CHAPTER 76

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Authority

N.J.S.A. 4:1C-5f.

Source and Effective Date

Effective: December 2, 2016.
See: 49 N.J.R. 97(a).

Chapter Expiration Date

Chapter 76, State Agriculture Development Committee, expires on December 2, 2023.

Chapter Historical Note

Chapter 76, State Agriculture Development Committee, was adopted as R.1984 d.58, effective March 19, 1984. See: 15 N.J.R. 2086(a), 16 N.J.R. 518(b).

Subchapter 2, Agricultural Management Practices, was adopted as R.1984 d.84, effective April 2, 1984. See: 16 N.J.R. 95(b), 16 N.J.R. 707(c).

Subchapter 3, Creation of Farmland Preservation Programs, was adopted as R.1984 d.229, effective June 18, 1984. See: 16 N.J.R. 579(a), 16 N.J.R. 1471(c).

Subchapter 4, Creation of Municipally Approved Farmland Preservation Programs, was adopted as R.1984 d.230, effective June 18, 1984. See: 16 N.J.R. 582(a), 16 N.J.R. 1475(a).

Subchapter 5, Soil and Water Conservation Project Cost-Sharing, was adopted as R.1984 d.418, effective September 17, 1984. See: 16 N.J.R. 1636(a), 16 N.J.R. 2426(a).

Subchapter 6, Acquisition of Development Easements, was adopted as R.1984 d.419, effective September 17, 1984. See: 16 N.J.R. 1637(a), 16 N.J.R. 2427(a).

Subchapter 7, Review of Non-Agricultural Development Projects in Agricultural Development Areas, was adopted as R.1987 d.482, effective November 16, 1987. See: 19 N.J.R. 1009(a), 19 N.J.R. 2132(a).

Subchapter 8, Acquisition of Farmland in Fee Simple, was adopted as R.1989 d.48, effective January 17, 1989. See: 20 N.J.R. 2501(a), 21 N.J.R. 160(a).

Subchapter 9, Emergency Acquisition of Development Easements, was adopted as R.1989 d.214, effective April 17, 1989. See: 21 N.J.R. 231(a), 21 N.J.R. 981(b).

Pursuant to Executive Order No. 66(1978), Chapter 76, State Agricultural Development Committee, was readopted as R.1989 d.453, effective July 31, 1989. See: 21 N.J.R. 1601(a), 21 N.J.R. 2472(b).

Subchapter 10, Appraisal Handbook Standards, was adopted as R.1993 d.391, effective August 2, 1993. See: 25 N.J.R. 1811(a), 25 N.J.R. 3461(a).

Pursuant to Executive Order No. 66(1978), Chapter 76, State Agricultural Development Committee, was readopted as R.1994 d.393, effective June 28, 1994. See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).

Pursuant to Executive Order No. 66(1978), Chapter 76, State Agricultural Development Committee, was readopted as R.1999 d.198, effective May 28, 1999, and Subchapter 2A, Agricultural Management Practices: Generally Accepted Operations and Practices, was adopted as R.1999, d.198, effective June 21, 1999. See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Subchapter 11, Committee Acquisition of Farmland Development Easements, was adopted as Emergency New Rules by R.1999 d.317, effective August 20, 1999, to expire October 19, 1999. See: 31 N.J.R. 2646(a). The provisions of R.1999 d.317 were readopted as R.1999 d.390, effective October 19, 1999. See: 31 N.J.R. 2646(a), 31 N.J.R. 3625(a).

Subchapter 12, Nonprofit Acquisition Projects: Project Eligibility, Conditions and Limitations, Subchapter 13, Nonprofit Acquisition Projects: Application Process, Subchapter 14, Nonprofit Acquisition Projects: Award Criteria, Subchapter 15, Nonprofit Acquisition Projects: Determination of Eligible Land Cost, and Subchapter 16, Nonprofit Acquisition Projects: Project Agreement, Negotiations for Purchase of Project Site, Disbursements, Accounting and Recordkeeping Requirements, were adopted as R.2000 d.95, effective March 6, 2000. See: 31 N.J.R. 4144(a), 32 N.J.R. 788(b).

Subchapter 2B, Supplemental Agricultural Activities, was adopted as R.2000 d.97, effective March 6, 2000. See: 31 N.J.R. 3882(a), 32 N.J.R. 787(b).

Subchapter 17, Planning Incentive Grants, was adopted as R.2000 d.263, effective June 19, 2000. See: 32 N.J.R. 1102(a), 32 N.J.R. 2223(a).

Subchapter 18, Agricultural Mediation Program, was adopted as R.2001 d.98, effective March 19, 2001. See: 33 N.J.R. 3(a), 33 N.J.R. 999(a).

Subchapter 19, Valuation of Development Easements in the Pinelands Area, was adopted as R.2001 d.121, effective April 2, 2001. See: 33 N.J.R. 152(a), 33 N.J.R. 1083(a).

Subchapter 20, Farmland Stewardship Program, was adopted as R.2002 d.68, effective March 4, 2002. See: 33 N.J.R. 2958(a), 34 N.J.R. 1034(a).

Subchapter 21, Administrative Grants to Counties, was adopted as R.2002 d.69, effective March 4, 2002. See: 33 N.J.R. 3597(a), 34 N.J.R. 1038(a).

Chapter 76, State Agriculture Development Committee, was readopted as R.2004 d.403, effective October 1, 2004. See: 36 N.J.R. 2322(a), 36 N.J.R. 4927(a).

Subchapter 17, Planning Incentive Grants, was repealed and Subchapter 17, County Planning Incentive Grants, and Subchapter 17A, Municipal Planning Incentive Grants, were adopted as new rules by R.2007 d.197, effective July 2, 2007. See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

Subchapter 22, Special Permit for Commercial Nonagricultural Activity on Preserved Farmland, and Subchapter 23, Special Permit for Installation of Personal Wireless Service Facility on Preserved Farmland, were adopted as new rules by R.2008 d.137, effective June 2, 2008. See: 39 N.J.R. 2568(a), 40 N.J.R. 2663(b).

Chapter 76, State Agriculture Development Committee, was readopted as R.2010 d.047, effective January 15, 2010. See: 41 N.J.R. 1300(a), 42 N.J.R. 587(a).

Subchapter 24, Solar Energy Generation on Preserved Farms, was adopted as new rules by R.2013 d.083, effective June 3, 2013. See: 44 N.J.R. 2223(a), 45 N.J.R. 1385(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 76, State Agriculture Development Committee, was scheduled to expire on January 15, 2017. See: 43 N.J.R. 1203(a).

Chapter 76, State Agriculture Development Committee, was readopted, effective December 2, 2016. See: Source and Effective Date.

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SUBCHAPTER 1. AGRICULTURAL DEVELOPMENT AREAS

2:76-1.1 Applicability

This subchapter applies to County Agriculture Development Boards and Subregional Agricultural Retention Boards when identifying and receiving State Agriculture Development Committee certification for agricultural development areas.

2:76-1.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural Development Area", hereinafter referred to as ADA, means an area identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

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

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

Amended by R.1984 d.274, effective July 2, 1984.
See: 16 N.J.R. 947(a), 16 N.J.R. 1714(a).
Amendments to definitions.

2:76-1.3 Statutory criteria

(a) The board may, after public hearing, identify and recommend an area as an agricultural development area, which recommendation shall be forwarded to the county planning

board. The board shall document where agriculture shall be the preferred, but not necessarily the exclusive, use of land if that area:

1. Encompasses productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and in which agriculture is a permitted use under the current municipal zoning ordinance or in which agriculture is permitted as a non-conforming use;

2. Is reasonably free of suburban and conflicting commercial development;

3. Comprises not greater than 90 percent of the agricultural land mass of the county;

4. Incorporates any other characteristics deemed appropriate by the board.

2:76-1.4 Other criteria

(a) The factors in this section that shall be considered by the board in developing criteria for the identification of agricultural development area(s) shall include, but not necessarily be limited to, the following:

1. Soils;

2. Current and anticipated local land use plans and regulations;

3. Farmland assessment status;

4. Anticipated approvals for non-agricultural development;

5. Accessibility to publicly funded water and sewer systems;

6. Compatibility with comprehensive and special purpose county and State plans;

7. Proximity and accessibility to major highways and interchanges;

8. Minimum size of an ADA;

9. Landowner sign-up;

10. Land within boroughs, towns or cities;

11. Inclusion of entire or partial lots and blocks;

12. Land ownership;

13. Natural and special features;

14. Type and distribution of agriculture.

(b) Guidelines for interpretation of the above factors may be obtained from the committee upon request. Requests shall be addressed to:

The State Agriculture
Development Committee
P.O. Box 330
Trenton, New Jersey 08625-0330

2:76-1.5 Certification request

(a) In order to obtain committee certification of board approval of ADAs, the board shall submit the following to the committee:

1. Board certification that a hearing was held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;

2. A copy of the approved minutes of the hearing which shall include a summary of the testimony;

3. A comprehensive report consisting of the following:

i. Discussion of factors considered for arriving at the adopted ADA criteria;

ii. Adopted criteria for ADA identification;

iii. A resolution of adoption of ADA(s);

iv. Map(s), preferably but not necessarily U.S.G.S. (1:24000), showing the general location of the ADA(s) as defined by the application of the criteria.

2:76-1.6 Committee review

(a) The committee shall review board submissions pursuant to N.J.A.C. 2:76-1.5.

(b) In order to certify, the committee must make a finding that the board's analysis of factors and resultant criteria are reasonable and consistent with the provisions of this subchapter.

2:76-1.7 Certification

Upon compliance with the provisions of this subchapter, the committee shall present to the Secretary of Agriculture its findings and recommendations to certify, to certify with conditions, or deny the request made pursuant to N.J.A.C. 2:76-1.5.

SUBCHAPTER 2. RIGHT TO FARM

2:76-2.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural management practices" means practices which have been recommended by the State Agriculture Development Committee, and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which shall include, but not necessarily be limited to, air and water quality control, noise control, pesticide control,

fertilizer application, integrated pest management and labor practices.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-17 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-20.

"Commercial farm" means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.; or

2. A farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.

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

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

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

"Site specific agricultural management practice" means a specific operation or practice which has been recommended by the appropriate board, or in a county where no board exists, the Committee, to constitute a generally accepted agricultural operation or practice.

"State Soil Conservation Committee" means an agency of the State established pursuant to N.J.S.A. 4:24-1 et seq.

Amended by R.1984 d.275, effective July 2, 1984.
See: 16 N.J.R. 948(a), 16 N.J.R. 1714(b).
Definitions amended.
Amended and Recodified from 2:76-2.2 by R.1993 d.223, effective May 17, 1993.
See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).
Old section was "Applicability". Revised definition "Agricultural management practices" and added new definition "State Soil Conservation Committee".
Amended by R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
In "Agricultural management practices", inserted ", and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.," following "Committee"; rewrote "Commercial farm"; and inserted "Farm management unit", "Farm market" and "Site specific agricultural management practice".

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

Case Notes

Applicant failed to establish that she operated a commercial farm, as defined in N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1, because she did not provide clear evidence of income from agricultural production; thus, applicant did not meet the threshold for a site-specific agricultural management practice determination pursuant to N.J.S.A. 4:1C-9 and N.J.A.C. 2:76-2.3 and was unable to preempt application of a local zoning ordinance. Hertz v. Morris County Agric. Dev. Bd., OAL Dkt. No. ADC 07672-06, Final Decision (January 25, 2007).

If a farmer in a Right to Farm Act matter has not filed a federal tax form Schedule F, which requires specific information about the type of farm income being reported, the farmer must produce contemporaneous evidence to show that his or her income is indeed from the sale of agricultural or horticultural products. Hertz v. Morris County Agric. Dev. Bd., OAL DKT. NO. ADC 07672-06, Final Decision (January 25, 2007).

2:76-2.2 Procedure for recommending agricultural management practices

(a) The Committee at its initiative may recommend agricultural management practices.

(b) Any person or organization may request the Committee to recommend agricultural management practices.

(c) In considering agricultural management practices, the Committee may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;

2. The New Jersey Agricultural Experiment Station, including appropriate county agents;

3. County Agriculture Development Boards;

4. The State Soil Conservation Committee;

5. Any other states' Departments of Agriculture, land grant institutions or Agricultural Experiment Stations;

6. The United States Department of Agriculture, or any other Federal governmental entity; or

7. Any other organization or person which may provide expertise concerning the particular practice.

(d) Upon the committee's recommendation, the agricultural management practice shall be forwarded to the appropriate State departments and agencies and boards and any other individuals, officials or organizations deemed appropriate by the Committee. Agricultural management practices

adopted pursuant to this section do not preclude a board or the Committee from recommending a site specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4, provided it is consistent with the agricultural management practices adopted pursuant to this section.

New Rule and recodification of 2:76-2.2 Definitions to 2.1. R.1993 d.223, effective May 17, 1993.
See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).
Section was "Definitions".
Amended by R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
In (c), added a reference to appropriate county agents at the end of 2, inserted new 5 and 6, and recodified former 5 as 7; and rewrote (d).

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.3 Determinations of site-specific agricultural management practices where a board exists

(a) In counties where a board exists, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 may submit an application to the board to determine if his or her operation constitutes a generally accepted agricultural operation or practice included in any of the permitted activities set forth in N.J.S.A. 4:1C-9.

1. The commercial farm owner and/or operator and board staff may hold a pre-application meeting or meetings to discuss application requirements, board jurisdiction and procedures, and any other related matter.

(b) The board shall advise the Committee and the clerk(s) of the municipality(ies) in which the commercial farm is located, in writing, of the nature of the application within 10 days of the filing of the request.

(c) The board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(d) In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9, the board shall request the commercial farm owner or operator to provide the following in certification form:

1. Proof that the commercial farm is no less than five acres, produces agricultural/horticultural products worth $2,500 or more annually, listing said products, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964 or, if the commercial farm is less than five acres, produces agricultural/ horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964; and

2. Proof that the farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm was in operation as of July 2, 1998.

(e) In the event the commercial farm owner or operator has sought approval of the agricultural operation or practice from the municipality in which the commercial farm is located, the board shall consider, at a minimum, any operation or practice, the approval of which has not been granted by the municipality.

(f) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure that less than a quorum, as defined in the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

(g) If the board determines that the farm operation is not a commercial farm pursuant to N.J.S.A. 4:1C-3 and/or that the operation or practice is not included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board shall pass a resolution dismissing the request. The resolution shall contain detailed findings of fact and conclusions of law, and references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and/or operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

(h) Board checklist. If the board determines that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that the operation or practice is included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board and/or board staff may request that the commercial farm owner or operator provide information using a checklist adopted by the board.

1. The checklist shall enumerate the data and materials reasonably necessary for the board to make an informed judgment on an application.

2. The checklist shall include, at a minimum, the following components:

i. Site plan elements to identify site location, extent and orientation, existing and proposed site conditions, location and availability of development infrastructure, detailed parking and traffic improvements and dedications, drainage provision, and the location of signage and lighting;

ii. A list of regulatory approvals or permit requirements;

iii. A list of studies required to assess the suitability of the site and impacts of the operation or practice that is the subject of the application submitted pursuant to this section;

iv. A schedule of municipal planning and zoning requirements and exemptions from the schedule sought by the commercial farm; and

v. Submittal of a farm conservation plan or documents showing active efforts to obtain a farm conservation plan in a timely manner.

3. The board and/or board staff shall have the discretion to waive, reduce, and/or determine the nonapplicability of checklist items in its review of an application filed by a commercial farm owner and/or operator pursuant to this section. The board may delegate this function to board staff, with final review and decision making authority vested in the board. In making such decisions, the board and board staff shall consider relevant site-specific elements, such as, but not limited to, the following:

i. The farm's setting and surroundings;

ii. The scale and intensity of the proposed operation(s) or practice(s);

iii. The type and use of the public road on which the operation or practice is located; and

iv. When applicable, the minimum level of improvements necessary to protect public health and safety.

4. Subject to the provisions of (k) below, the board may retain jurisdiction over any or all municipal ordinances and/or county resolutions as they apply to the commercial farm owner or operator's application for a site-specific agricultural management practice determination.

5. The commercial farm owner or operator may employ appropriate professional(s), at the commercial farm owner or operator's sole expense, as it determines necessary to prepare the application and checklist items and to testify before the board in support of the application.

(i) If the board determines that the application and checklist items are complete, then the board shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8.

(j) In determining whether or not to approve site-specific agricultural management practices, the board may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;

2. The State Agriculture Development Committee;

3. The New Jersey Agricultural Experiment Station, including appropriate county agents;

4. Other County Agriculture Development Boards;

5. The State Soil Conservation Committee;

6. Any other states' Departments of Agriculture, land grant institutions or Agricultural Experiment Stations;

7. The United States Department of Agriculture or any other Federal governmental entity;

8. County engineering staff and/or any other licensed professional employed by the county; or

9. Any other organization or person which may provide expertise concerning the particular practice.

(k) The board shall have no authority to determine the commercial farm owner or operator's compliance with State laws, rules, and regulations delegated to the municipality or county for administration and enforcement including stormwater management and construction code requirements, unless the municipal ordinance or county resolution, or any portion(s) thereof, effectuating the delegation exceed(s) State regulatory standards. If a municipal ordinance or county resolution, or any portion(s) thereof, exceed(s) State regulatory standards, then the board shall have the authority to determine whether the ordinance or resolution, or portion thereof, that exceeds such State regulatory standards is pre-empted by the board's approval of the commercial farm owner or operator's site-specific agricultural management practice.

(*l*) The board shall pass a resolution granting, with or without conditions, or denying the request for a site-specific agricultural management practice determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to this section and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

(m) Any person aggrieved by any decision of a board regarding site-specific agricultural management practices may appeal the decision to the Committee in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 45 days from receipt of the board's decision.

1. The decision of the Committee shall be considered a final administrative agency decision.

2. If the board's decision is not appealed within 45 days, the board's decision is binding.

Repeal and New Rule, R.1993 d.223, effective May 17, 1993.
See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).
Section was "Dispute procedures".
New Rule, R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
Former N.J.A.C. 2:76-2.3, Utilization of agricultural management practices, recodified to N.J.A.C. 2:76-2.5.
Amended by R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).
Section was "Recommendations of site specific agricultural management practices where a board exists". Rewrote the section.

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 239) adopted, which affirmed a county agriculture development board's approval of construction of a barn where the permit applicant, who operated a commercial farm pursuant to the requirements of N.J.S.A. 4:1C-9, was engaged in an accepted agricultural operation or practice and consequently had a legitimate agriculturally based reason under the Right to Farm Act for preemption of municipal land use authority. Application of the municipal ordinance would have entirely precluded applicant's ability to construct the barn, not merely restrict it, and moreover no testimony was offered to remotely suggest that fire or other emergency vehicles would be unable to reach the applicant's property, as access to the property was identical whether or not a barn would be built. In re Petty (Appeal of Resolution Issued by Warren County Agric. Dev. Bd.), OAL Dkt. No. ADC 05370-06, Final Decision (June 28, 2007).

Applicant failed to establish that she operated a commercial farm, as defined in N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1, because she did not provide clear evidence of income from agricultural production; thus, applicant did not meet the threshold for a site-specific agricultural management practice determination pursuant to N.J.S.A. 4:1C-9 and N.J.A.C. 2:76-2.3 and was unable to preempt application of a local zoning ordinance. Hertz v. Morris County Agric. Dev. Bd., OAL DKT. NO. ADC 07672-06, Final Decision (January 25, 2007).

Where the Tax Court of New Jersey had ruled that the landowners' premises met the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., which was a threshold issue in determining applicability of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., landowners were entitled to a determination by the county agricultural development board whether their commercial farm operation constituted a generally accepted agricultural operation or practice pursuant to N.J.A.C. 2:76-2.3(a) (all parties were in agreement with this result). In re Barton Nursery (Appeal From Decision of State Agric. Dev. Comm'n), OAL Dkt. No. ADC 6441-02, 2005 N.J. AGEN LEXIS 396, Initial Decision (August 5, 2005).

2:76-2.4 Determinations of site-specific agricultural management practices where a board does not exist

(a) In counties where a board does not exist, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 may submit an application to the Committee to determine if his or her operation constitutes a generally accepted agricultural operation or practice included in any of the permitted activities set forth in N.J.S.A. 4:1C-9.

(b) The provisions of N.J.A.C. 2:76-2.3(b) through (l) shall apply to the Committee's consideration of the application.

(c) The Committee shall pass a resolution granting, with or without conditions, or denying the request for a site-specific agricultural management practice determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and commercial farm operator, if applicable, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the Committee within 30 days of passage of the resolution.

1. The decision of the Committee shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

New Rule, R.1993 d.223, effective May 17, 1993.
See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).
New Rule, R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
Former N.J.A.C. 2:76-2.4, Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices, recodified to N.J.A.C. 2:76-2.6.
Amended by R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).
Section was "Recommendations of site specific agricultural management practices where a board does not exist". Rewrote the section.

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.5 Utilization of agricultural management practices and procedures and site-specific agricultural management practices and procedures

(a) Owners and operators of commercial farms are afforded benefits and protections pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., P.L. 1983, c.31, as amended.

(b) The failure of a commercial farm owner or operator to comply with an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3 or 2.4 shall not be utilized in any judicial proceedings or proceeding before any governmental body or agency except for the process as described in N.J.S.A. 4:1C-10.1 and N.J.A.C. 2:76-2.10.

(c) If a commercial farm owner or operator believes a municipality or county's standards or requirements for agricultural operations or practices are unduly restrictive, or believes a municipality or county is unreasonably with-

holding approvals related to agricultural operations or practices, then the commercial farm owner or operator may request that the board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively. The board, or Committee in counties where no board exists, shall review the matter and make a determination regarding whether RTFA protection is warranted.

(d) A commercial farm owner or operator shall not be precluded from requesting a site-specific agricultural management practice determination from a board, or from the Committee in counties where no board exists, pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively, for activities set forth in agricultural management practices recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2.

1. No site-specific agricultural management practice approval shall be granted if it is inconsistent with an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2.

(e) A commercial farm owner and/or operator who obtains a site-specific agricultural management practice determination by resolution from the board, or from the Committee in counties where no board exists, may present the resolution to appropriate municipal officials in support of obtaining appropriate permits, if applicable.

Recodified from N.J.A.C. 2:76-2.3 and amended by R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
Rewrote the section.
Amended by R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).
Section was "Utilization of agricultural management practices and site specific agricultural management practices". Added (c) through (e).

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.6 Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices

The Committee shall upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the Committee, commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the Committee of the reasons for accepting, conditionally accepting or rejecting the Committee's recommendations and submit a schedule for implementing all or a portion of the Committee's recommendations.

New Rule, R.1993 d.223, effective May 17, 1993.
See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).
Recodified from N.J.A.C. 2:76-2.4 by R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.7 Negotiation of conflicts between any person aggrieved by the operation of a commercial farm

(a) Any person aggrieved by the operation of a commercial farm shall first file a complaint, in writing, with the applicable board or with the Committee in counties where no board exists, prior to filing an action in court. The complaint shall include detailed facts concerning the contested operation or practice.

(b) If a board exists, then the board shall contact the commercial farm owner or operator to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.

(c) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site-specific agricultural management practice approved by the board pursuant to N.J.A.C. 2:76-2.3. If board members conduct the inspection, the board shall ensure that less than a quorum, as defined in the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

1. The board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(d) If the board determines that the farm is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2 or a site-specific agricultural management practice approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

1. The decision of the board, containing its findings and recommendations, shall be forwarded to the Committee, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable, within 60 days of receipt of the complaint.

i. The decision of the board shall be in the form of a resolution providing a summary of the testimony, detailed findings of fact and conclusions of law, references to any supporting documents, a copy of the agricultural management practice or site-specific agricultural operation or practice utilized by the board in its decision, and any other information requested by the Committee.

ii. Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with (b) above shall appeal the decision to the Committee within 10 days of the receipt of the board's final decision. The Committee shall schedule a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and make a determination within 90 days of receipt of the petition for review.

(1) The decision of the Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

(2) Any decision of the board that is not appealed shall be binding.

(e) If a board exists and the dispute concerns activities that are not addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site-specific agricultural management practice approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall contact the farm owner to provide evidence that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.

1. The board shall determine whether the commercial farm operation or practice in dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(f) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure compliance with the provisions of the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., if applicable.

(g) If the board determines that the dispute subject to this section does not involve a commercial farm as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in one or more of the protected activities set forth in N.J.S.A. 4:1C-9, then the board shall dismiss the complaint. The board's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, the Committee, and the municipality(ies) in which the farm operation is located within 60 days of receipt of the complaint.

(h) If the board determines that the dispute subject to this section involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the board shall forward the complaint to the Committee requesting the Committee's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice.

1. The board shall inform the Committee if it has received a request for a site-specific agricultural management practice determination and, if so, the status of the board's determination.

2. Upon receipt of the complaint, the Committee shall review the board's determinations that the dispute involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. As part of its review, the Committee may contact the farm owner to provide additional information. If the Committee determines that the dispute does not involve a commercial farm as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in one of more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the Committee shall dismiss the complaint. The Committee's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, and the municipality(ies) in which the farm operation is located.

i. The Committee's decision shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

(i) If the Committee determines that the dispute subject to this section involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth N.J.S.A. 4:1C-9, then the Committee shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8. The hearing shall be limited to consideration of whether or not the disputed agricultural activity constitutes a generally accepted operation or practice.

1. If the Committee determines that the disputed agricultural activity constitutes a generally accepted operation

or practice, its determination shall be sent to the board for a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm.

2. If the Committee determines that the disputed agricultural activity does not constitute a generally accepted operation or practice, the complaint shall be dismissed. The Committee's determination shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

3. The Committee's determination pursuant to (i)1 or 2 above shall be in the form of a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be sent to the board, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable.

(j) Upon receipt of the Committee's determination pursuant to (i)1 above, the board shall hold a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm. The board shall issue its findings and recommendations within 60 days of the receipt of the Committee's decision. The board's hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

(k) Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with this section shall appeal the decision to the Committee within 10 days from receipt of the board's decision. The Committee shall schedule a hearing and make a determination within 90 days of receipt of the petition for review.

1. The decision of the Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

2. Any decision of the board that is not appealed shall be binding.

New Rule, R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
Recodified from N.J.A.C. 2:76-2.10 and amended by R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).
Section was "Negotiation of conflicts between any person aggrieved by the operation of a commercial farm". Rewrote the section.

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

Case Notes

This section applies only in cases where the Board issues a decision in a dispute concerning activities that are addressed by an Agricultural Management Practice; therefore, the ALJ erred in relying, in part, on the regulation because petitioner's claim did not involve a dispute over an AMP, but, instead, whether the activities on the premises of an adjacent landowner were conducted for agricultural purposes. Bohlin v. Brickyard, OAL Dkt. No. ADC 743-08, Final Decision (November 5, 2009).

2:76-2.8 Hearing procedures for Right to Farm cases

(a) The Committee and county agriculture development boards shall follow the procedures set forth in this section for cases arising from the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the Right to Farm rules set forth at N.J.A.C. 2:76-2, 2A, and 2B.

(b) The procedures set forth in this section shall apply only after the county agriculture development board or the Committee determines that it has jurisdiction to hear the Right to Farm case.

(c) Procedures applicable to requests by a commercial farm for a site-specific agricultural management practice determination (see N.J.A.C. 2:76-2.3 and 2.4) shall be as follows:

1. Written notice of the request shall be given by the commercial farm, at its sole expense, via certified mail, return receipt requested, and/or by personal service, to:

i. The clerk and land use board secretary of the municipality in which the commercial farm is located. If the commercial farm is located within 200 feet of an adjoining municipality, then written notice of the request shall be given as set forth in (c)1 above to the clerk and land use board secretary of the adjoining municipality;

ii. The owners of all real property, on the current tax duplicates, within 200 feet in all directions of the property upon which the commercial farm is located. The commercial farm shall be solely responsible to pay for and obtain a certified list of property owners in accordance with N.J.S.A. 40:55D-12.c;

iii. The State Agriculture Development Committee;

iv. The county planning board, if the commercial farm is located on property adjacent to a county road or county-owned property;

v. The Commissioner of the New Jersey Department of Transportation, if the commercial farm is located on a State highway;

vi. The public, by publication in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality.

2. The written notice set forth in (c)1 above shall state the date, time, and place of the hearing; the site-specific agricultural management practice(s) that will be considered at the hearing; the identity of the property upon which the commercial farm is located by street address, if any, or by reference to lot and block number(s); the location and times at which documents in support of the commercial farm's request are available at the office of the board; and

advise that the board will accept public comments at and/or prior to the hearing.

i. The board shall allow the applicant to respond to any written comments within such reasonable time as the board directs.

ii. The written notice set forth in (c)1 above shall be served at least 10 days in advance of the hearing, and proof of service of the notice, along with the certified list of property owners, shall be provided by the commercial farm to the board.

iii. The hearing shall not begin until satisfactory proof of notice to all appropriate individuals has been provided by the commercial farm.

3. The board hearing shall be conducted in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

i. The testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson of, or counsel to, the board. Testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board.

ii. The hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial, or unduly repetitive evidence.

iii. The hearing shall be recorded utilizing a sound recording device or a stenographer.

(d) Procedures applicable to a complaint by an aggrieved person against a commercial farm (see N.J.A.C. 2:76-2.7) shall be as follows:

1. The board shall provide notice of the complaint, in writing, to the commercial farm owner, the commercial farm operator, if applicable, the Committee, and to the municipality(ies) in which the commercial farm is located, within 10 days of receipt of the complaint.

2. The board hearing shall be conducted in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

i. The testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson of, or counsel to, the board. Testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board.

ii. The hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial, or unduly repetitive evidence.

iii. The hearing shall be recorded utilizing a sound recording device or a stenographer.

New Rule, R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).

2:76-2.9 (Reserved)

2:76-2.10 (Reserved

Recodified to N.J.A.C. 2:76-2.7 by R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).
Section was "Negotiation of conflicts between any person aggrieved by the operation of a commercial farm".

SUBCHAPTER 2A. AGRICULTURAL MANAGEMENT PRACTICES: GENERALLY ACCEPTED OPERATIONS AND PRACTICES

2:76-2A.1 Recommendation basis

The agricultural management practices recommended in this subchapter are recommended pursuant to N.J.A.C. 2:76-2.2.

2:76-2A.2 Apiary agricultural management practice

(a) The following words and terms, as used in this section, shall have the following meanings:

"Apiary" means one or more colonies of honey bees.

"Bee" means members of the genus apis.

"Colony" means a hive or swarm of bees.

"Hive" means the manmade structure which contains a colony of honey bees.

(b) All overwintering apiaries must be registered with the New Jersey Department of Agriculture, pursuant to N.J.A.C. 2:24-3.1 et seq.

(c) Overwintering apiaries, honey production apiaries, queen and package apiaries and bee colonies utilized for crop pollination will not exceed an average density of 50 colonies per acre.

(d) All colonies must be located at least 25 feet from a public sidewalk, alley, street or road.

(e) All apiaries must be at least 300 feet from any residence, excluding the residence(s) associated with the agricultural operation. If less than 300 feet from any residence, a six feet high solid fence or hedge must be erected buffering the residence.

(f) All apiaries must have on site an adequate source of water which is no more than one-half mile from the apiary.

(g) All bee equipment and hives must be maintained in good condition.

(h) All colonies must be kept in movable frame hives in accordance with N.J.S.A. 4:6-10.

2:76-2A.3 Poultry manure agricultural management practice

(a) The poultry manure agricultural management practice applies to agricultural operations, which store poultry manure prior to land application and land apply poultry manure as part of crop production practices. Poultry manure is collected and stored in a variety of ways, depending on the need of the producer. The methods used to collect, handle and store the manure greatly affect its quality. Manure often has to be

stored before it is land applied. Proper storage is essential for manure to maintain its value as a nutrient resource and to prevent it from polluting surface or groundwater. The important points to consider when storing poultry manure are to keep it covered so rainfall will not create runoff from the storage area and to stack the manure no more than five to six feet deep to prevent overheating and burning.

(b) Poultry manure should not be stored outside unless it is covered by some type of waterproof sheeting and water is diverted away from the stack. The manure stack should be located on high ground and away from drainage ways and sources of surface water. Covered stockpiles should be considered for short-term storage only. If manure will be stored in this manner for more than one month, place an impervious pad under the stack.

1. Stockpiles of manure can be protected by covering with plastic sheeting, which is anchored with earth or other suitable weighted materials. Anchor the edges by laying the sheeting edge across a small trench approximately 12 inches deep and backfilling with soil. Lay suitable weighted materials over the top of the plastic on the pile. Heavy gauge (six mil) plastic can last one or two seasons. Lighter gauge plastic is not recommended.

2. The liner consisting of a minimum of a six mil plastic is laid on the soil surface on top of which the stockpile is formed. If the soil is loose, compact it before laying out the plastic. Apply a 12-inch layer of manure over the majority of the plastic before forming the pile to minimize the possibility of tearing by the equipment tires. Fold the edges of the liner one to two feet up the sides of the pile and anchor in the manure. Apply the surface cover as described for a covered stockpile. The ground liner will be torn during unloading of the pile and new plastic will be required each year.

3. If a permanent location for manure storage is desired, a concrete slab can be constructed on which to place a covered stockpile. The concrete should be at least six inches thick, reinforced with wire mesh and placed on six inches of compact gravel. To prevent concrete failure, thicken the perimeter of the concrete to form a footer where traffic enters and exits. Construct the stockpile as described for a covered stockpile, as set forth in (b)1 above. Anchor the cover sheet edges with wood poles, concrete blocks or other heavy objects on the concrete slab.

4. Bunkers are permanent aboveground concrete slabs with two parallel walls of concrete identical to those used for storing silage on livestock farms. A bunker allows deeper piling and compaction of manure to reduce the total area required for the manure storage. An end wall can be constructed to slightly increase the storage capacity. However, loading the structure is more easily accomplished without an end wall. A cover of plastic sheeting can be attached to the walls with batten strips and anchored with a suitable weighted material. A more permanent cover of fiberglass reinforced fabric with edge anchorage eyelets similar to that used for truck covers may be utilized.

5. Concrete slabs, bunkers or other structures with permanent roofs may be constructed to eliminate the need for plastic covers. The roof structure must be a clear span supported by the outside walls or perimeter posts. Roof structures must be of sufficient height to allow manure piling. Compaction loading will be difficult under a roof. Roofs 12 feet or higher will require wall panels to protect the stored manure from excessive blowing rain.

(c) The rate of manure application should be limited to that amount required for crop production and maintenance of a reasonable level of soil fertility. The amount of poultry manure used depends on crop needs, soil fertility levels, physical characteristics of the soil and the potency of the manure. The actual amount of manure applied should be calculated for each crop production situation as follows:

1. Manure analysis should be conducted;

2. Soil fertility tests should be conducted on land areas to be fertilized;

3. Crop needs for projected yields for each of the main fertilizer elements should be determined from appropriate guides for crop production; and

4. Manure application should be limited to amounts needed to make up the difference between crop needs and existing soil fertility levels.

(d) The following concern field application of poultry manure:

1. Manure should not be spread on ground that is frozen, snow covered or too wet to be plowed within the time limits listed in (d)3 and 4 below.

2. A manure free vegetative buffer zone of not less than 25 feet shall be maintained along or around defined drainage channels and sinkholes on slopes of six percent or less. On slopes greater than six percent, the vegetative buffer shall be four times the percent slope times 100 feet. Where a vegetative buffer is not established, manure shall not be spread closer than 50 feet from the defined drainage channel or sinkholes on slopes of six percent or less. Without a vegetative buffer on slopes greater than six percent, the distance shall be eight times percent slope times 100 feet. For example, the buffer zone for a 10 percent slope should be: 8 x 0.10 x 100 = 80 feet.

