

# MICHIGAN COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT

Lansing Center, Meeting Room 201  
333 E. Michigan Avenue  
Lansing, MI 48933

## MEETING MINUTES

Generally Accepted Agricultural and Management Practices  
Site Suitability Determination Appeal  
S&T Barns, LLC

September 7, 2017

### **PRESENT:**

Dru Montri, Chair, Michigan Commission of Agriculture and Rural Development  
Bob Kennedy, Vice Chair, Michigan Commission of Agriculture and Rural Development  
Brian Pridgeon, Secretary, Michigan Commission of Agriculture and Rural Development  
Diane Hanson, Past Chair, Michigan Commission of Agriculture and Rural Development  
Jamie Clover Adams, Director, Michigan Department of Agriculture and Rural Development

### **EXCUSED:**

Trever Meachum, Past Chair, Michigan Commission of Agriculture and Rural Development

### **CALL TO ORDER AND ROLL CALL**

Chairperson Montri called the meeting of the Commission of Agriculture and Rural Development to order at 2:28 p.m. on September 7, 2017. Commissioner Pridgeon called the roll with Commissioners Hanson, Kennedy, Montri, and Pridgeon, and Director Jamie Clover Adams present. Commissioner Meachum was excused.

### **APPROVAL OF AGENDA**

**MOTION: COMMISSIONER KENNEDY MOVED TO APPROVE THE MEETING AGENDA FOR SEPTEMBER 7, 2017. SECONDED BY COMMISSIONER HANSON. MOTION CARRIED.**

### **NEXT SCHEDULED MEETING**

The next scheduled meeting is Wednesday, October 11, 2017, to be held at the Bayshore Resort, Traverse City.

### **GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES (GAAMP) SITE SUITABILITY DETERMINATION FOR S&T BARNs, LLC – APPEAL PROCESS REVIEW AND SUMMARY OF DEPARTMENTAL ACTIVITIES: Jim Johnson, Division Director, and Ron Cummings, Right to Farm Program Manager, Environmental Stewardship Division**

Mr. Johnson expressed his appreciation for the Commission's flexibility in holding this special meeting today to help expedite the appeal process. Prior to discussion about the department's approval to construct a livestock production facility at S&T Barns in Fawn

River Township, St. Joseph County, he and Mr. Cummings would like to provide an historical perspective, describe siting, the appeal process, and establishment of the review panel asked to review specifics of the department's decision relative to S&T Barns, LLC.

The purpose today is to receive comments from the general public, hear from the Professional Review Committee, and consider that committee's recommendation. The Commission will then make a recommendation to the Director to either affirm or to reevaluate the site suitability determination. Ultimately, the decision rests with the Director.

In the years from 1960 and into the 1980s, there were many people moving from urbanized areas into agriculturally zoned areas of the state. Once there, they discovered they did not enjoy the noise, dust, and smells of agricultural production, and began suing farmers as nuisances and winning those cases. The Michigan Legislature enacted the Right to Farm (RTF) law in 1981, basically providing an affirmative defense against nuisance lawsuits for farmers that were in conformance with Generally Accepted Agricultural and Management Practices (GAAMPs). The response by citizens in these areas was to convince local units of government to impose conditions and penalties that would all but eliminate the possibility of livestock agriculture in agriculturally zoned areas of Michigan. This culminated in 1999 with the Legislature enacting RTF language that preempted local units of government from putting in place language that "purports to extend or revise in any manner the provisions of this Act or GAAMPs developed under this Act." This amendment also called for the creation of a GAAMP for the site selection and odor control at new and expanding livestock facilities. This is the only GAAMP of the eight GAAMPs named within the law itself. The first GAAMP for siting was proposed to and approved by the Commission in June 2000, and has since been reviewed, improved, and approved on an annual basis.

History has shown that many would like RTF to be more than was intended, and this is also true about application of the Siting GAAMP. Although it does take a great deal into account, there are some areas it does not govern. Its main focus is the placing of new or reviewing expansion of livestock facilities in a way that allows us to best limit the potential for nuisance conditions.

