

# The Right to Farm Act in New Jersey



**A Guide for Farmers,  
Neighbors, and Municipalities**

N.J. State Agriculture Development Committee

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# Table of Contents

- Introduction to Right to Farm ..... 2
- Eligibility ..... 4
- Protected Activities ..... 5
- Agricultural Management Practices (AMPs)..... 6
- Formal Review Processes..... 8
  - Complaint Process..... 8
  - Site-Specific Agricultural Management Practice Process..... 8
- Right to Farm Protection: What Does It Mean? ..... 10
  - Nuisance Protection ..... 10
  - Preemption ..... 10
- Legal Considerations and Case Law..... 11
  - Primary Jurisdiction ..... 11
  - Preemption and the Balancing of Interests..... 12
  - Due Process and the Balancing of Interests ..... 13
- Right to Farm and You (Common Questions and Answers)..... 16
- Additional Resources ..... 18

# Introduction to Right to Farm

As New Jersey's population has grown, farmers and neighbors have been brought closer together. Some aspects of this growth are positive, as farmers are able to cultivate new markets, and consumers are able to access local agricultural products. Other aspects are more challenging, as residential, municipal, and county concerns sometimes conflict with the needs of farm businesses. To help resolve such issues, the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., was signed into law in 1983.

Every state in the country has its own version of Right to Farm. In New Jersey, the Right to Farm Act is designed to help address conflicts among farmers, neighbors, municipalities, and counties regarding a farm's practices. If a conflict cannot be resolved informally, such as through Agricultural Mediation or other discussion by the parties, the Act provides for a formal review process. Under the Act, anyone aggrieved by the operation of a commercial farm is required to file a complaint with the County Agriculture Development Board (CADB) prior to filing an action in court. This is what makes New Jersey's Right to Farm Act so strong – commercial farms cannot be taken to court by neighbors and local governments first. Rather, these complaints must first be heard by the CADB or State Agriculture Development Committee (SADC), agencies that have special expertise in the agricultural industry and understand the needs of farm operations.

Under the Act, responsible commercial farms that meet the Act's eligibility criteria can receive significant protections from nuisance lawsuits and overly restrictive local regulations. Case law has upheld these protections, while affirming that CADBs and the SADC must exercise discretion when making formal Right to Farm determinations. Determinations are made on a case-by-case basis and must consider the interests of each party, including relevant local ordinances and public health and safety.

Right to Farm is coordinated locally by New Jersey's 18 CADBs. Anyone with questions about Right to Farm may contact the CADB administrator in their county for more information. Should a farmer, neighbor, or municipality wish to initiate one of the Act's formal review processes, they would contact the CADB to start the process. In the three counties without CADBs – Essex, Hudson, and Union – the SADC should be contacted.



## **Agriculture in New Jersey: Public Support and the Right to Farm Act in Context**

From community farmers markets to roadside stands and working landscapes, agriculture is a visible, vibrant presence in the Garden State. According to the 2012 Census of Agriculture, New Jersey has more than 715,000 acres in active farmland, and the annual market value of agricultural products sold exceeds \$1 billion. There are more than 9,000 farms in New Jersey, and together they make the state a top 10 producer nationally in many crops, including cranberries, bell peppers, spinach, peaches, and blueberries.

Supporting this vibrant industry behind the scenes is a strong foundation of public support in the form of statutes, programs, and public policies.

Three statutes have had a significant impact – the Farmland Assessment, Right to Farm, and Agriculture Retention and Development Acts. Enacted in 1964, the Farmland Assessment Act was the State’s first major effort to address the loss of farmland to development. By providing for lower property taxes based on the active, agricultural use of the land, the law enabled many farmers to afford to keep farming. In the face of continued development pressure and sprawling growth, New Jersey’s next major public policy response came in 1983 with the passage of the Right to Farm Act (RTFA) and Agriculture Retention and Development Act (ARDA). These two Acts followed up on a Governor’s Blueprint Commission Report on the Future of Agriculture in New Jersey, with the RTFA establishing a framework for protecting responsible commercial farms from nuisance actions, and the ARDA creating the Farmland Preservation Program to permanently protect an agricultural land base.