3. The following manure management alternatives concern manure with less than 60 percent moisture content:

i. Manure to be spread on land which will be tilled, shall be incorporated in the soil within 48 hours by:

(1) Moldboard plowing;

(2) Chisel plowing followed by disking; or

(3) Other methods which at a minimum achieve the results attained by the methods identified in (d)3i(1) or (2) above.

ii. Manure may be spread on the surface of pasture or hayland having more than a 75 percent vegetative cover.

iii. Manure may be spread on the surface on land where no-till corn will be planted at half the recommended rate as determined in (c) above during the months of March, April, or May.

4. Manure containing 60 percent or more moisture shall only be spread on cropland to be tilled and must be incorporated in the soil the same day by:

i. Moldboard plowing;

ii. Chisel plowing followed by disking; or

iii. Other methods which at a minimum achieve the results attained by the methods identified in (d)4i or ii above.

5. The following concern land slope:

i. Manure shall not be applied on land where the slope exceeds eight percent, except when injected or plow furrow application is made.

ii. If injected or plow furrow application is made, the slope of the land shall not exceed 10 percent.

6. The requirements for the application of manure as contained in (d)5 above may be modified if the application is made according to an approved conservation plan, developed by the Soil Conservation District for the control of runoff and erosion, and which has been implemented by the owner.

New Rule, R.1999 d.199, effective June 21, 1999.
See: 31 N.J.R. 823(a), 31 N.J.R. 1607(a).

2:76–2A.4 Food processing by-product land application agricultural management practice

(a) The following words and terms, as used in this section, shall have the following meanings.

"Agronomic rate" means the whole food processing by-product application rate on a dry weight basis designed:

i. To provide the amount of nitrogen or other nutrients needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land;

ii. To minimize the amount of nitrogen or other nutrients from residual and all other fertilizer sources that passes below the root zone of the crop or vegetation grown on the land; and

iii. To provide the amount of calcium or magnesium oxides capable of neutralizing soil acidity.

"Food processing by-product" means food processing vegetative wastes and/or food processing residuals generated from food processing and packaging operations or similar industries that process food products.

"Food processing residuals" means residuals resulting from the physical, chemical, and/or biological treatment of wastewater generated in food processing and packaging operations or similar industries that process food products, whose application to lands would benefit crop growth and soil productivity. Food processing residuals do not include process waste waters.

"Food processing vegetative waste" means material generated in trimming, reject sorting, cleaning, pressing, cooking, and filtering operations from the processing of fruits and vegetables and the like in food processing and packaging operations or similar industries that process food products. Vegetative wastes include, but are not limited to, tomato skins and seeds, pepper cores, potato peels, cabbage, onion skins, celery pieces, cranberry hulls, cranberry tailings, rice hulls, carrot stems, and coffee grounds.

(b) No commercial farm operator seeking protection of the Right to Farm Act shall apply food processing by-product to a commercial farm except in accordance with the requirements of N.J.A.C. 7:14A and this section.

(c) Only food processing by-product meeting the requirements of N.J.A.C. 7:14A–20.7(h)1 as determined by the Department of Environmental Protection shall be land applied to commercial farms.

(d) Food processing by-product shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under section 4 of the Federal Endangered Species Act, 16 U.S.C. § 1533, or its designated critical habitat.

(e) Food processing by-product shall not be applied to agricultural land that is 10 meters or less form the waters of the State, as defined in N.J.A.C. 7:14A–1.2, unless otherwise specified by the Department of Environmental Protection.

(f) Food processing by-product shall be applied to agricultural land at an application rate that is equal to or less than the agronomic rate for the food processing by-product.

(g) Runoff and erosion controls are essential to sound management. Overland flow increases the potential for contamination of surface waters. Erosion decreases soil productivity and increases sediment loads in streams. Soil conservation practices are designed to promote infiltration and slow down the velocity of water that flows over the soil surface. Therefore, it is recommended that food processing by-product be land applied to commercial farms in conjunction with and conformance to a farm conservation plan prepared by the United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS) and approved by the Soil Conservation District.

(h) It is recommended that each farm conservation plan address the commercial farm's site characteristics in order to assess the farm's suitability for land application of food processing by-product including, but not limited to, permeability of the most restrictive layer between zero and 60 inches, infiltration rate, soil drainage class, runoff class, slope, depth to seasonal high water table, frequency of flooding, depth to bedrock and ability to provide adequate buffer zones surrounding land application areas.

(i) Evaluating a commercial farm for beneficial use of food processing by-products requires working within the commercial farmer's existing management system. Food processing by-products utilization should not alter decisions on the crops to grow, the crop rotations to use, and whether to drain, irrigate, or lime the soil. The crop management system dictates when a field is accessible, the frequency of food processing by-product application, the expected amount of nutrients the food processing by-products must deliver, and the application methods.

1. Food processing by-product may be applied to row, grain, pasture and horticulture crops. The crops most likely to be used in a food processing by-products utilization program are pasture and forage, grain and grass seed, and row crops. Row crops include food crops (crops grown for direct human consumption or animal feeds) and non-food crops such as Christmas trees and ornamentals.

2. All food processing by-product samples collected for analysis should be representative of the food processing by-product residual to be land applied.

3. All plant-available nutrients supplied via food processing by-products and other carriers (that is, manure or fertilizers) should be counted toward satisfying the nutrient requirement of a crop and should not exceed said nutrient requirement.

4. Applications of available nutrients to crops that will not be harvested (for example, green manure crops) shall be limited to that rate recommended as the "establishment" rate for that crop, and shall be assumed to be available for the next crop grown.

5. All crop management practices shall aim at attaining the expected yield goal.

6. All crops shall be planted during the season of the year which is most appropriate for the growth of that crop, such that crop growth and maturation, with consequent nutrient uptake and utilization, is maximized.

7. A crop should be sown on fallow fields within 30 days of the initiation of food processing by-product land application activities on said fields, provided field conditions permit or as soon thereafter as field conditions permit.

8. The food processing by-product application rate for each field should be uniform over all sections of that field.

9. Where appropriate, applications of nutrients via food processing by-product may be modified at the discretion of the Department of Environmental Protection through evaluation of monitoring reports, compliance inspection reports or other relevant information including, but not limited to, data concerning food processing by-product quality, soil and crop yield, expert research in the field, and recommendations by County Agricultural Extension Agents or staff of the USDA-NRCS, Soil Conservation District or State Agriculture Development Committee.

(j) Subsurface injection and/or surface application are generally acceptable methods of land applying food processing by-product. Other methods of application, as reviewed and approved in writing by the Department of Environmental Protection, may be more appropriate for certain land applications of food processing by-product. The characteristics of a specific food processing by-product and of the specific commercial farm land application site (for example, slope and infiltration rate) should be evaluated to determine the most appropriate application method. The Department of Environmental Protection, where necessary, may limit the availability of a specific method of application where site specific factors warrant.

(k) Sometimes runoff is inevitable, even from pastures and well-protected fields. This is especially true during high-intensity storms and when the soil is frozen. Regardless of other conservation practices that might be in place, food processing by-products shall not be put on the soil at these times. In fact, N.J.A.C. 7:14A–20.7(b)2ii prohibits the application of food processing by-product to flooded, frozen or snow-covered land if the food processing by-product could enter surface waters or wetlands. Generally, land is considered flooded when the soil at the surface of the land is saturated with water, regardless of whether water is visible on the ground. Such flooding conditions may be produced by heavy precipitation that occurs locally or at some distance from the commercial farm, the rise of any nearby surface waters, the rise of the groundwater table, the melting of snow and ice, or irrigation.

New Rule, R.1999 d.325, effective September 20, 1999.
See: 31 N.J.R. 1655(a), 31 N.J.R. 2739(a).

2:76–2A.5 Commercial vegetable production agricultural management practice

(a) Pursuant to the authority of N.J.A.C. 1:30–2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension "2000 Commercial Vegetable Production Recommendations" as the commercial vegetable production agricultural management practice, subject to the modifications as stated in (c) below.

(b) The Rutgers Cooperative Extension will revise its publication annually to include new information. The adoption and incorporation by reference in (a) above does not include future supplements and amendments.

(c) The recommendations concerning sewage sludge addressed by the "2000 Commercial Vegetable Production Recommendations" in the section entitled "Sewage Sludge" or any other section, are excluded from the commercial vegetable production agricultural management practice.

(d) Copies of the "2000 Commercial Vegetable Production Recommendations" may be purchased from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901–8520.

New Rule, R.1999 d.366, effective October 18, 1999.
See: 31 N.J.R. 2021(a), 31 N.J.R. 3081(b).
Amended by R.2000 d.450, effective November 6, 2000.
See: 32 N.J.R. 2636(a), 32 N.J.R. 3974(a).
In (a), (c) and (d), substituted references to 2000 for references to 1999; and in (d), deleted a former third sentence.

2:76–2A.6 Commercial tree fruit production agricultural management practice

(a) Pursuant to the authority of N.J.A.C. 1:30–2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension "New Jersey Commercial Tree Fruit Production Guide 2000" as the commercial tree fruit production agricultural management practice.

(b) Rutgers Cooperative Extension will update its publication as changes in labels and restrictions warrant. The adoption and incorporation by reference in (a) above does not include future supplements and amendments.

(c) Copies of the "New Jersey Commercial Tree Fruit Production Guide 2000" may be purchased from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901–8520. In addition, the publication is available free of charge on the Rutgers Cooperative Extension site on the World Wide Web at http://www.rce.rutgers.edu.

New Rule, R.1999 d.367, effective October 18, 1999.
See: 31 N.J.R. 2023(a), 31 N.J.R. 3081(c).
Amended by R.2000 d.450, effective November 6, 2000.
See: 32 N.J.R. 2636(a), 32 N.J.R. 3974(a).
In (a) and (c), substituted references to 2000 for references to 1999.

2:76-2A.7 Natural resource conservation agricultural management practice

(a) The purpose of this section is to establish a generally accepted agricultural management practice for the implementation of a farm conservation plan for the conservation and development of soil, water and related natural resources on farmland.

(b) The following terms, as used in this section, shall have the following meanings:

"District" or "Soil Conservation District" (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

"Farm conservation plan" means a site specific plan developed by the landowner and approved by the local soil conservation district which prescribes needed land treatment and related conservation and natural resource management measures including forest management practices that are determined practical and reasonable to conserve, protect and develop natural resources, to maintain and enhance agricultural productivity and to control and prevent nonpoint source pollution.

"United States Department of Agriculture, Natural Resources Conservation Service, (NRCS) Field Office Technical Guide" means a composite of national, regional, State and local data and standards derived primarily from local universities, NRCS and conservation district offices and cooperating conservation agencies which administer natural resource conservation programs.

(c) The implementation of a farm conservation plan on farmland shall be a generally accepted agricultural management practice recommended by the Committee.

1. A farm conservation plan shall be prepared in conformance with the following:

i. United States Department of Agriculture, Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), revised April 20, 1998, incorporated herein by reference, as amended and supplemented; and

ii. Forest management practices shall be in accordance with standards and specifications adopted by the New Jersey Department of Environmental Protection, Bureau of Forest Management where such standards and specifications are not included in the NRCS FOTG.

2. For purposes of this recommended agricultural management practice, a farm conservation plan which includes recommendations concerning land application of sewage sludge-derived products is not recommended as a generally accepted agricultural management practice by the Committee.

New Rule, R.2000 d.96, effective March 6, 2000.
See: 31 N.J.R. 3881(a), 32 N.J.R. 787(a).

2:76-2A.8 Agricultural management practice for on-farm compost operations

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Natural Resource, Agriculture, and Engineering Service's "Field Guide to On-Farm Composting," NRAES-114, as the agricultural management practice for on-farm compost operations operating on commercial farms, provided that:

1. Biosolids, including sludge derived materials, paper sludge, cotton sludge, slaughter wastes, and solid wastes subject to regulation under N.J.A.C. 7:26 are not part of the compost mixture;

2. The finished compost product is not distributed or sold to off-farm users, except as set forth in N.J.A.C. 2:76-2B.3(b)3;

3. The production or use of compost on a commercial farm be in accordance with the requirements of the Water Pollution Control Act, N.J.S.A. 58:10-1 et seq., N.J.A.C. 7:26A, N.J.A.C. 7:14A and this section;

4. Only finished compost meeting the product quality criteria at N.J.A.C. 7:26A-4.5(c) shall be land applied to commercial farms; and

5. The location of compost areas and the land application of compost to commercial farms shall be in conjunction with and conformance to a farm conservation plan prepared by the United States Department of Agriculture-Natural Resources Conservation Service ("USDA-NRCS") and approved by the Soil Conservation District.

(b) Within one year of the start-up of the composting operation, commercial farm operators shall attend a composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the New Jersey Department of Environmental Protection.

(c) Copies of the "Field Guide to On-Farm Composting" may be purchased from the Natural Resource, Agriculture, and Engineering Service, Cooperative Extension, 152 Riley Robb Hall, Ithaca, NY 14853-5701.Purchasing information is also available on the Natural Resource, Agriculture, and Engineering Service's site on the World Wide Web at http://www.NRAES.ORG.

New Rule, R.2002 d.94, effective March 18, 2002.
See: 33 N.J.R. 2564(a), 34 N.J.R. 1262(c).
Amended by R.2008 d.229, effective August 4, 2008.
See: 39 N.J.R. 2561(a), 40 N.J.R. 4503(a).

Section was "Agricultural management practice for on-farm compost operations operating on commercial farms". In (a)2, inserted ", except as set forth in N.J.A.C. 2:76-2B.3(b)3".

2:76-2A.9 Fencing installation agricultural management practice for wildlife control

(a) The installation of fencing on farmland for protection against wildlife damage shall be a generally accepted agricultural management practice recommended by the Committee.

1. The installation of fencing on farmland for protection against wildlife damage shall be performed in accordance with the following:

i. With respect to high-tensile woven wire fencing, the Rutgers Cooperative Extension publication entitled "High-Tensile Woven Wire Fences for Reducing Wildlife Damage," FS 8XX, which the State Agriculture Development Committee hereby adopts and incorporates by reference, as amended and supplemented, pursuant to N.J.A.C. 1:30-2.2;

ii. With respect to electric fencing, the Rutgers Cooperative Extension publication entitled "Vertical Seven-Wire Deer Control Fence," FS 151, which the State Agriculture Development Committee hereby adopts and incorporates by reference, as amended and supplemented, pursuant to N.J.A.C. 1:30-2.2; and

iii. The particular fence manufacturer's installation instructions and guidelines.

2. Pursuant to N.J.S.A. 4:1C-9, N.J.A.C. 2:76-2.3 and N.J.A.C. 2:76-2.4, a commercial farm operator shall request a site specific agricultural management practice recommendation from the appropriate County Agriculture Development Board or the State Agriculture Development Committee in counties where no County Agriculture Development Boards exist, when installing, maintaining or utilizing a type of fence not specifically recommended in this agricultural management practice.

3. Copies of "High-Tensile Woven Wire Fences for Reducing Wildlife Damage" and "Vertical Seven-Wire Deer Control Fence" may be obtained from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520.

New Rule, R.2002 d.93, effective March 18, 2002.
See: 33 N.J.R. 2566(a), 34 N.J.R. 1263(a).

2:76-2A.10 Agricultural management practice for equine activities on commercial farms

(a) This agricultural management practice sets forth standards for equine operations and activities, with which farm operations must be in compliance to receive the protections of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

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

"Drylot" means an area with less than 70 percent vegetative cover used for turnout of horses.

"Stocking rate" means the amount of land area allocated to each horse for a specific period of time.

"Turnout" means the practice of turning horses loose in an area for all or part of the day.

(c) The standards for farm stocking rates are as follows:

1. The following categories of horse management schemes shall constitute the basis for determining the stocking rate for an individual farm, as set forth in (c)2 through 3 below:

i. Pasture regime: Farms that use pasture as a substantial source of nutrition for horses and/or for regular turnout as the horses' primary source of exercise;

ii. Drylot regime: Farms that provide nutrition to horses primarily through purchased or farm-grown feed, and regularly turnout horses on a drylot; and

iii. No regular turnout regime: Farms that provide nutrition to horses solely with purchased or farm-grown feed and that utilize equitation programs for exercise instead of regular turnout.

2. The standards for pasture regime are as follows:

i. Where pasture provides a significant source of nutrition and exercise, at least 70 percent vegetative cover in the pasture shall be maintained by restricting the number of horses and time allowed for turnout, and through pasture management.

ii. Stocking rates for pasture regimes shall be determined on a case-by-case basis using the following factors:

(1) The size of the horse;

(2) The length of turnout time each day;

(3) The yield potential of the pasture;

(4) Pasture management (mowing, irrigating, fertilizing, seeding, and pasture rotation);

(5) Drainage;

(6) Soil type; and

(7) Weather conditions and season.

3. For drylot regime and no regular turnout regime, stocking rates for farms which utilize a drylot regime or no regular turnout regime shall be determined on a case-by-case basis by an evaluation of the farm's manure management and dust management practices, pursuant to (d) and (e) below.

(d) The standards for manure management are as follows:

1. General provisions concerning manure management are as follows:

i. Manure management includes the storage, removal, disposal and composting of manure generated on the farm.

ii. Manure management, including the siting and size of storage areas and composting facilities, shall comply with:

(1) All relevant State and Federal statutes, rules and regulations; and

(2) A farm conservation plan approved by the local soil conservation district pursuant to N.J.A.C. 2:90 and prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), incorporated herein by reference, as amended and supplemented, available at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ.

iii. Equine operations that are deemed concentrated animal feeding operations (CAFO), as defined in N.J.A.C. 7:14A-1.2, shall comply with all relevant State and Federal rules and regulations.

iv. The primary goal of manure management is to minimize odor at storage and application sites, as odors can never be completely eliminated.

2. The standards for manure disposal are as follows:

i. Manure may be disposed of by:

(1) Spreading on the farm;

(2) Removal for off-farm use; and/or

(3) Composting, in conformance with N.J.A.C. 2:76-2A.8.

ii. Manure shall be spread in accordance with relevant State and Federal rules and regulations, the NRCS FOTG, incorporated herein by reference, as amended and supplemented, available at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ, and the Penn State Agronomy Guide, 2007-2008, incorporated herein by reference, as amended and supplemented and available at http://agguide.agronomy.psu.edu/.

iii. The standards for short-term storage of manure are as follows:

(1) If a farm operator disposes of manure by selling or giving it away for off-farm use, he may store the manure for periods no longer than three months.

i. Storage for longer periods may be permitted based on weather conditions and cropping systems of the land where the manure is intended to be applied.

(2) Manure shall be stored in dumpsters or other receptacles and situated on a concrete pad or other surface that complies with NRCS recommendations based on the FOTG, incorporated herein by reference, as amended and supplemented, available at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ.

(3) Manure shall be kept as dry as possible to minimize the breeding of flies, vectors, and other fomites.

iv. The standards for long-term storage of manure are as follows:

(1) If a farmer stores manure for the purpose of holding it until he can spread it on his farm, the storage areas shall conform with the standards contained in the NRCS FOTG, incorporated herein by reference, as amended and supplemented, available at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ, or a farm conservation plan prepared in accordance with the NRCS FOTG and approved by the local soil conservation district pursuant to N.J.A.C. 2:90.

(2) Farmers shall make reasonable efforts to minimize the breeding of flies, vectors, and other fomites.

3. Manure storage and composting facilities, and dumpsters containing manure that is to be removed from the farm, shall be located at least 50 feet from property lines, 200 feet from residences on adjacent properties, and 100 feet away from waters of the State.

(e) The standards for riding and training areas are as follows:

1. Riding and training areas include, but are not limited to, indoor and outdoor arenas, racetracks, training tracks.

2. Riding and training areas shall be located in a well-drained area of the farm.

3. Arenas shall be maintained as follows:

i. Manure, shavings and straw shall not be placed in arenas, as these materials can increase the amount of dust in the arena and serve as a breeding area for flies, vectors, and other fomites.

ii. The arena surface, and the area immediately outside the arena, shall be maintained to prevent weeds, unmowed grass, and an accumulation of debris, which can impede the flow of rainwater out of the arena, and serve as habitat for insects and rodents.

4. Dust management requirements shall be as follows:

i. The goal of dust management shall be to minimize dust, as dust can never be completely eliminated.

ii. Farm operators shall take all reasonable and economically feasible measures to minimize dust production and dissemination, including, but not limited to, applying water, applying other recommended products

in accordance with manufacturer guidelines, and establishing and maintaining vegetative buffers or windbreaks.

iii. Water application standards are as follows:

(1) Water is the most effective dust control and bonding agent in indoor and outdoor arenas.

(2) The frequency of watering shall depend upon weather conditions, the type of arena footing, and the intensity of arena use.

(3) Water shall be applied to riding and training areas and driveways in the evening, as it allows a deeper absorption of water, and less water is lost due to wind and evaporation.

(4) If dust is a persistent problem, water shall be applied additional times during the day.

iv. Waste oil shall not be used to control dust.

(f) Fencing standards are as follows:

1. Horse fences may be constructed and maintained around pastures, exercise areas, equine facilities, water bodies, and areas that can pose a danger to people or horses.

2. Fences shall be set back from property lines at a distance that is sufficient to:

i. Prevent horses from causing damage to trees and shrubs on neighboring properties;

ii. Facilitate fence repair;

iii. Facilitate mowing; and

iv. Prevent neighbors from having impermissible access to the horses.

3. For non-electric fences, the fence height shall not be less than four feet nor greater than eight feet.

4. The standards for fencing materials are as follows:

i. Fencing can be constructed of wood, wire mesh, high tensile wire, metal pipe, or other suitable material.

ii. If electric fences, tapes or wire are used, appropriate warning signs shall be posted to alert persons on the farm and on neighboring properties of the fence and its potential hazards.

iii. Barbed wire fencing is not recommended, but if used, risk to horses shall be minimized.

5. Fencing to control wildlife shall conform to N.J.A.C. 2:76-2A.9, Fencing installation agricultural management practice for wildlife control.

(g) If the Board or Committee determines that this section does not completely address an agricultural activity being considered for protection under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., the Board or Committee shall decide whether those aspects of the activity comply with generally accepted agricultural operations or practices.

New Rule, R.2008 d.229, effective August 4, 2008.
See: 39 N.J.R. 2561(a), 40 N.J.R. 4503(a).
Section was "Reserved".

2:76-2A.11 Aquaculture agricultural management practice

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the manual entitled "Recommended Management Practices for Aquatic Farms," published by Rutgers Cooperative Extension and the New Jersey Department of Agriculture in 2004, with a revision date of March 2004, as the agricultural management practice for aquaculture activities on commercial farms, with the following conditions:

1. If the Board or Committee determines that the publication "Recommended Management Practices for Aquatic Farms" does not completely address an agricultural activity being considered for protection under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., the Board or Committee shall decide whether those aspects of the activity not addressed by the publication comply with generally accepted agricultural operations or practices.

i. In making these decisions, the Board or Committee may consult with the Aquaculture Technical Committee, a body consisting of aquaculture professionals with technical expertise, as well as with the other agencies, organizations, and persons specified at N.J.A.C. 2:76-2.3(d).

2. All recommendations in "Recommended Management Practices for Aquatic Farms" shall become mandatory requirements with which a farmer must comply to receive the protections of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

3. Section VI, Part Two, entitled "Aquatic Organism Importation" of "Recommended Management Practices for Aquatic Farms" is excluded from the Aquaculture Agricultural Management Practice.

(b) Rutgers Cooperative Extension and the New Jersey Department of Agriculture will update its publication as changes in industry standards warrant. The adoption and incorporation by reference in (a) above does not includes future supplements and amendments.

(c) Copies of "Recommended Management Practices for Aquatic Farms" may be obtained from the New Jersey Department of Agriculture, Fish and Seafood Development Program, PO Box 330, Trenton, NJ 08625, and from the Department's website at http://www.state.nj.us/agriculture/rural/seafood/aquaculture.htm.

New Rule, R.2005 d.36, effective January 18, 2005.
See: 36 N.J.R. 3461(a), 37 N.J.R. 262(b).

2:76-2A.12 Agricultural management practice for the construction, installation, operation or maintenance of solar energy generation facilities, structures and equipment on commercial farms

(a) As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Ambient sound level" means that measured value, which represents the summation of the sound from all of the discrete sources affecting a given site at a given time.

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

"Commercial farm" means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.; or

2. A farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.

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

"Conservation plan" means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical and reasonable for the conservation, protection and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

"dBA" means the sound level as measured using the "A" weighting network with a sound level meter.

"dBZ" means the sound level as measured using the "Z" weighting network with an octave band sound level meter.

"Decibel" means the practical unit of measurement for sound pressure level as defined in N.J.A.C. 7:29.

"Geotextile fabrics" means permeable, woven and non-woven fabrics that allow for water infiltration into the underlying soil.

"L90" means the sound level exceeded for 90 percent of the duration of a measurement period.

"Lmin" means the minimum sound level measured during a measurement period.

"New Jersey Field Office Technical Guide (NJ-FOTG)" means the USDA-NRCS technical reference, which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conversation and management of soil, water and related natural resources, which is available at http://efotg.nrcs.usda.gov/efotg_locater.aspx?map=NJ.

"Occupied area" means the total contiguous or non-contiguous area(s) supporting the solar energy generation facilities and related infrastructure. The total area calculation shall include land devoted to the solar energy generation facilities; nonfarm roadways; roadway or utility easements accessing the solar generation facilities; any areas of the farm used for underground piping or wiring to transmit solar energy or heat where the piping or wiring is less than three feet from the surface; and any other buildings or site amenities deemed necessary for the production of solar energy on the farm.

"Octave band sound level meter" means an instrument that conforms to ANSI S1.4-1983 or its successors and ANSI S1.11-1986 or its successors.

"Operator" means the person or entity that installs, owns or controls the solar energy generation facilities, structures and equipment.

"Owner" means the owner of record of the commercial farm.

"Prime farmlands" means lands so defined by the USDA Natural Resources Conservation Service.

"Setback" means the distance measured from the nearest vertical component within the occupied area, including, but not limited to, solar arrays, inverters and fencing.

"Site plan" means a plot plan that includes the following:

1. Property lines and physical dimensions of the commercial farm;

2. Location, configuration and size of the occupied area measured in square feet and acres;

3. Method of mounting, system height and generating capacity (in alternating current) of the solar energy generation facilities;

4. Computed distances for setbacks and screening where required;

5. Proposed new roadways and existing roadways to access the facilities;

6. Use of concrete, asphalt, gravel, geotextile fabrics and the nature and extent of any site disturbances within the occupied area;

7. A copy of the USDA, Natural Resources Conservation Service soil map that uses the most current Soil Survey Geographic (SSURGO) database with a summary of the soil mapping units and designation of prime farmlands for the entire property;

8. A copy of the conservation plan that was approved by the soil conservation district, which is referenced in this section;

9. A copy of the farmland assessment form approved by the local tax assessor for the commercial farm; and

10. A copy of the analysis demonstrating that the solar energy generation system has been designed to comply with the sound standards in (j) below.

"Solar energy" means electricity or heat that is generated through a system that employs solar radiation.

"Solar energy generation facilities" means all the components of a solar energy generation system, including, but not limited to, structures and equipment, photovoltaic panels and films, arrays, collectors, piping, footings, supports, mounting and stabilization devices, inverters, pumps, transformers, electrical distribution and transmission wires, utility poles and other on-farm infrastructure necessary to operate and maintain the system for the generation of power or heat.

"Sound level meter" means an instrument that conforms to ANSI S1.4-1983 or its successors.

"System height" means the highest point of any component of the solar energy generation facilities, structures and equipment at any point in time, as measured from the ground beneath that point.

"Vegetative screen" means the planting of deciduous and non-deciduous trees, shrubs, grasses and other vegetation to serve as a visual screen to obstruct the view of the solar energy generation facilities.

(b) The owner or operator of a commercial farm who is engaged in the construction, installation, operation or maintenance of a solar energy generation facility for purposes of generating solar energy, and is seeking the benefits and protections of the Right to Farm Act, shall comply with the provisions of this section and relevant or applicable State and Federal rules and regulations including, but not limited to, the following:

1. The Right to Farm Act, N.J.S.A. 4:1C-9;

2. The Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.;

3. The Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and the standards of P.L. 1979, c. 111, and the Comprehensive Management Plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 for any lands located in the Pinelands Area;

4. The Coastal Area Facilities Review Act, N.J.S.A. 13:19-1 et seq., and the New Jersey Department of Environmental Protection Coastal Zone Management rules at N.J.A.C. 7:7E;

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

6. The Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; and

7. The State Uniform Construction Code, N.J.A.C. 5:23.

(c) The interconnection of the solar energy generation facilities to the electrical transmission or distribution system is subject to any applicable requirements of the Federal or State government.

(d) An owner or operator of a commercial farm who is seeking right-to-farm protection for the construction, installation, operation or maintenance of a solar energy generation facility shall provide a site plan to the board or committee upon request.

(e) Solar energy generation facilities shall not be constructed or installed on prime farmlands to the maximum extent physically and financially practicable.

(f) The mounting of solar photovoltaic panels, collectors or films constructed, installed and operated on the farm shall be done in the following manner:

1. To minimize adverse impacts on the productivity of the soil, the preferred installation shall be as follows:

i. On buildings or facilities;

ii. On the ground by a screw, piling or similar system that does not require a concrete footing or other permanent mounting; or

iii. Where the occupied area does not exceed one acre on the ground using gravel within contained structures, concrete block or similar materials for the purpose of providing ballast for mounting the solar energy generation facilities; or

2. In the event that the method in (f)1 above, of mounting the solar photovoltaic panels, collectors or films, are not practicable, then written justification shall be provided by a licensed professional engineer responsible for designing the installation of the solar photovoltaic panels, collectors or films that a permanent ground mounting is necessary to conform with Federal or State laws, rules or regulations and that the permanent mounting requires footings, concrete or other permanent methods.

(g) Ground-mounted solar energy generation facilities shall be constructed in compliance with the following system height, setback and screening standards:

1.

Mounting	System Height	Size Of Occupied Area	Minimum Setback To an Adjacent Residence Existing at the Time of System Installation and Not Located on the Commercial Farm	Minimum Setback To Property Line or Public Roadway Right of Way	Required Screening
Ground	Up to two feet	Up to one acre	200 feet	100 feet	Not Required
Ground	Greater than two feet up to 10 feet	Up to one acre	300 feet	150 feet	Not Required
Ground	Up to 10 feet	Greater than one acre up to 10 acres	300 feet	150 feet	Required
			400 feet	300 feet	Not required
Ground	Greater than 10 feet up to 20 feet	Up to 10 acres	300 feet	300 feet	Required
			500 feet	400 feet	Not required

2. Solar energy generation facilities shall not exceed a maximum system height of 20 feet.

3. Solar energy generation facilities shall be located in a manner that minimizes views of the facilities from public roadways and existing residences not located on the commercial farm, by utilizing existing visual barriers including, but not limited to, buildings, trees, hedgerows and pre-existing natural topography to the maximum extent possible.

i. In the event that existing visual barriers do not fully obstruct the view of the solar energy generation facilities, the installation of vegetative screens is required in certain circumstances as identified in paragraph (g)1 above.

ii. The installation of required vegetative screens shall comply with the aesthetic standards of the conservation plan approved by the soil conservation district and implemented by the owner pursuant to N.J.S.A. 54:4-23.3c.

(1) The conservation plan approved by the soil conservation district must address the soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the Natural Resources Conservation Service NJ-Field Office Technical Guide (NJ-FOTG). The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet.

iii. The aesthetic standards of the conservation plan shall address the following:

(1) The use of existing visual barriers, where practicable;

(2) The need for and location of vegetative screens, including the identification of appropriate species and varieties of vegetation, to ensure that there is adequate visual screening throughout the year; and

(3) The appropriate height or caliper of the vegetation to be planted to ensure that there is a 75 percent screening of the solar energy generation facilities from existing residences on adjacent properties and public roadways within five years of completing the installation of the facilities.

(h) The solar energy generation facilities shall be constructed to avoid solar reflection on adjoining properties and public roadways.

(i) The treatment of the land for purposes of constructing, installing, operating or maintaining the solar energy generation facilities within the occupied area shall be in accordance with the following standards:

1. The use of existing roadways to provide access to the solar energy generation facilities shall be maximized to avoid the construction of new onsite roadways to the extent practicable.

i. New roadways within the occupied area shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff and soil compaction.

ii. The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary roadways during the construction of the solar energy generation facilities is permitted provided that the geotextile fabrics and gravel are removed once the solar energy generation facilities are in operation;

2. The use of geotextile fabrics covered by a layer of gravel is permitted as a base for the installation of solar energy generation facilities provided that the system height is no greater than two feet and the occupied area does not exceed one acre;

3. The use of concrete or asphalt is prohibited within the occupied area, except as follows:

i. The mounting of inverters, transformers, power conditioning units, control boxes, pumps and other such system components;

ii. The mounting of solar photovoltaic panels, films and arrays when used as ballast, as described in paragraph (f)1 above; and

iii. The mounting of the solar photovoltaic panels, films and arrays, if determined necessary by a licensed professional engineer as described in paragraph (f)2 above;

4. Site disturbance including, but not limited to, grading, soil removal, excavation and soil compaction is limited to no more than one acre within the occupied area to ensure that the area can readily be returned to active agricultural or horticultural production after the removal of the solar energy generation facilities;

5. During construction and installation of the solar energy generation facilities, appropriate measures are taken to control soil erosion from wind and water including, but not limited to, the following:

i. The temporary stabilization of exposed areas using vegetative cover or mulch; and

ii. The application of non-potable water to exposed areas and the utilization of barriers to control air current and minimize soil blowing;

6. During operation and maintenance of solar energy generation facilities, appropriate measures are taken to address soil and water resource concerns in accordance with the conservation plan;

7. The use of geotextile fabrics is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section; and

8. Where it is not practicable to utilize the occupied area for agricultural or horticultural production in accordance with N.J.S.A. 54:4-23.1 et seq., the occupied area shall be maintained in a vegetative cover to prevent soil erosion, mowed on a regular basis and managed to prevent weeds or other invasive species from growing or spreading to other areas of the commercial farm or surrounding properties.

(j) Solar energy generation facilities shall be designed to comply with either of the following standards for sound emission:

1. The sound level shall not exceed 40 dBA when measured at any point on the property line of the commercial farm; or

2. The sound level shall not exceed the ambient sound levels measured at locations at the property line of the commercial farm that reasonably represent current or potential off-site sensitive receptors in accordance with the following requirements:

i. Ambient sound level measurements shall be made with an octave band sound level meter during daylight hours for periods of at least one half hour and on three separate occasions, a minimum of four hours apart, representing morning, mid-day and evening, at least one of which should be during a non-rush hour. The meter shall be set for slow response with a one second sampling interval; and

ii. The data reported for each occasion shall be the octave band values (31.5 Hz to 8,000 Hz) from the one second sample that represents the L90 or Lmin broadband value ("unweighted" or "flat" response, for example, dBZ).

(k) All inverters, transformers, power conditioning units and other system components that are designed to convert or modify electric current, or transmit electricity to the transmission or distribution system, shall be secured and entirely contained within a structure, building or steel cabinet secured with an operating lock.

(*l*) There shall be no signs that are visible from any public road posted on the energy generation facilities, equipment and structures, except for the manufacturer's or installer's identification, appropriate warning signs or owner identification.

(m) The solar energy generation facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are no longer being utilized to produce solar energy for a period of 18 consecutive months.

1. The decommissioning of all solar energy generation facilities shall be subject to local ordinances.

2. The decommissioning of all solar energy generation facilities shall be done in accordance with a conservation plan designed to address the impacts of the decommissioning process.

i. The conservation plan approved by the soil conservation district shall require, at a minimum, that all solar energy generation facilities shall be removed from the commercial farm and that the land shall be restored in accordance with the conservation plan prepared pursuant to NJ-FOTG in order to achieve as much agricultural productivity of the soil as practicable.

