appropriate, installed;

(2) The combined setback distance and screening arrangement receives approval as a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4;

(3) The site-specific agricultural management practice determination takes, at a minimum, the following into consideration:

(A) Adjacent property uses and buffers;

(B) The scale of the facility and intensity of its use;

(C) The nature, scale, and frequency of the activities and events;

(D) The physical features and constraints of the commercial farm property; and

(E) The economic feasibility of using buffers; and

(4) For a board or the Committee to make a site-specific agricultural management practice determination departing from the provisions in (i)2ii through iv above, a commercial farm must provide a legitimate farm-based reason for the departure and address the considerations listed in this subparagraph.

vi. Existing on-farm direct marketing facilities, activities, or events, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions of (i)2ii through iv above. If such facilities, activities, events, or parking areas are situated at lesser distances than the standards specified in (i)2ii through iv above, the use of screening for buffer purposes shall be considered.

vii. Existing on-farm direct marketing activities or events that are offered and located in different fields over time shall not be considered new activities or events under this paragraph.

3. The screening requirements for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

i. Screening, when used for buffer purposes, shall consist of vegetation or structures, such as, but not limited to, trees, bushes, fences, or walls;

ii. If the screening is comprised of vegetation and if used in conjunction with a facility, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the facility within five years;

iii. If the screening is comprised of vegetation and if used in conjunction with an activity or event offered in two or more consecutive years, the existing or newly planted materials shall be grown in such a manner

that there is 75 percent screening of the activity or event within five years;

iv. If the screening is comprised of a fence, wall, or another existing farm structure, then the fence, wall, or other existing farm structure shall be of sufficient height or construction to provide 75 percent screening of the facility, activity, or event; and

v. If the distance between a new or expanded facility and an existing, occupied residence not located on the farm is less than 100 feet, screening shall be installed.

4. For the purposes of this subsection, existing on-farm direct marketing facilities, activities, or events are those facilities, activities, or events that are in operation as of April 7, 2014, the effective date of the AMP.

(j) Outdoor sales areas shall be arranged, so as to not interfere with safe pedestrian and vehicular traffic circulation.

(k) The use of structures or improvements in conjunction with on-farm direct marketing activities and events shall be as follows:

1. Existing agricultural structures or improvements may be used in conjunction with the offering of on-farm direct marketing activities and events, provided this use does not adversely affect the continued use of the structures or improvements for agricultural production purposes.

2. New structures or improvements may be constructed and used in conjunction with the offering of on-farm direct marketing activities and events, provided this construction and use has a negligible impact on the farm's continued use of the land for agricultural production purposes.

i. If such structures or improvements are temporary and used in conjunction with a temporary or seasonal activity, the structures or improvements shall be removed within 30 days of cessation of the activity or event.

3. The use and construction of structures or improvements shall comply with relevant Federal and State laws, rules, and regulations.

(l) On-farm direct marketing activities and events shall have a negligible impact on the farm's continued use of the land for agricultural production purposes.

(m) Standards for certain on-farm direct marketing activities shall be as follows:

1. For pick-your-own activities, the following standards shall apply:

i. Visitors shall be informed of any rules to follow and instructed as to which fields they are permitted to harvest;

ii. Fields open for pick-your-own activities shall be clearly marked;

iii. Parking areas may be adjacent to or near pick-your-own fields, particularly if such fields are far from the farm's pick-your-own market area; and

iv. Pick-your-own market areas shall comply with applicable standards for on-farm direct marketing facilities.

2. For choose-and-cut Christmas tree activities, the following standards shall apply:

i. Visitors shall be informed of any activity and equipment rules and where Christmas trees may be selected and cut;

ii. Customers may be allowed to cut their own Christmas trees;

iii. Customers shall not be supplied with power equipment or be permitted to use motorized tree baling

equipment; and

iv. Choose-and-cut Christmas tree market areas shall comply with applicable standards for on-farm direct marketing facilities.