Public support for agriculture has continued in the more than three decades since 1983, with each Act having been amended and their programs refined as the agricultural industry has grown and evolved. The public has also shown its support over time at the market and at the ballot box. Interest in Jersey Fresh and locally grown products continues to grow, and the public has voted to approve each statewide farmland preservation funding question to come before it. This includes eight questions in total – 1981, 1989, 1992, 1995, 1998, 2007, 2009, and 2014 – with the most recent one creating a dedicated funding source for preservation through a percentage of the Corporate Business Tax.

# Eligibility

To be eligible for Right to Farm Act protection, a farm must be a “commercial farm” as defined in the Act. This includes criteria related to size, farmland assessment, and annual production. The Act defines a “commercial farm” as:

- A farm management unit of five or more acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for the Farmland Assessment Act; or
- 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 the Farmland Assessment Act; or
- A beekeeping operation farm management unit that produces honey or apiary-related products, or provides crop pollination services, worth \$10,000 or more annually.

A commercial farm may comprise multiple parcels, whether contiguous or non-contiguous, provided they are operated together as a single enterprise. All of these parcels together are the commercial farm’s “farm management unit.”

To be eligible for protection, a commercial farm must also meet the following criteria:

- The commercial farm must be located in a zone that as of December 31, 1997 or thereafter permits agriculture, or must have been in operation as of July 2, 1998.
- The commercial farm operation (practices, activities, or structures) must:
  - Conform to generally accepted agricultural management practices;
  - Comply with all relevant Federal or State statutes and regulations; and
  - Not pose a direct threat to public health and safety.



## Protected Activities

The Act’s list of protectable activities is set forth in N.J.S.A. 4:1C-9. These activities involve producing, processing, and marketing the agricultural output of the commercial farm, and renewable energy generation within certain limits. Commercial farms that meet the Act’s eligibility criteria may be entitled to receive Right to Farm protection for these activities, subject to a formal determination from the CADB or SADC. For an activity to be protected, it must be included in this list.

<b>Protected Agricultural Activities (pursuant to the Right to Farm Act, N.J.S.A. 4:1C-9)</b>	
Producing	<ul style="list-style-type: none"> <li>• Produce agricultural or horticultural crops, trees, forest products, livestock, poultry, and other products</li> <li>• Replenish soil nutrients and improve soil tilth</li> <li>• Control pests, predators, and diseases of plants and animals</li> <li>• Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas</li> <li>• Conduct on-site disposal of organic agricultural wastes</li> </ul>
Processing	<ul style="list-style-type: none"> <li>• Process and package the agricultural output of the commercial farm</li> </ul>
Marketing	<ul style="list-style-type: none"> <li>• Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards</li> <li>• 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</li> </ul>
Other	<ul style="list-style-type: none"> <li>• Engage in solar, wind, and biomass energy generation, in compliance with agricultural management practices</li> </ul>

The Act also permits the SADC to add additional agricultural activities to the list of protected activities through the rule-making process.

## Agricultural Management Practices (AMPs)

To be eligible for Right to Farm protection, a commercial farm must comply with agricultural management practices (AMPs) that are either generally accepted or have been formally adopted by the SADC through the rule-making process. The SADC has adopted AMPs in the following 12 areas to clarify the standards for Right to Farm protection:

- Apiaries
- Poultry manure
- Food processing by-product land application
- Commercial vegetable production
- Commercial tree fruit production
- Natural resource conservation
- On-farm composting operations
- Fencing installation for wildlife control
- Aquaculture
- Equine activities
- On-farm direct marketing
- Solar energy generation facilities

If a formal Right to Farm matter involves activities not addressed by an adopted AMP (or by a site-specific AMP determination), the CADB or SADC will determine whether the activities in question constitute generally accepted practices. In all cases, a farm's activities must be consistent with the standards set forth in any adopted AMPs in order to receive Right to Farm protection.