Mr. Cummings advised the appeal is related to the Siting GAAMP specifically. Through the siting process, there needs to be conformance to all applicable GAAMPs; however, most of the department's decision is centered on the Site Selection and Odor Control GAAMP itself. The Siting GAAMP is intended to help producers determine the site suitability of a new or expanding livestock facility. It outlines a process for a producer to submit a Site Verification Request to the department and receive a determination of whether it conforms with the Siting GAAMP. The GAAMP outlines specific criteria the verification needs to consider and meet, and the department must review each component to ensure it is in conformance with the GAAMP. It includes consideration of the number of residences in the area, proximity to wetlands, floodplains or drinking water sources, property setbacks, and proximity to residentially zoned and high public use areas. The GAAMP also outlines specific technical aspects that need to be included in the verification request. The primary components are the site plan; manure

management system plan that outlines storage, handling, and any land application specifics; odor management plan that includes outputs of the Michigan Offset Model, demonstrating where the odor extent is and where odor could be experienced; and construction information for reviewing site feasibility for both manure and housing facilities.

A very detailed document outlining each piece of information that needs to be included in a Site Verification Request is available on the department's website. The department conducts a thorough review of each of those specific elements, conducts a site visit to identify any concerns so appropriate changes can be made, and ultimately makes a suitability determination. Notification of suitability is then made to the owner and the local units of government, the township and the county. This is the point at which an appeal of the suitability determination can be made to the Commission to review the determination.

The next step in the process is construction. The producer will submit plans and drawings stamped by a professional engineer, which are reviewed by department engineering staff. As needed, staff inspect construction in progress for quality assurance purposes. Once construction has been completed, a final verification inspection is conducted to ensure structures were built in conformance with the plans and according to the verification request. Following approval of actual construction, a final verification notification letter is sent to the owner and the local units of government, completing the process.

In the S&T Barns verification process, the department was able to make a site suitability determination and approve their construction drawings in a simultaneous process.

The Site Selection GAAMP includes an appeal process where a facility owner, neighbor within one mile of the proposed facility, or local unit of government can request a review of the Michigan Department of Agriculture and Rural Development's (MDARD) site suitability determination. Appeal requests must be submitted, in writing, within 45 days of MDARD's determination and include supporting documentation. The Site Selection GAAMP further outlines the appeal process, including the appeal is reviewed by MDARD and a Professional Review Committee is formed consisting of at least three technical experts in the area of odor and livestock management systems and site selection in general. To avoid any conflict of interest, the department relied on the Chair of the Site Selection GAAMP Task Force to assemble those committee members. The committee reviews the determination and reports recommendations to the Commission within 45 days. The Commission must review the appeal and make a recommendation to the Director whether to affirm or reevaluate the site suitability determination. Ultimately, the Director makes a final decision for the department.

In response to inquiry from the Director, Mr. Cummings advised notification of site suitability determination is made to the facility owner, the township, and the county.

#### **PUBLIC COMMENT (AGENDA ITEMS ONLY)**

Commissioner Montri reminded attendees if they would like to make public comments, to please complete a Public Comment Card and submit it to Commission Assistant Cheri

Ayers. Public comment is limited to three minutes and she ask those wishing to speak to please make their statements within that time frame.

**Wendell Moore, Burr Oak**, advised he lives about seven-tenths of a mile due west and up the river valley from the proposed barns. He wrote the appeal letter and enclosed the petition, along with a large map. He was told by a number of people he was wasting his time coming here today, as the decision has already been made, that he was fighting the State of Michigan, MDARD, the Commission, MDEQ, and big business, including the Clemens Food Group and Agronomic Solutions. You employ all the experts whose job is to promote new and expanding livestock facilities; moreover, I am fighting the RTF Act, the very law that allows farmers to do this. He understands the Commission has never upheld an appeal; but, there is a first for everything and this should be the first denial of a site for the Commission and the Director. GAAMPs primary objectives are environmental, social considerations, and economic viability. If you look at the project in terms of these objectives, this is not a good site. Environmentally, we have a number of dwelling units within the one-half mile and one-mile radius. We are a very small township and the producer has squeezed the operation into 200 acres. Crane Road is a gravel road; there are no Class A roads leading to this operation. The roads leading to Crane are four-inch asphalt and not in good shape. Considering the topography of the land: it is a river valley with everything sloping toward the river; it has a high water table and shallow wells; the Fawn River eventually feeds into the St. Joseph River; there is Grass Lake with field run-off; the county ditch bisects the property, which must be crossed to reach the barns; and ditches connect directly to the Fawn River, including a series of inter-connecting ditches, which are conduits to the river. The whole hydrology of the site dictates this is not a good site. The social considerations: the words neighbor, neighbors, and neighborhoods are mentioned 23 times in the Site Selection Manual and 43 times in the Manure Management Manual. I have not seen any plan or action that will establish and maintain any working relations with neighbors or community members. I have heard just the opposite. He doesn't care what the neighbors think. These barns are being built and he thinks we are a bunch of complainers; so, he is not going to put in any air control. Economic viability: he has six barns in Branch County, near his home base, and I would think keeping all the barns in the vicinity would be more beneficial; he also saw that because of the ditches and setbacks, he can only inject nutrients on 112 of his 200 acres, 56 percent of his land; and he will need to manifest manure, which means he will have to truck much of it away, and that cannot be cheap. If the intent of the law was to protect farmers from nuisance lawsuits, then the pendulum has swung too far and it is now the community and individuals who need protection. I have read the Site Selection GAAMP and agree with best practices; but, the number of dwelling units within one-half mile should be reduced; and the building setback from a public body of water established and the odor technology that must be employed by the producer enhanced. As a matter of entitlement or right, the farmer will be given the okay to build these; but, CAFOs affect people and property. It is not just the people who reside in the area, as it is nothing to see 30, 40, even 50 or more canoes and kayaks on the Fawn River during the weekend. Our rights to clean air and uncontaminated Fawn River waters and clean drinking water are in jeopardy. If I had built my house after the barns were already there and established, I would say shame on me. I have 59 signatures on the petition you received who are in the same shape. This is a bad and risky site, please turn it down. Thank you.

