

**MICHIGAN COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT
Generally Accepted Agricultural and Management Practices
Site Suitability Determination Appeal
Marsh Swine Farm**

Constitution Hall
Atrium Level, Con-Con Conference Room
525 West Allegan Street
Lansing, Michigan 48933

**MEETING MINUTES
January 24, 2018**

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
Trever Meachum, Past Chair, 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

CALL TO ORDER AND ROLL CALL

Chairperson Montri called the meeting of the Commission of Agriculture and Rural Development to order at 9:02 a.m. on January 24, 2018. She reminded those wishing to speak today there are Public Comment Cards available in the registration area to be completed and given to Commission Assistant Cheri Ayers.

Commissioner Pridgeon called the roll with Commissioners Hanson, Kennedy, Meachum, Montri, and Pridgeon, and Director Jamie Clover Adams present.

APPROVAL OF AGENDA

MOTION: COMMISSIONER MEACHUM MOVED TO APPROVE THE MEETING AGENDA FOR THE JANUARY 24, 2018, SITE SUITABILITY DETERMINATION APPEAL. SECONDED BY COMMISSIONER KENNEDY. MOTION CARRIED.

GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES SITE SUITABILITY DETERMINATION FOR MARSH SWINE FARM – APPEAL PROCESS REVIEW AND SUMMARY OF DEPARTMENTAL ACTIVITIES: Jim Johnson, Division Director, Ben Tirrell, Right to Farm Program Manager, and Laura Doud, Environmental Engineering Specialist, Environmental Stewardship Division

Mr. Johnson stated the purpose of the special meeting today is to review the affirmative decision made by the Right to Farm (RTF) staff regarding Marsh Swine Farm in Claybanks Township.

The purpose today is to review the siting and appeal processes, 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.

Mr. Tirrell advised pursuant to the current Site Selection Generally Accepted Agricultural and Management Practices (GAAMP), a facility owner, neighbor within one mile of the proposed facility, or local unit of government can file a written appeal 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 determination and include supporting documentation. MDARD will then convene an expert Professional Review Panel consisting of at least three recognized professionals in the siting and management of livestock facilities. The panel reviews the determination and reports recommendations to the Commission within 45 days of the appeal request. The Commission will then 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 this case, MDARD issued its site suitability determination on October 5, 2017. The subsequent appeal was received by MDARD on November 20, 2017. The appellant was a private citizen within one mile of the respective facility. The Review Committee submitted its recommendation on January 11, 2018, and as such, is to be considered today by the Commission to make a recommendation to the Director. Engineering Specialist Laura Doud will present a brief summary of MDARD's site suitability determination for Marsh Swine Farm.

Ms. Doud reported MDARD received the Marsh Swine Farm application on August 28, 2017, and performed an initial site visit on September 13, 2017. The site suitability determination was issued on October 5, 2017. For the project overview, this is a swine finishing facility housing 4,000 heads equating to 1,600 animal units required to obtain a Michigan Department of Environmental Quality (MDEQ) Concentrated Animal Feeding Operation (CAFO) permit. It is located in Claybanks Township where zoning allows for agricultural production. It is considered a Category I site and all non-farm homes located within a one-half mile radius of the proposed facility were notified via telephone, as documented by certification from the owner. There were no property line setbacks required, as the facility is at least 600 feet on all sides from the property line. Application of the odor model indicated no homes within the odor footprint. The facility submitted pre-construction drawings and specifications that included subsurface investigation for soils, which were reviewed and demonstrated to MDARD the facility is proposed to be constructed appropriately. A Manure Management System Plan was submitted and for the CAFO permit, a Comprehensive Nutrient Management Plan will also be required. For additional considerations, MDARD ensured the facility was not located within a floodplain and the nearest residential well was more than 1,000 feet from the facility. There is a church located near the facility, but is outside the required 1,500-foot setback required within the GAAMP. The closest residential zone is one and one-half miles and located in Claybanks Township. Additionally, there are no migrant labor housing camps located near the facility. With those considerations, MDARD approved the site suitability

determination for Marsh Swine Facility and sent the letter of determination to the producer.

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, confirming the limit for each individual is three minutes. To help facilitate that, Commissioner Kennedy will identify when speakers have one minute remaining, as well as signaling when three minutes have expired. To facilitate the process, please clearly state your name and where you are from, especially in proximity to the facility we are discussing.