## **Understanding the Right to Farm Act: The Act's Legislative Findings**

Familiarity with the Right to Farm Act's legislative findings can help with understanding the Act's protections. When the Right to Farm Act was signed into law in 1983 along with the Agriculture Retention and Development Act (see box, page 3), the Legislature was responding to the call for action to protect and preserve a viable, sustainable agricultural industry in New Jersey. The Act's legislative findings provide a glimpse into the issues facing agriculture then and now – the loss of farmland; municipal and State regulations that are not always familiar with the needs of agriculture, leading to constraints on farming operations; and nuisance lawsuits regarding common farming practices. The legislative findings help introduce the Act, and they frame the protections, provisions, and processes that follow. They also recognize that while responsible commercial farms may be entitled to protection, the interests of all parties must be considered and properly balanced.

### **N.J.S.A. 4:1C-2. Legislative findings**

The Legislature finds and declares that:

- a. The retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State;
- b. Several factors have combined to create a situation wherein the regulations of various State agencies and the ordinances of individual municipalities may unnecessarily constrain essential farm practices;
- c. It is necessary to establish a systematic and continuing effort to examine the effect of governmental regulation on the agricultural industry;
- d. All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;
- e. It is the express intention of this act to establish as the policy of this State the protection of commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey.

## Formal Review Processes

The Right to Farm Act establishes two formal processes through which CADBs can officially determine whether a commercial farm is entitled to Right to Farm protection:

- (1) A complaint process that neighbors and municipalities can initiate
- (2) A site-specific request process that farmers can initiate

### Complaint Process

Under the Act, anyone aggrieved by the operation of a commercial farm is required to file a complaint with the CADB rather than filing an action in court. This means:

- Neighbors who have a nuisance complaint must file a complaint with the CADB rather than filing a lawsuit in court.
- Municipal officials who believe a farm is violating an ordinance must file a complaint with the CADB rather than issuing the farmer a zoning violation or summons.

CADBs, in other words, have primary jurisdiction to review and decide agriculture-related disputes. In the three counties without CADBs, complaints must go to the SADC, which retains primary jurisdiction.

After receiving a written complaint, the CADB begins by reviewing the Act's threshold eligibility criteria: whether the farm is a commercial farm, whether the farm meets the Act's locational eligibility provision, and whether the activity in question is included in the Act's list of protectable activities. If these criteria are met, and if the activities are addressed by an adopted AMP or site-specific AMP, the CADB holds a public hearing and issues its findings in the form of a resolution. (If the activities are not addressed by an adopted AMP or site-specific AMP, the SADC holds an initial hearing, and then the CADB continues with the process.) The CADB's decision can protect the farm's activities that are the subject of the complaint, protect the activities in part, or deny Right to Farm protection, based on the specific details of the case. Anyone aggrieved by the CADB's decision may appeal it to the SADC, and anyone aggrieved by the SADC's decision may appeal it to the New Jersey Superior Court, Appellate Division.

### Site-Specific Agricultural Management Practice (AMP) Process

A commercial farm may also proactively request that the CADB determine whether its specific operation or practices conform to generally accepted practices. The purpose of a farm's site-specific AMP request might be to address a current issue with a neighbor or municipality, or it might be to establish, for the future, that the farm's practices are generally accepted and entitled to Right to Farm Act protection. When a CADB receives a request for a site-specific AMP determination, it follows a process similar to the one for formal complaints. It reviews whether the Act's eligibility criteria are met, holds a public hearing, and issues its findings in the form of a resolution, which may be appealed to the SADC. To ensure that everyone's interests are considered, the farm must notify various public bodies and individuals about the public hearing. This includes the municipality and all property owners within 200 feet of the farm.

## **What Happens When There's a Conflict? Ideas and Options for Resolving Agricultural Issues**

There are several informal strategies for conflict resolution that parties may consider as an alternative or in addition to the formal processes described on the opposite page. Many of these ideas are basic, but can also be very effective.