New Rule, R.2011 d.222, effective August 15, 2011.
See: 43 N.J.R. 231(a), 43 N.J.R. 2157(a).

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

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

tural management practices for commercial farms seeking the protections of the Act.

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

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

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

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

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

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

"Commercial farm" means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.); or

2. A farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.).

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

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

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

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

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

not considered farm-based recreational activities include, but are not limited to: athletic fields; paintball; go-karting and other similar racetracks; carnival-type amusement rides; and the flying of hobby, private, or commercial aircraft.

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

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

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

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

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

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

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

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

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

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

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

Recreational activities. Covered sales areas include sales areas inside structures and sales areas underneath tents, awnings, and other canopies.

"Sanitary facilities" means restrooms or portable toilets.

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

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

1. On-farm direct marketing facilities and activities may be open or offered on weekdays, weekends, holidays, seasonally, for part of the year, or year-round.

2. On-farm direct marketing events may be offered on weekdays, weekends, holidays, seasonally, or for part of the year.

3. Hours of operation may be between 6:00 A.M. and 10:00 P.M. These hours may be temporarily extended to 11:00 P.M. in conjunction with seasonal on-farm direct marketing sales, activities, or events.

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

1. When an on-farm direct marketing facility, activity, or event is open or offered after dark, a commercial farm shall provide, unless specified otherwise in this section, lighting for areas used by customers, such as: walkways, parking areas, sales areas, activity areas, and event areas. This lighting shall provide, at a minimum, the amount of light necessary for customer safety.

2. All lighting shall be provided with lights focused either downward or with an orientation designed to minimize light spilling off the site and to minimize impacts on adjacent off-farm residential buildings and streets. Lights shall not be focused directly onto public roads.

3. Any temporary lighting shall be removed within 30 days after the activity or event has ended.

4. Lighting for on-farm direct marketing purposes shall be turned off within half an hour of the close of business.

5. In addition to lighting referenced in (d)1 through 4 above for on-farm direct marketing purposes, a commercial farm may use lighting for other farm management purposes, for example, for security. Security lighting may be used to help protect a farm's products or other physical or natural resources and to discourage trespassing and vandalism and is subject to the provisions in (d)2 above.

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

1. A commercial farm shall provide sanitary facilities in the following cases:

i. If indoor seating space, outdoor picnic tables, or other areas are made available to enable customers to consume food on-site;

ii. If an on-farm direct marketing activity or event promotes customers staying on-site for more than 90 minutes; and

iii. When required pursuant to N.J.A.C. 8:24, the Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, or N.J.A.C. 5:23, the New Jersey Uniform Construction Code.

2. The number of sanitary facilities provided shall be sufficient to accommodate, without causing long queues, the volume of visitors expected in conjunction with on-farm direct marketing facilities, activities, or events.

3. A commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of the sanitary facilities. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations.

4. Sanitary facilities shall be located and managed with an appropriate cleaning schedule, so as to prevent adverse impacts on adjacent properties, such as odors.

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

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

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

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

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

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

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

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

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

iii. Signs may have information on both sides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The general standards are as follows:

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

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

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

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

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

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

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

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

(6) The economic feasibility of using buffers.

2. The setback requirements are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Adjacent property uses and buffers;

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

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

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

(E) The economic feasibility of using buffers; and

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

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

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

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

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

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

iii. If the screening is comprised of vegetation and if used in conjunction with an activity or event offered in two or more consecutive years, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the activity or event within five years;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Visitors shall be informed of any rules associated with the maze, including how to exit the maze in the event of an emergency;

ii. Farm staff shall walk through the maze periodically, or periodically observe the maze from an elevated location, to check for lost visitors. Farm staff shall similarly check for lost visitors before closing the maze;

iii. If a maze is open after dark, adequate lighting shall be provided by the commercial farm and/or used by visitors to illuminate the traveled paths. If lighting is provided, the lighting shall be turned off within half an hour of the close of business; and

iv. No smoking or any other open flames shall be permitted in or near the maze.

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

i. Wagons shall be in good repair and have sideboards to contain occupants;

ii. A ladder, ramp, footstool, steps, or other stable device or component shall be used to assist with safe boarding of and disembarking from wagons;

iii. When using a tractor to tow wagons, the left and right brakes of the tractor shall be locked together;

iv. No smoking or any other open flames shall be permitted on hayrides and wagon rides; and

v. Wagon operators shall:

(1) Plan routes in advance;

(2) Be familiar with and have experience operating the tractor and wagon equipment;

(3) Be familiar with and have experience using draft animals, if applicable, and the wagon equipment;

(4) Evenly distribute passengers on the wagons and instruct passengers to remain seated during the ride;

(5) Operate tractor and wagon equipment in low gears and at safe speeds; and

(6) Have a current motor vehicle operator's license.

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

i. A farm employee or activity attendant shall regularly monitor activities in which visitors may have incidental contact with agricultural animals. Incidental contact includes, but is not limited to, agricultural animal display, petting, or feeding areas;

ii. A farm employee or activity attendant shall be present at all times to monitor activities in which visitors are permitted to have direct contact with agricultural animals. Direct contact includes, but is not limited to, horseback riding, pony rides, and animal shows, competitions, or demonstrations;

iii. All agricultural animals having incidental or direct contact with the public shall be observed daily for health problems by a farm employee or activity attendant. Sick animals or animals behaving strangely shall be prevented from having contact with the public;

iv. Hand-sanitizing facilities shall be provided and readily available if an activity is offered in which visitors may have incidental or direct contact with agricultural animals. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations. Visitors shall be advised to sanitize their hands after contact with agricultural animals;

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

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

vii. The management of animals shall comply with the Animal Welfare Act, 7 U.S.C. § 54, and the Humane

Treatment of Domestic Livestock rules, N.J.A.C. 2:8, as applicable, and any other relevant State and Federal laws, rules, or regulations.

6. For bonfires, the following standards shall apply:

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

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

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

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

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

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

iii. Traffic management includes:

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

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

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

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

iv. Public health management includes:

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

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

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

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

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

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

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

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

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

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

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

ii. A commercial farm applying to a county agriculture development board or the Committee for approval of site plan elements shall request a site-specific agri-

cultural management practice determination pursuant to N.J.A.C. 2:76-2.3 and 2.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

New Rule, R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).

SUBCHAPTER 2B. SUPPLEMENTAL AGRICULTURAL ACTIVITIES

2:76-2B.1 Determination basis

Pursuant to N.J.S.A. 4:1C-9(i), the supplemental agricultural activities contained in this subchapter are determined to be eligible to receive the protection of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

2:76-2B.2 Eligibility of pick-your-own operations for Right to Farm protections

Pick-your-own operations rules are set forth in N.J.A.C. 2:76-2A.13.

Repeal and New Rule, R.2014 d.057, effective April 7, 2014.
See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).
Section was "Eligibility of pick-your-own operations for Right to Farm protections".

2:76-2B.3 Eligibility of equine activities for right to farm protections

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

"All other land not devoted to agricultural or horticultural use" means land other than that used in connection with the farmhouse that is not devoted to an agricultural or horticultural use nor is necessary to support or enhance land actively devoted to an agricultural or horticultural use. This land is assessed and taxed in accordance with the true value standard.

"Appurtenant woodland" means woodland that is part of a farm qualified for farmland assessment. Usually this land is restricted to woodlots because of slope, drainage capability, soil type or typography. Such land has limited productive use but it provides a windbreak, watershed, buffers or controls soil erosion.

"Boarding" means providing horses that are not owned by the owner or operator of a commercial farm with shelter, feed, and care on a continuing basis. "Boarding" shall not be construed to mean "raising" as defined in this section.

"Concrete and asphalt area" means the area of the farm occupied by buildings, or the portions of buildings, which have permanent concrete or asphalt flooring and are used in support of equine activities; and paved parking, driveway, and other paved areas used in support of equine activities.

"Contiguous" means parcels or lots sharing common boundaries. Parcels or lots separated by roads shall be deemed contiguous.

"Cropland harvested" means land that is the heart of a farming enterprise and represents the highest use of land in agriculture. All land from which a crop was harvested in the current year falls into this category.

"Cropland pastured" means land that can be and often is used to produce crops, but its maximum income may not be realized in a particular year. Land that is fallow or in cover crops as part of a rotational program falls in this classification.

"Equine-related infrastructure" means buildings and other related structures used to conduct equine activities, and paved areas, including parking and driveway areas, used in support of equine activities and any appurtenant non-production areas immediately adjacent to or between such buildings, structures, and parking and driveway areas. Equine-related infrastructure shall include agricultural labor housing used to conduct equine activities but shall not include race tracks, the land under and land used in connection with a farmhouse, and all other land not devoted to agricultural or horticultural use, as defined in this section.

"Keeping" means providing horses owned by the owner or operator of a commercial farm with shelter, feed, and care on a continuing basis. "Keeping" shall not be construed to mean "raising" as defined in this section.

"Land under and land used in connection with farmhouses" means land on which a farmhouse is located, together with such land area as may be devoted to lawns, flower gardens, shrubs, swimming pools, tennis courts and like purposes related to the use and enjoyment of the farmhouse. This is land not deemed to be in agricultural or horticultural use and, therefore, is assessed and taxed in accordance with the true value standard, that is at its residential value.

"Non-appurtenant woodland" means woodland which can only qualify for farmland assessment on the basis of being in compliance with a woodland management plan filed with the Department of Environmental Protection. It is actively devoted to the production for sale of tree and forest products.

"Non-contiguous" means parcels or lots not sharing common boundaries.

"Permanent pasture" means land that is not cultivated because its maximum economic potential is realized from grazing or as part of erosion control programs. Animals may or may not be part of a farm operation for land to fall in this category.

"Production area" means the area of the farm, not including the area occupied by equine-related infrastructure, that is in or available for agricultural production and falls within the land use classes "cropland harvested," "cropland pastured," "permanent pasture," "non-appurtenant woodland," or "appurtenant woodland" as established by the State Farmland Evaluation Advisory Committee, and defined in this section, not including freshwater wetlands that have not been modified for agriculture, as determined pursuant to (d) below.

"Raising" means promoting the physical growth of horses to their full-grown stage for the purpose of selling the horses for a profit.

"Rehabilitation" means the care of horses for the purposes of returning them to good health or useful condition.

"Total usable area" means the sum of the production area and the area occupied by equine-related infrastructure, as defined in this section.

"Training" means educating horses to increase their salable value as well as enhance their ability to perform specific tasks and interact productively with people for the purpose of selling the horses for a profit.

(b) The following activities are eligible for the protections and benefits of the Right to Farm Act, subject to the requirements set forth in (c), (d), (e), and (f) below:

1. The raising, breeding, keeping, boarding, training, and rehabilitation of horses;

2. Complementary equine activities that are associated with the activities specified in (b)1 above, including, but not limited to, clinics, open houses, demonstrations, educational camps, farm events, competitions, and rodeos, as long as these activities are related to the marketing of horses that are raised, bred, kept, boarded, trained or rehabilitated on the farm, and are in compliance with municipal requirements; and

3. The sale and distribution of manure and composted products produced on the farm to off-farm users, subject to the following:

i. The manure must be generated on the farm, and composted products must be generated on the farm from materials generated on the farm, with the exception of soil amendments such as lime or super-phosphates that may be necessary;

ii. Vehicular activity occurring on the farm for the purposes of the sale and distribution of manure and composted products described in (b)3i above is eligible for the protections of the Right to Farm Act; and

iii. The sale or distribution of manure not generated on the farm, or of compost generated from either some or all off-farm components, is not eligible for the protections of the Right to Farm Act.

(c) The production area of a commercial farm must be greater than the area occupied by equine-related infrastructure in proportions set forth in (c)3 and 4 below.

1. The sum of the production area and the area occupied by equine-related infrastructure, as defined in this section, shall be referred to as the total usable area.

2. If a farm management unit consists of noncontiguous parcels of land, the total usable area shall be determined individually for each non-contiguous parcel.

3. For farms where the total usable area is 150 acres or less, the area occupied by equine-related infrastructure shall not exceed 15 percent to 25 percent of the total usable area.

i. It shall be the responsibility of each county agriculture development board (CADB) to determine the maximum permissible percentage of total usable area occupied by equine-related infrastructure based on the level of, or proximity of the farm to, non-agricultural development. In counties where no CADB exists, it shall be the responsibility of the Committee to make this determination. This maximum permissible percentage shall not be less than 15 percent nor more than 25 percent.

4. For farms where the total usable area is greater than 150 acres, the area occupied by equine-related infrastructure may not exceed the sum of 15 percent to 25 percent of the first 150 acres of total usable area, as determined by the CADB or Committee pursuant to (c)3(i) above, plus 10 percent of all additional acres of total usable area above the first 150 acres of total usable area.

5. Concrete and asphalt area shall not exceed 15 percent of the total usable area of each non-contiguous parcel of the farm management unit.

(d) Evaluation of the calculations under (c) above shall be based on the following:

1. Geographical Information Systems (GIS) aerial mapping and New Jersey Freshwater Wetlands Data provided by the New Jersey Department of Environmental Protection (NJDEP), which will be used to determine the total usable area, the area occupied by equine-related infrastructure, and the concrete and asphalt area.

i. If NJDEP wetlands maps are in dispute, further investigation and onsite analysis may be conducted by a licensed engineer or qualified wetlands consultant and/or a letter of interpretation may be issued by NJDEP to provide a more accurate assessment of the site conditions;

2. The farm's Form FA-1 filed pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), which will be used to determine the area occupied by land under and land used in connection with farmhouses, and all other land not devoted to agricultural or horticultural use;

3. A visual on-site inspection of existing equine-related infrastructure and concrete and asphalt areas to verify NJDEP GIS mapping, FA-1 form information, and CADB or Committee determinations.

i. Equine-related infrastructure and concrete and asphalt areas existing on the farm but not on NJDEP GIS maps shall be measured either on-site or through certified engineering drawings obtained from the farmer.

ii. If a matter involves proposed construction, the farmer shall provide written estimates of the area on which equine-related infrastructure would be con-

structed, as well as any proposed concrete and asphalt areas; and

4. The Committee retains final jurisdiction in any dispute regarding a CADB's evaluation under this subsection.

(e) The following income may be used to satisfy the production requirements in the definition of "commercial farm" set forth in N.J.S.A. 4:1C-3:

1. Income from breeding, which may include:

i. Income from insemination fees, which involves the collection of semen from horses owned by the farm operator or owner, preparation of semen for insemination, and insemination;

ii. Income from selling semen collected from horses owned by the farm operator or owner;

iii. Income from stallion fees; and

iv. Income from the sale of a horse that has been bred from a mare owned by the farm operator or owner;

2. Imputed income from pasturing horses, as determined by the productivity values set annually by the State Farmland Evaluation Advisory Committee;

3. Income from the sale of a horse that was trained or raised on the commercial farm for at least 120 days prior to the time of sale; and

4. Income from fees associated with raising a horse on the commercial farm for at least 120 days.

(f) The following income cannot be used to satisfy the production requirements in the definition of "commercial farm" set forth in N.J.S.A. 4:1C-3:

1. Fees from boarding;

2. Fees from riding and driving lessons;

3. Fees from equine assisted therapy;

4. Monetary proceeds from racing; and

5. Fees from training horses.

(g) To receive the protections of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., a commercial equine operation must be in compliance with a farm conservation plan prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), incorporated herein by reference, as amended and supplemented, available at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ and must meet the eligibility criteria set forth in the Act, including the following:

1. The commercial farm must be located in an area, in which, as of December 31, 1997, or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan or which commercial farm is in operation as of July 2, 1998;

2. The operation or agricultural activity at issue shall conform to the agricultural management practice set forth in N.J.A.C. 2:76-2A.10 or in the event that N.J.A.C. 2:76-2A.10 does not completely address an agricultural activity being considered for protection under the Right to Farm Act, the activity shall comply with generally accepted agricultural operations or practices;

3. The operation or agricultural activity shall be in compliance with relevant Federal or State statutes or rules and regulations adopted thereto; and

4. The operation or agricultural activity shall not pose a direct threat to public health and safety.

New Rule, R.2008 d.229, effective August 4, 2008.
See: 39 N.J.R. 2561(a), 40 N.J.R. 4503(a).

SUBCHAPTER 3. CREATION OF FARMLAND PRESERVATION PROGRAMS

Law Review and Journal Commentaries

Farmlands—Municipal Land Use. Judith Nallin, 136 N.J.L.J. No. 12, 70 (1994).

2:76-3.1 Applicability

This subchapter provides for any eligible landowner to voluntarily petition a county agriculture development board or a subregional agricultural retention board for the creation of a farmland preservation program.

2:76-3.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agreement" means a legally binding written document between the landowner(s), and the board which must be signed by both parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation program.

"Agricultural Development Area" hereinafter referred to as ADA, means an area identified by a board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

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

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

"Development easement" means an interest in land less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and any relevant rules or regulations promulgated pursuant hereto.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and the maintenance and support of increased agricultural production as the first priority use of that land.

"Petition" means a formal written document adopted by the board, which an eligible landowner must submit to the board when applying for inclusion in a farmland preservation program.

"Premises" means the property under easement which is defined by the legal metes and bounds description in the Agreement.

"Soil and water conservation project" means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity.

Amended by R.1986 d.196, effective June 2, 1986.
See: 18 N.J.R. 508(a), 18 N.J.R. 1193(b).
Added definition "premises".

2:76–3.3 Petition

(a) One or more owners of land may voluntarily enter into a farmland preservation program provided the following statutory criteria are satisfied:

1. The land must qualify for farmland assessment in accordance with the Farmland Assessment Act of 1964, N.J.S.A. 54:4–23.1 et seq.;

2. Is located within an ADA;

3. Eligibility criteria established by the board; and

4. Eligibility criteria established by the Committee.

(b) A landowner meeting the statutory provisions contained in (a) above shall submit the following documents to the local board for the creation of a farmland preservation program:

1. A signed petition (petitions may be obtained from the local board upon request.);

2. A tax map and any other documents as designed by the board for identifying the boundaries of the proposed program;

3. A true copy of the deed of the subject lands.

Amended by R.1996 d.36, effective January 16, 1996.
See: 27 N.J.R. 8(a), 28 N.J.R. 260(a).

2:76–3.4 Board review

(a) Upon receipt of a petition and required documents, the board shall conduct a review to assure compliance with the provisions contained in N.J.A.C. 2:76–3.3 and approve, conditionally approve or disapprove the petition and so notify the applicant(s).

(b) The board shall conduct an owner of last record search on all lands receiving board approval to verify that the landowner is the true owner of record.

2:76–3.5 Agreement

(a) Approval of the petition by the board and creation of the farmland preservation program shall be signified by an agreement between the board and the landowner to retain the land in agricultural production for a minimum period of eight years.

(b) The agreement shall constitute a restrictive covenant and shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed.

(c) Deed restrictions established by the Committee shall be placed on all lands that are to be included in the farmland preservation program. These restrictions shall remain in effect for the length of the agreement unless the land is withdrawn from the program in compliance with provisions contained in N.J.S.A. 4:1C–30 and N.J.A.C 2:76–3.11. Any landowner intending to subdivide the subject lands shall advise the board prior to initiating such action (see N.J.A.C 2:76–3.12).

(d) Subject to Committee approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(e) Eligibility of benefits follows:

1. The land or owner(s) of the land in a farmland preservation program are eligible for the following:

i. To apply, to the board to sell a development easement on the land subject to the provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32;

ii. To apply, or have a farm operator as an agent apply to the local soil conservation district and the board for a grant for a soil and water conservation project as approved by the State Soil Conservation Committee and authorized by the Committee;

iii. To use a farm structure design as an acceptable minimum construction standard to build farm structures based on criteria developed by a land grant college or a recognized organization of agricultural engineers and approved by the Committee. In addition, the use of the approved design shall exempt the owner or operator from any requirement concerning the seal of approval or fee of an architect or professional engineer;

iv. Additional benefits as determined by the board in accordance with the provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32;

v. Additional benefits as may be made available from time to time through amendments to N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32 and all other pertinent State, county and municipal laws, rules or policies.

(f) The agreement and the creation of a farmland preservation program shall not become effective until such time that it is certified in accordance with N.J.A.C. 2:76–3.7 and recorded with the county clerk in the same manner as a deed.

Amended by R.1996 d.36, effective January 16, 1996.
See: 27 N.J.R. 8(a), 28 N.J.R. 260(a).

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76–3.6 Certification request

(a) The board shall submit the following to the Committee:

1. A copy of the approved petition;

2. The original copy of the agreement (the board shall retain appropriate copies.);

3. A copy of the tax map and any other documents designated by the board for identifying the boundaries of the proposed program. The board shall certify that the land(s) are in a certified ADA and all other criteria pursuant to N.J.A.C. 2:76–3.3 have been satisfied;

4. A copy of the owner of last record search; and

5. Any other pertinent information or comments from the board.

Amended by R.1996 d.36, effective January 16, 1996.
See: 27 N.J.R. 8(a), 28 N.J.R. 260(a).

2:76–3.7 Certification

After review and evaluation of the certification request, the committee shall certify, certify with conditions or deny the approval of the farmland preservation program and present its findings to the Secretary of Agriculture.

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76–3.8 Recording of the farmland preservation program

(a) Upon receipt of certification, the board shall retain a copy of the agreement and within ten working days send a copy to the following:

1. The municipal tax assessor;

2. The county clerk for recording in the same manner as a deed;

3. The municipal governing body;

4. The county governing body;

5. The municipal planning board;

6. The county planning board;

7. The soil conservation district; and

8. The landowner.

2:76–3.9 Renewal, termination, reformation

(a) The farmland preservation program shall remain in effect for a minimum of eight years from the effective date of the creation of a farmland preservation program.

(b) The board shall conduct a review of the practicability and feasibility to continue the program within one year of the effective date of termination. At least 60 days prior to the expiration of the program, the board shall, by certified mail, notify all parties which have entered into the agreement to contact the board in writing, within 30 days of receipt of the notice if they want to continue the program for another eight years or to terminate the program at the end of the initial eight year period.

1. In the event the landowner(s) intends to continue the farmland preservation program for another eight years, the landowner(s) shall confirm the following:

i. That the record owner(s) of the premises as identified in the agreement has not changed since the creation of the initial farmland preservation program; and

ii. That the legal metes and bounds description of the boundaries of the premises has not changed since the creation of the initial farmland preservation program.

(c) Renewal of the farmland preservation program shall occur if the board and landowner, pursuant to (b) above, determine to continue the program for another eight year period.

(d) If the board receives a notice to terminate the farmland preservation program or the landowner fails to respond during the 30 day period pursuant to (b) above, the program shall terminate at the end of the eight year period.

(e) At least 30 days prior to the expiration of the initial farmland preservation program, the board shall document the renewal or termination of the farmland preservation program by resolution and record such action with the county clerk's office.

1. The board shall provide notice of the renewal or termination of the farmland preservation program to the Committee, landowner, soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, and municipal planning board.

(f) Reformation of a farmland preservation program as a result of a change in ownership or amendment to the metes and bounds description of the premises shall comply with provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32 and all rules promulgated by the Committee.

Amended by R.1996 d.36, effective January 16, 1996.
See: 27 N.J.R. 8(a), 28 N.J.R. 260(a).

2:76–3.10 Inclusion of additional lands

(a) Any landowner not included in the farmland preservation program, as initially created, may within two years following the creation date, request inclusion, and upon review by the board and a finding that this inclusion is warranted, become part of the farmland preservation program provided that the landowner enters into an agreement pursuant to provisions of N.J.A.C. 2:76–3.5 for the remaining duration of the farmland preservation program.

(b) Any landowner not included in the farmland preservation program may request inclusion at any time during the review conducted pursuant to N.J.A.C. 2:76–3.9(b). The inclusion shall be approved provided the board finds this inclusion would promote agriculture production.

Amended by R.1996 d.36, effective January 16, 1996.
See: 27 N.J.R. 8(a), 28 N.J.R. 260(a).

2:76–3.11 Withdrawal

(a) Under provisions of N.J.S.A. 4:1C–30, withdrawal of land from a farmland preservation program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act", N.J.S.A. 10:4–6 et seq., and approved by the board.

(b) The board shall document this approval by resolution and shall file a copy with the following:

1. Soil conservation district;
2. County clerk;
3. Municipal tax assessor;
4. Landowner;
5. Committee;
6. County planning board;
7. County governing body;
8. Municipal governing body;
9. Municipal planning board.

2:76–3.12 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board and the landowner(s) when a farmland preservation program is adopted and shall run with the land:

Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

"1. The Premises shall be retained in agricultural use and production unless the land is withdrawn from the program in compliance with N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

"2. Grantor certifies that at the time of petitioning the Grantee to enter into a farmland preservation program the nonagricultural uses indicated on attached Schedule (C) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this agreement.

"3. All nonagricultural uses existing on the Premises at the time of the landowner's petition to the Grantee as set forth in Section 2 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;

ii. No change in the pre-existing nonagricultural use is permitted;

iii. No expansion of the pre-existing nonagricultural use is permitted; and

iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

"4. Grantor shall comply with agricultural management practices recommended by the Committee, insofar as those practices are applicable to the land and the type of farming conducted on the Premises.

"5. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1, of this agreement. In the event Grantor intends to subdivide the subject lands, Grantor shall advise Grantee prior to initiating such action.

"6. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used. Grantor retains and reserves all oil, gas, and other mineral rights in the land underlying the Premises, provided that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.

"7. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

"8. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the land.

"9. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

"10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this agreement or as otherwise provided by law.

"11. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this agreement.

"12. At the time of this conveyance, Grantor has (___) existing single family residential building(s) on the Premises and (___) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

i. Improvements to agricultural buildings shall be consistent with agricultural uses;

ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and

iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

"13. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which shall serve as a residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises;

ii. To construct one new permanent single family residential unit only if the Premises does not contain at least one permanent residential building; and

iii. To construct a single family residential building anywhere on the Premises in order to replace any existing single family residential unit.

iv. The above exceptions shall not be permitted unless jointly approved in writing by the Grantee and the Committee. Approval for such exceptions shall only be granted upon the determination that the proposed construction would have a positive impact on the continued use of the Premises for agricultural production. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural.

"14. Nothing in this agreement shall be deemed to restrict the right of Grantor, to maintain all roads and trails existing upon the Premises as of the date of this agreement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, buildings, or reservoirs as may be necessary.

"15. In the event of any violation of the terms and conditions of this agreement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require the restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purposes of this agreement by a prior failure to act.

"16. It is understood that this agreement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this agreement.

"17. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns grants the Committee the first right and option to purchase the Premises in fee simple absolute in accordance with the provisions of N.J.S.A. 4:1C–1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns, agree to give the Committee written notice, by certified mail, that a contract of sale has been executed for the property. The notice shall set forth the terms and conditions of the executed contract of sale and shall have attached a copy of that contract. The notice of executed contract of sale shall also include any other information required by the Committee by regulation. The Committee may exercise its first right and option to purchase the Premises in fee simple absolute by complying with the provisions of N.J.S.A. 4:1C–1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310.

"18. This agreement shall be binding upon the Grantor and upon the Grantee.

"19. Throughout this agreement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"20. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to his heirs, executors, administrators, personal or legal representatives, successors and assigns.

"21. Wherever in this agreement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrators, personal or legal representatives, successors and assigns' have been inserted after each and every designation."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, as amended by P.L. 1987, c.240, the Open Space Preservation Bond Act of 1989, P.L. 1989, c.183 and the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, as amended.

Amended by R.1984 d.596, effective January 7, 1985.
See: 16 N.J.R. 2867(a), 17 N.J.R. 63(a).
Section substantially amended.
Amended by R.1986 d.196, effective June 2, 1986.
See: 18 N.J.R. 508(a), 18 N.J.R. 1193(b).
Substantially amended.
Amended by R.1989 d.451, effective August 21, 1989.
See: 21 N.J.R. 1183(a), 21 N.J.R. 2472(c).
Amendment at new 15. to implement the right of first refusal as authorized by P.L. 1989, c.28.
Amended by R.1992 d.325, effective August 17, 1992.
See: 24 N.J.R. 893(b), 245 N.J.R. 2831(a).
Revised text.
Amended by R.1993 d.181, effective May 3, 1993.
See: 25 N.J.R. 222(a), 25 N.J.R. 1866(a).
Revised (a)13iv.
Amended by R.1996 d.36, effective January 16, 1996.
See: 27 N.J.R. 8(a), 28 N.J.R. 260(a).

2:76–3.13 Compliance

(a) All farmland preservation programs shall comply with the provisions of the Agricultural Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, C.32, and the provisions of this subchapter.

SUBCHAPTER 4. CREATION OF MUNICIPALLY APPROVED FARMLAND PRESERVATION PROGRAMS

2:76–4.1 Applicability

(a) This subchapter provides for any eligible landowner to voluntarily petition a county agriculture development board or a subregional agricultural retention board for the creation of a municipally approved farmland preservation program. These rules supplement N.J.S.A. 4:1C–11 et seq., P.L. 1983, C.32 and shall not be construed to be a conclusive set of regulations involving all aspects of the municipally approved farmland preservation program. N.J.S.A. 4:1C–11 et seq., P.L. 1983, C.32 shall be referenced for clarification of provisions not contained in the rules.

2:76–4.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agreement" means a legally binding written document between the landowner(s), the board, and the municipal governing body, which must be signed by all parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a municipally approved program.

"Agricultural Development Area", hereinafter referred to as ADA, means an area identified by a board pursuant to the provisions of N.J.S.A. 4:1C–18 and certified by the State Agriculture Development Committee.

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

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

"Governing body" means, in the case of a county, the board of chosen freeholders, and in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality.

"Municipally approved farmland preservation program", hereinafter referred to as municipally approved program, means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C–11 et seq., P.L. 1983, C.32 and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C–21.

"Petition" means a formal written document adopted by the board, which an eligible landowner must submit to the board when applying for inclusion in a municipally approved program.

"Premises" means the property under easement which is defined by the legal metes and bounds description contained in the Agreement.

Amended by R.1986 d.197, effective June 2, 1986.
See: 18 N.J.R. 511(a), 18 N.J.R. 1195(a).
Added definition "premises".

2:76–4.3 Petition

(a) One or more owners of land may voluntarily enter into a municipally approved preservation program provided the following statutory criteria are satisfied:

1. The land must qualify for farmland assessment in accordance with the Farmland Assessment Act of 1964, N.J.S.A. 54:4–23.1 et seq.;

2. Is located within an ADA;

3. Eligibility criteria established by the board; and

4. Eligibility criteria established by the Committee.

(b) A landowner meeting the statutory provisions contained in (a) above shall submit the following documents to the local board for the creation of a municipally approved program:

1. A signed petition (petitions may be obtained from the local board upon request.);

2. A tax map and any other documents as designed by the board for identifying the boundaries of the proposed program;

3. A true copy of the deed of the subject lands.

Amended by R.1996 d.37, effective January 16, 1996.
See: 27 N.J.R. 10(a), 28 N.J.R. 261(a).

2:76–4.4 Board review

(a) Upon receipt of a petition and required documents the board shall conduct a review to assure compliance with the provisions contained in N.J.A.C. 2:76–4.3.

(b) The board shall conduct an owner of last record search on all lands that have complied with the provisions of N.J.A.C. 2:76–4.3, to verify that the landowner is the true owner of record.

(c) If all criteria have been satisfied, the board shall immediately forward a copy of the petition to the following:

1. County planning board;

2. Governing body of any municipality wherein the proposed municipally approved program is located;

3. Planning board of each affected municipality.

(d) The board shall, by public notice, advise owners of any land contiguous to the proposed municipally approved program that a petition has been received, solicit opinions concerning inclusion of this land and, if the board deems appropriate, encourage the inclusion of the land in the municipally approved program.

1. Public notice shall comply with provisions of N.J.S.A. 40:55D–12 of the Municipal Land Use Law, N.J.S.A. 40:55D–1 et seq.

2. These procedures shall only be applicable to landowners contiguous to the proposed municipally approved program.

3. Landowners in an adjoining municipality shall be notified by personal service or certified mail.

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76–4.5 Agreement

(a) Approval of a petition by the municipal governing body and the board and creation of a municipally approved program shall be signified by an agreement between the board, municipal governing body and the landowner to retain the land in agricultural production for a minimum period of eight years.

(b) The agreement shall constitute a restrictive covenant and shall be filed in accordance with N.J.A.C. 2:76–4.8.

(c) Deed restrictions established by the Committee shall be placed on all lands that are to be included in the municipally approved program. These restrictions shall remain in effect for the length of the agreement unless the land is withdrawn from the program in compliance with provisions contained in N.J.S.A. 4:1C–30 and N.J.A.C. 2:76–4.10. Any landowner intending to subdivide the subject lands shall advise the board prior to initiating such action (see N.J.A.C. 2:76–4.11).

(d) Subject to Committee approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(e) Eligibility of benefits follows:

1. The land or owner(s) of the land in a municipally approved program are eligible for the following:

i. Benefits contained in N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32;

ii. Additional benefits as determined by the board in accordance with the provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32;

iii. Additional benefits as may be made available from time to time through amendments to N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32 and all other pertinent State, county and municipal laws, rules or policies.

(f) The agreement and the creation of a municipally approved program shall not become effective until such time that it is certified in accordance with N.J.A.C. 2:76–4.7 and recorded with the county clerk in the same manner as a deed.

Amended by R.1996 d.37, effective January 16, 1996.
See: 27 N.J.R. 10(a), 28 N.J.R. 261(a).

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76–4.6 Certification request

(a) The board shall submit the following to the Committee:

1. A copy of the approved petition;

2. A copy of the municipal ordinance approving the municipally approved program;

3. A copy of the county resolution or ordinance of adoption;

4. A copy of the tax map and any other documents designated by the board for identifying the boundaries of the proposed programs. The board shall certify that the land(s) are in a certified ADA and all other criteria pursuant to N.J.A.C. 2:76–4.3 have been satisfied;

5. The original copy of the agreement (the board shall retain appropriate copies);

6. A copy of the owner of last record search; and

7. Any other pertinent information or comments from the board.

Amended by R.1996 d.37, effective January 16, 1996.
See: 27 N.J.R. 10(a), 28 N.J.R. 261(a).

2:76–4.7 Certification

(a) After review and evaluation of the certification request, the commission shall certify, certify with conditions or deny the approval of the municipally approved program and present its findings to the Secretary of Agriculture.

2:76–4.8 Recording of the municipally approved program

(a) Upon receipt of certification, the board shall retain a copy of the agreement and within ten working days document the recording of the municipally approved program in the following manner:

1. The petition in its final form shall be filed and recorded, in the same manner as a deed, with the county clerk and shall be filed with the municipal clerk;

2. The petition in its final form shall be filed with the municipal tax assessor;

3. The agreement shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed;

4. A copy of the agreement shall be filed with the local soil conservation district, municipal governing body, county governing body, municipal planning board, county planning board and the landowner.

2:76–4.9 Renewal, termination, reformation

(a) The municipally approved program shall remain in effect for a minimum of eight years from the effective date of the creation of a municipally approved program.

(b) The board and municipal governing body shall conduct a review of the practicability and feasibility to continue the program within the year immediately preceding the termination date of the municipally approved program. At least 90 days prior to the expiration of the program, the board shall, by certified mail, notify all parties which have entered into the agreement to contact the board in writing, within 45 days of receipt of the notice if they want to continue the program for another eight years or to terminate the program at the end of the initial eight-year period.

1. In the event the landowner(s) intends to continue the municipally approved program for another eight years, the landowner(s) shall confirm the following:

i. That the record owner(s) of the premises as identified in the agreement has not changed since the creation of the initial farmland preservation program; and

ii. That the legal metes and bounds description of the boundaries of the premises has not changed since the creation of the initial municipally approved program.