Mechelle Schneider, Montague, Michigan, advised she lives within one-half mile of this proposed CAFO as the crow flies. She was not notified by Mr. Marsh. She sits on the administrative council for the Claybanks United Methodist Church (UMC) that is directly impacted, yet had not been informed. The first time she heard of the proposed CAFO came from a notice from ROAD (Reviving Our American Democracy).

She expressed concern on several fronts, including proximity to Flower Creek and Meinert Park, which is already contaminated and posted as unfit for swimming, with the suspect being farm runoff. The fields nearby are sprayed regularly with cow manure. The acreage across the road from her is farmed and manure is spread by Country Dairy. Claybanks UMC is regularly assaulted by odors of cow manure and the church windows generally must be kept closed. Now with a CAFO of hogs, they fear that problem will be intensified, as will the manure runoff. The church has already needed to replace its well because of nitrate contamination. She inquired if the facility intends to install filters to help reduce odors and was advised they do not. The numerous outdoor community and fund-raising activities will be spoiled, or even not planned there at all. She feels the CAFO application was not truthful about notifications and wonders if the state will allow this CAFO to supersede the right of the church to worship. Will this one family be given free rein to alter their community and profit at their expense? Will residents' property values decline while the facility adds to its pockets? Will the quality of water be jeopardized so pork can be exported? She asked the Commission to stand up to what is just for the community. This CAFO does not need to be located in our part of our state that represents Pure Michigan.

Commissioner Montri advised she did read the comments Ms. Schneider submitted in November and contacted the RTF staff because she wanted to ensure the GAAMP was properly followed. The GAAMP states the distance of the proposed facility to a non-farm residence is considered from structure to structure, not from property lines. According to the GAAMP, residences within that one-half mile were properly notified.

In response to question from the Director, Ms. Schneider advised she is due south of the proposed facility and on a road perpendicular to the church's road.

Bruce Froelich, Montague, Michigan, advised he is sharing today a written copy of his remarks, along with copies of two reports, which will be forwarded electronically to Ms. Ayers. The first report was prepared in May of 2013 by Grand Valley State University

(GVSU) Annis Water Resources Institute on the condition of Little Flower Creek and indicates substantial *E.Coli* were detected. The second report, Preliminary Analysis of Proposed CAFO in the Flower Creek Watershed, was published on January 10, 2018, by Drs. David Hyndman and Anthony Kendall of Michigan State University (MSU). Because of the GVSU study, signs have been posted to warn visitors not to swim in the outlet of Little Flower Creek, within Meinert Park. This is without potential additional loading of output from Marsh's proposed CAFO. Concerns of the MSU study include steep slopes draining runoff into Flower Creek and soil composition data, as well as data about levels of N (nitrogen) and P (phosphate) in that watershed before and after projected input levels from the proposed Marsh CAFO, and the limited distances which are economically viable for transport of swine slurry. Drs. Hyndman and Kendall relied on data from the Marsh application documents, which specifies a finished weight of 255 pounds per pig. However, Pork Producers' Association industry norms show finished weight of 285 pounds per pig, over 10 percent greater that will produce larger volumes of waste. Therefore, the actual production of waste will exceed the levels used by Drs. Hyndman and Kendall for their report. Another fact which should also be included in the Michigan Commission of Agriculture and Rural Development decision is Marsh dairy manure is already being applied to their land, and already generates odor problems. There is a synergism missing in the data being considered and he believes MDARD staff should recalculate that data to provide a more comprehensive odor profile.

Also, as you will hear from Dr. Jeff Andresen later today, there have been changes in Michigan's climate patterns, which should also be taken into consideration. When low pressure storm systems occur, they tend to linger longer, dumping greater amounts of precipitation from the atmosphere, which has increased temperatures, and therefore holds more moisture (higher relative humidity). Rains last longer and have greater volume. Former standards for 50-year and 100-year rainfalls are no longer realistic, and must be modified to reflect this new reality. In fact, Flower Creek watershed within the last two months had six inches of rain in a single storm event, matching the current 100-year standard. These facts should be accessed and considered.

And, we just received word the Wisconsin Department of Agriculture today is voting regarding the 16 counties bordering Lake Michigan to impose a limit of zero cow manure where bedrock is two feet from the soil surface, because they realize affects on algae blooms in the lake. Similarly, Lake Michigan is our ultimate concern here.