### **Communication and Conversation**

Whether with neighbors, business partners, coworkers, or others, communication is often the foundation for any relationship and is particularly important should a conflict arise. A farmer-neighbor conversation, for instance, could allow both parties to express their points of view, listen to and understand the other's concerns, and consider options for moving forward. By talking with the other person, parties may be able to find a solution that satisfies everyone's interests and concerns.

### **Agricultural Mediation**

In some cases, the parties may be interested in speaking with one another about the issues and possible solutions, but would feel more comfortable having a neutral, third-party present to help guide the discussion. The Agricultural Mediation Program is available to help in these cases. The program is coordinated by the SADC and can be used by farmers, neighbors, and municipalities as an alternative to the formal Right to Farm process. Mediation is a voluntary process in which a trained, impartial mediator serves as a facilitator to help the parties look at their issues, identify and consider options, and determine if they can agree on a solution. A mediator has no decision-making authority, so successful mediation is based on the cooperation and participation of all the parties. Mediation is a free service, is confidential, and generally takes only a meeting or two to complete. For more information, see [www.nj.gov/agriculture/sadc/agmediation/](http://www.nj.gov/agriculture/sadc/agmediation/).

### **Conflict as Opportunity**

The words and feelings associated with the word "conflict" often focus on negative ideas such as "problem," "hard," and "difficult." On further consideration, however, conflict can also be seen as positive. Albert Einstein said, "In the middle of difficulty lies opportunity." Conflicts can be hard, but they can also be opportunities for change and to shape a different outcome. Good communication as well as mediation can help make this possible. By discussing the issues, parties may be able to create their own solutions and find positive ways to address everyone's interests and concerns.



# Right to Farm Protection: What Does It Mean?

The Right to Farm Act can protect responsible commercial farms from nuisance lawsuits and overly restrictive local regulations. A common question that follows is: What does this mean in practice when an issue arises?

- What is the effect of the CADB's or SADC's final determination in a formal Right to Farm case?
- In what ways must the interests of neighbors and municipalities be considered?

## Nuisance Protection

If a matter involves a formal complaint submitted by a neighbor, and if the CADB (and the SADC, if the CADB's decision is appealed) finds that the farm is following generally accepted practices and is entitled to protection, then the CADB's final decision establishes an "irrebuttable presumption" that the farm's activities do not constitute a public or private nuisance. This means that should a nuisance lawsuit subsequently be filed (after the Right to Farm process has ended), the farm would be protected from the lawsuit because the farm's activities would have already been deemed not a nuisance by the CADB. On the other hand, if the CADB (and the SADC, if the CADB's decision is appealed) finds that the farm is not following generally accepted practices and is not eligible for protection, the farm would not be shielded from subsequent nuisance lawsuits. A commercial farm could similarly receive (or not receive) nuisance protection when requesting a site-specific AMP determination from the CADB. In all cases, whether formal complaints or site-specific AMP requests, the CADB must consider the impact of the farm's practices on adjacent property owners when making its decision.

## Preemption

In certain cases, Right to Farm protection can preempt municipal ordinances, meaning the farm does not have to follow certain local regulations, e.g., local zoning standards. This preemption of local regulations is one possible outcome when a formal complaint or a site-specific AMP request involves the issue of compliance with local standards. In these cases, the CADB must seek the municipality's input during the public hearing process. The New Jersey Supreme Court has held that when rendering decisions, CADBs and the SADC must consider relevant municipal standards and impacts to affected property owners, appropriately balance competing interests, and consider the impact of agricultural practices on public health and safety. The preemption of local ordinances is thus addressed by CADBs and the SADC on a case-by-case basis, and for preemption to occur, a commercial farm must provide a legitimate, agriculturally-based reason for not complying with the local standards. If an insufficient reason is provided or the CADB's balancing finds that greater deference should be given to the local standards, then the CADB's final Right to Farm decision will not include preemption.

## Legal Considerations and Case Law

A handful of Right to Farm issues have been appealed to the New Jersey Superior Court, Appellate Division, and one case was appealed further to the New Jersey Supreme Court. In these cases, the courts have affirmed many of the Right to Farm Act's provisions and conditions, e.g., primary jurisdiction, preemption, health and safety considerations, and the balancing of interests.