(c) If the board does not receive any notice to terminate the municipally approved program within the 45 day period, the program shall continue for another eight-year period and may continue for succeeding eight year periods provided that no notice of termination is received by the board during subsequent periods of review and notification.

1. At least 30 days prior to the expiration of the municipally approved program, the board shall document the renewal of the municipally approved program by resolution and record such action with the county clerk's office.

2. The board shall provide notice of the renewal of the municipally approved program to the Committee, landowner(s), soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, municipal planning board and municipal clerk.

3. The Committee shall not authorize a cost share grant for the installation of any soil and water conservation cost share projects pursuant to N.J.A.C. 2:76–5 until the provisions of (b)1i and ii above have been confirmed.

(d) Termination of the municipally approved program at the end of the eight year period shall occur following the receipt by the board of any notice of termination.

1. At least 30 days prior to the expiration of the municipally approved program, the board shall document the termination of the municipally approved program by

resolution and record such action with the county clerk's office.

2. The board shall provide notice of the terminated municipally approved program to the Committee, landowner(s), soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, municipal planning board and municipal clerk.

(e) Reformation of a municipally approved program as a result of a change in ownership or amendment to the metes and bounds description of the premises shall comply with provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32 and all rules promulgated by the Committee.

Amended by R.1996 d.37, effective January 16, 1996.
See: 27 N.J.R. 10(a), 28 N.J.R. 261(a).

2:76–4.10 Withdrawal

(a) Under provisions of N.J.S.A. 4:1C–30, withdrawal of land from the municipally approved program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act", N.J.S.A. 10:4–6 et seq., and approved by the board and municipal governing body at a regular or special meeting thereof.

(b) The Board shall document this approval by resolution and the municipal governing body by resolution or ordinance and shall file a copy with the following:

1. Committee;
2. Soil conservation district;
3. Municipal tax assessor;
4. Municipal clerk;
5. County clerk;
6. Municipal governing body;
7. County governing body;
8. Municipal planning board;
9. County planning board;
10. Landowner.

2:76–4.11 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board, the municipal governing body and the landowner(s) when a municipally approved farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

"1. The Premises shall be retained in agricultural use and production unless the land is withdrawn from the program in compliance with N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

"2. Grantor certifies that at the time of petitioning the Grantee to enter into a farmland preservation program the nonagricultural uses indicated on attached Schedule (C) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this agreement.

"3. All nonagricultural uses existing on the Premises at the time of the landowner's petition to the Grantee as set forth in Section 2 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;

ii. No change in the pre-existing nonagricultural use is permitted;

iii. No expansion of the pre-existing nonagricultural use is permitted; and

iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

"4. Grantor shall comply with agricultural management practices recommended by the Committee, insofar as those practices are applicable to the land and the type of farming conducted on the Premises.

"5. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1, of this agreement. In the event Grantor intends to subdivide the subject lands, Grantor shall advise Grantee prior to initiating such action.

"6. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used. Grantor retains and reserves all oil, gas, and other mineral rights in the land underlying the Premises, provided that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.

"7. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

"8. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the land.

"9. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

"10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this agreement or as otherwise provided by law.

"11. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this agreement.

"12. At the time of this conveyance, Grantor has (_____) existing single family residential building(s) on the Premises and (_____) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

i. Improvements to agricultural buildings shall be consistent with agricultural uses;

ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and

iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

"13. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which shall serve as a residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises;

ii. To construct one new permanent single family residential unit only if the Premises does not contain at least one permanent residential building; and

iii. To construct a single family residential building anywhere on the Premises in order to replace any existing single family residential unit.

iv. The above exceptions shall not be permitted unless jointly approved in writing by the Grantee and the Committee. Approval for such exceptions shall only be granted upon the determination that the proposed construction would have a positive impact on the continued use of the Premises for agricultural production. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural.

"14. Nothing in this agreement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this agreement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, buildings, or reservoirs as may be necessary.

"15. In the event of any violation of the terms and conditions of this agreement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require the restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purposes of this agreement by a prior failure to act.

"16. It is understood that this agreement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this agreement.

"17. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns grants the Committee the first right and option to purchase the Premises in fee simple absolute in accordance with the provisions of N.J.S.A. 4:1C–1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns, agree to give the Committee written notice, by certified mail, that a contract of sale has been executed for the property. The notice shall set forth the terms and conditions of the executed contract of sale and shall have attached a copy of that contract. The notice of executed contract of sale shall also include any other information required by the Committee by regulation. The Committee may exercise its first right and option to purchase the Premises in fee simple absolute by complying with the provisions of N.J.S.A. 4:1C–1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310.

"18. This agreement shall be binding upon the Grantor and upon the Grantee.

"19. Throughout this agreement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"20. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to his heirs, executors, administrators, personal or legal representatives, successors and assigns.

"21. Wherever in this agreement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrators, personal or legal representatives, successors and assigns' have been inserted after each and every designation."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, as amended by P.L. 1987, c.240, the Open Space Preservation Bond Act of 1989, P.L. 1989, c.183 and the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, as amended.

Amended by R.1984 d.597, effective January 7, 1985.
See: 16 N.J.R. 2869(a), 17 N.J.R. 64(a).
Section substantially amended.
Amended by R.1986 d.197, effective June 2, 1986.
See: 18 N.J.R. 511(a), 18 N.J.R. 1195(a).
Substantially amended.
Amended by R.1989 d.452, effective August 21, 1989.
See: 21 N.J.R. 1183(b), 21 N.J.R. 2473(a).
New paragraph 15 added to implement the right of first refusal policy established by P.L. 1989, c.28.
Amended by R.1992 d.325, effective August 17, 1992.
See: 24 N.J.R. 893(b), 24 N.J.R. 2831(a).
Amended by R.1993 d.223, effective May 17, 1993.
See: 25 N.J.R. 740(a), 25 N.J.R. 1963(a).
Revised (a)13iv.
Amended by R.1996 d.37, effective January 16, 1996.
See: 27 N.J.R. 10(a), 28 N.J.R. 261(a).

2:76–4.12 Compliance

(a) All municipally approved programs shall comply with the provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, and the provisions of this subchapter.

SUBCHAPTER 5. SOIL AND WATER CONSERVATION PROJECT COST–SHARING

2:76–5.1 Applicability

This subchapter identifies State Agriculture Development Committee rules which provide for a landowner, or a farm operator as an agent for the landowner, whose land is within a municipally approved farmland preservation program or other farmland preservation program, or is subject to a development easement conveyed pursuant to N.J.S.A. 4:1C–24a to apply for and receive grants for soil and water conservation projects. These rules shall be utilized in conjunction with N.J.A.C. 2:90–2 and 2:90–3, promulgated by the State Soil Conservation Committee, which prescribes procedures for development of conservation plans and approval of projects.

Amended by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76–5.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

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

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

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, C.32 and any relevant rules or regulations promulgated pursuant thereto.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within the agricultural development areas adopted pursuant to N.J.S.A. 4:1C–11 et seq., P.L. 1983, C.32 and the maintenance and support of increased agricultural production as the first priority use of that land.

"Fund" means the "Farmland Preservation Fund" created pursuant to the "Farmland Preservation Bond Act of 1981", P.L. 1981, c.276, and any future funds authorized for the purpose of providing grants to landowners for soil and water conservation projects.

"Municipally approved farmland preservation program", hereinafter referred to as "municipally approved program," means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C–11 et seq., P.L. 1983, C.32 and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C–21.

"Secretary" means the Secretary of Agriculture.

"Soil and water conservation project", hereinafter referred to as project, means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity.

"Soil conservation district" means a governmental subdivision of this State organized in accordance with the provisions of N.J.S.A. 4:24–1 et seq.

"State Soil Conservation Committee" means an agency of the State established pursuant to N.J.S.A. 4:24–1 et seq.

Amended by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76–5.3 Approved soil and water conservation projects

The State Soil Conservation Committee, pursuant to procedures established in N.J.A.C. 2:90–2, shall approve projects that are eligible for cost-sharing.

Amended by R.1987 d.90, effective February 2, 1987.
See: 18 N.J.R. 1981(a), 19 N.J.R. 288(a).
Subsection (b) substantially amended.
Amended by R.1987 d.427, effective October 19, 1987.
See: 19 N.J.R. 1123(a), 19 N.J.R. 1892(a).
Money for soil and conservation projects dedicated raised from $4.9 million to $6.0 million.
Amended by R.1989 d.213, effective April 17, 1989.
See: 21 N.J.R. 230(a), 21 N.J.R. 981(a).
(b)1 deleted, recodified 2 and 3 as 1 and 2, decreased $6 million allocation for soil and water conservation as that amount exceeded demand.
Amended by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76–5.4 Eligibility for State soil and water conservation cost-share funds

(a) Upon certification of a farmland preservation program or a municipally approved program, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= $600.00/acre
From greater than 50 to 100 acres	= $30,000 + $200.00/acre above 50 acres
From greater than 100 to 450 acres	= $40,000 + $100.00/acre above 100 acres
Greater than 450 acres	= $75,000

1. The total eligible amount of cost-share funds as determined above shall remain in effect for the duration of the initial farmland preservation program or municipally approved program.

2. Upon renewal of the farmland preservation program or municipally approved program, the eligibility of cost-share funds shall be based upon the formula current at the time of program renewal set forth in this section.

(b) On land that has had a development easement conveyed from it pursuant to N.J.S.A 4:1C–24a, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= $600.00/acre
From greater than 50 to 100 acres	= $30,000 + $200.00/acre above 50 acres
From greater than 100 to 450 acres	= $40,000 + $100.00/acre above 100 acres
Greater than 450 acres	= $75,000

1. The total eligible amount of cost-share funds as determined above shall remain in effect for a period of eight years from the date the development easement was conveyed to the board.

2. At the end of the eight-year period, the eligibility of cost-share funds shall be based upon the formula current at that time and set forth in this section for subsequent eight-year periods.

(c) Notwithstanding (a) and (b) above, if a governmental body or a not-for-profit corporation is the record owner of land enrolled in a farmland preservation program, municipally approved program or is subject to a development easement conveyed pursuant to the provisions of the Agriculture Retention and Development Act, the owner is eligible for State soil and water project cost-share funds on the basis of the acreage contained in each farm in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= $600.00/acre
From greater than 50 to 100 acres	= $30,000 + $200.00/acre above 50 acres
From greater than 100 to 450 acres	= $40,000 + $100.00/acre above 100 acres
Greater than 450 acres	= $75,000

1. The total eligible amount of cost-share funds as determined above shall remain in effect for a period of eight years from the date the easement is conveyed.

2. At the end of the eight-year period, the eligibility for cost-share funds for subsequent eight-year periods shall be based upon the formula set forth in this subchapter that is in effect at the end of the eight-year period.

(d) Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76–5.7 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

1. Approval of funds shall not exceed the amount determined in (a), (b) and (c) above.

2. The term of obligation may be extended due to seasonal constraints or other unavoidable delays only upon the approval of the local soil conservation district, the State Soil Conservation Committee and the State Agriculture Development Committee.

New Rule, R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).
Amended by R.2004 d.476, effective December 20, 2004.
See: 36 N.J.R. 3959(a), 36 N.J.R. 5669(a).

Rewrote the section.

2:76–5.5 Eligible applicants

(a) Any landowner or farm operator as an agent for the landowner who is in a farmland preservation program or a municipally approved program shall be eligible to apply for a grant for projects.

(b) The farm operator, as an agent for the landowner, shall be designated in writing by the landowner.

Recodified from 2:76–5.4 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76–5.6 Submission of the application

An applicant shall apply to the soil conservation district and the board for a grant for a project pursuant to N.J.A.C. 2:90–3.

Recodified from 2:76–5.5 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76–5.7 Approval for project funding

(a) The Committee may provide a cost-share grant of up to 75 percent of the actual cost for a project approved by the State Soil Conservation Committee pursuant to N.J.A.C. 2:90–2 and 3.

(b) For projects where the applicant provides at least 50 percent of the project cost without assistance from the county and upon the soil conservation district's approval in accordance with N.J.A.C. 2:90–3, the following procedures shall apply:

1. The application shall be forwarded to the State Soil Conservation Committee for approval;

2. A copy of the approved application shall be sent to the board for its information.

(c) For projects where the applicant receives financial assistance from county funds for the cost of projects and upon soil conservation district approval in accordance with N.J.A.C. 2:90–3, the following procedures shall apply:

1. The soil conservation district approved application shall be forwarded to the board for concurrence;

2. Following board approval, the application shall be forwarded to the State Soil Conservation Committee for approval.

(d) The State Soil Conservation Committee upon review and verification of conformance with this subchapter, N.J.A.C. 2:90–2 and 2:90–3 shall recommend funding approval by the committee.

(e) The committee shall review and approve, conditionally approve or disapprove applications for project funding and;

1. Certify that the land is part of a municipally approved program or farmland preservation program;

2. Proceed to secure project funding when approval has been granted; and

3. Notify the soil conservation district of committee's action (informational copy sent to the State Soil Conservation Committee and the board).

Recodified from 2:76–5.6 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 24 N.J.R. 4899(a).
Amended by R.2004 d.476, effective December 20, 2004.
See: 36 N.J.R. 3959(a), 36 N.J.R. 5669(a).
Added a new (a); recodified former (a) through (d) as (b) through (e).

2:76–5.8 Payment

(a) Upon project completion, as verified by the soil conservation district the applicant shall request payment pursuant to procedures established by N.J.A.C. 2:90–3.

(b) The committee, following State Soil Conservation Committee verification of compliance with N.J.A.C. 2:90–2 and 2:90–3, shall request the Secretary to direct payment to the applicant. The State Soil Conservation Committee, soil conservation district and board shall be advised to such action.

Recodified from 2:76–5.7 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 24 N.J.R. 4899(a).

2:76–5.9 Allocation of soil and water cost-share eligibility after subdivision

(a) A subdivision for change of ownership of any lands under common deed of ownership shall affect eligibility for soil and water conservation project cost-share grants as follows:

1. Subdivision(s) of the land(s) in a program will not alter the total eligibility for soil and water cost-share funding as determined at program enrollment.

2. That portion of the original eligible amount not already obligated and/or expended for specific projects shall be reallocated pro rata on a per acre basis among the parcels.

3. Funds obligated for specific projects at time of sale or subdivision that lapse under the provisions of N.J.A.C. 2:76–5.3(b)3 shall be reallocated as eligible funds according to (a)2 above.

New Rule, R.1987 d.427, effective October 19, 1987.
See: 19 N.J.R. 1123(a), 19 N.J.R. 1892(a).
Recodified from 2:76–5.8 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 24 N.J.R. 4899(a).

SUBCHAPTER 6. ACQUISITION OF DEVELOPMENT EASEMENTS

2:76–6.1 Applicability

The principal purpose for acquisition of development easements is for the long term preservation of agricultural lands in order to maintain and enhance the agricultural industry in the State. These lands shall be retained for agricultural production and shall be restricted from any non-agricultural development.

2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural Development Area", hereinafter referred to as ADA, means an area identified by a board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

"Agriculturally viable parcel" means a parcel that is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output.

"Application," as relates to the purchase of development easements, means a standard form adopted by the county agriculture development board.

"Appraisal handbook standards" means the rules and requirements for conducting appraisals established at N.J.A.C. 2:76-10.

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

"Committee" means the State Agricultural Development Committee (SADC) established pursuant to N.J.S.A. 4:1C-4.

"Cost" as used with respect to cost of development easements includes, in addition to the usual connotations thereof, the cost of inspection, appraisal, legal, financial, and other professional services, estimates and advice; and the cost of organizational, administrative and other work and services, including salaries, supplies, equipment and materials.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and any relevant rules or regulations promulgated pursuant thereto.

"Exceptions," unless the text indicates otherwise, means portions of the applicant's land holdings which are not to be encumbered by the deed restrictions contained in N.J.A.C. 2:76-6.15.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981", P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and the maintenance and support of increased agricultural production as the first priority use of that land.

"Formula index" means the value obtained by application of the formula contained in N.J.S.A. 4:1C-31b(1).

"Governing body" means, in the case of a county, the board of chosen freeholders, and in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality.

"Landowner" means the record owner of the land, duly authorized contract purchaser of the land or record owner of the development easement acquired pursuant to N.J.S.A. 4:1C-34.

"Landowner asking price" means the applicant's per acre confidential offer for the sale of a development easement.

"Municipally approved farmland preservation program", hereinafter referred to as "municipally approved program", means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981", P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C-21.

"Non-agricultural development value—agricultural value" means the fair market value of the development easement as certified by the committee.

"Option agreement" means a written agreement for consideration between an owner of land and the board whereby the board has a right to purchase the development easement within a specified time for a designated price.

"Premises" means the property under easement which is defined by the legal metes and bounds description contained in the deed of easement.

"Quality score" means the Committee's numeric total derived from the application of the criteria for evaluating a development easement application contained in N.J.A.C. 2:76-6.16.

"Regularly engaged in farmsite activities" means actively engaged in the day-to-day agricultural operation on the premises.

1. A landowner cannot establish that he or she is actively engaged in the day-to-day agricultural operation merely by showing that:

i. He or she owns the premises;

ii. The land is actively farmed; or

iii. The land is assessed pursuant to the Farmland Assessment Act, N.J.S.A. 54:4-23.1.

"Residential unit" means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.

"Residual dwelling site" means the location of the residential unit and other appurtenant structures.

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures on the premises in accordance with N.J.A.C. 2:76-6.17.

"Secretary" means the Secretary of Agriculture.

"Use for agricultural purposes," as related to the exercise of a residual dwelling site opportunity and the continued use of the residential unit constructed thereto, means at least one person residing in the residential unit shall be regularly engaged in common farmsite activities on the premises including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage, water management and grazing.

Amended by R.1986 d.386, effective September 22, 1986.
See: 18 N.J.R. 1328(a), 18 N.J.R. 1930(a).
Added "premises".
Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
Added definitions "Agricultural Development Area" and "project area".
Amended by R.1989 d.49, effective January 17, 1989.
See: 20 N.J.R. 1761(a), 21 N.J.R. 158(a).
Added definitions.
Amended by R.1989 d.537, effective October 16, 1989.
See: 21 N.J.R. 3294(a).
Change to "project area" made upon adoption.
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Added definitions for "ancillary costs", "formula index", "landowner asking price" and "non-agricultural development value—agricultural value".
Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Deleted definitions of "Ancillary costs" and "Project area" and added definition of "Agriculturally viable parcel".
Amended by R.2006 d.387, effective November 6, 2006.
See: 38 N.J.R. 2244(a), 38 N.J.R. 4689(a).
Added definition "Regularly engaged in farmsite activities".

2:76-6.3 Eligible applicants

(a) Any landowner that applies to the board in compliance with N.J.A.C. 2:76-6.4 and whose land is in a farmland preservation program, a municipally-approved program or qualifies for differential property tax assessment pursuant to the Farmland Assessment Act of 1964 and which is included in an agricultural development area shall be eligible to sell a development easement on that land, provided that the land satisfies the minimum eligibility criteria contained at N.J.A.C. 2:76-6.20.

(b) Any person or organization acquiring a development easement, by purchase, gift or otherwise, may apply to sell that development easement to the board pursuant to N.J.S.A. 4:1C-34, provided that the land satisfies the minimum eligibility criteria contained at N.J.A.C. 2:76-6.20.

Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
In (a), inserted a hyphen following "municipally"; and in (a) and (b), inserted ", provided that the land satisfies the minimum eligibility criteria contained at N.J.A.C. 2:76-6.20".

2:76-6.4 Application

(a) Under the provisions of N.J.A.C. 2:76-6.3, the landowner shall submit a completed application to the board.

(b) The board shall require the landowner to sign a certification confirming that the information provided in the application is true.

(c) The board and/or Committee reserve the right to take any necessary action against the landowner to require the return of any funds provided by the board for the purchase of a development easement in the event that the board and/or Committee has determined that the landowner supplied false or misleading information in the application.

Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1996 d.212, effective May 6, 1996.
See: 28 N.J.R. 319(a), 28 N.J.R. 2373(a).
Added (b) and (c).

2:76-6.5 Preliminary board review

(a) The board shall review and evaluate the easement purchase application pursuant to N.J.A.C. 2:76-6.20 to determine the suitability of the land for development easement purchase and establish a priority ranking of the applications on the basis of the following factors:

1. Criteria duly adopted by the board which evaluates the degree to which the purchase would encourage the survivability of the land in productive agriculture and the degree of imminence of change of the land from productive agriculture to nonagricultural use pursuant to N.J.S.A. 4:1C-31b.

(b) The board shall review the application pursuant to N.J.A.C. 2:76-6.17(a) and determine the number of residual dwelling site opportunities to be allocated to the premises.

(c) The board shall inform the landowner of the number of residual dwelling site opportunities allocated to the premises.

(d) The board shall approve or disapprove the application.

(e) An application approved by the board shall be forwarded to the municipal governing body for review.

1. Unless previously granted by prior ordinance, the municipal governing body shall by resolution approve or disapprove the application and so notify the board.

(f) The board shall submit a request for a grant for the purchase of a development easement to the Committee on or before September 15. The request for a grant shall be submitted on a form prescribed by the Committee. The information provided by the board shall include the following:

1. RDSO eligibility and allocation;

2. Exceptions approved by the board with its justification;

3. Confirmation that the land satisfies the minimum eligibility criteria contained at N.J.A.C. 2:76-6.20;

4. CADB preliminary ranking with its justification; and

5. Other information relating to the specific application as required by the Committee.

(g) An application consisting of a development easement acquired by the board and/or county must be submitted to the Committee within three consecutive application rounds.

1. The development easement acquired by a municipality, the board and/or county shall at a minimum contain the restrictions found at N.J.A.C. 2:76-6.15(a) which were in effect at the time the development easement was acquired.

(h) In the event that the board grants preliminary approval to more than the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a), it shall forward to the Committee all such application(s) in excess of the maximum number with its justifications for granting such approvals along with other information required in (f) above for preliminary approval.

(i) A board that submits an application to the Committee pursuant to this subchapter shall not be eligible to apply for a grant under the county planning incentive grant program pursuant to N.J.A.C. 2:76-17 during the same fiscal year.

Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
(a) and (d) substantially amended.
Amended by R.1989 d.49, effective January 17, 1989.
See: 20 N.J.R. 1761(a), 21 N.J.R. 158(a).
Added new (c) and (d); recodified old (c) and (d) to (e) and (f); added (e)1-3.
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Cite correction at (c).
Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Amended by R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
In (g), substituted "on or before November 15" for "within 30 days of the date appraisal work is authorized pursuant to N.J.A.C. 2:76-6.7" at the end of the first sentence of the introductory paragraph; and in (i), substituted references to the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a) for references to seven applications throughout.
Amended by R.2001 d.47, effective February 5, 2001.
See: 32 N.J.R. 3513(a), 33 N.J.R. 550(a).
Rewrote the section.
Amended by R.2001 d.311, effective September 4, 2001.
See: 33 N.J.R. 1980(b), 33 N.J.R. 2987(a).
In (f), rewrote the first sentence of the introductory paragraph.
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
In the introductory paragraph of (a), substituted "pursuant to N.J.A.C. 2:76-6.20" for "and respective project area"; in the introductory paragraph of (f), substituted "on or before September 15" for "on or before October 15, 2001 for requests submitted in 2001 and on or before September 15 for requests submitted after 2001"; added (f)3; recodified former (f)3 and (f)4 as (f)4 and (f)5; and added (i).

2:76-6.6 Preliminary Committee review

(a) The Committee shall review and evaluate all applications received from the boards in accordance with the criteria set forth in N.J.A.C. 2:76-6.16.

1. The Committee shall determine whether the land satisfies the minimum eligibility criteria contained at N.J.A.C. 2:76-6.20.

2. In the event that the criteria is not met, the application shall be rejected by the Committee.

(b) Except for those applications submitted pursuant to (c) below, for any application which is submitted in excess of the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a) per county, the Committee may grant preliminary approval only if it finds that the application is of superior quality and that there is a substantial likelihood that the land would change from productive agriculture to nonagricultural use prior to the next funding round.

(c) The Committee shall grant preliminary approval to an application which is in excess of the maximum number of applications authorized pursuant to N.J.A.C. 2:76-6.11(a) per county, only if the application is for a farm which is located in more than one county and is selected by at least one other board as one of its applications not requiring Committee approval.

(d) The Committee shall establish a preliminary ranking of the approved applications based on the applicant's quality score and inform the board at least 15 days prior to the Committee's certification of a development easement value.

Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
(a) and (b) substantially amended.
Amended by R.1989 d.49, effective January 17, 1989.

See: 20 N.J.R. 1761(a), 21 N.J.R. 158(a).
Added new (b) and (c); recodified old (b) to (d).
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Corrected cite at (c).
Repeal and New Rule, R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Amended by R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
In (b) and (c), substituted references to the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a) for references to seven applications.
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Added (a)1 and (a)2.

2:76-6.7 Appraisals

(a) The procedure for conducting and reviewing appraisals shall be as follows:

1. The Committee shall adopt a list of approved appraisers pursuant to N.J.A.C. 2:76-6.21;

2. The board in accordance with county procedures shall select two appraisers from the list adopted by the Committee to conduct independent appraisals of development easements or on lands that have received board and, where appropriate, Committee approvals;

3. Appraisers shall perform appraisals in accordance with procedures detailed at N.J.A.C. 2:76-10, in the generally recognized appraisal practices and in the appraisal handbook;

i. For grant requests submitted pursuant to N.J.A.C. 2:76-6.5 to the Committee, the appraiser shall certify the market value of the development easements as of August 1 of the year in which the appraisals are conducted;

4. Upon completion of the appraisals, the appraisers shall forward appraisal reports to the appropriate person designated by the board to review the reports for completeness of contractual requirements; and

5. For grant requests for the purchase of development easements submitted to the Committee, the board shall forward the completed appraisals to the Committee on or before November 15 of the year in which the appraisals were conducted.

Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
(b)4 amended; new (b)5 added and old 5 renumbered as 6; (b)7 and 8 added.
Recodified from 2:76-6.8 and amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Prior text at 2:76-6.7, "Municipal review," repealed.
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Amended by R.2001 d.311, effective September 4, 2001.
See: 33 N.J.R. 1980(b), 33 N.J.R. 2987(a).
Rewrote (a)3i and (a)5.
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
In (a)1, substituted "approved appraisers pursuant to N.J.A.C. 2:76-6.21" for "approved appraisers who are designated as state certified general real estate appraisers (SCGREA) pursuant to N.J.A.C. 13:40A-1.2"; deleted (a)1i; in (a)3, inserted "at N.J.A.C. 2:76-10, in the generally recognized appraisal practices and"; rewrote (a)3i; and in (a)5, deleted the first sentence and deleted "after 2001" following the first occurrence of "Committee".

2:76-6.8 Committee certification of development easement value

(a) The Committee shall appoint a review appraiser to evaluate the appraisals submitted by the board and to recommend a market value of the development easement for each application. The review appraisal shall be done in accordance with the appraisal handbook standards at N.J.A.C. 2:76-10.

(b) The Committee shall have final authority for certifying the market value of the development easement.

(c) The Committee's certified market value of the development easement shall not be greater than the highest independent appraised value of the development easement or be less than the lowest independent appraised value of the development easement.

(d) The Committee may find an appraisal invalid if it does not comply with the appraisal handbook for standards at N.J.A.C. 2:76-10 or generally recognized appraisal practices or contains a series of errors, omissions or hypothetical assumptions that significantly impact the integrity of the report such that the appraiser's valuations cannot be supported.

1. If an appraisal is found to be invalid, the committee shall reject the application for which the appraisal was conducted.

(e) The Committee shall certify the market value of the development easement and submit the value to the board.

New Rule, R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Prior text at section Appraisal, recodified as 2:76-6.7.
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
In (a) through (c) and in (e), deleted "fair" preceding "market"; and in (d), inserted "or contains a series of errors, omissions or hypothetical assumptions that significantly impact the integrity of the report such that the appraiser's valuations cannot be supported".

2:76-6.9 Landowner offer

(a) Within 45 days of the Committee's certification of the fair market value of the development easement, the board shall forward the value to the landowner and the landowner shall submit an asking price to the Committee.

(b) The landowner asking price shall contain information required by the Committee.

(c) The landowner asking price shall be submitted as a sealed confidential offer on or before a uniform date and time to be set by the Committee.

1. The Committee shall not accept any offer submitted after the time and date prescribed by the Committee or any offer which does not contain the information required by the Committee.

(d) The Committee shall publicly open all of the confidential landowner offers at a time and date prescribed by the Committee and published pursuant to the "Open Public Meeting Act".

(e) The Committee shall forward the landowner offers to the respective boards.

Amended by R.1988 d.435, effective September 6, 1988.
See: 20 N.J.R. 1319(a), 20 N.J.R. 2254(b).
(a): Grants to the Board raised from no more than 50 percent to 80 percent; added development easement.
Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
(b)-(d) substantially amended.
Amended by R.1989 d.49, effective January 17, 1989.
See: 20 N.J.R. 1761(a), 21 N.J.R. 158(a).
Added (a)1.
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Established 30 day time frame in which to agree on landowner asking price.
Repeal and New Rule, R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Section was "Final board review."
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76-6.10 Final board review

(a) Within 30 days of the Committee's opening of the confidential offers pursuant to N.J.A.C. 2:76-6.9(d), the board shall approve or disapprove the applications and submit the following to the Committee:

1. The priority ranking of the approved applications based upon suitability criteria duly adopted by the board which evaluate the following:

i. Priority consideration shall be given to offers with higher numerical values obtained by applying the following formula:

$$\frac{\text{nonagricultural development value} - \text{agricultural value} - \text{landowner's asking price}}{\text{nonagricultural development value} - \text{agricultural value}}$$

ii. The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

iii. The degree of imminence of change of the land from productive agriculture to nonagricultural use;

2. The final purchase price of the development easement for each application.

i. The purchase price of the development easement shall be adjusted according to the acceptance or rejection of any residual dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.17 and other adjustments required by the Committee;

3. The justification for the board's decision; and

4. A copy of the municipal governing body's resolution approving the purchase of the development easement.

(b) Regardless of the board's ranking determined by (a) above, the board may disapprove an application if it determines that an applicant has initiated proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.

Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
Added (a)1 and renumbered old (a)1.-2. as 2.-3; substituted "value" for "offer" in (a)2.
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Sixty day time frame established.
Repeal and New Rule, R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Section was "Board application to the committee."
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76-6.11 Final Committee review

(a) The Committee shall approve a maximum limit of funds available and the maximum number of applications permitted per county for an easement purchase grant round to provide grants to counties and municipalities for the purchase of development easements on farmland.

(b) Upon receipt of applications which have received final approval by the board, the Committee shall determine the landowner's formula index by application of the formula contained in N.J.S.A. 4:1C-31b(1) as follows:

$$\frac{\text{nonagricultural development value} - \text{agricultural value} - \text{landowner's asking price}}{\text{nonagricultural development value} - \text{agricultural value}} = \text{formula index}$$

(c) The Committee's funding priority shall be given to those applications which have higher numerical values obtained by application of the following formula:

(quality score) + (formula index x 200) = final score

1. Regardless of the final score, the Committee may disapprove an application if it determines that the applicant has initiated proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.

2. The Committee may give funding priority to offers with higher numerical values in any one county based on the applicant's final score.

(d) The Committee shall not authorize a grant for an amount greater than 80 percent of the Committee's certified market value of the development easement or the board and/or county's purchase price of the development easement, whichever is lower. In situations where the Committee is cost sharing on an easement which has been acquired, or is being acquired, by a municipality, the Committee shall not authorize a grant for an amount greater than 80 percent of the Committee's certified market value of the development easement or 80 percent of the sum of the municipality's purchase price of the development easement plus the interest or discount on bonds the municipality incurred in association with the acquisition of the development easement from the date the municipality acquires the easement to the date of the appropriation of State funds, whichever is lower. The Committee's cost share grant for a development easement involving a governmental entity's prior acquisition of land in fee simple title also shall be subject to N.J.A.C. 2:76-6.23.

1. The percent Committee cost share shall be based upon the following:

Landowner's asking price		Percent committee cost share
From $0.00 to $1,000	=	80% above $0.00
From > $ 1,000 to $ 3,000	=	$ 800 + 70% above $ 1,000
From > $ 3,000 to $ 5,000	=	$ 2,200 + 60% above $ 3,000
From > $ 5,000 to $ 9,000	=	$ 3,400 + 50% above $ 5,000
From > $ 9,000 to $ 50,000	=	60%
From > $ 50,000 to $ 75,000	=	$30,000 + 55% above $ 50,000
From > $ 75,000 to $ 85,000	=	$43,750 + 50% above $ 75,000
From > $ 85,000 to $ 95,000	=	$48,750 + 40% above $ 85,000
From > $ 95,000 to $105,000	=	$52,750 + 30% above $ 95,000
From > $105,000 to $115,000	=	$55,750 + 20% above $105,000
From > $115,000	=	$57,750 + 10% above $115,000

i. If the landowner's asking price is greater than the certified market value, the Committee's cost share grant shall be based upon the Committee's certified market value.

2. Notwithstanding (d)1 above, the Committee shall provide a grant for the purchase of a development easement on the top ranked application in a county at a 50 percent cost share in those counties where pursuant to (d)1 above, the Committee's cost share percentage would be less than 50 percent.

i. The Committee's cost share grant shall only apply to the purchase of a development easement pursuant to N.J.A.C. 2:76-6.3.

3. Subject to available funds, the Committee shall provide a cost share grant for up to 50 percent of the cost for eligible ancillary costs for the purchase of development easements.

i. Eligible ancillary costs shall be limited to wetlands determinations, appraisals, review appraisals, title search, title insurance and surveys on those farms from which a development easement has been purchased by the board pursuant to N.J.S.A. 4:1C-11 et seq. and this subchapter; and

ii. Ineligible costs include other local governmental expenses and administrative costs related to the acquisition of the development easement, such as staff and attorney work, clerical supplies and office space.

(e) Subject to the available funds, the Committee shall approve a grant, on a per acre basis, for the purchase of a development easement as determined in (d)1 and 2 above, based on the final surveyed acreage.

(f) In order to receive a grant for the purchase of a development easement, the County Board of Chosen Freeholders shall enter into a grant agreement pursuant to N.J.A.C. 2:76-6.18 through 6.18B.

(g) The Committee shall notify the respective boards of applications receiving final approval.

Amended by R.1988 d.435, effective September 6, 1988.
See: 20 N.J.R. 1319(a), 20 N.J.R. 2254(b).
(c): Added "no more than 80" to replace "50".
Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
(a) and (b) substantially amended.
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Expanded and clarified formula and basis by which funding priority is established; includes a sliding scale.
Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1994 d.43, effective January 18, 1994.
See: 25 N.J.R. 3890(a), 25 N.J.R. 4697(a), 26 N.J.R. 350(a).
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Amended by R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).
In (a), inserted a reference to the maximum number of applications permitted per county.
Amended by R.2001 d.47, effective February 5, 2001.
See: 32 N.J.R. 3513(a), 33 N.J.R. 550(a).
In (d), rewrote the introductory paragraph.
Amended by R.2004 d.39, effective January 20, 2004.
See: 35 N.J.R. 4164(a), 36 N.J.R. 441(b).
Rewrote (d).
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
In the introductory paragraph of (d) and in (d)1i, deleted "fair" preceding "market" throughout; in the introductory paragraph of (d), inserted the last sentence; deleted former(d)3, and recodified former (d)4 as (d)3.

2:76-6.12 Landowner decision

(a) Within 30 days of the board's receipt of the Committee's final approval, the board shall present to the landowner a written offer to purchase the development easement. A binding offer shall be contingent upon compliance with the provisions stated in N.J.A.C. 2:76-6.13.