Commissioner Montri asked how far Meinert Park is from the proposed facility. Mr. Froelich advised in the highlighted area on the map provided in the MSU study, there is small creek system just below Big Flower Creek that empties into Lake Michigan and Meinert Park is at the mouth of that.

Commissioner Montri inquired about who commissioned the MSU report and if it is publicly available. Mr. Froelich advised private individuals affiliated with ROAD requested and paid for the report and a copy will be electronically transmitted to Ms. Ayers within 24 hours.

Commissioner Meachum asked regarding the watershed map, and if there is opportunity from the site itself for water to run into Little Flower Creek. Mr. Froelich advised from the

site itself, he does not believe it will shed into Little Flower Creek, only the larger property encompassed by Big Flower Creek. The Director added there is a ridge that comes up and flattens out where the barns will be located, this is a distance from where the barn is located, and it then slopes down to the valley. Mr. Froelich advised the most relevant graph is Figure 7 on page 7 of the MSU report. The red circle at the center is the barn, the concentric circles indicate distance from the barn, and the interpretation indicates red slopes are those greater than five degrees and many come close to the actual structure. Comparing this to aerial views shows how it is unsafe to apply manure on those slopes. The land available to properly apply manure becomes less and less. Commissioner Meachum confirmed Little Flower Creek would not be impacted unless manure were applied to land directly in that watershed. Mr. Froelich noted, as documented in 2013 by GVSU, there already is an *E.Coli* problem there.

Peter Bane, Montague, Michigan, asked the Commission to communicate to the Governor what he believes is a crisis of water and air quality from livestock waste, misapplication, and runoff in our state. He also expressed he feels there is an inherent conflict of interest in the Commission, which is composed of industry advocates. This specific hearing is about placement of a 4,000-head swine barn and he feels the current site is the wrong place for several reasons. Those not already discussed include that 71 percent of Claybank's residents, when polled recently, oppose industrial or intensive development in the township and did not want factory farming. Flower Road, through which the facility would access public roads, is in poor condition and has deteriorated under use by the Marsh family. It and other roads in the area are under seasonal weight limits, which would seriously impact access to the facility for emptying manure during critical spring seasons. Claybanks Township has a small population and limited tax base, neither the country nor the township will be able to improve or perhaps even maintain Flower and adjacent roads in the face of 25 million pounds of freight per year added by the transport of pigs, feed, and manure. In September, township supervisors repudiated any notion they would improve the road. This leaves a limited window during which manure could leave the facility during proper application times and seems to defy logic that all could be moved safely over poor roads. The watersheds where this additional 1.5 million gallons of swine manure would be spread are already impaired or overburdened. They have recently been in testimony before MDEQ staff and that and other comments received stated the Marsh family will exercise common management over both their existing dairy operation and the new swine facility. You have an application for siting review filed by the father, David Marsh, the swine barn will be owned by the son, Jacob Marsh, yet the father advises he is the one in charge, indicating common management is a factor. The odor footprint conducted on the swine barn in isolation does not incorporate impacts the family already has on the immediate area and that odor analysis should be redone, and he believes would then include the church and the houses on 56th Avenue, which he believes is unacceptable. Residents and visitors to the area are already exposed to levels of ammonia and other irritating gases that exceed OSHA (Occupational Safety and Health Administration) standards. These are likely to trigger CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) reporting requirements that are under development by EPA (Environmental Protection Agency). The report indicated 10 residences within one mile, and yet satellite images suggest at least 54 are present within a mile of the CAFO location and estimated property value losses could exceed \$1.5 million within this region.

These are concerns affecting the community that he believes the Commission needs to evaluate, not only in terms of this application, but in its general approach to the Site Selection GAAMP and models for protecting human wellbeing, health, safety, property values, and quality of life, while they try to support agriculture in our state.

PROFESSIONAL COMMITTEE REPORT – APPEAL OF THE GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES (GAAMP) SITE SUITABILITY DETERMINATION FOR MARSH SWINE FARM: 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 the Marsh Swine Farm consisted of Suzanne Reamer, an environmental engineer with the U.S. Department of Agriculture Natural Resources Conservation Service, Nathaniel Hude, environmental quality analyst with MDEQ, Air Quality Division, and himself.