There were no other cards submitted for public comment.

**PROFESSIONAL COMMITTEE REPORT – APPEAL OF THE GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES (GAAMP) SITE SUITABILITY DETERMINATION FOR S&T Barns, LLC: Dr. Dale Rozeboom, Professor, Michigan State University Department of Animal Science, Professional Committee Chair, and Chair, Site Selection GAAMP Task Force**

Dr. Rozeboom reported the Professional Committee reviewing the GAAMP Site Suitability Determination for S&T Barns, LLC, consisted of Suzanne Reamer, an environmental engineer with the U.S. Department of Agriculture Natural Resources Conservation Service, Catherine Mullhaupt, staff attorney with the Michigan Townships Association, and Nathaniel Hude, environmental quality analyst with MDEQ, Air Quality Division, and himself.

The committee reviewed a substantial amount of information provided by MDARD, including (1) correspondence and supporting documentation from those who submitted the appeal to MDARD, (2) supporting documentation from the producer's application to MDARD for siting verification, (3) MDARD's documentation of the siting process; and (4) Generally Accepted Agricultural and Management Practices for Site Selection and Odor Control for New and Expanding Livestock Production Facilities (Siting GAAMP) dated January 2017. All four of the committee members serve on the Siting GAAMP Task Force which annually reviews the GAAMP, and with that awareness, they considered all aspects of the siting. Following individual review of the documents, the committee met on three occasions to discuss the determination in depth and consider each item as delineated in the GAAMP. Their resulting report was completed and provided to MDARD and the Commission on August 25, 2017.

Criteria in the Siting GAAMP assesses the density and proximity to neighboring non-farm residences. There are three properties within one-half mile of the facility; more importantly, none are located within the five percent odor footprint. The Siting GAAMP review is based on the odor nuisance potential, using the Odor Offset Tool as developed by the University of Minnesota and revised by Michigan State University. The intent of the tool is to have zero non-farm residences within the five percent odor footprint to maintain a 95 percent annoyance-free level from odor. It was designed to consider the chance of odor being a nuisance and the footprint as determined by the consultant and presented to the committee was, in their opinion, completed correctly and used appropriately. The committee concurred with the results as presented in the siting proposal regarding the number of non-farm residences.

The committee considered the topography of the site and types of soils. They realized the Siting GAAMP does not have authority or responsibility over drainage, which is a local decision by drain commissions and townships.

Relative to roads, those also are not the responsibility of siting and come within the jurisdiction of local and state authorities who are responsible for that infrastructure.

Considering the concern of Fawn River and its proximity to the proposed site, the committee also noted a portion of the Fawn River, which is also used for recreational kayaking and canoeing, was within the five percent odor footprint, being about 738 feet at its nearest point from the facility. In the committee's discussion about what is "public" as defined in the Siting GAAMP, that type of purpose is currently not included as a public high use definition. Their conclusion was the recreational use of the river may be a discussion for future Siting GAAMP review. But currently, the Fawn River site as proposed by S&T Barns meets the present criteria set forth in the 2017 Siting GAAMP.