(b) The landowner shall accept or reject the offer in writing within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Established 30 day time frames.

Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76-6.13 Terms, contingencies and conditions of purchase

(a) Upon the landowner's acceptance of an offer to sell a development easement, the landowner shall provide evidence that current lien, easement and right-of-way holders will, as required by the Committee and board, subordinate their rights to the rights and privileges granted by the sale of the development easement to the board and shall supply recordable evidence of their subordination at the time of transfer of the easement.

(b) The board shall authorize an insured title search and a survey be conducted on the subject land.

(c) Upon the purchase of the development easement by the board, a statement containing the conditions of conveyance and restrictions on the use an development of the land shall be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded (see N.J.A.C. 2:76-6.15).

1. Subject to Committee approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(d) Deed restrictions shall be recorded as follows:

1. The statement containing the conditions of conveyance and restrictions shall be recorded with the county clerk.

2. The board shall provide for notification of the development easement purchase to the following:

i. County governing body;

ii. County planning board;

iii. Municipal governing body;

iv. Municipal tax assessor;

v. Municipal planning board; and

vi. Soil conservation district.

(e) The board shall be responsible for monitoring all lands from which a development easement has been purchased since June 1, 1985, pursuant to N.J.S.A. 4:1C-11 et seq. and this subchapter, to ensure compliance with the provisions of the Deed of Easement. The monitoring shall consist of the following:

1. An onsite inspection shall be performed at least once a year;

2. All inspections and monitoring shall be completed within the period commencing July 1 and ending June 30;

3. A written summary shall be provided to the Committee by July 15, verifying that the inspections were conducted during the scheduled period with a certification concerning whether the farm was in compliance with the provisions of the Deed of Easement;

4. The Board shall inform the SADC if any of the terms and conditions of the Deed of Easement were violated within 30 days of identifying such violation; and

5. Appropriate action shall be taken within the board's and/or County's authority to ensure that the terms and conditions of the Deed of Easement are enforced.

Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76-6.14 Payment procedures; schedule of payment

(a) The board and the landowner may agree upon and establish a schedule of payment which provides that the landowner may receive consideration for the easement in a lump sum, or in installments over a period of up to 40 years from the date of settlement, provided that:

1. If a schedule of installments is agreed upon, the State Comptroller shall retain in the fund, or the governing body shall retain, an amount of money sufficient to pay the landowner pursuant to the schedule.

2. The landowner shall receive, annually, interest on any unpaid balance remaining after the date of settlement. The interest shall accrue at a rate established in the installment contract.

(b) Proof of title insurance, a certified survey and a copy of the recorded deed shall be forwarded to the Committee when requesting a grant for reimbursement of the board's purchase of a development easement.

Amended by R.1988 d.435, effective September 6, 1988.
See: 20 N.J.R. 1319(a), 20 N.J.R. 2254(b).
(b): Substituted "no more than 80" for "50".
Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76-6.14A Request for pre-closing division of land

(a) In the event that a landowner applies to the board and Committee to divide farmland which has received final approval by both the board pursuant to N.J.A.C. 2:76-6.10 and Committee pursuant to N.J.A.C. 2:76-6.11, but prior to the conveyance of the development easement to the board, the Committee may grant approval to divide the land if all of the following criteria are met:

1. The division of the land results in agriculturally viable parcels;

2. The division of the land is for an agricultural purpose;

3. Common deed ownership of the land existed at the time of application;

4. There exists a contract of sale between the board and/or county and the landowner to convey the development easement to the board and/or county which does not contain a condition requiring or permitting the division prior to the conveyance;

5. The county and/or board has granted approval of the division;

6. There is an existing, valid contract of sale to convey the divided parcel(s) to a third party(ies); and

7. The county and/or board enters into a Grant Agreement with the SADC pursuant to N.J.A.C. 2:76-6.18.

New Rule, R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

2:76–6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1. Any development of the Premises for nonagricultural purposes is expressly prohibited.

"2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of the premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

"3. Grantor certifies that at the time of the application to sell the development easement to the Grantee and at the time of the execution of this Deed of Easement the nonagricultural uses indicated on attached Schedule (B) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Deed of Easement.

"4. All nonagricultural uses, if any, existing on the Premises at the time of the landowner's application to the Grantee as set forth in Section 3 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;

ii. No change in the pre-existing nonagricultural use is permitted.

iii. No expansion of the pre-existing nonagricultural use is permitted; and

iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

"5. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used.

"6. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

"7. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

i. Grantor shall obtain within one year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district.

ii. Grantor's long term objectives shall conform with the provisions of the farm conservation plan.

"8. Grantee and Committee and their agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this Deed of Easement. Grantee agrees to give Grantor, at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week.

"9. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

"10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this Deed of Easement or as otherwise provided by law.

"11. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this Deed of Easement.

"12. Nothing in this Deed of Easement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this Deed of Easement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary.

"13. At the time of this conveyance, Grantor has ( ) existing single family residential building(s) on the Premises and ( ) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

i. Improvements to agricultural buildings shall be consistent with agricultural uses;

ii. Improvements to residential buildings shall be consistent with agricultural or single and extended fami-

ly residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and

iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

"14. Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural; and

ii. To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.

iii. ( ) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76–6.17, "Residual Dwelling Site Opportunity". The Grantor's request to exercise a residual dwelling site opportunity shall comply with the rules promulgated by the Committee in effect at the time the request is initiated.

In the event a division of the Premises occurs in compliance with deed restriction No. 15 below, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective divided lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

(or)

No residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76–6.17. No residential buildings are permitted on the Premises except as provided in this Deed of Easement.

For purposes of this Deed of Easement:

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures as the Premises in accordance with N.J.A.C. 2:76–6.17.

"Residual dwelling site" means the location of the residential unit and other appurtenant structures.

"Residential unit" means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.

"Use for agricultural purposes" as related to the exercise of a residual dwelling site opportunity and the continued use of the residential unit constructed thereto, means at least one person residing in the residential unit shall be regularly engaged in common farmsite activities on the Premises including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage, water management and grazing.

"15. The land and its buildings which are affected may be sold collectively or individually for continued agricultural use as defined in Section 2 of this Deed of Easement. However, no division of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. In order for the Grantor to receive approval, the Grantee and Committee must find that the division shall be for an agricultural purpose and result in agriculturally viable parcels. Division means any division of the Premises, for any purpose, subsequent to the effective date of this Deed of Easement.

i. For purposes of this Deed of Easement, "Agricul turally viable parcel" means that each parcel is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output.

"16. In the event of any violation of the terms and conditions of this Deed of Easement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purpose of this Deed of Easement by a prior failure to act.

"17. This Deed of Easement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this Deed of Easement.

"18. This Deed of Easement is binding upon the Grantor, the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as a restriction running with the land and shall be binding upon any person to whom title to the Premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.

"19. Throughout this Deed of Easement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"20. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns.

"21. Wherever in this Deed of Easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words, 'heirs, executors, administrators, personal or legal representatives, successors and assigns' have been inserted after each and every designation.

"22. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns further transfers and conveys to Grantee all of the non-agricultural development rights and development credits appurtenant to the lands and Premises described herein. Nothing contained herein shall preclude the conveyance or retention of said rights by the Grantee as may be permitted by the laws of the State of New Jersey in the future. In the event that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee ( ) percent of the value of the development rights as determined at the time of the subsequent conveyance.

"23. That portion of the net proceeds, representing the value of the land only (and not the value of the improvements), of a condemnation award or other disposition of the Premises following termination of this Deed of Easement, as permitted pursuant to N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, shall be distributed among the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Premises on the date of execution of this Deed of Easement. For this purpose, the Grantee's allocable share of the proceeds shall be the net proceeds multiplied by a fraction, the numerator of which is the fair market value of the development easement as certified by the Committee at the time of the initial acquisition and the denominator of which is the full fair market value of the unrestricted Premises as certified by the Committee at the time of the initial acquisition, which is identified as (/). Furthermore, the Grantee's proceeds shall be distributed among the Grantee and the Committee in shares in proportion to their respective cost share grants on the date of execution of this Deed of Easement. The Grantee shall use its share of the proceeds in a manner consistent with the provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, and the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32.

Amended by R.1984 d.595, effective January 7, 1985.
See: 16 N.J.R. 2871(a), 17 N.J.R. 65(a).
Section substantially amended.
Amended by R.1986 d.386, effective September 22, 1986.
See: 18 N.J.R. 1328(a), 18 N.J.R. 1930(a).
Substantially amended.
Amended by R.1989 d.49, effective January 17, 1989.
See: 20 N.J.R. 1761(a), 21 N.J.R. 158(a).
Added (d).
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Modified deed restrictions at (a)11, 12, 13, 16 and 20.
Amended by R.1992 d.324, effective August 17, 1992.
See: 24 N.J.R. 896(a), 24 N.J.R. 2833(a).
Revised (a).
Amended by R.1993 d.182, effective May 3, 1993.
See: 25 N.J.R. 223(a), 25 N.J.R. 1867(a).
Revised (a)14i.
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

Law Review and Journal Commentaries

Farmlands—Municipal Land Use. Judith Nallin, 137 N.J.L.J. No. 14, 52 (1994).

Case Notes

Denial for failing to demonstrate agricultural viability of newly created parcel exceeded authority of township planning board. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 234, 639 A.2d 743 (A.D. 1994).

Landowners seeking to divide agricultural land subject to deed restrictions under farmland preservation programs; demonstration to municipal governing body of agricultural viability. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 234, 639 A.2d 743 (A.D.1994).

2:76–6.16 Criteria for evaluating development easement applications

(a) The evaluation shall be based on the merits of the individual application and the application's contribution to its respective project area. The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.

(b) The criteria listed in (c), (d), (e), (f), (g), and (h) below shall be combined to demonstrate the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture.

(c) The soil quality criterion (weight 15) is as follows:

1. Priority will be given to soils which exhibit superior quality, require minimal maintenance and have a greater potential for long term viability for a variety of agricultural purposes.

2. Factors to be considered are as follows:

i. Prime soils identified by the U.S.D.A., Soil Conservation Service;

ii. Soils of Statewide importance as identified by the New Jersey Department of Agriculture, State Soil Conservation Committee; and

iii. Other soils which are specifically suited for the production of specialty crops and are being used or intended to be used for that purpose.

(d) The tillable acres criterion (weight 15) is as follows:

1. Priority will be given to the proportion of the land that is deemed tillable.

2. Factors to be considered and deemed to be tillable will be lands devoted to cropland harvested, cropland pastured and permanent pasture. For purposes of evaluating these factors, the following terms shall have the following meanings:

i. "Cropland harvested" means land from which a crop was harvested in the current year. Cropland harvested shall include the land under structures utilized for agricultural or horticultural production.

ii. "Cropland pastured" means land which can be and often is used to produce crops, but its maximum income may not be realized in a particular year. This includes land that is fallow or in cover crops as part of a rotational program.

iii. "Permanent pasture" means land that is not cultivated because its maximum economic potential is realized from grazing or as part of erosion control programs. Animals may or may not be part of the farm operation.

(e) The boundaries and buffers criterion (weight 20) is as follows:

1. Priority will be given to the greatest proportion of boundaries with buffers which help protect the integrity of the individual application and/or project area from conflicting nonagricultural uses.

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

(1) Compatible uses as follows:

(A) Deed restricted farmland (permanent);

(B) Deed restricted wildlife areas;

(C) Eight year programs;

(D) Farmland (unrestricted);

(E) Streams (perennial) and wetlands;

(F) Parks (limited public access);

(G) Parks (high use);

(H) Military installations;

(I) Highways (limited access);

(J) Golf course (public); and

(K) Other compatible buffers.

(2) Conflicting uses as follows:

(A) Residential; and

(B) Other;

(3) Negative consideration:

(A) Exceptions which adversely affect the applicant's agricultural operation (weight 10); and

ii. Percentage of boundaries buffering the individual application.

(f) The local commitment criterion (weight 20) is as follows:

1. Priority will be given where municipal and county land use regulations and policies support the long term viability of the agricultural industry.

2. Factors to be considered are as follows:

i. Zoning ordinances and densities which discourage conflicting nonagricultural development;

ii. Absence of sewer or other growth leading infrastructure;

iii. Consistency with municipal, county, state and regional plans;

iv. Municipal commitment to actively participate in the Agriculture Retention and Development Program;

v. Right to farm and other ordinances supporting agriculture; and

vi. Community financial support for the project area.

(g) The size and density criterion (weight 20) is as follows:

1. Priority will be given to larger masses with higher density of the lands dedicated to farmland preservation.

2. Factors to be considered are as follows:

i. The size of the individual application;

ii. The size of the individual application in relation to the average farm size in the respective county; and

iii. The density of the individual application in relation to the project area. Density shall be recognized as the reasonable contiguity, within one-half mile, of lands encompassed by development easement purchase applications, development easements purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs.

(h) The board's highest ranked application (weight 10) will be given priority consideration to recognize local factors which encourage the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture and degree of imminence of change of the land from productive agriculture to nonagricultural use.

(i) Factors which determine the degree of imminence of change of the land from productive agriculture to nonagricultural use criterion (weight 10) are as follows:

1. Priority will be given to minimizing the negative impacts caused by the imminent conversion of agricultural land to a nonagricultural use.

2. Factors to be considered are as follows:

i. The degree of imminence of change; and

ii. The impact of the conversion.

New Rule, R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).
Amended by R.1989 d.537, effective October 16, 1989.
See: 21 N.J.R. 2152(a), 21 N.J.R. 3294(a).
Reduction of total available points from 100 to 90, clarification of the local commitment calculation and additional unweighted special considerations.
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Deleted formula at (h), recodified subsection.
Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1995 d.505, effective September 5, 1995.
See: 27 N.J.R. 2295(a), 27 N.J.R. 3323(a).
Inserted (d) and redesignated former (d) to (h) as (e) to (i), in (c) substituted "15" for "30", and in (g)(2)(iii) inserted "reasonable" and ", within one-half mile,".
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Administrative correction.
See: 28 N.J.R. 813(b).

2:76-6.17 Residual dwelling site opportunity

(a) Upon a landowner's request, residual dwelling site opportunities may be allocated to the premises by the board only under the following conditions:

1. The overall gross density shall not exceed one residential unit per 100 acres. The board shall decrease the allocation in consideration of the following conditions:

i. Existing residential buildings on the premises;

ii. Proposed residential building(s) which have received preliminary and/or final approval from the municipality but have not yet been constructed; and

iii. In no case shall the overall density of residual dwelling site opportunities, existing residential buildings and proposed residential buildings exceed one unit per 100 acres.

2. The board may decrease the allocation in consideration of the following conditions:

i. Exceptions of parcels of land from a tax block and lot contained in the application to sell a development easement or a tax block and lot adjacent to the application which is under the same record ownership as the landowner; and

ii. Other factors which the board deems appropriate.

(b) At the landowner's option, the allocation of residual dwelling site opportunities may be reduced at any time prior to the sale of the development easement.

(c) The following restriction shall be attached to and recorded with the deed of the land and shall run with the land to identify the number of residual dwelling site opportunities allocated to the premises:

(___) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17, "Residual Dwelling Site Opportunity". The Grantor's request to exercise a residual dwelling site opportunity shall comply with the rules promulgated by the Committee in effect at the time the request is initiated.

In the event a division of the Premises occurs in compliance with deed restriction No. 15 below, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective divided lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

In the event a residual dwelling site opportunity has been approved by the Grantee, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement at the time of Grantee's approval. The Corrective Deed shall reflect the reduction of residual dwelling site opportunities allocated to the Premises. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

For purposes of this Deed of Easement:

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures on the Premises in accordance with N.J.A.C. 2:76-6.17.

"Residual dwelling site" means the location of the residential unit and other appurtenant structures.

"Residential unit" means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.

(d) Nothing in this section shall be construed to mandate the board to allocate a residual dwelling site opportunity to the premises.

(e) A request to exercise an RDSO shall be conducted in the following manner:

1. If a landowner or contract purchaser intends to exercise a residual dwelling site opportunity subsequent to the purchase of a development easement, an application shall be submitted to the board. If a contract purchaser submits the request, the record owner shall also endorse the application.

2. The application shall contain the information required by the board.

3. Upon receipt of the application the board shall forward a copy of the application to the municipal governing body for advisory comments. The governing body may submit comments, if any, concerning the application to the board within 35 days of the receipt of the application.

4. Upon receipt of the application the board shall forward a copy of the application to the Committee.

5. The Committee may submit comments, if any, concerning the application to the board within 35 days of its receipt.

6. The Committee's failure to submit any comments shall not be construed as recommending approval or denial of the application.

7. Upon the expiration of the 35-day committee comment period, the board may review the application to exercise an RDSO.

8. The residual dwelling site opportunity may only be exercised if the board determines that the construction and use of the residential unit is for agricultural purposes and that the location of the residual dwelling site minimizes any adverse impact on the agricultural operation.

9. Upon the board's finding that the construction and use of the proposed residential unit is for agricultural purposes and that the residual dwelling site minimizes any adverse impact on the agricultural operation, the board shall condition its approval of the exercising of the residual dwelling site opportunity on the landowner or contract purchaser securing a building permit, to ensure that the construction of the residential unit is in compliance with all municipal ordinances.

10. The board's approval to exercise a residual dwelling site opportunity shall be valid for a period of three years from the date of approval. Extensions may be granted by the board for additional periods for at least one year but not to exceed a total extension of two years.

(f) Documentation of the status of an allocated residual dwelling site opportunity shall be as follows:

1. In the event a division of the premises occurs in compliance with N.J.A.C. 2:76-6.15(a)15, the landowner shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective divided lots. The Corrective Deed shall be recorded with the county clerk. A copy of the recorded Corrective Deed shall be provided to the board and Committee; and

2. In the event a residual dwelling site opportunity has been approved by the board, the landowner shall prepare or cause to be prepared a Corrective Deed of Easement at the time of the board's approval. The Corrective Deed shall reflect the reduction of residual dwelling site opportunities allocated to the premises. The Corrective Deed shall be recorded with the county clerk. A copy of the recorded Corrective Deed shall be provided to the board and Committee.

(g) A person who was, but is no longer, regularly engaged in common farmsite activities on the premises may continue living in a residential unit only if he or she has:

1. Retired from farming, as long as he or she was regularly engaged in common farmsite activities on the premises for at least five years while residing in the residential unit; or

2. Suffered a disability and can no longer engage in farming as a result of the disability.

(h) Upon the death of a person who was regularly engaged in common farmsite activities on the premises (farmer occupant), the farmer occupant's spouse, domestic partner registered pursuant to N.J.S.A. 26:8A-1 et seq. (domestic partner), and children may continue residing in the residential unit subject to the following conditions:

1. The farmer occupant's spouse, domestic partner, or children must have been residing in the residential unit at the time of the farmer occupant's death;

2. A child who was claimed as a dependent on the farmer occupant's most recent Federal income tax return filed before his or her death may continue residing in the house as long as his or her status as a dependent for Federal income tax purposes is maintained.

i. Upon losing his or her status as a dependent for Federal income tax purposes, the child may continue residing in the residential unit as long as the farmer occupant's spouse or domestic partner resides there. If the farmer occupant's spouse or domestic partner no longer lives in the residential unit, the child shall:

(1) Vacate the residential unit; or

(2) Become regularly engaged in common farmsite activities on the premises;

3. A child who was not claimed as a dependent on the farmer occupant's most recent Federal income tax return filed before his or her death may continue residing in the residential unit as long as the farmer occupant's spouse or domestic partner continues to reside in the residential unit. If the farmer occupant's spouse or domestic partner no longer resides in the residential unit, the child shall:

i. Vacate the residential unit; or

ii. Become regularly engaged in common farmsite activities on the premises; and

4. Other family members not addressed in this subsection above, including but not limited to, a parent or sibling of the farmer occupant, may reside in the residential unit only with the joint approval of the board and committee (or with the sole approval of the committee if the committee owns the development easement). When considering requests, the board and committee shall consider the financial and health status of the family member and serious hardships that may warrant the family member to live in the residential unit.

New Rule, R.1989 d.49, effective January 17, 1989.
See: 20 N.J.R. 1761(a), 21 N.J.R. 158(a).
Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).
Corrected internal cite and added language.
Repeal and New Rule, R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).
Amended by R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Amended by R.2006 d.387, effective November 6, 2006.
See: 38 N.J.R. 2244(a), 38 N.J.R. 4689(a).
Added (g) and (h).

2:76-6.18 SADC grant agreement with county: General provisions

(a) In order to receive a grant for the purchase of a development easement as approved by the SADC pursuant to N.J.A.C. 2:76-6.11, the county board of chosen freeholders shall agree to enter into a grant agreement which shall incorporate the requirements of N.J.A.C. 2:76-6.18 through 6.18B.

(b) The county by entering into a grant agreement shall accept primary responsibility for the administration and success of the acquisition of the development easement on the properties designated in a Schedule A of the agreement.

(c) The county shall award contracts and subcontracts concerning the acquisition of development easements on properties designated in Schedule A of the agreement free from bribery, graft and other corrupt practices. The county shall bear the sole responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The county shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The county shall notify the SADC immediately after such allegation or evidence comes to its attention, and shall periodically advise the SADC of the status and ultimate disposal of any such matter.

(d) The county shall award all contracts in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11–1 et seq., and the rules adopted pursuant thereto, N.J.A.C. 5:34.

(e) The county, its contractors and subcontractors shall comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–2000d–4), as well as the discrimination and affirmative action provisions of N.J.S.A. 10:2–1 through 10:2–4, the New Jersey Law against Discrimination, N.J.S.A. 10:5–1 et seq., and the rules and regulations promulgated pursuant thereto.

(f) The SADC, or its duly authorized representative(s), shall have access to all records, books, documents and papers pertaining to the agreement and/or the approved development easement purchase for audit, examination, excerpt and transcript purposes. Obtaining information shall be made practicable for the SADC.

(g) A development easement acquired by the County pursuant to N.J.S.A. 4:1C–11 et seq., shall not be sold, given, transferred or otherwise conveyed in any manner except in accordance with N.J.S.A. 4:1C–32a or unless specifically permitted by law.

(h) No public body shall exercise the power of eminent domain for the acquisition of land from which a development easement has been conveyed pursuant to N.J.S.A. 4:1C–24, nor shall any public body advance a grant, loan, interest subsidy or other funds with regard to land from which a development easement has been conveyed pursuant to N.J.S.A. 4:1C–24, for the construction of dwellings, commercial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures unless the Governor declares that the action is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative. If the Governor so declares, the provisions of N.J.S.A. 4:1C–19 shall apply.

(i) The county shall assume all risk and responsibility for, and agree to indemnify, defend and save harmless the SADC, its agents, servants, officers or employees from and against any and all claims, demands, or lawsuits that may be made by third parties against the SADC, its agents, servants, officers or employees for damages of any kind or description arising from the acquisition of the development easement on account of or resulting from the acts or omissions of county, its employees, agents, contractors or subcontractors, including, but not limited to:

1. Any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in the acquisition of the development easement;

2. Any damages or injury to persons or property or county, its contractors, subcontractors, officers, agents, servants or employees, or any other person who may be about the property caused by any act of negligence of any person (other than the SADC or its officers, agents, servants or employees); or

3. Any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by the SADC in connection with the acquisition of the development easement.

(j) The county shall indemnify, protect, and hold the SADC and its agents, servants, officers and employees harmless from and against any and all such losses, damages, injuries, costs or expenses and from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever (except by county) and arising or purportedly arising from the agreement or from the ownership of the development easement on account of or resulting from the acts or omissions of county, its employees, agents, contractors or subcontractors.

(k) The county may unilaterally rescind the agreement at any time prior to the county's receipt of the grant. After the receipt of the grant, the county may not terminate, modify or rescind the agreement without the express written approval of the SADC. Any attempt by the county to terminate, modify or rescind the agreement after receipt of a grant without the express written approval of the SADC shall constitute a material breach and subject the county to any and all appropriate penalties at law.

(*l*) The SADC may terminate the agreement prior to providing a grant to county, in whole or in part at any time for good cause. The term "good cause" shall include, but not be limited to, failure to comply with the terms and conditions of the agreement or the rules and regulations adopted by the SADC. Default by county shall also constitute "good cause" for termination of the agreement.

(m) Any one or more of the following events shall constitute an event of default by the county:

1. If the county knew or should have known that any representation or warranty made in the agreement or in any certifications, reports, plans, financial statements or other information furnished in connection with the agreement was false or misleading; or

2. Failure of county to observe and perform any covenant, condition or requirement of the agreement, and continuance of such failure for a period of 30 days after receipt by the county of written notice by the SADC, specifying the nature of such failure and requesting that it be remedied, or if by reason of the nature of such failure the same cannot be remedied within the said 30 days, the county fails to proceed with reasonable diligence after receipt of said notice to cure same.

(n) In the event of default by the county, the SADC shall have the right to require repayment of its entire grant on the affected property as the case may be without presentment, demand, protest or other notice of any kind, all of which shall be expressly waived by the county, anything contained in the agreement to the contrary notwithstanding.

(*o*) In addition to any other rights or remedies available to the SADC pursuant to law, in the event of the County's noncompliance with the terms of the agreement or violation of the provisions of this chapter, with respect to the property(ies) set forth in Schedule A of the agreement, or any other property subject to the Agriculture Retention and Development restrictions and for which the SADC has provided a grant to County, the SADC may take any of the following actions or combinations thereof:

1. Issue a Notice of Noncompliance;

2. Withhold SADC grants;

3. Terminate or annul the agreement; and

4. Demand immediate repayment of the funds advanced by the SADC.

(p) No remedy in regard to the agreement conferred or reserved by the SADC is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the SADC to exercise any remedy reserved to it in this section, it shall not be necessary to give notice other than such notice as may be provided by this section.

(q) In addition to the remedies in (m) through (*o*) above, if the county commits a breach, or threatens to commit a breach of the agreement, the SADC shall have the right and remedy, without posting bond or other security, to have the provisions of the agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the SADC and that money damages will not provide an adequate remedy therefor.

(r) In the event that county should default under any of the provisions of the agreement and the SADC shall require and employ attorneys or the services of the Attorney General's Office, or incur other expenses for the collection of payments due or to become due or for the enforcement or performance of any obligation or agreement on the part of county contained in the agreement, the county shall on demand therefor pay to the SADC the reasonable fees of such attorneys and other expenses incurred by the SADC.

(s) The SADC shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to county if any event of default shall occur as part of the agreement.

(t) The agreement constitutes the entire agreement and supersedes all prior agreements and understandings both written and oral between the parties with respect to the subject matter of the agreement and may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(u) In the event any provision of the agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of the agreement.

(v) In the event that any provision of the agreement should be breached by the county and thereafter deemed waived by the SADC, such waiver shall be limited to the particular breach so waived by the SADC and shall not be deemed to waive any other breach by county.

(w) The agreement shall inure to the benefit of and be binding upon the heirs, successors and administrators of the county, but no part shall be assigned without the prior written consent of the SADC.

(x) The agreement shall be construed and enforced under the laws of the State of New Jersey.

(y) In the event of litigation, the county shall waive whatever right it may have to trial by jury.

(z) The grant agreement and the grant is conditioned upon the county agriculture development board adopting a code of ethics that prohibits its members, and members of its members' immediate family, from selling or applying to sell development easements on their property or from selling or applying to sell their property in fee simple pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq. and the Garden State Preservation Trust Act, N.J.S.A. 13:8C–1 et seq. "Member of the immediate family" shall be defined in said code of ethics as the member's spouse, child, parent, or sibling, residing in the same household.

1. This condition shall apply to all grants awarded to counties for applications submitted to the Committee beginning with those submitted on or before November 15, 2000 for the 2001 Application Round. In addition to the requirements set forth herein, members of county agriculture development boards shall comply with the Local Government Ethics Law, N.J.S.A. 40A:9–22.1 et seq.

New Rule, R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).
Administrative correction.
See: 28 N.J.R. 813(b).
Amended by R.2001 d.22, effective January 16, 2001.
See: 32 N.J.R. 3515(a), 33 N.J.R. 253(a).
Added (z).

2:76–6.18A SADC grant agreement with county: acquisition phase; and monitoring phase

(a) The county shall certify that the acquisition of development easements by the county as set forth in the agreement complies with the provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32, as amended, and all implementing regulations in this chapter.

(b) During the acquisition phase the county which is in the process of acquiring a development easement pursuant to the Agriculture Retention and Development Act and other implementing regulations, N.J.A.C. 2:76–6 shall:

1. Provide a copy of a survey of the respective property, certified to the county, CADB, SADC, and title company which has been performed in accordance with N.J.S.A. 45:8–27 et seq. and N.J.A.C. 13:40–1.1 through 10.1.

i. The county is encouraged to require the surveyor to delineate internal features such as residential units, agricultural labor units, other agricultural buildings or structures and easements of record. This information will be extremely helpful in setting baseline data for future enforcement of the deed restrictions by the county;

2. Coordinate the initial onsite investigation of the property identified in Schedule A of the agreement with the SADC staff to establish the necessary baseline information for completing the Deed of Easement and for future inspection and monitoring purposes;

3. Obtain clear, valid record title, marketable, and insurable by a title company authorized to do business in New Jersey pursuant to N.J.A.C. 2:76–6.13(a);

4. Provide a copy of the title commitment to the SADC;

5. Prepare a Deed of Easement in accordance with N.J.A.C. 2:76–6.15 on the Deed of Easement form adopted by the SADC;

6. Identify the county's percent cost share and cost share grant amount for the purchase of the development easement;

7. Identify the municipal percent cost share and cost share grant amount for the purchase of the development easement;

8. Identify if the landowner is providing a donation to the county concerning the sale of the development easement pursuant to N.J.S.A. 4:1C–35;

9. Inform the SADC if the purchase of the development easement will require a lump sum payment (grant) to the County or installments over a period of up to 40 years from the date of settlement pursuant to N.J.S.A. 4:1C–32(c);

10. Subject to outstanding liens, other payments necessary to cover the easement and other special circumstances which may result in escrowing of funds, issue a check to the landowner for the total purchase price of the development easement at the time of closing for the purchase of the development easement, unless the installment purchase option is utilized;

11. Purchase the development easement on all properties set forth in Schedule A of the agreement within 18 months of the SADC's final approval;

i. The county may request the SADC to consider extending the 18 month period for one additional six month period;

12. File and record a notice of settlement prior to the easement purchase closing;

13. Immediately and properly record the fully executed Deed of Easement and all other appropriate settlement documents with the County Clerk's office following the purchase of the development easement;

14. Provide for notification of the development easement purchase pursuant to N.J.A.C. 2:76–6.13(d)2.

15. Provide the SADC with a copy of the recorded Deed of Easement immediately upon the county's receipt of the originally recorded Deed of Easement;

16. Provide the SADC with a copy of the insured title policy immediately upon receipt; and

17. Provide the SADC with an accounting of the County's ancillary costs pursuant to N.J.A.C. 2:76–6.11(d)3.

(c) During the acquisition phase, a county which is the record owner of a development easement acquired pursuant to N.J.S.A. 4:1C–34 and this subchapter and subsequent to the acquisition of the development easement, applies to the SADC for a grant under the Agriculture Retention and Development Act, shall:

1. Provide a copy of the initial survey of the property certified to the SADC, county and title company which has been performed in accordance with N.J.S.A. 45:8–27 et seq. and N.J.A.C. 13:40–1.1 through 10.1.

i. The county is encouraged to require the surveyor to delineate internal features such as residential units, agricultural labor units, other agricultural buildings or structures and easements of record. This information will be extremely helpful in setting baseline data for future enforcement of the deed restrictions by the county;

2. Coordinate the initial onsite investigation of the property identified in Schedule A of the agreement with the SADC staff to establish the necessary baseline information for completing the Deed of Easement and for future inspection and monitoring purposes;

3. Provide a copy of the title policy for the county's original acquisition of the development easement ensuring clear, valid record title marketable, and insurable by a title company authorized to do business in New Jersey;

4. Provide a copy of the recorded Deed of Easement used to acquire the original development easement which at a minimum contained the restrictions found at N.J.A.C. 2:76–6.15(a) which were in effect at the time the development easement was acquired;

5. Identify the county's initial purchase price of the development easement;

6. Identify, if applicable, the municipal percent cost share and cost share grant amount for the purchase of the initial development easement;

7. Identify if the initial landowner provided a donation to the county concerning the sale of the development easement pursuant to N.J.S.A. 4:1C–35;

8. Provide an affidavit from the county that no new encumbrances have been imposed on the Deed of Easement subsequent to the county's acquisition;

9. Provide an affidavit from the current record owner of the premises that no new encumbrances have been imposed on the premises subsequent to the sale of the development easement;

10. In the event an affidavit cannot be provided pursuant to (c)8 and 9 above, the county shall provide a copy of an updated title commitment to the SADC which provides for a clear, valid record title, marketable, and insurable by a title company authorized to do business in New Jersey;

11. Reimburse the SADC for its respective cost share grant in the event any encumbrance(s) was placed on the property subsequent to the date the original development easement was acquired which was not disclosed by the County and/or landowner in the Affidavits provided in (c)8 and 9 above;

12. Prepare a new Deed of Easement which contains the provisions of N.J.A.C. 2:76–6.15 which were in effect at the time the development easement was acquired by the county. The document shall provide for execution by the county and current landowner of the restricted premises if necessary; and

13. Provide the SADC with an accounting of the county's ancillary costs pursuant to N.J.A.C. 2:76–6.11(d)3.

(d) During the monitoring phase the county shall:

1. Conduct an onsite inspection and monitor, at least once a year, all land from which a development easement has been acquired by the county and for which the SADC has provided a cost share grant to the county to ensure compliance with the terms of the Deed of Easement;

i. All inspections and monitoring shall be completed within the period commencing July 1 and ending June 30; and

ii. The county shall provide a written summary to the SADC by July 15, verifying that the inspections were conducted during the scheduled period with a certification concerning whether the farm was in compliance with the provisions of the Deed of Easement;

2. Inform the SADC if any of the terms and conditions of the Deed of Easement were violated within 30 days of identifying such violation;

3. Take appropriate action within the county's authority to ensure that the terms and conditions of the Deed of Easement are enforced;

4. Maintain a data base of all lands from which a development easement was acquired listing at least the following:

i. Record owner;

ii. Record owner's address;

iii. Phone number;

iv. Tax map block and lots of the premises;

v. Acres;

vi. Title policy;

vii. Final survey;

viii. Inspection dates;

ix. Copy of the recorded Deed of Easement;

x. Subsequent amendments to the Deed of Easement; and

xi. Subsequent issues impacting the premises;

5. Annually inform the SADC of any record ownership changes which occur on lands from which development easements have been acquired; and

6. Inform the SADC of any actions which require the SADC's review and/or approval pursuant to N.J.A.C. 2:76–1, and the Deed of Easement.

New Rule, R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76–6.18B SADC grant agreement with county: SADC responsibility

(a) In furtherance of an agreement for a grant for the purchase of a development easement by a county the SADC shall:

1. Conduct a base line inspection of the properties designated in Schedule A of the agreement in cooperation with the county;

2. Review the title commitment, final survey, and other necessary closing documents deemed to be complete and accurate by the county prior to the formal purchase of a development easement;

3. Attend the formal closing for the purchase of a development easement to ensure that the SADC's interests and obligations are fully protected;

4. Provide a grant to the county for the purchase of a development easement on the properties designated in Schedule A of the agreement subject to available funds, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq. and N.J.A.C. 2:76–6.11, within 18 months of the SADC's final approval, but not prior to the closing for the purchase of the development easement;

5. Consider a request by the county pursuant to N.J.A.C. 2:76–6.18A(b)11, to extend the 18 month period to provide a grant to the county as follows:

i. The SADC may extend the 18 month period for one additional six month period when it has determined that extenuating circumstances which are beyond the county's or landowner's control have caused the delay;

6. Enforce the provisions of the Deed of Easement pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq. and N.J.A.C. 2:76; and

7. Review and take appropriate action as required pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., this chapter and the Deed of Easement.