### Primary Jurisdiction

CADBs and the SADC have primary jurisdiction to review agricultural issues and determine whether Right to Farm protection may be granted in a specific case. This authority and responsibility comes from the Right to Farm Act. The Act states that anyone aggrieved by the operation of a commercial farm must file a complaint with the CADB first, prior to filing an action in court.

In Franklin Township v. den Hollander, Superior Court of N.J., Appellate Division (2001), the Court reiterated this point and explained how "primary" jurisdiction does not mean "exclusive" jurisdiction but rather "first":

"There may be instances where a CADB or the SADC concludes that an issue is beyond the jurisdiction of the agency, that adherence to local land use ordinances is appropriate, or even that there is no preemption on a specific issue; however, that determination shall be made by the CADB or SADC in the first instance, rather than by the municipality or a court."

This finding was upheld in Franklin Township v. den Hollander, Supreme Court of N.J. (2002), in which the Court stated, "the CADB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms," and it was reiterated in Borough of Closter v. Abram Demaree Homestead, N.J. Superior Court, Appellate Division (2004).

The Abram Demaree case also reinforced that under CADB primary jurisdiction, the scope of a CADB's review includes making the initial determination of whether a farm meets the Right to Farm Act's threshold eligibility criteria – such as whether the farm is a commercial farm, whether the activities are farm practices, and whether the activities pose a direct threat to public health and safety.



In Curzi v. Raub, N.J. Superior Court, Appellate Division (2010), the Court affirmed that the doctrine of primary jurisdiction also applies in farmer-neighbor cases, complementing the two cases above in which the Court affirmed it for farmer-municipality cases. The issue in Curzi v. Raub, which involved a neighbor's nuisance complaint about a farm's use and placement of storage trailers, was whether the complaint had been heard in the proper venue. The complaint had gone to the trial court rather than the CADB, and the Appellate Division found that this was not correct. Whether the farm's practices constituted acceptable agricultural practices "was a determination the CADB has primary jurisdiction to make." The Court further stated, "the language of the Act is clear and unambiguous in requiring that any aggrieved person shall file a complaint with the county agricultural board 'prior to filing an action in court.'"

## **Preemption and the Balancing of Interests**

The courts have been clear that the "Right to Farm Act preempts municipal land use authority over commercial farms," Franklin Township v. den Hollander, Supreme Court of N.J. (2002). They also have been clear that preemption is not automatic, that there are limits to Right to Farm protection. CADBs must consider the impacts of farm practices on public health and safety, for instance, and CADBs must give appropriate consideration to local regulations. Regarding public health and safety, the New Jersey Supreme Court in den Hollander stated,

"Although the CADB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have carte blanche to impose their views. Because the authority of the agricultural boards is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practices on public health and safety and 'temper [their] determinations with these standards in mind.'"

The New Jersey Supreme Court also stated that CADBs and the SADC must consider relevant municipal standards when making decisions related to local zoning issues:

"The CADBs and SADC must act in a manner consistent with their mandate, giving appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations, including land use regulations, that may affect the practice."

The New Jersey Supreme Court ruled that Right to Farm cases must be looked at on a case-by-case basis. In particular, it found that decisions involving preemption should be based on the degree to which an ordinance impacts the farm operation and whether the farm has a valid reason for not complying. According to the Court, if an ordinance has a "peripheral effect on farming [and] implicates a policy that does not directly conflict with farming practices, [then] greater deference should be afforded" to the local ordinance. The Court then provided an example of how a commercial farm, if it could demonstrate a "legitimate, agriculturally-based reason" for needing to operate as it is operating, could be entitled to protection and preemption.