3. For corn, sunflower, and other crop mazes, the following standards shall apply:

- i. Visitors shall be informed of any rules associated with the maze, including how to exit the maze in the event of an emergency;
- ii. Farm staff shall walk through the maze periodically, or periodically observe the maze from an elevated location, to check for lost visitors. Farm staff shall similarly check for lost visitors before closing the maze;
- iii. If a maze is open after dark, adequate lighting shall be provided by the commercial farm and/or used by visitors to illuminate the traveled paths. If lighting is provided, the lighting shall be turned off within half an hour of the close of business; and
- iv. No smoking or any other open flames shall be permitted in or near the maze.

4. For hayrides and wagon rides, the following standards shall apply:

- i. Wagons shall be in good repair and have sideboards to contain occupants;
- ii. A ladder, ramp, footstool, steps, or other stable device or component shall be used to assist with safe boarding of and disembarking from wagons;
- iii. When using a tractor to tow wagons, the left and right brakes of the tractor shall be locked together;
- iv. No smoking or any other open flames shall be permitted on hayrides and wagon rides; and
- v. Wagon operators shall:
 - (1) Plan routes in advance;
 - (2) Be familiar with and have experience operating the tractor and wagon equipment;
 - (3) Be familiar with and have experience using draft animals, if applicable, and the wagon equipment;
 - (4) Evenly distribute passengers on the wagons and instruct passengers to remain seated during the ride;
 - (5) Operate tractor and wagon equipment in low gears and at safe speeds; and
 - (6) Have a current motor vehicle operator's license.

5. For livestock and animal activities, the following standards shall apply:

- i. A farm employee or activity attendant shall regularly monitor activities in which visitors may have incidental contact with agricultural animals. Incidental contact includes, but is not limited to, agricultural animal display, petting, or feeding areas;
- ii. A farm employee or activity attendant shall be present at all times to monitor activities in which visitors are permitted to have direct contact with agricultural animals. Direct contact includes, but is not limited to, horseback riding, pony rides, and animal shows, competitions, or demonstrations;
- iii. All agricultural animals having incidental or direct contact with the public shall be observed daily for health problems by a farm employee or activity attendant. Sick animals or animals behaving strangely shall be prevented from having contact with the public;
- iv. Hand-sanitizing facilities shall be provided and readily available if an activity is offered in which visitors

may have incidental or direct contact with agricultural animals. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations. Visitors shall be advised to sanitize their hands after contact with agricultural animals;

v. Visitors shall be advised not to feed agricultural animals unless the feed has been specifically provided by the farm;

vi. Visitors shall be advised that their pets and animals shall not be allowed in areas with agricultural animal activities unless in connection with a specific agricultural purpose, including, but not limited to, agricultural animal shows, competitions, or demonstrations; and

vii. The management of animals shall comply with the Animal Welfare Act, 7 U.S.C. § 54, and the Humane Treatment of Domestic Livestock rules, N.J.A.C. 2:8, as applicable, and any other relevant State and Federal laws, rules, or regulations.

6. For bonfires, the following standards shall apply:

i. A commercial farm conducting a bonfire shall comply with Uniform Fire Code requirements, N.J.A.C. 5:70-2.7, and any other relevant State and Federal laws, rules, or regulations.

ii. A farm employee shall be present for the duration of the bonfire to monitor and oversee the activity.

(n) The event management plan for on-farm direct marketing events shall include the following:

1. If the expected volume of traffic and visitors for an event is significantly greater than the volume regularly accommodated by a commercial farm's on-farm direct marketing facility, such that the increased volume of traffic is likely to interfere with the movement of normal traffic or emergency vehicles on- and off-site, the farm shall create and implement a written event management plan to address public health and safety issues including, but not limited to, emergency vehicle access, traffic management, and public health management.

i. A complete copy of the plan shall be provided to the clerk of the municipality in which the commercial farm is located at least 30 days in advance of the event as an advisory notice and to enable coordination between the commercial farm and municipality that may be necessary regarding emergency vehicle access, traffic, and public health management.

ii. Emergency vehicle access management includes establishing the location(s) and manner in which emergency vehicles may access the farm if necessary.

iii. Traffic management includes:

(1) Providing safe ingress and egress, vehicular traffic flow, and pedestrian traffic flow;