New Rule, R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76-6.19 Request for Committee approval of lands permanently deed-restricted by a board and/or county not requiring a Committee cost share grant

(a) A board and/or county may request Committee approval of land from which a development easement was purchased by or donated to the board and/or county for the purpose of ensuring that the owner of the land is afforded all of the benefits available to lands from which a development easement has been conveyed pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and N.J.A.C. 2:76.

(b) To initiate a review by the Committee, the board shall provide the Committee with the following:

1. A completed application which included the following:

i. The landowner name, address, phone number;

ii. The block and lot designation;

iii. Acres;

iv. The general location;

v. Operation;

vi. Residence, RDSOs, exceptions;

vii. Pre-existing, non-agricultural uses;

viii. Prior subdivision approval;

ix. Easements/rights of way;

x. The quality score and ranking;

xi. The degree of imminence of change or conversion analysis; and

xii. The county ranking of the farm.

2. Certification that the land is located in an agricultural development area;

3. Certification that the land qualifies for differential property tax assessment pursuant to the Farmland Assessment Act of 1964;

4. A copy of the municipal governing body's resolution approving the purchase and/or donation of the development easement;

5. A copy of the board's and, if appropriate, county's approval of the purchase or receipt of a donated development easement; and

6. A copy of the recorded Deed of Easement that conveyed a development easement and all of the nonagricultural development rights and development credits appurtenant to the lands and premises to the board and/or county.

i. The deed restrictions imposed on the premises shall at a minimum contain the restrictions found at N.J.A.C. 2:76-6.15(a) which were in effect at the time the development easement was acquired.

ii. If appropriate, the Deed of Easement shall contain the following provision:

"Grantor understands and accepts that Grantee may, at its sole option, apply to have this easement enrolled for participation in the State of New Jersey Agriculture Retention and Development Program as administered by the State Agriculture Development Committee. It is the intention of Grantor to convey to Grantee, by this present instrument, all of the rights which would have to be conveyed under N.J.S.A. 4:1C-11 et seq. and under N.J.A.C. 2:76-1.1 et seq. in order to qualify this easement for participation in the State Program. Grantor hereby agrees and undertakes to cooperate with Grantee in any appropriate aspect of the State in the application process and to execute any necessary papers presented by the State or by Grantee in connection therewith. Grantor hereby consents to the participation in or exercise of any of Grantee's rights and obligations hereunder by the State Agriculture Development Committee or any other State agency or political subdivision of the State of New Jersey. Grantee stipulates that any rights and prerogatives which this Deed of Easement extends to the Committee (which entity is neither a party to this conveyance nor to any of the negotiations and agreements leading up to same) are inchoate and shall not be exercised unless and until Grantee and the Committee enter into an agreement as a result of the enrollment of this easement in the State of New Jersey Agriculture Retention and Development Program";

7. A copy of the board and/or county's marked up title commitment, or, if appropriate, title policy issued for the purchase or donation of the development easement on the premises;

8. A copy of the survey plat with a legal metes and bounds description of the premises;

9. If appropriate, an executed Enrollment Agreement between the board and/or county and the Committee which grants the Committee all of the rights and prerogatives contained in the Deed of Easement; and

10. An executed Grant Agreement between the board and/or county and the Committee.

(c) The Committee shall review the documentation provided by the board and/or county to ensure that the infor-

mation is accurate and complete in accordance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and this chapter and shall approve or disapprove the board and/or county's request.

1. If approved, the Committee shall execute the Enrollment Agreement as identified in (b)9 above and Grant Agreement and return the Enrollment Agreement to the board for recording with the county clerk's office;

2. Upon the board's recording of the Enrollment Agreement, the owner of the land shall be eligible for all of the benefits provided to lands from which a development easement has been conveyed pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and this chapter.

3. The Committee's approval of a board and/or county-owned development easement pursuant to this section shall not preclude the board and/or county from applying for a grant from the Committee at a later date to reimburse the board and/or county for its cost of acquiring the development easement pursuant to N.J.A.C. 2:76-6.5(h). However, counties are not eligible to apply to the Committee for a cost share grant for the donated portion of a development easement.

New Rule, R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

2:76-6.20 Minimum eligibility criteria

(a) All lands from which a development easement is acquired and all lands purchased in fee simple title pursuant to section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 though 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 40) shall at a minimum satisfy the following criteria:

1. For lands less than or equal to 10 acres, the land must meet the criteria in (a)1i, ii, iii and iv, or (a)1v below.

i. The land produces agricultural or horticultural products of at least $2,500 annually;

ii. At least 75 percent of the land is tillable or a minimum of five acres, whichever is less;

iii. At least 75 percent of the land, or a minimum of five acres, whichever is less, consists of soils that are capable of supporting agricultural or horticultural production; and

iv. The land must exhibit development potential based on a finding that all of the following standards are met:

(1) The municipal zoning ordinance for the land as it is being appraised must allow additional development, and in the case of residential zoning, at least one additional residential site beyond that which will potentially exist on the premises;

(2) Where the purported development value of the land depends on the potential to provide access for additional development, the municipal zoning ordinances allowing further subdivision of the land must be verified. If access is only available pursuant to an easement, the easement must specify that further subdivision of the land is possible. To the extent that this potential access is subject to ordinances such as those governing allowable subdivisions, common driveways and shared access, these facts must be confirmed in writing by the municipal zoning officer or planner;

(3) The land shall not contain more than 80 percent soils classified as freshwater or modified agricultural wetlands according to the New Jersey Department of Environmental Protection (DEP) wetlands maps. If the DEP wetlands maps are in dispute, further investigation and onsite analysis may be conducted by a certified licensed engineer or qualified wetlands consultant and/or a letter of interpretation issued by the New Jersey Department of Environmental Protection, may be secured and used to provide a more accurate assessment of the site conditions, provided, however, that nothing herein shall require the Committee to conduct such additional investigation; and

(4) The land shall not contain more than 80 percent soils with slopes in excess of 15 percent as identified on a USDA, Natural Resources Conservation Service SSURGO version 2.2 or newer soils map; or

v. The land is eligible for allocation of development credits pursuant to a transfer of development potential program authorized and duly adopted by law including development credits authorized pursuant to the Pinelands Comprehensive Management Plan and authorized rules.

vi. For evaluation purposes, the term "tillable" means lands that are classified as cropland harvested, cropland pastured and permanent pasture for farmland assessment purposes.

(1) "Cropland harvested" means land from which a crop was harvested in the current year. Cropland harvested shall include land under structures utilized for agricultural or horticultural production.

(2) "Cropland pastured" means land which can be and often is used to produce crops, but its maximum income may not be realized in a particular year. This includes land that is fallow or in cover crops as part of a rotational program.

(3) "Permanent pasture" means land that is not cultivated because its maximum economic potential is realized from grazing or as part of erosion control programs. Animals may or may not be part of the farm operation.

2. For lands greater than 10 acres, the land must meet the criteria in (a)2i, ii and iii, or (a)2iv.

i. At least 50 percent of the land, or a minimum of 25 acres, whichever is less, is tillable;

ii. At least 50 percent of the land, or a minimum of 25 acres, whichever is less, consists of soils that are capable of supporting agricultural or horticultural production; and

iii. The land must exhibit development potential based on a finding that all of the following standards are met:

(1) The municipal zoning ordinance for the land as it is being appraised must allow additional development, and in the case of residential zoning, at least one additional residential site beyond that which will potentially exist on the premises;

(2) Where the purported development value of the land depends on the potential to provide access for additional development, the municipal zoning ordinances allowing further subdivision of the land must be verified. If access is only available pursuant to an easement, the easement must specify that further subdivision of the land is possible. To the extent that this potential access is subject to ordinances such as those governing allowable subdivisions, common driveways and shared access, these facts must be confirmed in writing by the municipal zoning officer or planner.

(3) Land that is less than 25 acres in size shall not contain more than 80 percent soils classified as freshwater or modified agricultural wetlands according to the New Jersey Department of Environmental Protection (DEP) wetlands maps. If the DEP wetlands maps are in dispute, further investigation and onsite analysis may be conducted by a certified licensed engineer or qualified wetlands consultant and/or a letter of interpretation issued by the New Jersey Department of Environmental Protection, may be secured and used to provide a more accurate assessment of the site conditions, provided, however, that nothing herein shall require the Committee to conduct such additional investigation; and

(4) Land that is less than 25 acres in size shall not contain more than 80 percent soils with slopes in excess of 15 percent as identified on a USDA, Natural Resources Conservation Service SSURGO version 2.2 or newer soils map; or

iv. The land is eligible for allocation of development credits pursuant to a transfer of development potential program authorized and duly adopted by law including development credits authorized pursuant to the Pinelands Comprehensive Management Plan and authorized rules.

v. For evaluation purposes, the term "tillable" means lands that are classified as cropland harvested, cropland pastured and permanent pasture for farmland assessment purposes.

(1) "Cropland harvested" means land from which a crop was harvested in the current year. Cropland harvested shall include land under structures utilized for agricultural or horticultural production.

(2) "Cropland pastured" means land which can be and often is used to produce crops, but its maximum income may not be realized in a particular year. This includes land that is fallow or in cover crops as part of a rotational program.

(3) "Permanent pasture" means land that is not cultivated because its maximum economic potential is realized from grazing or as part of erosion control programs. Animals may or may not be part of the farm operation.

(b) Lands that do not meet the minimum eligibility criteria are not eligible for a State cost share grant for farmland preservation purposes.

(c) No application being reviewed by the Committee for permanent farmland preservation purposes shall be eligible to be considered in more than one program at any time.

(d) If a landowner rejects an offer for an amount equal to or greater than the certified market value, the Committee shall not accept for processing any application for the sale of a development easement, or for sale of land in fee simple, pursuant to the planning incentive grant program or any other farmland preservation program authorized pursuant to N.J.S.A. 4:1C-11 et seq., or 13:1C-1 et seq. for two years from the date that the application for a sale of the development easement was originally submitted to the Committee. This provision applies only to an application from the same landowner for the same farm property.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

2:76-6.21 Appraiser selection

(a) A State-Certified General Real Estate Appraiser (SCGREA) certified pursuant to N.J.A.C. 13:40A-1.2 on the Committee's list of approved appraisers as of July 2, 2007, shall be eligible to remain on the Committee's approved list subject to N.J.A.C. 2:76-6.22.

(b) A State-Certified General Real Estate Appraiser (SCGREA) certified pursuant to N.J.A.C. 13:40A-1.2 that is not on the Committee's list of approved appraisers as of July 2, 2007, may apply to the Committee in writing, by no later than June 1 of the year in which the appraiser wants to be added to the list of approved appraisers, subject to the Committee's determination that the appraiser has satisfied the following requirements:

1. The appraiser is equipped with adequate office support and resources to efficiently complete narrative appraisal reports on a large scale as confirmed by the Committee's review appraiser;

2. The appraiser has demonstrated his or her experience in appraising various types of real estate such as residential, commercial, industrial and special purpose assignments with an emphasis on appraising agricultural and vacant lands;

3. The appraiser has presented a summary of his or her credentials including a partial list of clients indicating the scope of practice, a copy of his or her license and three references;

4. The appraiser has provided an example of an agricultural or vacant land appraisal report that has been reviewed by the Committee's review appraiser and found to be prepared based on generally recognized appraisal practices with reasonable and justified conclusions, adheres to appraisal report format, and is without errors and omissions; and

5. The appraiser has attended the Committee's annual appraisal seminar in the year in which he or she is making application to the Committee to be considered for approval.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

2:76-6.22 Appraiser retention and removal

(a) Annually, the Committee shall conduct a review of the qualifications of all approved appraisers and may remove an appraiser who does not meet the provisions of N.J.A.C. 2:76-6.21 or (b) below.

(b) To be retained as an approved appraiser, the Committee shall ensure that the appraiser complies with the following:

1. The appraiser has attended at least one of the Committee's annual appraisal seminars in the last two years;

2. The appraiser has satisfied contractual requirements, has complied with Committee handbook standards and N.J.A.C. 2:76-10, has complied with generally recognized appraisal practices and responded to the contracting agency to address any appraisal deficiencies or questions in a timely manner.

i. The contracting agency shall notify the Committee if an appraiser has not complied with the above;

3. The appraiser has responded to the Committee's review appraiser to address any appraisal deficiencies or questions in a timely manner; and

4. The appraiser has consistently prepared quality appraisal reports that do not contain errors and omissions that impact the integrity of the appraisal report.

(c) In the event that the Committee has documentation that the appraiser has not complied with any of the provisions contained in (b) above, the Committee shall remove the appraiser from the list of approved appraisers.

1. The appraiser shall be notified in writing of the Committee's determination.

(d) The Committee shall update its list of approved appraisers annually and notify all boards and other contracting parties and post the list on its website at www.state.nj.us/agriculture/sadc/sadc.htm.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

2:76-6.23 Determination of the Committee's cost share for a development easement on lands acquired in fee simple title by a government entity

(a) In order for a board and/or county or municipality that has acquired land in fee simple title for farmland preservation purposes to be eligible for a cost share grant for the purchase of a development easement as a partial interest in the fee simple title, the board and/or county or municipality shall submit an application to the Committee pursuant to this subchapter within three consecutive funding rounds (see N.J.A.C. 2:76-6.5(g)), or within three years of the date of acquisition for any other permanent farmland preservation program.

(b) Where the government entity has not yet resold the premises with deed restrictions at the time the Committee provides its cost share grant, the Committee shall base the amount of its cost share grant on either the development easement value determined pursuant to N.J.A.C. 2:76-10 and certified by the Committee, or the purchase price of the premises paid by the board and/or county or municipality minus the certified "after" value of the restricted premises, whichever is less. In the case of a municipal transaction, the development easement value or purchase price shall be adjusted to include any municipal interest costs incurred as defined at N.J.A.C. 2:76-6.11(d).

1. Grant agreements governing transactions described in (b) above, shall provide that, if the government entity receiving the grant sells the restricted premises for more than the "after" value used to calculate the grant amount, the government entity shall reimburse to the Committee any funds previously paid by the Committee for the development easement on a pro rata basis up to the amount of the cost share grant, within 30 days of the government entity's resale of the restricted premises.

2. Failure to comply with this provision may result in the Committee filing a petition with the Department of Treasury, Division of Taxation to withhold approval of the government entity's budget for the next fiscal year.

(c) In those instances where the government entity resold the restricted premises prior to the Committee providing its cost share grant, the Committee shall base its cost share grant on the development easement value determined pursuant to N.J.A.C. 2:76-10 and certified by the Committee, on the purchase price of the premises paid by the board and/or county or municipality minus the certified "after" value of the

restricted premises or on the purchase price paid by the government entity less the payment received for the resale of the restricted premises, whichever is less. In the case of a municipal transaction, the easement value or purchase price shall include any municipal interest costs incurred as defined at N.J.A.C. 2:76-6.11(d).

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

SUBCHAPTER 7. REVIEW OF NON-AGRICULTURAL DEVELOPMENT PROJECTS IN AGRICULTURAL DEVELOPMENT AREAS

2:76-7.1 Applicability

This subchapter applies to any public body or public utility which intends, within an agricultural development area, to exercise the power of eminent domain for the acquisition of land, or advance a grant, loan, interest subsidy or other funds within an agricultural development area for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures.

2:76-7.2 Definitions

"Advance a grant, loan, interest subsidy or other funds" means the provision of funds in the form of a grant, loan or interest subsidy or other financial assistance for the construction of a project as defined in this subchapter.

"Agricultural development area" means the agricultural land area identified by the board and certified by the Committee pursuant to N.J.S.A. 4:1C-18 and N.J.A.C. 2:76-1.

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

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

"Initiation of an action" means the earliest of the following events: the filing of a complaint by a public body or public utility with the New Jersey Superior Court for permission to exercise the power of eminent domain; the issuance of a draft environmental impact statement or environmental assessment; the approval of a project as a "categorical exclusion" by the Federal Highway Administration; or, in the case of the advancement of funds, the time at which a public utility or public body decides to make a final commitment to advance a grant, loan, interest subsidy or other funds toward a project.

"Notice of intent" means the written notification by a public body or public utility to the Committee and the board and the supporting documents and information pursuant to N.J.A.C. 2:76-7.3(c) and 2:76-7.4(d).

"Project" means the use or purpose for which any public body or public utility intends to acquire land within an agricultural development area through the exercise of the power of eminent domain, or the construction, within an agricultural development area, of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures, for which construction any public body or public utility intends to advance a grant, loan, interest subsidy or other funds.

"Proposed action" means the intention of any public body or public utility to exercise the power of eminent domain for the acquisition of land or advance a grant, loan, interest subsidy or other funds for a project as defined in this subchapter.

"Public body" means any State, regional, county or municipal agency or governing body, including but not limited to special districts and authorities.

"Public utility" means and includes every public utility enumerated in N.J.S.A. 48:2-13, and every natural gas pipeline utility as defined at N.J.S.A. 48:10-2 et seq. vested with the power of eminent domain and subject to regulation under State or Federal law.

"Secretary" means the Secretary of Agriculture.

2:76-7.3 Responsibilities of the public body and/or public utility

(a) A notice of intent shall be filed with the board and the Committee by any public body or public utility which intends, within an agricultural development area, to:

1. Exercise the power of eminent domain for the acquisition of land; or

2. Advance a grant, loan, interest subsidy or other funds for the construction of a project as defined in this subchapter.

(b) The following are exempt from the requirements of (a) above:

1. Extension of roadside public utility electric and gas distribution lines; and

2. Minor improvements and/or repairs to existing transportation and water or sewer infrastructure systems that do not increase existing capacity or extend service into previously unserviced areas.

(c) The notice of intent shall include:

1. A statement of the reasons for the proposed action;

2. An evaluation of alternatives which would not include action in the agricultural development area;

3. Information about the project and its impact as outlined in N.J.A.C. 2:76-7.4.

(d) The notice of intent shall be filed with the board and the Committee at least 30 days prior to the initiation of an action described in (a) above. The time at which the action is initiated shall be as defined in N.J.A.C. 2:76-7.2.

2:76-7.4 Information about the project

(a) The information outlined in (d) below regarding the proposed action and project shall be required in the notice of intent submitted to the board and the Committee by the public body or public utility and shall be used, along with other relevant information, by the board and the Committee to evaluate the impact of the project on the agricultural activities in the Agricultural Development Area. If the board determines that further information is required to complete its evaluation, such information shall be submitted by the public body or public utility within 10 working days of the request.

(b) If a draft environmental impact statement has been prepared in connection with the proposed action or project and includes all of the information required in (d) below, then that statement, along with the information required in N.J.A.C. 2:76-7.3(c) and together with a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such statement is served upon the board and the Committee at least 30 days prior to the initiation of the proposed action.

(c) If a draft environmental impact statement prepared in connection with the proposed action or project does not contain all of the information required in (d) below, including the information required in N.J.A.C. 2:76-7.3(c), then that statement, together with all additional information necessary and a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such statement is served upon the board and the Committee at least 30 days prior to the undertaking of the proposed action.

(d) The following information must be submitted for each project:

1. The name of the public body or public utility involved, its address, telephone number and the name of a contact person.

2. The location and land use of the project as follows:

i. The location of the project, including:

(1) The municipality(ies), block and lot number(s) to the extent known;

(2) A key map adequately locating the site or proposed route of the project;

(3) The current use of the site; and

(4) The land use of area adjacent to the site, including:

(A) Current buffers between the project and farmland; and

(B) The proposed use of buffers between the project and farmland.

(C) Land use on adjacent lots.

ii. A description of the project, including:

(1) The type of project (utility, residential, commercial, industrial, etc.);

(2) The purpose of the project;

(3) The total area of the project;

(4) The phases of the project;

(5) The infrastructure required, including roads and utilities (water, electric, gas, etc.); and

(6) The alternatives considered, if any.

(7) The site plan, if available.

3. A discussion of farm activities impacts on the project through consideration of the following issues from the public body or public utility's perspective and identification of feasible solutions to these potential problems:

i. Potential complaints concerning noise from use of farm machinery, irrigation pumps or other equipment;

ii. Potential complaints concerning odors associated with livestock, poultry, crops or manure spreading;

iii. Potential complaints concerning use of herbicides, pesticides and fertilizers; and

iv. Potential dust problems.

4. A discussion of project impacts on farm activities, including:

i. Prevention of access to an actively farmed area;

ii. Potential increase in vandalism of farm equipment, buildings and/or crops;

iii. Potential increase in farm trespass;

iv. Potential increase in vehicle traffic;

v. Potential increase in litter (glass, plastic and/or paper) that may affect the farm operation; and

vi. Potential impact on aesthetics of the area.

5. A discussion of the project's impact on water resources with respect to the agricultural operation, including:

i. The following aspects of water diversion:

(1) Surface runoff affecting water bodies, including irrigation ponds;

(2) Groundwater aquifers affected; and

(3) Rechanneling of streams or water courses;

ii. The potential effect on surface and groundwater quality; and

iii. The site's function as a water recharge area.

SUBCHAPTER 8. ACQUISITION OF FARMLAND IN FEE SIMPLE

2:76-8.1 Applicability

This subchapter applies to all transactions in which the State Agriculture Development Committee purchases real property pursuant to P.L. 1988, c. 4, N.J.S.A. 4:1C-31.1, 4:1C-31.2, 4:1C-38, and 4:1C-39 and all other relevant provisions of the Agriculture Retention and Development Act and the Garden State Preservation Trust Act, P.L. 1999, c. 152.

Emergency amendment R.1999 d.317, effective August 20, 1999 (to expire October 19, 1999).
See: 31 N.J.R. 2646(a).
Added a reference to the Garden State Preservation Trust Act.
Adopted concurrent proposal, R.1999 d.390, effective October 19, 1999.
See: 31 N.J.R. 2646(a), 31 N.J.R. 3625(a).
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Substituted "c. 4" for "c.4", "N.J.S.A. 4:1C-31.1, 4:1C-31.2, 4:1C-38, and 4:1C-39" for "N.J.S.A. 4:1C-31.1 and N.J.S.A. 4:1C-31.2" and "c. 152" for "c.152".

2:76-8.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Agricultural Development Area(s) (ADA)" means area(s) identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agricultural Development Committee (SADC).

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

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4. "Agricultural deed restrictions for farmland preservation purposes" means a statement containing the conditions of the conveyances and the terms of the restrictions set forth in P.L. 1983, c.32 and as additionally determined by the committee on the use and development of the land which shall be recorded with the deed in the same manner as originally recorded.

"120-day commitment letter" means a document prepared by the Committee and signed by the landowner and Committee that requires the landowner to refrain from entering into any option agreement, contract of sale, or any other agreement affecting title to the subject farm for a period of 120 days, during which time the Committee shall hire two independent appraisers to appraise the subject farm.

"Quality score" means the Committee's numeric total derived from the application of the criteria for evaluating a development easement application contained in N.J.A.C. 2:76-6.16.

Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Added definitions "120-day commitment letter" and "Quality score".

2:76-8.3 Landowner offer

(a) An owner of farmland within an agricultural development area may offer to sell to the Committee the fee simple absolute title to the farmland at a price which, in the opinion of the landowner, represents the fair market value of the property.

(b) The Committee shall forward copies of the offer to the respective board and municipality.

2:76-8.4 Board and municipal comments

The respective board and municipality may submit comments regarding the pending offer to the Committee within 30 days of the date of application.

2:76-8.5 Committee evaluation

(a) In determining the suitability of the purchase of farmland, the Committee shall consider the criteria set forth in N.J.S.A. 4:1C-31.1 and any comments of the respective board and municipality.

(b) In addition to the factors set forth in (a) above, the Committee shall evaluate the same criteria utilized for the evaluation of applications for development easement purchases set forth in N.J.A.C. 2:76-6.16, the criteria contained at N.J.A.C. 2:76-6.20 and the prioritization criteria set forth in (c), (d) and (e) below.

(c) An application received by the Committee that satisfies the minimum eligibility criteria contained at N.J.A.C. 2:76-6.20 and has been evaluated pursuant to N.J.A.C. 2:76-6.16 shall be prioritized as follows:

1. "Priority farm": meets or exceeds both 75 percent of the average farm size in the county in which it is located and its quality score is at least 90 percent of the average quality score in the county in which it is located.

2. "Alternate farm": does not meet the criteria for "priority" farm, but meets or exceeds both 55 percent of the average farm size in the county in which it is located and its quality score is at least 70 percent of the average quality score in the county in which it is located.

3. "Other farm": does not meet the criteria for "priority" or "alternate" farms.

(d) Average farm size in a county shall be determined based on the average farm size of farms using the 2002 US Census data, incorporated herein by reference, as amended and supplemented. The 2002 US Census data can be obtained at www.nass.usda.gov.

(e) Average quality score in a county shall be based on the average quality scores determined pursuant to N.J.A.C. 2:76-6.16 for all farms granted preliminary approval by the Committee through the county easement purchase program and/or county planning incentive grant program within the previous three fiscal years, as determined by the Committee.

Emergency amendment R.1999 d.317, effective August 20, 1999 (to expire October 19, 1999).
See: 31 N.J.R. 2646(a).
Added (c).
Adopted concurrent proposal, R.1999 d.390, effective October 19, 1999.
See: 31 N.J.R. 2646(a), 31 N.J.R. 3625(a).
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
In (a) and (b), substituted "Committee" for "committee"; in (b), inserted ", the criteria contained at N.J.A.C. 2:76-6.20 and the prioritization criteria set forth in (c), (d) and (e) below"; rewrote (c); and added (d) and (e).

2:76-8.6 Committee notification

(a) An application that receives a "priority" ranking pursuant to N.J.A.C. 2:76-8.5(b) shall proceed as follows:

1. The Committee shall consider if it has expended the required minimum funds in that particular county pursuant to N.J.S.A. 13:8C-38m for the respective fiscal year and available funds.

2. If a determination pursuant to (a)1 above is to proceed with the application, the landowner shall be notified in writing of its application status and requested to enter into a 120-day commitment letter with the Committee.

3. Upon execution of the 120-day commitment letter, the application shall proceed to the appraisal process described pursuant to N.J.A.C. 2:76-8.7.

(b) An application that receives an "alternate" ranking pursuant to N.J.A.C. 2:76-8.5(b) shall proceed as follows:

1. The landowner shall be notified in writing of its application status and informed that no immediate action shall be taken until such time that the Committee determines the following:

i. There are no "priority" ranked applications received at least 120-days prior to the end of the fiscal year that have not already been accepted for processing;

ii. The Committee has not expended the required minimum funds in that particular county pursuant to N.J.S.A. 13:8C-38m for the respective fiscal year; and

iii. Consideration of geographic distribution of funds authorized pursuant to N.J.S.A. 13:8C-38b.

2. The Committee may authorize the execution of the 120-day commitment letter, provided that the conditions in (b)1 above have been satisfied.

3. Upon execution of the 120-day commitment letter, the application shall proceed to the appraisal process described pursuant to N.J.A.C. 2:76-8.7.

(c) An application that receives an "other" ranking pursuant to N.J.A.C. 2:76-8.5(b) shall proceed as follows:

1. The landowner shall be notified in writing of its application status and informed that the Committee will not take action until such time as it determines the following:

i. There are no "priority" or "alternate" ranked applications received at least 120-days prior to the end of the fiscal year that have not already been accepted for processing;

ii. The Committee has not expended the required minimum funds in that particular county pursuant to N.J.S.A. 13:8C-38m for the respective fiscal year; and

iii. The acquisition will promote the geographic distribution of funds pursuant to N.J.S.A. 13:8C-38b.

2. The Committee may proceed to authorize the execution of the 120-day commitment letter, provided that the conditions in (c)1 above have been satisfied.

3. Upon execution of the 120-day commitment letter, the application shall proceed to the appraisal process described pursuant to N.J.A.C. 2:76-8.7.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Former N.J.A.C. 2:76-8.6, Appraisals, recodified to N.J.A.C. 2:76-8.7.

2:76-8.7 Appraisals

(a) The Committee shall, for each application that has been authorized pursuant to N.J.A.C. 2:76-8.6 to proceed to the appraisal process, select two independent appraisers on the list of appraisers approved by the Committee pursuant to N.J.A.C. 2:76-6.22 to perform appraisals on the offered farmland.

(b) Appraisals to determine the market value of the fee simple estate and market value of the restricted fee simple estate for purposes of resale of the restricted premises shall be conducted consistent with the process set forth in subsection c of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), sections 38(e), (g), (i) and (j) of the Garden State Preservation Trust Act, P.L. 1999, c. 152 and N.J.A.C. 2:76-10.

(c) Upon completion of the appraisals, the appraisers shall forward the appraisal reports to the Committee.

Recodified from N.J.A.C. 2:76-8.6 and amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Rewrote the section. Former N.J.A.C. 2:76-8.7, Final Committee action, recodified to N.J.A.C. 2:76-8.10.

2:76-8.8 Committee approval of fee simple market value

(a) The Committee shall appoint a review appraiser to evaluate the two independent appraisals and establish a recommended market value for the fee simple estate and the market value for the restricted fee simple estate.

1. The review shall be done to ensure compliance with the appraisal handbook standards at N.J.A.C. 2:76-10.

2. The recommended market value of the fee simple estate shall not be greater than the highest independent appraised value of the fee simple estate or less than the lowest independent appraised value for the fee simple estate.

(b) The Committee shall have final authority for certifying the market value of the fee simple estate and the market value for the restricted fee simple estate.

1. The certified market value of the fee simple estate shall not be greater than the highest independent appraised value of the fee simple estate or less than the lowest independent appraised value of the fee simple estate.

(c) The Committee may find an appraisal invalid if it does not comply with the appraisal handbook standards at N.J.A.C. 2:76-10 or generally accepted appraisal practices or contains a series of errors, omissions or hypothetical assumptions that significantly impact the integrity of the report or in the aggregate affect the credibility of the results.

1. If an appraisal is found to be invalid, the Committee may request the selection of a new independent appraiser pursuant to N.J.A.C. 2:76-8.7.

(d) The Committee shall authorize staff to negotiate the fee simple purchase of the farmland pursuant to N.J.A.C. 2:76-8.9.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

2:76-8.9 Negotiation of offer

(a) The Committee authorizes staff to negotiate the purchase of the farmland in fee simple title with the owner not to exceed the certified market value for the fee simple estate established pursuant to N.J.A.C. 2:76-8.8.

(b) Upon the owner's acceptance of a fee simple value, the Committee shall conduct a final review pursuant to N.J.A.C. 2:76-8.10.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

2:76-8.10 Final Committee action

(a) Upon identification to the Committee of the fee simple value negotiated with a landowner other than a government entity pursuant to N.J.A.C. 2:76-8.9, the Committee shall ensure compliance with the provisions of this subchapter and if all requirements are satisfied, grant final approval of the fee simple purchase of the land and all of its improvements subject to the following:

1. Available funds; and

2. Execution of an agreement between the owner of the fee simple interest and Committee.

i. If appropriate, the Committee may condition its approval on a local government or nonprofit organization contributing a portion of the cost of acquiring the farmland in fee simple title if the preservation of the farmland is of significant local or regional importance or if the Committee has insufficient funds to pay 100 percent of the acquisition cost.

(b) Upon identification to the Committee of the fee simple value negotiated with a landowner that is a government entity pursuant to N.J.A.C. 2:76-8.9, the Committee shall ensure compliance with the provisions of this subchapter and if all requirements are satisfied, grant final approval of the fee simple purchase of the land and all of its improvements subject to the following:

1. Available funds;

2. The provisions at N.J.A.C. 2:76-8.11; and

3. Execution of an agreement between the local government entity owning the fee simple interest and Committee.

Recodified from N.J.A.C. 2:76-8.7 and amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Rewrote the section.

2:76-8.11 Grants to local governments for acquisition of fee simple titles to farmland

(a) Pursuant to N.J.S.A. 13:8C-37a.(2), the Committee may provide grants to local government entities to pay up to 80 percent of the cost of acquisition of fee simple titles to farmland from willing sellers only.

(b) The Committee's grant shall be determined pursuant to N.J.A.C. 2:76-6.11(d) based on the cost of the local government's acquisition. Cost is defined as the local government's purchase price or the Committee's certified market value of the fee simple estate, whichever is less. In addition, the Committee may provide a grant for up to 50 percent of the eligible ancillary costs as defined at N.J.A.C. 2:76-6.11(d)4.

1. The Committee may provide a lower pro rata cost share of the cost as determined in (b) above under any of the following circumstances:

i. There are limited funds available;

ii. The certified market value of the fee simple estate exceeds $115,000 per acre;

iii. The land is of greater local or regional significance and not of Statewide significance; or

iv. The Committee has already expended the required minimum funds in that particular county pursuant to N.J.S.A. 13:8C-38m for the respective fiscal year.

(c) Any lands acquired in fee simple title by the local government unit shall be offered for resale or lease with agricultural restrictions, as determined by the Committee.

1. The agricultural restrictions shall be consistent with the restrictions contained at N.J.A.C. 2:76-6.15.

(d) Any proceeds received from a resale shall be dedicated for farmland preservation purposes and the Committee's pro rata share, as determined by (b) above, of the proceeds shall be repaid to the Committee by the local government unit and deposited in the Garden State Farmland Preservation Trust Fund or other appropriate farmland preservation fund to be used for the purposes of that fund. Proceeds are defined as the actual gross sales proceeds and shall not include any adjustments for real estate commissions or other costs incurred by the governmental entity associated with the resale of the land.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

SUBCHAPTER 9. EMERGENCY ACQUISITION OF DEVELOPMENT EASEMENTS

2:76-9.1 Scope

This subchapter sets forth the emergency conditions under which the State Agriculture Development Committee (SADC) may provide up to 100 percent funding for the purchase of development easements on farmland pursuant to N.J.S.A. 4:1C-31(c)-(e) as amended.

2:76-9.2 Emergency purchase conditions

(a) If the SADC determines that there is a substantial likelihood that the use of the land will change from productive agriculture to non-agriculture, the SADC may provide up to 100 percent of the cost of development easements on the following:

1. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where the SADC determines that the purchase would be in the interest of the State regardless of whether the respective county agriculture development board (CADB) is willing to provide funds for the purchase.

2. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where both the SADC and the respective CADB determines that the purchase is in their respective interests and no county funding is immediately available.

(b) The SADC may require the county to provide additional cost share funds beyond those currently required for future purchases of development easements in the event of the 100 percent SADC funding pursuant to (a)2 above.

SUBCHAPTER 10. APPRAISAL HANDBOOK STANDARDS

2:76-10.1 Applicability

This subchapter provides the standards contained in the State Agriculture Development Committee's appraisal handbook for independent professional appraisers to follow when conducting appraisals of farmland for the purpose of acquiring a development easement pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended.

2:76-10.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural value" means the value of the property based solely on its agricultural productivity which does not take into account alternative uses for the property.

"Agricultural market value" means the market value of property with a present and future highest and best use for agricultural production. This includes consideration of exposure on the market and competition for agricultural property among farmers.

"Appraiser handbook" means a document prepared and adopted by the Committee which identifies the standards for conducting appraisals which shall be available to the boards.

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

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

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and any relevant rules or regulations promulgated pursuant thereto.

"Exceptions", unless the text indicates otherwise, means portions of the applicant's land holdings which are not to be encumbered by the deed restrictions contained in N.J.A.C. 2:76-6.15.

"Hydrologically limited area" means those areas which are designated as freshwater wetlands, transition zones, 100 year flood hazard areas, hydric soils, State open waters, State-owned riparian lands, or otherwise lack or have limited development potential due to excessive water.