## Due Process and the Balancing of Interests

CADBs and the SADC must also consider the interests of adjacent property owners when a case involves or could involve neighbors, such as when a neighbor files a Right to Farm complaint against a farm or a farm requests a site-specific AMP determination. In *Curzi v. Raub* (2010), the Court highlighted this due process concern:

“Agricultural boards must conscientiously consider the impact of the proffered agricultural use on surrounding property owners. Failure to do so is an abuse of discretion. Boards shall provide notice to affected property owners when an application is made, as in this case, by the farmer. Failure to do so in clear terms, describing with particularity the subject of the application and the consequences of the determination to be made, may deprive the determination of its binding effect on those individuals. Boards must temper their determinations with due consideration of the impact on affected parties.”

The SADC, with this direction from the Court in mind, updated the Right to Farm Act’s administrative rules in 2014 regarding notification requirements. When a commercial farm requests a site-specific AMP determination and the process reaches the public hearing stage, the commercial farm must provide written notice of the public hearing to several parties, including all property owners within 200 feet of the commercial farm. N.J.A.C. 2:76-2.8. In this way, adjacent property owners are made aware of the formal Right to Farm process. The CADB can then balance the farm’s agricultural practices with the interests of private property owners who might be affected.



## **The New Jersey Supreme Court on Right to Farm: Franklin Township v. den Hollander (2002)**

This case originated when the township filed a complaint (incorrectly with the Superior Court, Law Division, rather than with the CADB) that a nursery operation was violating local land use ordinances. The Superior Court, Law Division denied the farm's motion to transfer the case to the CADB, and the farm appealed to the Appellate Division. The Appellate Division remanded the matter to the CADB, citing that CADBs have primary jurisdiction under the Right to Farm Act to review agricultural issues and determine whether Right to Farm protection may be granted. This decision was then appealed to New Jersey Supreme Court, which upheld the Appellate Division decision and affirmed the Right to Farm Act's preemption, primary jurisdiction, and balancing provisions.

Excerpts from the New Jersey Supreme Court:

- "The Right to Farm Act preempts municipal land use authority over commercial farms."
- "The Legislature has reposed trust in the CADBs and SADC to make the appropriate decisions [regarding] whether the operation of a commercial farm implicates agricultural management practices, and, if so, whether those practices affect or threaten public health and safety."
- "Although the CADB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have carte blanche to impose their views. Because the authority of the agricultural boards is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practices on public health and safety and 'temper [their] determinations with these standards in mind.'"
- "As a general rule the threshold question will be whether an agricultural management practice is at issue, in which event 'the CADB or SADC must then consider relevant municipal standards in rendering its ultimate decision.'"
- "There will be those cases where the local zoning ordinance simply does not affect farming. There will be other disputes where, although the ordinance has a peripheral effect on farming, it implicates a policy that does not directly conflict with farming practices. In such cases greater deference should be afforded to local zoning regulations and ordinances."
- "Even when the CADB or SADC determines that the activity in question is a generally accepted agricultural operation or practice according to N.J.S.A. 4:1C-10.1(c), the resolution of that issue in favor of farming interests does not vest the board with a wide-ranging commission to arrogate to itself prerogatives beyond those set forth in the Act."

- “The boards must act in a matter consistent with their mandate, giving appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations, including land use regulations, that may affect the agricultural practice.”
- “We recognize that the task before the agricultural boards is complex. Agricultural activity is not always pastoral. The potential for conflict between farming interests and public health and safety exists. Nevertheless, we repose trust and discretion in the agricultural boards to decide carefully future disputes on a case-by-case basis and to balance competing interests. We are confident that the boards will conduct those proceedings and reach their determinations in good faith, cognizant that the benchmark for those decisions is the understanding that government has an obligation to deal forthrightly and fairly with property owners and their neighbors.”

### Decisions by the New Jersey Superior Court, Appellate Division

As of June 2016, the New Jersey Superior Court, Appellate Division has made decisions in seven Right to Farm-related cases. Four of these cases (see the chart below) originated outside of the Right to Farm Act’s formal processes, e.g., when a municipality improperly assumed jurisdiction in a case. The other three cases involved SADC Right to Farm decisions that were appealed, leading to a decision by the New Jersey Superior Court, Appellate Division. In all of the cases that were appealed, the Appellate Division upheld the decision made by the SADC.