Grass Lake is outside of the proposed site odor footprint. The concern of drains, again, is outside of the responsibility of the Siting GAAMP.

Concerning the water table, engineering was completed and submitted with the site consultation documents. The committee found those to meet the criteria of the Siting GAAMP.

Transportation of waste is covered under the Manure Management Utilization GAAMP. The farm has submitted a comprehensive nutrient management plan and has agreed to be accountable based upon that GAAMP.

The final recommendation of the recognized professionals is to affirm the siting proposal for S&T Barns and the suitability as determined by MDARD. It is their opinion that all criteria in the Siting GAAMP were appropriately addressed in the determination of site suitability.

Commissioner Pridgeon asked about odor mitigation. Dr. Rozeboom advised the size of the odor footprint is impacted by the type of manure storage, as well as other mitigation practices, such as filters on the fans. Although we know they have an impact, vegetative windbreaks are not currently considered, because sufficient scientific data does not yet exist to document what portion of odor is dispersed in that manner.

The Director asked Dr. Rozeboom to elaborate on a campground in the area, because she did not see one during her visit to the site area. Dr. Rozeboom advised the committee also did not find that to be the case. They inquired with the guide service that conducts the kayaking and canoeing if there were any publicly maintained campgrounds, which then would have been considered as detailed in the Siting GAAMP. There were none in the portion of the river that falls within the odor footprint of the site.

Commissioner Montri advised today, we are discussing specifically the site suitability determination based on the 2017 Siting GAAMP. She expressed appreciation for the clarification of public use and all of the work completed by the Professional Committee to review use of the river, as well as noting it is consideration for future review of the Siting GAAMP; and the recommendations relative to planting a vegetative buffer and using air scrubbers on pit fans to further reduce the potential odor, especially on those high-use areas.

## **COMMISSION DISCUSSION AND RECOMMENATION**

Commissioner Montri confirmed the Commission's charge in this matter is to listen to public comment, review documentation from the Professional Review Committee, evaluate the site suitability determination, and make recommendation to the Director to either affirm the subject site suitability determination was made according to the Siting GAAMP, or ask for reevaluation of the site.

Commissioner Kennedy advised he believes all required criteria have been met by the producer in this situation.

The Director asked what the committee considered when looking at the wetland issue. Dr. Rozeboom explained they inquired with the consultant relative to soil types, tiling and irrigation, and soil saturation, which fall under the Manure Management Utilization GAAMP. The mention of irrigation is to be removed from the plan, as it was not intended. Based upon that information, irrigation was not further pursued. Relative to wetlands, the committee agreed with the engineering evaluation indicating the site was suitable for the facility relative to the high water table.

Commissioner Montri noted a number of legitimate concerns were heard today, and not all of them fall under the purview of the Siting GAAMP, which is what we are here today to review. There are many different agencies and organizations involved in making decisions about suitability. It is very important for farmers to be good neighbors and continue to think through opportunities they have to reduce odor and be good neighbors.

Commissioner Montri advised that under the current Siting GAAMP and the documents and information provided, the Commission is ready to make a decision.

**MOTION: COMMISSIONER KENNEDY MOVED TO MAKE RECOMMENDATION TO THE DIRECTOR TO AFFIRM THE SITE SUITABILITY DETERMINATION FOR S&T BARNES, LLC, IN FAWN RIVER TOWNSHIP, ST. JOSEPH COUNTY. SECONDED BY COMMISSIONER HANSON. MOTION CARRIED.**

The Director expressed her appreciation for everyone being here today. She has visited the site, driven around the neighborhood, and reviewed all siting documentation and written comments received, as well as the Professional Review Committee summary report. She appreciates all of the comments made today, both from the public and the Commissioners. She will review all of the information once again and hopes to have a decision within the next seven-ten days.

## **ADJOURN**

**MOTION: COMMISSIONER PRIDGEON MOVED TO ADJOURN THE MEETING. COMMISSIONER KENNEDY SECONDED. MOTION CARRIED.**

The meeting adjourned at 3:14 p.m.

### Attachments:

- A) *Agenda*
- B) *Site Suitability Determination Appeals Process*

- C) *S&T Barns, LLC, Summary*
- D) *S&T Barns, LLC, Appeal*
- E) *S&T Barns, LLC, Siting Request File*
- F) *S&T Barns, LLC, Letter and Committee Report 8.25.17*
- G) *Public Comments Submitted to the Commission regarding S&T Barns, LLC*