"Market value restricted" means the market value of property subject to the deed restrictions placed on the title of the property as set forth in N.J.A.C. 2:76-6.15.

"Market value unrestricted" means the market value that a property will bring in the open market under all conditions requisite for a fair sale and which value includes all rights of fee simple ownership.

"Subject property" means the property being considered for the purchase of a development easement.

2:76-10.3 Appraisal report format

(a) The appraisal reports prepared by the independent appraiser pursuant to N.J.S.A. 2:76-6.7 shall follow the following format:

1. Summary;

2. General information;

3. Property valuation before development easement acquisition (market value unrestricted);

4. Property valuation after development easement acquisition (market value restricted);

5. Final estimate of development easement value; and

6. Addendum.

(b) The requirements for each section of the appraisal reports are described in N.J.A.C. 2:76-10.4 through 10.9.

2:76-10.4 Summary

(a) The summary section of the appraisal report shall contain the following:

1. A letter of transmittal which shall include the development easement value expressed as a per acre value and a total value;

2. A certification of appraisal which shall include the market value unrestricted, market value restricted, development easement value, date of valuation and the signature of the appraiser responsible for the report;

3. A summary of salient facts and important conclusions which shall include any other information which the appraiser deems relevant. The format shall conform with the sample, Appendix A of this subchapter, incorporated herein by reference; and

4. A table of contents which shall include the topic listings contained in the appraisal report with corresponding page numbers. The format shall conform with the sample, Appendix B of this subchapter, incorporated herein by reference.

2:76-10.5 General information

(a) The general information section of the appraisal report shall contain the following:

1. The purpose of the appraisal which estimates the market value of the development easement on the subject property as restricted pursuant to N.J.A.C. 2:76-6.15;

2. A statement of the rights being valued:

i. Market value unrestricted;

ii. Market value restricted; and

iii. Development easement value;

3. A section defining the legal and technical terms of the report;

4. Any assumptions and limiting conditions;

5. A section identifying the subject property by municipal tax map block and lot or other means. The subject property and its current use shall be briefly described;

6. Zoning and assessment information; and

7. Information detailing community and neighborhood data. This shall include, but not be limited to, the character of the community, land use trends, degree of development pressure in the area and any other information which may impact the market value unrestricted.

(b) Appraisers shall apply the valuation procedure set forth in N.J.S.A. 13:8C-38j to land the owner of which is:

1. The same person who owned the lands on the date of enactment of P.L. 2004, c.120 (August 10, 2004) and who has owned the lands continuously since that enactment date;

2. An immediate family member of that person, defined as a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption; or

3. A farmer as defined in (c) below.

(c) Farmer means an owner or operator of a farming operation who during the calendar year immediately preceding submittal of a farmland preservation application, realized gross sales of at least $2,500 of agricultural or horticultural products produced on the farming operation exclusive of any income received for rental of lands.

1. Documentation to be provided by the farmland preservation applicant shall include, but not be limited to, sales receipts and Federal tax forms.

(d) A governmental unit or a qualifying tax-exempt non-profit organization shall be eligible for the appraisal valuation procedure set forth in N.J.S.A. 13:8C-38j provided that it:

1. Acquired land or an interest in land or is a contract purchaser to acquire land or an interest in land, for farmland preservation purposes pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq.;

2. Submitted a farmland preservation application to the Committee for a grant pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq., within three years of the date of acquisition of the land or interest in land; and

3. Acquired the land or interest in land from a farmer as defined in (c) above.

(e) If an owner of land who meets the definition of farmer in (c) above transferred ownership to a business entity, such as a corporation, limited liability company, partnership, or trust, after the date of enactment of P.L. 2004, c.120 (August 10, 2004), the new owner shall be eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j provided that the transferring owner, or an immediate family member of the owner, as defined in (b)2 above, continues to hold an interest in the business entity or trust, and further provided that the business entity or trust meets the gross sales criteria of (c) above in the calendar year immediately preceding submittal of a farmland preservation application.

1. Documentation to be provided by the farmland preservation applicant shall include, but not be limited to, deeds of ownership or other official documentation showing that the original owner has an interest in the business entity or trust, and sales receipts and Federal tax forms showing that both the transferring owner and the business entity or trust meet the definition of farmer in (c) above.

(f) If the ownership of land has been transferred from a person who meets the definition of farmer in (c) above to an estate after the date of enactment of P.L. 2004, c.120 (August 10, 2004), the estate shall be eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j.

1. Documentation to be provided by the farmland preservation applicant shall include, but not be limited to, deeds of ownership or other official documentation verifying the estate's ownership of the land, and sales receipts and Federal tax forms providing proof that the original owner was a farmer as defined in (c) above.

(g) The landowner shall submit all required documentation set forth in (c) through (e) above to: the appropriate Board if it has submitted a farmland preservation application to the Board; to the Committee, if it has submitted a farmland preservation application to the Committee; to a municipal governing body, if it has submitted a farmland preservation to the municipal governing body; and to a non-profit organization, if it has submitted a farmland preservation application to a non-profit organization which intends to apply to the Committee for a grant.

1. If a Board received the farmland preservation application, it shall determine if the landowner is eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j based on the documentation submitted by the landowner.

i. The Board shall advise the appraisers regarding whether an individual property is eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j.

2. If the Committee received the farmland preservation application, it shall determine if the landowner is eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j based on the documentation submitted by the landowner.

i. The Committee shall advise the appraisers regarding whether an individual property is eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j.

3. If a municipal governing body received the farmland preservation application and has applied to the Committee for a planning incentive grant pursuant to N.J.S.A. 4:1C-43.1, it shall forward the documentation set forth in (c) through (e) above to the Committee.

i. The Committee shall determine whether an individual property is eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j and shall advise the municipal governing body to notify its appraisers of the Committee's determination.

4. If a non-profit organization received the farmland preservation application and applies to the Committee for a grant, it shall forward the documentation set forth in (c) through (e) above to the Committee.

i. The Committee shall determine whether an individual property is eligible for the valuation procedure set forth in N.J.S.A. 13:8C-38j and shall advise the non-profit organization to notify its appraisers of the Committee's determination.

Amended by R.2005 d.361, effective November 7, 2005.
See: 37 N.J.R. 2310(b), 37 N.J.R. 4215(a).
Added (b)-(g).

2:76-10.6 Property valuation before development easement acquisition (market value unrestricted)

(a) The property valuation before development easement acquisition (market value unrestricted) section of the appraisal report shall contain the following:

1. A description of the subject property including all physical attributes and improvements which shall include, but not be limited to:

i. A discussion of the topography, soil characteristics, hydrologically limited areas, state owned or privately held riparian lands, frontage, configuration, dwellings, outbuildings and other appropriate characteristics;

ii. Any rejected, approved, or pending subdivision plans;

iii. Any exceptions to the subject property. (The appraiser shall incorporate the effect of the value of exceptions into the valuation); and

iv. The estimated acreage of hydrologically limited areas.

(b) A detailed discussion of the subject property's highest and best use based upon its characteristics as set forth in this section.

(c) A determination of the subject property's market value unrestricted. The appraiser shall consider the effect of building and improvements when conducting the valuation, but only the market value of the land is required to be identified.

1. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property. At a minimum, the report shall address the following:

i. Grantor/grantee;

ii. Deed date/recording date;

iii. Deed book and page;

iv. Sale price;

v. Property size;

vi. Location, block and lot;

vii. Soil types/percent tillable soils;

viii. Frontage/access;

ix. Conditions of sale;

x. Color photograph(s);

xi. Improvements;

xii. Utilities;

xiii. Easements;

xiv. Verification; and

xv. Legible copy of subject tax map.

2. The appraiser shall adjust the comparable sales to include salient characteristics in the market which may include, but not be limited to the following: soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (state owned or privately held), date of sale and financing.

i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample, Appendix C of this subchapter, incorporated herein by reference.

ii. The final estimate of value shall be expressed as a per acre figure and a total value for the property.

3. In addition, the appraiser may consider the following methods of valuation:

i. Subdivision method;

ii. Income capitalization method; and

iii. Cost method.

4. The appraiser shall provide a value conclusion which identifies the final market value unrestricted for the subject property and discuss how the conclusion was determined.

Amended by R.2003 d.208, effective May 19, 2003.
See: 35 N.J.R. 379(a), 35 N.J.R. 2176(a).
In (a)1, deleted existing iii and recodified existing iv through v as iii through iv.

2:76–10.7 Property valuation after development easement acquisition (market value restricted)

(a) The property valuation after development easement acquisition (market value restricted) section of the appraisal report shall contain the following:

1. A description of the subject property in conformance with N.J.A.C. 2:76–10.6(a)1. In addition, an evaluation of the deed restrictions contained in N.J.A.C. 2:76–6.15 and their effect on the subject property, the subject property's adaptability for agricultural use or other uses which are not in conflict with the deed restrictions, soils and their productivity and other items which are significant to the valuation of the subject property;

2. A detailed description of the subject property's highest and best use as encumbered by the deed restrictions. The highest and best use analysis shall consider the following:

i. The legality of possible use;

ii. The physical possibility of use;

iii. The probability or likelihood of use; and

iv. The economic feasibility of use.

3. A determination of the subject property's market value restricted. The appraiser shall consider the effect of buildings and improvements when conducting the valuation, but only the market value of the land is required to be identified.

i. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property as encumbered by the deed restric-

tions. The appraiser shall consider the following types of land sales;

(1) Deed restricted properties;

(2) Physically limited properties;

(3) Flood plain;

(4) Low development pressure; and

(5) Development easements.

ii. The appraiser shall adjust the comparable sales to include, but not be limited to, the following: soil characteristics, zoning, hydrologically limited areas, date of sale, financing, and residential opportunities.

(1) The appraiser shall consider the effect of residential opportunities, including an existing residential unit, an exception, which is not encumbered by the deed restrictions, or a residual dwelling site opportunity allocated to the subject property pursuant to N.J.A.C. 2:76–6.17, if appropriate, and any other improvements when conducting the valuation, but only the market value of the land is required to be identified.

(2) The appraiser shall determine if there is an increment of value attributed to the land that is independent of the actual value of the improvement.

(3) The appraiser shall provide a land sale comparative rating grid in conformance with the sample in Appendix C.

(4) The final estimate of value shall be expressed as a per acre value and a total value for the property.

iii. In addition, the appraiser may consider the following methods of valuation:

(1) Income capitalization; and

(2) Cost approach.

Amended by R.2003 d.208, effective May 19, 2003.
See: 35 N.J.R. 379(a), 35 N.J.R. 2176(a).
In (a)3ii, added new (1) and (2) and recodified existing (1) and (2) as (3) and (4).

2:76–10.8 Final estimate of development easement value

(a) The final estimate of development easement value section of the appraisal report shall contain the following:

1. The estimated development easement value which is arrived at by the difference between the market value unrestricted and the market value restricted and reported as a per acre value and total value of the property;

2. A discussion of the rights represented by the value conclusion and resultant changes in the highest and best use of the unrestricted versus the restricted property; and

3. A summary of the major points of the report which support the final estimate of value.

2:76–10.9 Addendum

(a) The addendum section of the appraisal report shall contain the following:

1. A subject property location map;

2. A subject property tax map or survey;

3. Soils/flood/topographic maps;

4. A study of hydrologically limited areas (if appropriate);

5. Subject property photos (color);

6. Reference materials, studies, articles, or other data considered important;

7. Development easement deed restrictions; and

8. The appraiser's qualifications.

APPENDIX A

SUMMARY OF SALIENT FACTS AND IMPORTANT CONCLUSIONS

PROPERTY LOCATION

PROPERTY TYPE

LAND SIZE

ZONING

HIGHEST AND BEST USE

DATE OF VALUATION

	PER ACRE	TOTAL
ESTIMATE OF PROPERTY VALUE "BEFORE":	_____	_____
ESTIMATE OF PROPERTY VALUE "AFTER":	_____	_____
ESTIMATE OF DEVELOPMENT EASEMENT VALUE:	_____	_____

APPENDIX B

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PROPERTY VALUATION AFTER DEVELOPMENT EASEMENT ACQUISITION (MARKET VALUE RESTRICTED)

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APPENDIX C

LAND SALE COMPARATIVE RATING GRID

Sale No.	1	2	3
Sale Price	$_____	$_____	$_____
Reflects in Units	$_____/AC	$_____ /AC	$_____ /AC
Date of Sale	_____	_____	_____
Conditions of Sale	_____%	_____ %	_____ %
Financing	_____%	_____ %	_____ %
Time Adjustment	_____	_____ %	_____ %
Total Adjustment	_____%	_____ %	_____ %
Adjusted Sales Price	$_____	$_____	$_____
Location	_____%	_____ %	_____ %
Size	_____	_____	_____
Frontage	_____	_____	_____
Topography	_____	_____	_____
Zoning	_____	_____	_____
Easements	_____	_____	_____
Wetlands	_____	_____	_____
(Hydrologically limited areas)	_____	_____	_____
Soils	_____	_____	_____
Other	_____	_____	_____
Net Adjustment	_____	_____ %	_____ %
Value Indicated to Subject by Unit	$_____/AC	$_____ /AC	$_____ /AC

SUBCHAPTER 11. COMMITTEE ACQUISITION OF FARMLAND DEVELOPMENT EASEMENTS

2:76-11.1 Applicability

This subchapter applies to transactions in which the State Agriculture Development Committee purchases development easements on farmland pursuant to the Garden State Preservation Trust Act, P.L. 1999, c.152. In order to receive the priority consideration contained in N.J.A.C. 2:76-8.5, the landowner must be an established farmer as defined in 7 C.F.R. § 1945.154. In order to receive the priority an applicant who conducts the farming operation as an individual must manage the farming operation. If the applicant is another entity, at least one stockholder, member, partner or joint operator must manage the farming operation.

2:76-11.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

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

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

"Development easement" means an interest in land, less than fee simple title thereto, which interest represents the right to develop that land for all nonagricultural purposes and which interest may be transferred under laws authorizing the transfer of development potential.

"Farmland" means land identified as having prime or unique soils as classified by the Natural Resource Conservation Service in the United States Department of Agriculture, having soils of Statewide importance according to criteria adopted by the State Soil Conservation Committee, established pursuant to N.J.S.A. 4:24-3, or having soils of local importance as identified by local soil conservation districts, and which land qualifies for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.), and any other land on the farm that is necessary to accommodate farm practices as determined by the State Agriculture Development Committee.

"Farmland preservation," "farmland preservation purposes" or "preservation of farmland" means the permanent preservation of farmland to support agricultural or horticultural production as the first priority use of that land.

"120-day commitment letter" means a document prepared by the committee and signed by the landowner and committee that requires the landowner to refrain from entering into any option agreement, contract of sale, or any other agreement af-

fecting title to the subject farm for a period of 120 days during which time the Committee shall hire two independent appraisers to appraise the subject farm.

"Quality score" means the Committee's numeric total derived from the application of the criteria for evaluating a development easement application contained in N.J.A.C. 2:76-6.16.

Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Added definitions "120-day commitment letter" and "Quality score".

2:76-11.3 Landowner offer

(a) An owner of farmland may offer to sell to the Committee a development easement on the farmland at a price which, in the opinion of the landowner, represents the fair market value of the development easement.

(b) The Committee shall forward copies of the offer to the respective board and municipality.

2:76-11.4 Board and municipal comments

The respective board and municipality may submit comments regarding the pending offer to the Committee within 30 days of the date of application.

2:76-11.5 Committee evaluation

(a) In determining the suitability of the purchase of development easements on farmland, the committee shall consider the criteria set forth in N.J.S.A. 4:1C-31 and any comments of the respective board and municipality.

(b) In addition to the factors set forth in (a) above, the committee shall utilize the same criteria utilized for the evaluation of applications for development easement purchase set forth in N.J.A.C. 2:76-6.16, the criteria contained in N.J.A.C. 2:76-6.20 and the prioritization criteria set forth in (c), (d) and (e) below.

(c) An application received by the Committee that satisfies the minimum eligibility criteria contained at N.J.A.C. 2:76-6.20 and evaluated pursuant to N.J.A.C. 2:76-6.16 shall be prioritized as follows:

1. "Priority farm": meets or exceeds both 75 percent of the average farm size in the county in which it is located and its quality score is at least 90 percent of the average quality score in the county in which it is located.

2. "Alternate farm": does not meet the criteria for "priority" farm, but meets or exceeds both 55 percent of the average farm size in the county in which it is located and its quality score is at least 70 percent of the average quality score in the county in which it is located.

3. "Other farm": does not meet the criteria for "priority" or "alternate" farms.

(d) Average farm size in a county shall be determined based on the average farm size of farms using the 2002 US Census data, incorporated herein by reference, as amended and supplemented.

(e) Average quality score in a county shall be based on the average quality scores determined pursuant to N.J.A.C. 2:76-6.16 for all farms granted preliminary approval by the Committee through the county easement purchase program and/or county planning incentive grant program within the previous three fiscal years, as determined by the Committee.

Amended by R.2000 d.98, effective March 6, 2000.
See: 31 N.J.R. 3880(a), 32 N.J.R. 788(a).
Inserted a new (d); and recodified former (d) as (e).
Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
In (b), inserted ", the criteria contained in N.J.A.C. 2:76-6.20 and the prioritization criteria set forth in (c), (d) and (e) below"; and rewrote (c) through (e).

2:76-11.6 Committee action

(a) An application that receives a "priority" ranking pursuant to N.J.A.C. 2:76-11.5(b) shall proceed as follows:

1. The Committee shall consider if it has expended the required minimum funds in that particular county pursuant to N.J.S.A. 13:8C-38m for the respective fiscal year and available funds.

2. If a determination pursuant to (a)1 above is to proceed with the application, the landowner shall be notified in writing of its application status and requested to enter into a 120-day commitment letter with the Committee.

3. Upon execution of the 120-day commitment letter, the application shall proceed to the appraisal process set forth at N.J.A.C. 2:76-11.7.

(b) An application that receives an "alternate" ranking pursuant to N.J.A.C. 2:76-11.5(b) shall proceed as follows:

1. The landowner shall be notified in writing of its application status and informed that no immediate action shall be taken until such time that the Committee determines the following:

i. There are no "priority" ranked applications received at least 120-days prior to the end of the fiscal year that have not already been accepted for processing;

ii. The Committee has not expended the required minimum funds in that particular county pursuant to N.J.S.A. 13:8C-38m for the respective fiscal year; and

iii. Consideration of geographic distribution of funds authorized pursuant to N.J.S.A. 13:8C-38b.

2. The Committee may authorize the execution of the 120-day commitment letter, provided that the conditions in (b)1 above have been satisfied.

3. Upon execution of the 120-day commitment letter, the application shall proceed to the appraisal process described pursuant to N.J.A.C. 2:76-11.7.

(c) An application that receives an "other" ranking pursuant to N.J.A.C. 2:76-11.5(b) shall proceed as follows:

1. The landowner shall be notified in writing of its application status and informed that the Committee will not take action until such time as it determines the following:

i. There are no "priority" or "alternate" ranked applications received at least 120-days prior to the end of the fiscal year that have not already been accepted for processing;

ii. The Committee has not expended the required minimum funds in that particular county pursuant to N.J.S.A. 13:8C-38m for the respective fiscal year; and

iii. The action will promote the geographic distribution of funds pursuant to N.J.S.A. 13:8C-38b.

2. The Committee may proceed to authorize the execution of the 120-day commitment letter, provided that the conditions in (c)1 above have been satisfied.

3. Upon execution of the 120-day commitment letter, the application shall proceed to the appraisal process described pursuant to N.J.A.C. 2:76-11.7.

Repeal and New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Section was "Yield determination and recordkeeping".

2:76-11.7 Appraisals

(a) For each application that has been authorized pursuant to N.J.A.C. 2:76-11.6 to proceed to the appraisal process, the Committee shall select two independent appraisers on the list of appraisers approved by the Committee pursuant to N.J.A.C. 2:76-6.22 to perform appraisals to determine a development easement value on the offered farmland.

(b) Appraisals to determine the market value of the development easement shall be conducted consistent with the process set forth in subsection c of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), sections 38(e), (g), (i) and (j) of the Garden State Preservation Trust Act, P.L. 1999, c. 152, and N.J.A.C. 2:76-10.

(c) Upon completion of the appraisals, the appraisers shall forward the appraisal reports to the Committee.

Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Rewrote (a) and (b); and deleted (d).

2:76-11.8 Committee approval of development easement value

(a) The Committee shall appoint a review appraiser to evaluate the two independent appraisals and establish a recommended market value of the development easement.

1. The review shall be done to ensure compliance with the appraisal handbook standards at N.J.A.C. 2:76-10 and generally recognized appraisal practices.

2. The recommended market value of the development easement shall not be greater than the highest independent appraised value of the development easement or less than the lowest independent appraised value of the development easement.

(b) The Committee shall have final authority for certifying the market value for the development easement.

1. The certified market value of the development easement shall not be greater than the highest independent appraised value of the development easement or less than the lowest independent appraised value of the development easement.

(c) The Committee may find an appraisal invalid if it does not comply with the appraisal handbook standards at N.J.A.C. 2:76-10 or generally accepted appraisal practices or contains a series of errors, omissions or hypothetical assumptions that significantly impact the integrity of the report or in the aggregate affect the credibility of the results.

1. If an appraisal is found to be invalid, the Committee may request the selection of a new independent appraiser pursuant to N.J.A.C. 2:76-11.7.

(d) The Committee shall authorize staff to negotiate the purchase of a development easement pursuant to N.J.A.C. 2:76-11.9.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Former N.J.A.C. 2:76-11.8, Final Committee action, recodified to N.J.A.C. 2:76-11.10.

2:76-11.9 Negotiation of offer

(a) The Committee shall authorize staff to negotiate the purchase of a development easement with the owner not to exceed the certified market value of the development easement certified by the Committee pursuant to N.J.A.C. 2:76-11.8.

1. A landowner may voluntarily accept a development easement value that is less than the lowest market value of the development easement as determined pursuant to N.J.A.C. 2:76-11.8.

2. In the event that the development easement is owned by a governmental entity, the Committee's offer for the purchase of the development easement shall not exceed the Committee's cost share determined pursuant to N.J.A.C. 2:76-6.11(d).

(b) Upon the owner's acceptance of a development easement value, the Committee shall conduct a final review pursuant to N.J.A.C. 2:76-11.10.

New Rule, R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

2:76-11.10 Final Committee action

(a) Upon identification to the Committee of the development easement value negotiated with a landowner other than a government entity pursuant to N.J.A.C. 2:76-11.9, the Committee shall ensure compliance with the provisions of this subchapter and if all requirements are satisfied, grant final approval of the purchase of the development easement subject to the following:

1. Available funds; and

2. Execution of an agreement between the owner of the development easement and Committee.

i. The Committee may condition its approval on a local government or nonprofit organization contributing a portion of the cost of acquiring the development easement if the preservation of the farmland is of significant local or regional importance or if the Committee has insufficient funds to pay 100 percent of the acquisition cost.

(b) Upon identification to the Committee of the development easement value negotiated with a government entity pursuant to N.J.A.C. 2:76-11.9, the Committee shall ensure compliance with the provisions of this subchapter and if all requirements are satisfied, grant final approval of the purchase of the development easement subject to the following:

1. Available funds;

2. The provisions at N.J.A.C. 2:76-6.11(d); and

3. Execution of an agreement between the government entity owning the development easement and Committee.

Recodified from N.J.A.C. 2:76-11.8 and amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Rewrote the section.

SUBCHAPTER 12. NONPROFIT ACQUISITION PROJECTS: PROJECT ELIGIBILITY, CONDITIONS AND LIMITATIONS

2:76-12.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural use" means the use of the land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

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

"Development easement" means an interest in land, less than fee simple absolute title thereto, which interest represents the right to develop that land for all nonagricultural purposes and which interest may be transferred under laws authorizing the transfer of development potential.

"Farmland" means land identified as having prime or unique soils as classified by the Natural Resources Conservation Service in the United States Department of Agriculture, having soils of Statewide importance according to criteria adopted by the State Soil Conservation Committee, established pursuant to N.J.S.A. 4:24-3, or having soils of local importance as identified by local soil conservation districts, and which land qualifies for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.), and any other land on the farm that is necessary to accommodate farm practices as determined by the State Agriculture Development Committee.

"Garden State Preservation Trust" means the Garden State Farmland Preservation Trust established pursuant to section 20 of the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq., P.L. 1999, c.152.

"Nonprofit" means a nonprofit organization that is exempt from Federal taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which qualifies for a grant pursuant to the Garden State Preservation Trust Act, N.J.S.A. 13:8C-42, P.L. 1999, c.152.

2:76-12.2 General provisions

(a) The Committee may provide a grant to a nonprofit for up to 50 percent of the cost of acquisition of development easements on farmland or up to 50 percent of the cost of acquisition of fee simple titles to farmland from willing sellers.

(b) The Committee shall establish a maximum funding limit per project or per applicant based on available funds and project priorities established pursuant to criteria contained at N.J.A.C. 2:76-6.16. There is no minimum or maximum grant request amount. Any funding awarded by the Committee is subject to approval by the Garden State Preservation Trust and legislative appropriation.

(c) A nonprofit may use as its matching share of the cost of acquisition its own funds or a donation of all or a portion of the eligible development easement cost or fee simple acquisition of the land cost of the project site.

(d) A nonprofit shall not use as its matching share of the cost of acquisition either:

1. The value of lands that the nonprofit owns at the time of application for Committee funding;

2. The value of lands that were acquired with funds obtained under the Committee or any other State grant or loan program for the purpose of acquiring land; or

3. Funds obtained under the Committee or any other State grant or loan program for the purpose of acquiring a development easement on farmland or fee simple title to farmland.

(e) If the value of the donated land that the nonprofit uses as its matching share exceeds 50 percent of the cost of acquisition, the Committee shall reduce the amount of the funding it provides by the amount by which the donation exceeds 50 percent of the cost of acquisition.

(f) The nonprofit is responsible for meeting all requirements of all Committee rules, other State statutes, Federal statutes, and local ordinances, as applicable.

2:76-12.3 Eligible projects

The purchase of development easements on farmland or the purchase of fee simple title to farmland, pursuant to N.J.S.A. 13:8C-39, are eligible for acquisition with Committee funding, subject to N.J.A.C. 2:76-12.4 and the criteria contained at N.J.A.C. 2:76-6.20.

Amended by R.2007 d.197, effective July 2, 2007.
See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).
Inserted "and the criteria contained at N.J.A.C. 2:76-6.20".

2:76-12.4 Ineligible projects

(a) The following acquisition projects are not eligible for Committee funding:

1. Any lands not located in an agricultural development area;

2. Any lands which do not qualify for differential property tax assessment pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.;

3. Any lands which are permanently restricted by an easement which is not consistent with N.J.A.C. 2:76-6.15, unless approved by the Committee;

4. Any land that is, or is intended to be, used for other than an agricultural use as defined at N.J.A.C. 2:76-12.1;

5. Any lands or development easement that was acquired prior to the enactment of the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq., P.L. 1999, c.152; and

6. Any lands or development easement that was held by the nonprofit for more than three years.

2:76-12.5 Donations toward the cost of acquisition

(a) The Committee shall not treat as a donation any donation accepted prior to approval of an application for Committee funding under N.J.A.C. 2:76-13.4, unless approved by the Committee.

(b) The Committee shall not treat as a donation any donation of land which is not part of the approved project.

(c) The Committee shall not treat as a donation the reduction in the cost of acquisition resulting from negotiation between the nonprofit and the property owner, unless approved by the Committee.

2:76-12.6 Allowable project costs

(a) The following costs are allowable, provided the costs are incurred in conformance with all applicable laws:

1. Costs which the nonprofit incurs to acquire farmland in fee simple title or to acquire a development easement based on the Committee's approved grant;

2. Costs which the nonprofit incurs for any appraisal obtained in accordance with N.J.A.C. 2:76-13.5;

3. Costs which the nonprofit incurs for surveys necessary for the acquisition of a development easement or the acquisition of fee simple title to farmland; and

4. Costs which the nonprofit incurs for obtaining a title search and title insurance.

(b) The following costs are not allowable:

1. Administrative, legal and operating costs related to the acquisition;

2. Salaries and/or wages of employees of the nonprofit;

3. Real property taxes; and

4. Costs associated with an application for Committee funding that is not approved under N.J.A.C. 2:76-13.4.

SUBCHAPTER 13. NONPROFIT ACQUISITION PROJECTS: APPLICATION PROCESS

2:76-13.1 Timing

A nonprofit may submit an application for Committee funding within 90 days after the date of publication of a notice of availability of grant funds in the New Jersey Register.

2:76-13.2 Pre-application procedures

(a) The Committee encourages nonprofits to request a pre-application conference with the Committee as early as possible, prior to application submission, to discuss project eligibility, award criteria and application requirements.

(b) A nonprofit that enters into a purchase or option contract with an owner of land prior to receiving Committee approval is not precluded from submitting an application to the Committee, but shall proceed at its own risk.

2:76-13.3 Application requirements

(a) A nonprofit shall submit an application containing all of the following:

1. A completed application form, provided by the Committee, that identifies the nonprofit; lists the project location; contains a brief description of the project and an estimate of the funding request amount; identifies the nonprofit's contact person for the project; and contains the certification of the person authorized by the enabling resolution required under (a)2 below to submit the application.

i. The nonprofit shall base the estimated funding request amount on the present market value or anticipated purchase price of the project site and not solely on the tax assessed value of the project site. The nonprofit shall include estimated survey, appraisal, and preliminary assessment costs, and estimated costs of building demolition, if applicable;

2. A certified copy of the enabling resolution, authorizing the submission of a Committee application and authorizing a person to execute the project agreement described in N.J.A.C. 2:76-16.1(a);

3. A narrative description of the extent to which the project meets the award criteria under N.J.A.C. 2:76-14.1;

4. A copy of the deed restrictions to be placed on the land;

5. A project reference map with dimensions of at least 22 inches by 36 inches and containing the following information:

i. The project name and location;

ii. The parcel number as assigned by the nonprofit to each adjacent group of lots with one owner. Lots under a single ownership that are physically separated must be assigned individual parcel numbers;

iii. The lot and block numbers and municipality(ies) in which the proposed project site is located;

iv. The owner(s) of record as of the date of application submission;

v. The area of project site, in acreage;

vi. The dimensions of each lot marked on each perimeter boundary;

vii. Improvements shown in approximate location on lots;

viii. If the acquisition of part of a lot is proposed, both the area of the part to be acquired and the area of the remainder must be denoted;

ix. The name and block and lot identification of adjacent landowner(s);

x. The scale of map proportional to the size of the project site so as to allow an appraiser to prepare an accurate appraisal;

xi. An arrow indicating north;

xii. The location and area of all known existing easements, road rights-of-way, and similar features, with source of such information identified;

xiii. The location and area of tidelands, as determined from New Jersey Tidelands claims maps, conveyance overlays, and atlas sheets;

xiv. The location and area of flood plain, as shown on the New Jersey State Flood Hazard Area maps prepared under the Flood Hazard Area Control Act, N.J.S.A. 58:16A–50 et seq.;

xv. The location and area of coastal wetlands, as shown on maps prepared by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A–1 et seq.; and

xvi. The location and area of freshwater wetlands, as determined from:

(1) A wetlands delineation, if one exists, verified by the Department's Land Use Regulation Program or its successor;

(2) Freshwater wetlands maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B–1 et seq., if they exist; or

(3) If the document listed under (a)4xvi(1) and (2) above do not exist, U.S. Fish and Wildlife Service National Wetlands Inventory (NWI) maps, in conjunction with County Soil Surveys published by the U.S. Department of Agriculture;

6. A street map which clearly indicates the location of the project site;

7. A copy of the affidavit of publication of the newspaper notice required under (b) below;

8. Photographic slides and/or prints that clearly show the existing conditions at the proposed project site; and

9. A local tax map that indicates the lots and blocks to be acquired.

(b) Within 90 days of submitting the application to the Committee, the nonprofit shall publish a notice in the official newspaper of the municipality in which the proposed project is located that the application for Committee funding has been submitted and is available for review at the Committee office. The nonprofit shall also send the notice to the governing body of the municipality or municipalities in which the proposed project or projects are located and to the County Agriculture Development Board.

1. Any comments received by the nonprofit shall be forwarded to the Committee.

(c) The Committee shall conduct one or more project site inspections to verify the statements in the application.

(d) A nonprofit that has submitted an application shall monitor and immediately notify the Committee of any pending or proposed actions or events affecting the project site. The nonprofit shall also immediately notify the Committee of any fires, demolitions, floods, natural disasters, donations, easements, leases, survey discrepancies, or changes in ownership of the project site.

2:76–13.4 Approval or denial of application; award of funding; procedural letter

(a) Upon receipt of an application containing all the information required under N.J.A.C. 2:76–13.3, the Committee shall determine if the project is eligible for funding in accordance with the requirements of N.J.A.C. 2:76–12.3, and, based on the preliminary ranking of the project under N.J.A.C. 2:76–6.16, the Committee shall approve or deny the application.

(b) If the application is approved, the Committee shall notify the nonprofit in writing of the amount of the Committee's funding award.

(c) If the application is denied, the Committee shall notify the nonprofit in writing.

(d) After the notification of the funding award under (b) above, the Committee shall send the nonprofit a procedural letter that directs the nonprofit to:

1. Obtain and submit to the Committee the appraisals required under N.J.A.C. 2:76–13.5; and

2. For lands to be acquired in fee simple title, obtain a preliminary assessment of the project site and submit to the Committee the preliminary assessment report. Upon receipt of the preliminary assessment report, the Committee shall determine if the report contains the information required under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and shall notify the nonprofit as follows:

i. If the preliminary assessment report does not contain the required information, the Committee shall send the nonprofit a deficiency letter identifying the

information that must be submitted. The nonprofit shall submit the information by the date specified in the letter.

ii. If the preliminary assessment report contains the required information and does not identify any areas of concern, as defined under the Technical Requirements for Site Remediation, the Committee shall send the nonprofit a letter acknowledging the sufficiency of the preliminary assessment report. The chief executive officer of the nonprofit shall certify, on a form provided by the Committee with the sufficiency letter, that the nonprofit has reviewed the preliminary assessment report and determined to proceed with the acquisition of the project site. The nonprofit shall return the certification to the Committee within 30 days of the date of the sufficiency letter.

iii. If the preliminary assessment report contains the required information and identifies one or more areas of concern, as defined under the Technical Requirements for Site Remediation, the Committee shall send a letter notifying the nonprofit that the areas of concern must be addressed to the Committee's satisfaction before the nonprofit acquires the project site.

2:76–13.5 Appraisal procedures

(a) The nonprofit shall obtain two appraisals as follows:

1. The nonprofit shall request a meeting with Committee staff to discuss the selection and hiring of two appraisers and the scope of work;

2. The nonprofit shall select two appraisers from the list of appraisers adopted by the Committee pursuant to N.J.A.C. 2:76–6.7 to conduct independent appraisals to determine the fair market value of the development easement or fair market value of the fee simple estate;

3. All appraisals shall be prepared pursuant to the Garden State Preservation Trust Act, N.J.S.A. 13:8C–38, P.L. 1999, c.152, the Committee's Appraisal Handbook Standards at N.J.A.C. 2:76–10 and the Committee's Appraisal Handbook;

4. The nonprofit shall request a meeting with Committee staff and the appraisers to discuss the scope of work and to visit the project site, prior to starting the appraisal(s); and

5. The nonprofit shall submit to the Committee one copy of each completed appraisal.

(b) The nonprofit shall immediately submit to the Committee, in writing, any information it has which could affect the appraised value of the project site.

SUBCHAPTER 14. NONPROFIT ACQUISITION PROJECTS: AWARD CRITERIA

2:76–14.1 Project award criteria

The Committee shall rank an application after it has received the application under N.J.A.C. 2:76–13.3 according to the criteria contained at N.J.A.C. 2:76–6.16.