Citation of Right to Farm-Related Case	Date	Right to Farm Provisions Addressed
Casola and SADC v. Planning Board of the Township of Holmdel A-3575-99T5F, A-3576-99T5F, and A-6979-99T5F (N.J. Super. App. Div. 2001)	January 22, 2001	Primary jurisdiction; preemption
Township of Franklin v. Den Hollander, 383 N.J. Super. 373 (App.Div. 2001), affirmed 172 N.J. 147 (2002)	March 28, 2001	Primary jurisdiction; preemption; health and safety considerations; balancing of interests
Borough of Closter v. Abram Demaree Homestead, 365 N.J. Super. 338 (App. Div. 2004)	January 14, 2004	Primary jurisdiction
Curzi v. Raub, 415 N.J. Super. 1 (App. Div. 2011)	July 20, 2010	Primary jurisdiction regarding nuisance complaints; balancing of interests

Copies of these court decisions, as well copies of the many Right to Farm decisions issued by CADBs and the SADC, are available online at [www.nj.gov/agriculture/sadc/rtfprogram/formdet/](http://www.nj.gov/agriculture/sadc/rtfprogram/formdet/).

# The Right to Farm and You

Every Right to Farm question or case is different and requires a case-by-case consideration. The following are some common questions and answers to help farmers, neighbors, and municipalities understand Right to Farm.

## Q – Neighbor: I live next to a farm and have a complaint. What can I do?

**A** – There are several ways to approach resolving your complaint. If you haven't done so, you might first want to try speaking with the farmer. Maybe there is a way to discuss the matter and satisfy everyone's interests and concerns. If you think it would help to have another person present (such as a neutral third-party) to help guide the discussion, you could also request the free services of the Agricultural Mediation Program.

If discussions are not possible and/or issues remain, you also could file a formal written complaint with the CADB. This would start the Right to Farm Act's formal review process.

## Q – Municipal official: A farm in town is not complying with a zoning ordinance. Can I issue a zoning violation/summons?

**A** – When there is a conflict between a farm's practices and local regulations, the municipality must file a complaint with the CADB prior to filing an action in court. This would start the formal Right to Farm review process. If the CADB finds that the farm is not entitled to Right to Farm Act protection, the municipality could at that point pursue a violation notice or summons.

Sometimes issues can also be resolved through informal discussions or mediation with the farm. For help with these approaches, you could contact the CADB or SADC. Through the Agricultural Mediation Program, a free and impartial mediator can be provided to help guide the discussion.

## Q – Farmer: A neighbor is complaining about my farm, and I am concerned that a formal complaint or lawsuit will be filed. What can I do?

**A** – Aside from speaking with your neighbor and using the free Agricultural Mediation Program to see if the issues can be resolved informally, your first point of contact would be the CADB. The CADB can help answer questions about the Right to Farm Act and the formal review processes.

If you would like a formal determination from the CADB, which could establish the security of having formal Right to Farm Act protection, you can request that the CADB make a site-specific AMP determination for a specific operation or practice on your farm.

**Q – Farmer:** I have a commercial farm and am following generally accepted agricultural practices. Can I say I am protected by Right to Farm?

**A –** To be protected by Right to Farm, you would need a formal determination from the CADB, which you could get by requesting a site-specific AMP determination. During this formal process, you would need to show that the farm satisfies the Right to Farm Act’s eligibility criteria. For a specific activity to be eligible for protection, it would also need to be included in the list of protectable activities set forth in N.J.S.A. 4:1C-9 and summarized on page 5.

**Q –** If an activity is not eligible for Right to Farm protection, can the farm still engage in it?

**A –** Just because an activity isn’t protected by the Act doesn’t mean that a farm can’t do it. It simply means that the farm is not eligible for the Act’s protections (relief from nuisance complaints and from local regulations). The activity might be supported or permitted under local zoning, and a farmer or neighbor could check with the municipality regarding permitted uses and conditions.