(2) Utilizing parking attendants, signs, or other parking-related instructions to facilitate vehicular and pedestrian traffic flow onto, off of, and within the farm. Local police officers may be hired to assist with traffic management;

(3) Establishing areas temporarily devoted to parking based on the volume of visitors expected; and

(4) Establishing overflow parking areas in the event the planned-for parking capacity is exceeded.

iv. Public health management includes:

(1) Providing sanitary facilities sufficient to accommodate, without causing long queues, the volume of visitors expected;

(2) Providing hand-sanitizing facilities for visitors to wash or sanitize their hands after the use of the sanitary facilities;

(3) Locating sanitary facilities and managing them with an appropriate cleaning schedule, so as to prevent adverse impacts on adjacent properties, such as odors;

(4) Providing trash and recycling receptacles to accommodate the volume of visitors expected in order to prevent the accumulation of trash on the ground; and

(5) Properly training and equipping commercial farm staff on how to handle an emergency situation during the event including, but not limited to, whether and how police, fire, or other entities should be contacted based on an actual emergency.

2. A commercial farm may satisfy the provisions of (n)1 above by obtaining a special events permit, or its equivalent, from the municipality in which the commercial farm is located.

3. If an event of the type described in (n)1 above occurs periodically or more than once per year and occurs under the same basic conditions, a commercial farm may satisfy the provisions of (n)1 above for the multiple events by submitting a single event management plan that notes the multiple occurrences and the future dates of the event.

(o) This section shall not be construed to extend Right to Farm protection to overnight accommodations of any kind, including, but not limited to, lodging and camping.

(p) The approval of site plan elements for new or expanded on-farm direct marketing facilities shall be as follows:

1. A commercial farm seeking approval of site plan elements to establish a new, or expand an existing, on-farm direct marketing facility may apply to the municipality and/or the county agriculture development board for such approval.

i. A commercial farm applying to a municipality for approval of site plan elements may request that the municipality consider waiving or reducing review requirements based on a consideration of relevant site-specific elements, such as the following: the farm's setting and surroundings; the scale of the facility and intensity of its use; the type and use of the public road on which the facility is located; and the minimum level of improvements necessary to protect public health and safety. Nothing in this paragraph shall be construed as authorizing a municipality to waive or reduce review requirements required by State or Federal law, rule, or regulation.

ii. A commercial farm applying to a county agriculture development board or the Committee for approval of site plan elements shall request a site-specific agricultural management practice determination pursuant to N.J.A.C. 2:76-2.3 and 2.4.

iii. If a commercial farm has previously obtained approval for an on-farm direct marketing facility, then such a facility closing seasonally and reopening the following year with the same total square footage of indoor and/or outdoor covered sales area as previously approved shall not be considered a new facility.

(q) On-farm direct marketing facilities, activities, and events shall comply with relevant Federal and State laws, rules, and regulations, including, but not limited to:

1. The Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.;

2. The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.;

3. The New Jersey Uniform Construction Code, N.J.A.C. 5:23;

4. The New Jersey Uniform Fire Code, N.J.A.C. 5:70;

5. The Stormwater Management rules, N.J.A.C. 7:8;

6. The State Highway Access Management Code, N.J.A.C. 16:47;

7. The Sanitation in Retail Food Establishments and Food and Beverage Vending Machines rules, N.J.A.C. 8:24; and

8. The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50.

(r) Additional miscellaneous provisions for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. This agricultural management practice does not preclude a commercial farm from requesting a site-specific agricultural management practice determination for on-farm direct marketing facilities, activities, and events pursuant to N.J.A.C. 2:76-2.3 and 2.4. A board or the Committee, pursuant to N.J.A.C. 2:76-2.3 and 2.4, may make site-specific agricultural management practice determinations for facilities, activities, and events, provided such site-specific agricultural management practice determinations are consistent with the practices set forth in this section.

2. If a commercial farm believes a municipality's standards for the construction of building and parking areas applicable to on-farm direct marketing facilities are unduly restrictive, or believes a municipality is unreasonably withholding local zoning approval related to a facility, the commercial farm may request that the appropriate board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4.

HISTORY:

New Rule, R.2014 d.057, effective April 7, 2014.

See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).