The committee carefully 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 three of the committee members serve on the Siting GAAMP Task Force which annually reviews the GAAMP, and with that awareness, they carefully considered all aspects of the siting. Following individual review of the documents, the committee met 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 to the Commission on January 11, 2018.

The review request contained several concerns that were considered and discussed by the professionals. The Siting GAAMP requires non-farm residences located within one-half mile of the facility to be notified. Non-farm residence is defined in the Siting GAAMP as a residence that is habitable for human occupation and is not affiliated with the specific livestock production system. The professionals confirmed the identification of non-farm residences within this one-half mile radius and that all had been notified of the proposed construction and farming operation. The professionals noted Claybanks United Methodist Church (UMC) was not notified, with the justification for not doing so being it does not have an onsite residence or rectory.

Concern was raised relative to water quality of the tributaries of Big Flower Creek because at least three are adjacent to the Marsh proposed barn which drains into the creek and into a trout stream, which in turn drains into Lake Michigan. Pre-existing *E. Coli* contamination of nearby Little Flower Creek has been attributed to farm runoff.

The proposed facility is required to be built according to the Natural Resources Conservation Service (NRCS) 313 standard for Waste Storage Facilities, as well as the producer must follow the Manure Management and Utilization GAAMP for land application of manure. Additionally, the proposed farming venture will be subject to an

MDEQ CAFO permit that is designed to further protect surface water quality from the facility itself. When land application occurs, the producer will apply the wastes to the land at a time, place, and rate that will be protective of surface waters, as required under current MDEQ regulations. The professionals agreed the information submitted met the criteria set forth in the GAAMP.

Concern regarding potential air pollution and odors was expressed, stating the odors from the Marsh farm with less than 200 dairy cows already prohibits the Claybanks UMC from opening windows, and that a review of the plan does not show any special filtering for odors.

The Siting GAAMP requires the use of an Odor Management Plan, including the application and evaluation of the Michigan Odor from Feedlot Setback Estimation Tool (OFFSET) 2000. The Michigan OFFSET is a means of estimating odor source magnitudes and potential impacts from livestock production facilities. 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. This does not mean the facility will be odor free. The professionals reviewed the Odor Management Plan, with the OFFSET footprint, and confirmed there were zero non-farm residences in the five percent odor footprint for the swine facility and site suitability determination was completed properly by the department. The note of 1,500 feet or more from the church was examined and other maps were reviewed as well, and it was determined the church was outside the 1,500 feet required by the Siting GAAMP.

Concerns were expressed regarding roads. The panel noted transportation of waste is not within the purview of the Siting GAAMP to directly consider in the decision of whether to issue site suitability.

The final recommendation of the recognized professionals is to affirm the siting proposal. It is their opinion all criteria in the Siting GAAMP were appropriately addressed in the determination of site suitability and were appropriately addressed in making that decision. The Professional Review Committee affirms the site suitability determination for Marsh Swine Farm.

Commissioner Kennedy inquired regarding the odor footprint in consideration of dairy and swine operations together. Dr. Rozeboom advised that pursuant to the current Siting GAAMP, with the operations being more than 1,000 feet apart, it considers those as separate farm sites, even though they are under the same ownership. A cumulative assessment is not conducted.

Commissioner Montri noted the point today is to listen to public comment, where reasonable concerns are expressed, and for the Commission to consider that information under the purview of the Site Selection GAAMP. She noted many concerns around water quality were stated based on the documents submitted as part of public comment, and she asked Dr. Rozeboom if the committee would want to review those additional materials or if they would apply to manure spreading and not impact the Site Selection GAAMP. Dr. Rozeboom confirmed the site suitability is what is being assessed today. Relative to additional materials, they would be considered by the

Professional Review Committee if they had been given those at the time of their review. Because they came after the committee's work, it is difficult to make a decision regarding their value, impact, and validity. Being a scientist, he knows scientists do not agree, and those reports should be subject to scientific review.

Commissioner Pridgeon asked how this hog operation became qualified as a new site. Dr. Rozeboom advised under the Site Selection GAAMP, it and the dairy operation are located more than 1,000 feet apart and considered separate farm sites, even though under the same ownership. As such, the odor footprint is specific for this enterprise, and he emphasized this situation is not unique to this case.