Similarly, if a farm doesn’t meet the Act’s other eligibility criteria – for instance, if the farm produces less than what is required to be a “commercial farm” – this doesn’t mean that the farm isn’t allowed to farm. It simply means that the farm wouldn’t receive the Act’s protections.

**Q –** Are preserved farms automatically entitled to Right to Farm protection?

**A –** No. Whether or not a farm is preserved, the farm would need to satisfy the Right to Farm Act’s eligibility criteria and receive a formal determination in order to receive protection. An activity may be allowed on a preserved farm under the farmland preservation deed of easement; however, that doesn’t mean it is automatically protected under the Right to Farm Act.

**Q –** Are farm markets protected by the Right to Farm Act?

**A –** Yes. The operation of a farm market is included in the Act’s list of protected activities. A farm market is an on-farm facility used to market the farm’s agricultural output and products that contribute to farm income (not to be confused with a community farmers market). Conditions for Right to Farm protection include that the construction of building and parking areas must be in conformance with municipal standards. Additionally, at least 51% of the annual sales from the farm market must come from the farm’s agricultural output, or at least 51% of the sales area must be devoted to the farm’s agricultural output.

The SADC’s On-Farm Direct Marketing AMP, adopted in 2014, clarifies the protections for on-farm direct marketing facilities (farm markets), activities, and events. The AMP also notes that 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 CADB for such approval.

## Additional Resources

For more information on Right to Farm, contact your CADB or the SADC. A wealth of information is also available on the SADC's website, including the Right to Farm Act, the agricultural management practices (AMPs) adopted by the SADC, and mediation resources. Rutgers Cooperation Extension may also be a good resource for additional information on generally accepted agricultural practices.

### County Agriculture Development Boards

County Agriculture Development Boards (CADBs) are the local county government entities that partner with the SADC on the Farmland Preservation, Right to Farm, and Agricultural Mediation Programs. For Right to Farm questions and issues, the CADB is the primary local contact for farmers, neighbors, and municipal officials.

[www.nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html](http://www.nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html)

### State Agriculture Development Committee

The State Agriculture Development Committee (SADC) is the State agency that leads in the preservation of New Jersey's farmland and works to maintain a viable agricultural industry in New Jersey. The SADC coordinates the Farmland Preservation, Right to Farm, and Agricultural Mediation Programs in collaboration with local CADBs. The SADC also coordinates the Farm Link Program.

[www.nj.gov/agriculture/sadc/rtfprogram/](http://www.nj.gov/agriculture/sadc/rtfprogram/)

### Rutgers Cooperative Extension

Rutgers Cooperative Extension (RCE) county offices are staffed by agricultural agents and specialists who can provide information on a variety of agricultural and natural resource topics. Farmers, residents, and municipal officials often contact their RCE county office to speak with their county agent regarding agriculture-related questions. In Right to Farm cases and mediation sessions, county agents sometimes serve as agricultural experts to help inform the process and encourage solutions.

[www.njaes.rutgers.edu/county/](http://www.njaes.rutgers.edu/county/)

### Right to Farm Resources

Right to Farm Act – N.J.S.A. 4:1C-1 et seq.

[www.nj.gov/agriculture/sadc/rtfprogram/rtfact/](http://www.nj.gov/agriculture/sadc/rtfprogram/rtfact/)

Right to Farm Rules – N.J.A.C. 2:76-2

[www.nj.gov/agriculture/sadc/rtfprogram/rules/](http://www.nj.gov/agriculture/sadc/rtfprogram/rules/)

Agricultural Mediation Program

[www.nj.gov/agriculture/sadc/agmediation/](http://www.nj.gov/agriculture/sadc/agmediation/)



# Notes

# Notes



**State Agriculture Development Committee**

[www.nj.gov/agriculture/sadc/](http://www.nj.gov/agriculture/sadc/)

Chris Christie  
*Governor*

Kim Guadagno  
*Lieutenant Governor*

Douglas H. Fisher  
*Secretary of Agriculture*