Commissioner Meachum asked regarding the 1,500 acres of land secured and if those are separate from acres the dairy uses for manure application. Dr. Rozeboom advised in materials provided, they were not able to differentiate what year a field would receive dairy manure and what year it would receive swine manure. However, they do know the cumulative nutrients of both facilities were balanced with an appropriate number of crop production acres – there was a clear agronomic balance demonstrated in the manure management plan.

COMMISSION DISCUSSION AND RECOMMENDATION

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 Site Selection GAAMP, or ask for reevaluation of the site.

Commissioner Meachum advised although he feels two livestock operations in relatively close proximity to one another could be an issue in the future, he realizes we are only considering the site for the hog facility and according to the Site Selection GAAMP review, he feels there is nothing different affecting the decision. The Director noted the dairy is about one-quarter mile down the road from the proposed site. Commission Meachum advised perhaps in the future, consideration could be given to providing a broader scope of all production in the area.

Commissioner Montri reiterated the responsibility is to consider the determination review under the current 2017 Site Selection GAAMP and what is under purview of that GAAMP. There are points raised through these processes that can be considered as part of future GAAMPs.

Commissioner Kennedy reaffirmed consideration and focus today must be within the current GAAMP and agreed new information should be considered in the future as agriculture continues to grow in Michigan. Relative to today's focus, he feels the current criteria have been followed throughout the determination process for Marsh Swine Farm.

Commissioner Pridgeon questioned whether MDEQ under NPDES permit is considering Marsh Swine Farm as a separate site. Commissioner Montri noted this demonstrates that different authorities have jurisdiction and purview of various pieces of this process. As mentioned in the November Commission meeting, there are ways in which the

department, through this process, can help our appellants understand what the Commission has purview over and where other concerns can be raised.

Commissioner Pridgeon advised he feels the Commission has a responsibility to the Site Selection GAAMP to know if this is expanding livestock or new. In his mind, it has been treated as new and as such, meets those criteria. We have a responsibility to review and ensure it does not actually fall as an expanding operation. Dr. Rozeboom advised under the current Site Selection GAAMP, this would clearly be classified as a new swine facility.

MOTION: COMMISSIONER MEACHUM MOVED TO MAKE RECOMMENDATION TO THE DIRECTOR TO AFFIRM THE SITE SUITABILITY DETERMINATION FOR MARSH SWINE FARM IN CLAYBANKS TOWNSHIP, OCEANA COUNTY. SECONDED BY COMMISSIONER KENNEDY.

Commissioner Pridgeon asked the Director to delineate what happens next. The Director advised she has already visited the proposed site and reviewed the application. She will again review the application and testimony provided today, as well as the documents provided. She intends to ask Dr. Rozeboom to review the study brought forward today and advise whether it is pertinent to the case. Therefore, she needs more time than normal in which to review and issue the order, but will do so as expeditiously as possible.

Commissioner Meachum reiterated the questions raised today by the Commission need to be considered in the 2018 Site Selection GAAMP going forward.

Commissioner Montri asked for vote regarding the motion on the floor.

MOTION TO MAKE RECOMMENDATION TO THE DIRECTOR TO AFFIRM THE SITE SUITABILITY DETERMINATION FOR MARSH SWINE FARM IN CLAYBANKS TOWNSHIP, OCEANA COUNTY, CARRIED.

ADJOURN

Commissioner Montri thanked everyone for being here today.

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

The meeting adjourned at 10:11 a.m.

Attachments:

- A) *Agenda*
- B) *GAAMP Site Suitability Determination Summary for Marsh Swine Farm*
- C) *Marsh Swine Farm Siting Application and Attachments Redacted*
- D) *Marsh Appeal Letter and Attachments received via email*
- E) *Marsh Appeal Letter and Attachments received via U.S. Mail*
- F) *Marsh Swine Farm Site Suitability Recommendation Memo and Panel Report*
- G) *Public Comment Letter Submitted by Mechelle Schneider*

- H) *Public Comment Letter Submitted by Bruce Froelich*
- I) *“A Preliminary Investigation of E.Coli in Little Flower Creek Near Meiner Park, Muskegon, Michigan” Report as Provided by Bruce Froelich*
- J) *“Preliminary Analysis of Proposed CAFO in the Flower Creek Watershed” Report as provided by Bruce Froelich*