SUBCHAPTER 15. NONPROFIT ACQUISITION PROJECTS: DETERMINATION OF ELIGIBLE LAND COST

2:76–15.1 Determination of eligible land cost

(a) The Committee shall determine the sufficiency of any appraisals submitted under N.J.A.C. 2:76–13.5 and shall notify the nonprofit in writing of any deficiencies that prevent a certification of fair market value of the development easement or the fair market value of the fee simple estate.

(b) The Committee shall determine the eligible land cost for each parcel within a project site as follows:

1. If the difference between the two appraisal values is greater than 10 percent of the higher appraisal value, the eligible land cost shall be determined based upon the following:

i. The Committee shall appoint a review appraiser to evaluate the appraisals submitted by the nonprofit to recommend a fair market value pursuant to the appraisal handbook standards at N.J.A.C. 2:76–10. The Committee shall have final authority for certifying the fair market value of the development easement or fair market value of the fee simple estate.

2. If two appraisals have been obtained on a parcel, and the difference between the two appraisal values is 10 percent of the higher appraisal value or less, the eligible land cost shall be the average of the appraisal values. The nonprofit may, however, request that the Committee provide a certified fair market value, in which case the eligible land cost shall be that certified fair market value.

i. The Committee reserves the right to appoint a review appraiser to evaluate the appraisals submitted by the nonprofit to recommend a fair market value pursuant to the appraisal handbook standards at N.J.A.C. 2:76–10. The Committee shall have final authority for certifying the fair market value of the development easement or fair market value of the fee simple estate.

(c) The Committee shall send to the nonprofit a copy of the certification report and statement of the eligible land cost for review and acceptance in accordance with N.J.A.C. 2:76–15.1.

1. The Committee reserves the right to negotiate an offer price for less than the certified fair market value.

(d) If the survey of a parcel submitted with an advance payment or reimbursement request under N.J.A.C. 2:76–16.3(c) shows an acreage total different from the acreage total shown in the statement of eligible land cost or negotiated offer, the Committee shall notify the nonprofit or appraiser(s), request an adjusted market value determination, if needed, and revise accordingly the eligible land cost or negotiated offer to reflect the actual acreage of the parcel.

2:76–15.2 Acceptance of eligible land cost

(a) Within 60 days after the nonprofit receives from the Committee the statement of eligible land cost or negotiated offer pursuant to N.J.A.C. 2:76–15.1, the nonprofit shall submit to the Committee a letter stating that the nonprofit has reviewed and accepts the eligible land cost or negotiated offer of the parcel and that the nonprofit has the ability and intention to finance the cost of the parcel, should such cost exceed the amount of Committee funding.

(b) Receipt by the Committee of the letter submitted under (a) above constitutes the nonprofit's acceptance of the eligible land cost or Committee's negotiated offer.

2:76–15.3 Supplemental funding

(a) A nonprofit may request, in writing, supplemental funding for a project if it has accepted the eligible land cost under N.J.A.C. 2:76–15.2 and if the eligible land cost exceeds the grant amount awarded under N.J.A.C. 2:76–13.4.

(b) Provided sufficient funds are available, the Committee shall increase the amount of funding for a project in response to a request submitted under (a) above to cover 50 percent of the eligible land cost, development easement costs, or negotiated offer and allowable costs under N.J.A.C. 2:76–12.6.

(c) The Committee and the nonprofit shall execute an amendment to the project agreement in accordance with N.J.A.C. 2:76–16.1 to reflect any supplemental funding provided under this section.

SUBCHAPTER 16. NONPROFIT ACQUISITION PROJECTS: PROJECT AGREEMENT, NEGOTIATIONS FOR PURCHASE OF PROJECT SITE, DISBURSEMENTS, ACCOUNTING AND RECORDKEEPING REQUIREMENTS

2:76–16.1 Project agreement

(a) The Committee shall send the project agreement to the nonprofit. The nonprofit shall ensure that the project agreement is approved and signed by the nonprofit's attorney, and executed by the person authorized under the resolution described at N.J.A.C. 2:76–13.3(a)2. The project agreement shall contain:

1. An identification of the parcels to be acquired or preserved as part of the project site;

2. The estimated cost of acquisition of the project site; and

3. The following conditions:

i. That the nonprofit shall, for lands acquired in fee simple title, ensure that the lands are maintained for agricultural use and production pursuant to N.J.A.C. 2:76–6.15;

ii. That the nonprofit shall, for lands acquired in fee simple title, agree not to sell, lease, exchange, or donate the lands unless:

(1) The lands will continue to be maintained for agricultural use and production pursuant to N.J.A.C. 2:76–6.15;

(2) The Committee is notified that the restricted farm is being offered for sale, exchange or donation; and

(3) The Committee approves the transfer in writing prior to the nonprofit's offering, for sale or conveyance, of any of its interest in the land. This requirement for written approval is met if an intended transferee is named in the project agreement executed under this section;

iii. That the nonprofit shall, in the case of the acquisition of a development easement, agree not to convey the development easement except to the Federal government, the State, a local unit of government, or another qualifying tax exempt nonprofit organization for farmland preservation purposes;

iv. That the nonprofit shall, at the time of acquisition of lands in fee simple title, agree to execute a deed of easement. The deed of easement shall be recorded in the same manner as a deed and shall run with the land. The deed of easement shall contain the following:

(1) Restrictions consistent with the provisions of N.J.A.C. 2:76–6.15 and approved by the Committee;

(2) The Committee's right to enforce the conditions of the restrictions;

(3) The remedies available to the Committee in the event the nonprofit does not comply with the conditions of the restrictions;

(4) A reimbursement provision which requires the nonprofit that sells or donates any interest in any lands acquired with a grant by the Committee, that the nonprofit shall pay to the Committee 50 percent of the net proceeds. For purposes of this section,

"net proceeds" means the amount of compensation received by the nonprofit in excess of any unreimbursed costs; and

(5) Other special conditions as appropriate;

v. That the nonprofit shall, at the time of acquisition of a development easement, agree to execute a deed of easement. The deed of easement shall be recorded in the same manner as a deed and shall run with the land. The deed of easement shall contain the following:

(1) Restrictions consistent with the provisions of N.J.A.C. 2:76–6.15 and approved by the Committee;

(2) The Committee's right to enforce the conditions of the restrictions;

(3) The remedies available to the Committee in the event the nonprofit does not comply with the conditions of the restrictions; and

(4) Other special conditions as appropriate;

vi. The requirements for recordkeeping and project administration pursuant to N.J.A.C. 2:76–16.4; and

vii. Other terms and conditions, including a statement of the remedies described at (f) through (i) below.

(b) Upon receipt of the project agreement executed in accordance with (a) above, the Committee shall establish an account from which the grant shall be disbursed.

(c) The Committee and the nonprofit shall execute an amendment to the project agreement to:

1. Add a parcel to the project site if the nonprofit demonstrates that the parcel meets the project eligibility requirements at N.J.A.C. 2:76–12.3;

2. Extend the project period established in the project agreement if the nonprofit demonstrates that it is making a good faith effort to complete the project in an expeditious manner; or

3. Reflect any supplemental funding provided under N.J.A.C. 2:76–15.3.

(d) Upon receipt of notification from the nonprofit of the scheduled date of closing, the nonprofit shall forward a copy of the title commitment, survey, deed of easement and any other necessary documents to complete the closing.

1. The Committee shall review the closing documents and, if appropriate, send the executed deed of easement required under (a)3iv or v above to the nonprofit. The Committee shall forward the approved grant to the nonprofit. The nonprofit shall have the deed of easement recorded by the county clerk or registrar either when the deed for the project site is recorded or when the nonprofit receives the first disbursement of Committee funds.

i. A copy of the executed deed of easement shall be forwarded to the Committee.

ii. A copy of the recorded deed of easement shall be forwarded to the Committee when available.

(e) In addition to any other rights or remedies available to the Committee under law, if the nonprofit does not comply with any of the requirements of the project agreement, the deed of easement, this chapter, or the Committee laws, or if the nonprofit makes any material misrepresentation in the project application and/or the documentation submitted in support of the application, the Committee may take any of the following actions:

1. Issue a written notice of noncompliance directing the nonprofit to take and complete corrective action within 30 days of receipt of the notice.

i. If the nonprofit does not take corrective action, or if the corrective action taken is not adequate in the judgement of the Committee, then the Committee may take any of the actions described at (e)2 through 4 and (f) below;

2. Withhold a grant disbursement or portion thereof;

3. Terminate the project agreement; and/or

4. Demand immediate repayment of all Committee funds that the nonprofit has received.

(f) If the nonprofit fails to comply with any of the terms of the project agreement, the deed of easement, this chapter, or the Committee laws, the Committee may initiate suit for injunctive relief or to seek specific enforcement, without posting bond, it being acknowledged that any actual or threatened failure to comply will cause irreparable harm to the Committee and that money damages will not provide an adequate remedy.

(g) If the Committee incurs legal or other expenses, including its own personnel expenses, for the collection of payments due or in the enforcement or performance of any of the nonprofit's obligations under the project agreement, the deed of easement, this chapter, or the Committee laws, the nonprofit shall pay these expenses on demand by the Committee.

(h) The Committee is not required to mitigate any damages to the nonprofit resulting from the nonprofit's noncompliance with the terms of the project agreement, the deed of easement, this chapter or the Committee laws.

1. The nonprofit shall monitor lands from which a development easement was acquired or lands purchased in fee simple title pursuant to the provisions of N.J.A.C. 2:76–16.5.

2:76–16.2 Negotiations for purchase of project site

(a) Unless the nonprofit has already entered into a purchase or an option contract with the property owner, the nonprofit may enter into a purchase or option contract with the property owner after the nonprofit accepts the eligible land cost or negotiated offer under N.J.A.C. 2:76–15.2.

(b) Any person who performed an appraisal under N.J.A.C. 2:76–13.5 of any parcel in the project site shall not conduct negotiations for such parcel.

2:76–16.3 Disbursement of grant

(a) The Committee shall disburse the grant in advance of closing or as reimbursement after closing.

(b) If the nonprofit seeks payment in advance of closing, it shall submit its request at least 60 days before the scheduled date of closing.

(c) For each parcel of land in the project site for which payment is requested, the nonprofit shall submit:

1. For payment in advance of closing, the following:

i. A copy of the contract of sale;

ii. A land survey plan, prepared in accordance with the Committee's Survey Contract Standards, rules of the State Board of Professional Engineers and Land Surveyors at N.J.A.C. 13:40–5, showing acreage, tax map references (blocks and lots) current as of the date of the plan, all easements of record, fences, improvements, encroachments, water courses, wetlands, and pertinent natural features, submitted on paper (two copies) and in a format compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A, incorporated herein by reference;

iii. Two copies of the metes and bounds description, stating acreage, corresponding to the survey required under (c)1ii above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor;

iv. A copy of the title insurance binder, with copies of the deed of record and of all easements, restrictions, and other instruments of record as attachments. The binder must name the Committee as additional insured;

v. A copy of each canceled check (both sides), voucher, or invoice for appraisal, preliminary assessment, and survey costs;

vi. A Nonprofit Acquisition Payment Form, which the Committee provides with the statement of eligible land cost under N.J.A.C. 2:76–15.1, with the following items completed:

(1) The project name, block(s) and lot(s), name of nonprofit, municipality, and county;

(2) An itemized statement of the cost of acquisition of the parcel; and

(3) A certification by the nonprofit's chief executive officer or chief financial officer that the information contained in the form is accurate and that no bonus has been given or received in connection with any bill for which the nonprofit seeks payment; and

2. For reimbursement after closing, the following:

i. A copy of the canceled check (both sides) for the purchase of the parcel(s) in the project site;

ii. A land survey plan, prepared in accordance with the Committee's Survey Contract Standards, rules of the State Board of Professional Engineers and Land Surveyors at N.J.A.C. 13:40–5, showing acreage, tax map references (blocks and lots) current as of the date of the plan, all easements of record, fences, improvements, encroachments, water courses, wetlands, and pertinent natural features, submitted on paper (two copies) and in a format compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A;

iii. Two copies of the metes and bounds description, stating acreage, corresponding to the survey required under (c)2ii above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor;

iv. A copy of the title insurance policy, with copies of the deed of record and of all easements, restrictions, and other instruments of record as attachments, and conforming to the following:

(1) The policy must name the Committee as additional insured;

(2) The policy must replace the survey exception with a survey endorsement that insures title to the area within the metes and bounds description;

(3) The policy amount must be at least equal to the eligible land cost; and

(4) Schedule B, Section II (Exceptions) must note that the parcel is subject to the Committee's approved restrictions as contained in the deed of easement;

v. A copy of the recorded deed, containing the metes and bounds description required under (c)2iii above;

vi. A copy of each canceled check (both sides), voucher, or invoice for appraisal, preliminary assessment, survey, and any other allowable project costs under N.J.A.C. 2:76–12.6;

vii. A Nonprofit Acquisition Payment Form, which the Committee provides with the statement of eligible land cost or negotiated offer under N.J.A.C. 2:76–15.1, with the following items completed:

(1) The project name, block(s) and lot(s), name of nonprofit, municipality, and county;

(2) An itemized statement of the cost of acquisition of the parcel;

(3) A certification by the nonprofit's chief executive officer or chief financial officer that the information contained in the form is accurate and that no bonus has been given or received in connection with any bill for which the nonprofit seeks payment;

(4) A justification of any difference between the purchase price and the eligible land cost or negotiated offer of the parcel; and

(5) A justification of any difference between the parcel acreage as described in the appraisal and the parcel acreage purchased; and

3. All documents required under (c)2 above not submitted with a request for payment in advance of closing shall be submitted as expeditiously as possible after closing.

(d) Upon receipt of a request for payment under (c) above, the Committee shall:

1. Send to the nonprofit a payment invoice for the grant amount or 50 percent of the cost of acquisition, whichever is less. The nonprofit's chief executive officer or chief financial officer shall verify, sign, and return the invoice to the Committee for processing; and

2. Conduct a site inspection of the parcel of land for which the payment is requested.

(e) The Committee shall mail each grant disbursement to the nonprofit in the form of a check. The nonprofit shall not sign over the check to the property owner or any other person but shall deposit the check into the nonprofit's bank account.

(f) The nonprofit shall immediately inform the Committee if the closing date established in the contract of sale for the project site is postponed for any reason. A nonprofit that has received a disbursement in advance of a scheduled closing that is postponed is subject to the following conditions:

1. As of the 30th day after the disbursement is made, the nonprofit shall pay to the Committee interest accrued on the amount of the disbursement from that day up to the 90th day after the disbursement. The interest rate shall be the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at 4:42–11(a)(ii) in effect on the 30th day.

2. As of the 90th day after the disbursement is made, the nonprofit shall repay to the Committee the amount of the disbursement plus accrued interest from 30 days after disbursement to the date of repayment. The interest rate shall be the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at 4:42–11(a)(ii) in effect on the 90th day.

(g) A nonprofit that has repaid the disbursement plus accrued interest under (f)2 above may, upon acquisition of the project site, submit a request for reimbursement after closing in accordance with (c)2 above.

(h) The nonprofit may unilaterally withdraw the project at any time before it receives Committee funds. The nonprofit shall not terminate the project agreement after it receives any Committee funds without the written consent of the Committee.

(i) If the nonprofit terminates the project agreement under (h) above, the nonprofit is responsible for any costs of acquisition incurred as of the time of termination. The nonprofit shall also repay, with interest at the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at 4:42–11(a)(ii) in effect at the time of termination, any disbursement which the Committee made to the nonprofit for the project.

2:76–16.4 Accounting and recordkeeping

(a) The nonprofit shall maintain and make available to the Committee for inspection on request all financial documents and records related to the project for three years in accordance with (d) below.

(b) The nonprofit, its contractors, and subcontractors shall employ generally accepted accounting procedures that adequately identify the costs associated with the Committee grant.

(c) The nonprofit shall maintain separate records for each project including the amount, receipt, and disposition of all funding received for the project, including the Committee's grants, contributions, gifts, or donations from any other sources.

(d) The nonprofit shall provide a duly authorized representative of the Committee access to all records, books, documents, and papers pertaining to the project agreement and/or the approved project for audit, examination, excerpt, and transcript purposes. Such records shall be maintained and access shall be provided during performance of the project and for three years after the latter date of either final payment or audit resolution. The nonprofit shall include this requirement in all project-related contracts.

(e) The nonprofit shall conduct annual audits and submit audit reports in conformance with the Single Audit Act of 1984, P.L. 98–502 and the Single Audit Act Amendments of 1996, P.L. 104–156, Federal OMB Circular A–133; "Audits of Nonprofit Organizations," incorporated herein by reference, and State OMB Circular 98–07: "Single Audit Policy," incorporated herein by reference.

1. Audit reports shall address nonprofit's compliance and all specific instances of noncompliance with the material terms and conditions of the project agreement and applicable laws and regulations.

2. Audit reports shall contain an itemized schedule of all project-related financial assistance received by the nonprofit identifying: grantor agency, program title, State account number, and total disbursement.

(f) The Committee shall adjust the nonprofit's final payment, if necessary, based on the results of the annual audit reports.

(g) If a nonprofit sells or donates any interest in any lands acquired with a grant by the Committee, the nonprofit shall pay to the Committee the relative percent cost share based on its initial grant as compared to the original purchase price of the net proceeds. This reimbursement provision shall be contained in the deed of easement on lands acquired in fee simple title by the nonprofit. For purposes of this subsection, "net proceeds" means the amount of compensation received by the nonprofit in excess of any unreimbursed costs.

2:76-16.5 Monitoring

(a) Any lands from which a development easement was acquired or lands purchased in fee simple title by a nonprofit with a grant provided by the Committee shall be monitored by the nonprofit as follows:

1. An onsite inspection shall be performed at least once a year;

2. All inspections and monitoring shall be completed within the period commencing July 1 and ending June 30;

3. A written summary shall be provided to the Committee by July 15, verifying that the inspections were conducted during the scheduled period with a certification concerning whether the farm was in compliance with the provisions of the deed of easement;

4. The Committee shall be notified if any of the terms and conditions of the deed of easement were violated within 30 days of identifying such violation; and

5. Appropriate actions shall be taken within the nonprofit's authority to ensure that the terms and conditions of the deed of easement are enforced.

SUBCHAPTER 17. COUNTY PLANNING INCENTIVE GRANTS

2:76-17.1 Applicability

(a) This subchapter implements N.J.S.A. 4:1C-43.1 by establishing a county farmland preservation planning incentive grant program. The rules describe the procedures that the State Agriculture Development Committee shall follow to provide grants to eligible counties, which grants shall be for the purpose of preserving a significant area of reasonably contiguous farmland that will promote the long-term economic viability of agriculture as an industry in a county.

(b) A board or county that submits an application or a renewal application to the Committee pursuant to this subchapter shall not be eligible to apply for a grant under the county easement purchase program pursuant to N.J.A.C. 2:76-6, for the same fiscal year.

2:76-17.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural Development Area" or "ADA" means an area identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

"An application for the sale of a development easement" means a standard form, as developed and identified by the Committee, to be submitted to the county from a landowner interested in selling his or her development easement, in which the landowner shall provide parcel-specific information to the county.

"Application" means the formal submission of a planning incentive grant program application by the county to the Committee which includes a copy of the county's adopted comprehensive farmland preservation plan and a project area summary for each project area submitted for approval, and other information required by the Committee.

"Base grant" means the minimum amount of SADC funding that will be allocated to each county that has received preliminary approval of an application submitted pursuant to N.J.A.C. 2:76-17.7.

"Board or county" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-12.

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

"Competitive grant fund" means an amount of money identified by the Committee each fiscal year, which the SADC may award on a competitive basis to counties that have obligated all of their previously allocated base grant funding.

"Eligible farm" means a targeted farm that qualified for grant funding under this subchapter by achieving an individual rank score pursuant to N.J.A.C. 2:76-6.16 that is equal to or greater than 70 percent of the county's average quality score of all farms granted preliminary approval by the Committee through the county easement purchase program and/or the county planning incentive grant program within the previous three fiscal years, as determined by the Committee.

"Garden State Preservation Trust" means the public body created pursuant to N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152.

"Governing body" means, in the case of a county, the board of chosen freeholders, and in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality.

"Project area" means an area identified by a county agriculture development board that identifies discrete areas within the county's farmland preservation plan that constitute separate, significant areas of reasonably contiguous farmland that will promote the long-term viability of agriculture as an industry in the county, and which consists of the following lands and lands that are within one mile of any of the following lands:

1. Targeted farms located within an ADA;

2. Lands from which an application for the sale of a development easement has been granted final approval by the municipality, county and/or the Committee pursuant to the Agriculture Retention and Development Act, as amended, and the Garden State Preservation Act;

3. Lands from which development easements have already been purchased;

4. Other land permanently deed restricted for agricultural use;

5. Lands enrolled in an eight-year farmland preservation program or municipally approved farmland preservation programs; or

6. Other permanently preserved lands dedicated for open space purposes that are compatible with agriculture, as approved by the Committee.

"Targeted farm" means a specific property contained within an approved project area that a county may seek to solicit for preservation through the county planning incentive grant program. In the event a landowner requests his or her land to be removed from consideration as a targeted farm, the county agriculture development board shall remove the targeted farm from its project area.

2:76-17.3 Prerequisites for grant eligibility

(a) A county seeking to establish its eligibility for a base grant under this subchapter shall establish or develop the following:

1. A county agriculture development board that shall serve as the agricultural advisory committee;

2. A comprehensive farmland preservation plan; and

3. A dedicated source of funding for farmland preservation pursuant to P.L. 1997, c. 24 (N.J.S.A. 40:12-15.1 et seq.), or an alternative means of funding for farmland preservation, including, but not limited to:

i. A dedicated tax pursuant to P.L. 1997, c. 24 (N.J.S.A. 40:12-15);

ii. Repeated, continuing annual appropriations; or

iii. Repeated issuance of bonded indebtedness.

(b) The Committee may determine that a funding source other than those identified in (a)3 above, is, in effect, a dedicated source of funding based upon a demonstrated commitment to farmland preservation by the county.

2:76-17.4 County comprehensive farmland preservation plan

(a) A comprehensive farmland preservation plan shall include, at a minimum, the following components:

1. A complete description of the county's agricultural resource base and industry trends;

2. A complete description of the county's past and future farmland preservation program activities, including program goals and objectives, and any proposed farmland preservation program project areas;

3. A complete description of the land use planning context for farmland preservation initiatives including identification of the county's adopted ADA, and consistency of the county's farmland preservation program with local, county, regional, and State planning and conservation efforts; and

4. A complete discussion of actions the county has taken, or plans to take, to promote agricultural economic development in order to sustain the agricultural industry.

(b) A comprehensive farmland preservation plan shall include, either in the body of the plan, or as an addendum to the plan, the following:

1. A detailed map of, and county resolution approving, the adopted ADA of the county;

2. A summary identifying county funding dedicated to, or available for, preservation of farmland through the State Farmland Preservation Program;

3. A funding plan for the preservation of land consistent with the county's one-, five- and 10-year preservation projections that includes identification of available funding sources and any approved policies related to funding sources;

4. The minimum eligibility criteria or standards as adopted by the county for solicitation and approval of farmland preservation program applications considered by the county, which at a minimum shall include the criteria at N.J.A.C. 2:76-6.20, subject to the following:

i. The criteria to qualify as an eligible farm if Committee funds are requested;

5. The adopted ranking criteria that the county will use to prioritize farms for county farmland preservation funding, which shall address the factors included in the criteria at N.J.A.C. 2:76-6.16; and

6. Any other policies, guidelines or standards used by the county that affect farmland preservation application evaluation or selection.

2:76-17.5 Project area summary

(a) The county shall prepare a project area summary containing the following information for each project area designated within the county's comprehensive farmland preservation plan for which the county intends to seek Committee funding:

1. An inventory showing the number of farms or properties, and their individual and aggregate acreage, for each of the following categories of land within the project area:

i. Targeted farms;

ii. Lands from which an application for the sale of a development easement has been granted final approval by the municipality, county and/or the Committee pursuant to the Agriculture Retention and Development Act, as amended, and the Garden State Preservation Trust Act;

iii. Lands from which development easements have already been purchased;

iv. Other permanently deed restricted farmlands;

v. Lands enrolled in an eight-year farmland preservation program or municipally-approved farmland preservation program; and

vi. Other permanently preserved lands dedicated for open space purposes that are compatible with agriculture, as approved by the Committee;

2. Aggregate size of the entire project area;

3. Density of the project area expressed as the ratio between the total area of the properties listed in (a)1ii, iii, iv, v and vi above and the total area of the project area;

4. Description of soil productivity of the targeted farms in the project area expressed as the ratio between the total area of the following important farmland soils and the total area of the targeted farms:

i. Prime soils identified by the U.S.D.A. Natural Resources Conservation Service;

ii. Soils of Statewide importance as identified by the New Jersey Department of Agriculture, State Soil Conservation Committee; and

iii. Unique soils which are specially suited for the production of specialty crops and are being used, or intended to be used, for that purpose;

5. An estimate of the cost of purchasing development easements on the targeted farms in the designated project area, which shall be determined through existing appraisal data, or an appraisal for the entire project area; and

6. The county's multi-year plan for the purchase of development easements on targeted farms in the project area, indicating the county's and, if appropriate, any other funding partner's share of the estimated purchase price.

i. If a county intends to leverage monies made available through N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152, the county shall provide an accounting of such leveraging, including, but not limited to the estimated percentage of leveraged State funds in the application, and the time period of installment purchase agreements.

2:76-17.6 County application procedures

(a) All planning incentive grant applications shall be received by the Committee no later than December 15 of each year preceding the fiscal year in which the county seeks to participate in the planning incentive grant program, subject to the following:

1. The county's initial application shall include a copy of the county's comprehensive farmland preservation plan and all applicable project area summaries.

2. In any subsequent year, the county's application shall include the following:

i. A copy of the county's comprehensive farmland preservation plan, as amended if appropriate;

ii. Project area summaries for any new or amended project areas; and

iii. A report summarizing the status of the purchase of development easements on farms identified in prior year's applications and expenditure of Committee funds previously available pursuant to N.J.A.C. 2:76-17.8.

(b) To improve county and municipal farmland preservation program coordination, the county shall notify all municipalities in which targeted farms are located within a project area no later than 90 days prior to the date on which it submits its application to the Committee, and no less than 90 days prior to the December 15 application deadline.

1. The municipality shall have 60 days from receipt of the application to provide written comments to the county.

2. The municipality shall provide any comments and, if appropriate, identify the level of funding that the municipality is willing to provide to assist in the purchase of development easements on targeted farms.

(c) A county may enhance its application by submitting a joint proposal with one or more contiguous counties resulting in the preservation of a more significant area of reasonably contiguous farmland.

(d) The county shall consider the municipality's comments before submitting the application to the Committee. If the county approves the application, it shall forward the approved application to the Committee within the time provided by (b) above.

(e) Any application submitted after December 15 shall be considered by the Committee as an application for the subsequent program year.

2:76-17.7 Committee review of planning incentive grant applications

(a) Within 60 days of receipt thereof, the Committee shall review and evaluate the county's application submitted pursuant to N.J.A.C. 2:76-17.6 as follows:

1. The Committee shall determine whether all of the components of the comprehensive farmland preservation plan are fully addressed and complete;

2. The Committee shall determine for each designated project area, whether the project area summary is complete and technically accurate;

3. If the Committee finds that the application is complete and accurate, and that it is designed to preserve a significant area of reasonably contiguous farmland that will promote the long-term economic viability of agriculture as an industry, it shall approve the application.

i. Funding eligibility shall be established pursuant to N.J.A.C. 2:76-17.8.

ii. The Committee shall notify the county of its decision in writing; and

4. If the Committee finds that the comprehensive farmland preservation plan and/or the project area summary are not complete and accurate, it may grant conditional approval of the application.

i. The Committee shall notify the county of its decision in writing of the deficiencies in the application.

ii. The county shall respond with the required information to the Committee within 60 days of receiving notification of the submission deficiencies.

iii. Upon receipt of the required information, the Committee shall review the information within 60 days of receipt thereof, and if appropriate grant preliminary approval pursuant to N.J.A.C. 2:76-17.7.

(b) The county's failure to provide the requested information within 60 days of receiving notification of the submission deficiencies shall result in a rejection of the application by the Committee.

1. An application rejected by the Committee shall not be resubmitted by the county until the following fiscal year.

2:76-17.8 Annual funding eligibility

(a) For each fiscal year, the Committee shall establish the amount of the base grant available to each county that has received approval of an application submitted pursuant to N.J.A.C. 2:76-17.7.

1. The Committee may adjust any county's base grant eligibility, or withhold a base grant entirely, if the county's projected expenditures, as described in its application, do not demonstrate sufficient need for a full base grant allocation.

2. The county shall expend funds within two years of the date the funds are appropriated or risk the loss of those funds or funding eligibility in subsequent funding cycles.

3. The Committee shall review the county's performance over the previous two fiscal years to determine if the county has expended State cost share funds on a timely basis. The degree to which the county has expended all previously allocated grant funding will determine to what extent the county is eligible to receive the minimum annual base grant for the next fiscal year according to the following:

i. If the county has expended at least 50 percent of the total grant funds appropriated to the county in the previous two fiscal years, the county is eligible for 100 percent of the maximum base grant available to it;

ii. If the county has expended at least 25 percent, but less than 50 percent of the total grant funds appropriated to the county in the previous two fiscal years, the county is eligible for 50 percent of the maximum base grant available to it; or

iii. If the county has expended less than 25 percent of the total grant funds appropriated to the county in the previous two fiscal years, the county is ineligible for a base grant award.

(b) For each fiscal year, the Committee shall establish a maximum combined amount of planning incentive grant funds that any county may receive from both its base grant and from the competitive grant fund.

1. The SADC shall identify the total amount of funds available for expenditure in the competitive grant fund for each fiscal year.

2. If at any time during the fiscal year, a county seeks final approval for an eligible farm for which there are insufficient funds remaining in the county's base grant for that fiscal year, the request for final approval will be applied to the funding available in the competitive grant fund pursuant to N.J.A.C. 2:76-17.14.

3. Counties may continue to qualify for funds available in the competitive grant fund up to the total maximum grant eligibility established pursuant to (b) above.

2:76-17.9 Committee review of an application for the sale of a development easement from an eligible farm

(a) At any time during the year, but subsequent to the Committee's approval of a planning incentive grant application, and prior to commencement of any appraisals to be submitted to the Committee for review and certification, the county shall submit to the Committee the following information for any eligible farm that the county intends to commence processing for purchase:

1. A completed application for the sale of a development easement;

2. Appropriate GIS mapping and soils analysis as required by the Committee;

3. Clear delineation of all proposed exception areas, whether severable or non-severable, all housing opportunities and all pre-existing nonagricultural uses that shall identify the information in (a)3i and ii below. Exception areas shall be permitted only if they do not cause a substantially negative impact on the continued use of the land for agricultural purposes.

i. The allocation of any residual dwelling site opportunities authorized pursuant to N.J.A.C. 2:76-6.17; and

ii. Any other residential opportunities that currently exist on the premises;

4. Confirmation that the farm meets the minimum eligibility criteria established by the county in its comprehensive farmland preservation plan developed in accordance with N.J.A.C. 2:76-17.4(b)4, and further provided as follows:

i. A member of the board or a member of his or her immediate family, is prohibited from selling or applying to sell a development easement on his or her property or from selling or applying to sell his or her property in fee simple title pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq.

(1) "Member of the immediate family" means a member's spouse, child, parent, or sibling, residing in the same household;

5. Rank score of the farm based on the county's adopted ranking criteria;

6. Rank score of the farm based on the Committee's ranking criteria adopted pursuant to N.J.A.C. 2:76-6.16; and

7. Confirmation that each farm's individual rank score pursuant to N.J.A.C. 2:76-6.16 meets the requirements of an eligible farm as defined by N.J.A.C. 2:76-17.2 provided that:

i. If a farm fails to meet the minimum rank score in (a)5 and 6 above and the county wishes to preserve the farm using Committee funds provided for pursuant to this subchapter, the county may request from the Committee a waiver of the minimum score criteria.

(1) The Committee may grant a waiver of the minimum score criteria upon a finding that any of the following apply:

(A) The conversion of the farm to non-agricultural use will likely cause a substantial negative impact on the public investment made in farmland preservation within the project area;

(B) The subject property is of exceptionally high agricultural resource value based on soil characteristics; or

(C) The subject property represents a unique and valuable agricultural resource to the surrounding community, and the Committee finds that it has a reasonable opportunity to remain agriculturally viable.

(b) The Committee shall conduct a review of the application(s) for the sale of a development easement and confirm that it is complete and accurate and that it otherwise meets the criteria of (a) above.

1. If an application for the sale of a development easement is determined to be complete and meets the criteria as set forth in (a) above, the Committee shall notify the county in writing that the application is approved and that appraisals may commence pursuant to N.J.A.C. 2:76-17.10.

2. If an application for the sale of a development easement is determined to be incomplete, the Committee shall notify the county in writing to address the deficiencies.

i. Upon receipt and review of an amended application for the sale of a development easement that is determined to be complete and meets the criteria as set forth in (a) above, the Committee shall notify the county in writing that the application is approved and that appraisals may commence pursuant to N.J.A.C. 2:76-17.10.

2:76-17.10 Appraisal of eligible farms

(a) Upon Committee approval of an application for the sale of a development easement pursuant to N.J.A.C. 2:76-17.9(b), the county shall select two appraisers from the list of appraisers approved by the Committee pursuant to N.J.A.C. 2:76-6.22 to conduct independent appraisals of each farm to determine the market value of the development easement for which funding is requested.

1. The county shall provide to the appraisers a completed appraisal order checklist as required by the Committee and a copy of the application for the purchase of a development easement including, but not limited to, residential opportunities, exceptions, soils, wetlands and any other factors that may affect the market value of the development easement to the appraisers.

2. The appraisers shall perform appraisals in accordance with procedures detailed in the appraisal handbook for standards at N.J.A.C. 2:76-6.10, generally recognized appraisal practices, N.J.S.A. 4:1C-11 et seq., and 13:8C-1 et seq., P.L. 1999, c. 152, and the Committee's appraisal handbook.

(b) The two appraisers shall certify the current market value of the development easement as of a uniform date established by the county pursuant to (a)1 above.

(c) The valuation of a development easement for lands located in the Pinelands with Pinelands Development Credits shall be determined pursuant to N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152, and 4:1C-11 et seq., N.J.A.C. 2:76-19 and the Committee's appraisal handbook.

(d) Upon completion of the appraisals, the appraisers shall forward the appraisal reports to a person designated by the county, who shall review the reports for completeness of contractual requirements.

(e) The county shall forward the completed appraisals to the Committee.

2:76-17.11 Committee certification of development easement values

(a) The Committee shall review appraisals of eligible farms only after they have been authorized for appraisal pursuant to N.J.A.C. 2:76-17.9(b).

(b) For purposes of funding eligible farms through fiscal year 2009 appropriations only, an appraisal submitted in compliance with the provisions set forth below shall be deemed a current market value appraisal:

1. An appraisal conducted, or relied upon, by counties having a valuation date of August 1, 2006 or thereafter;

2. In the event that a county has preacquired lands in fee simple title for farmland preservation purposes within three years of filing an application with the Committee for a cost share grant for the purchase of a development easement as a partial interest in the fee simple title, the Committee shall accept the original appraisal conducted in support of the preacquisition, conditioned upon the following:

i. The valuation date of the appraisal is August 1, 2006 or thereafter or the valuation date is not more than 18 months prior to the date of the county's preacquisition; and

ii. The county did not acquire the fee simple interest for an amount greater than the highest appraised value at the time of preacquisition; or

3. In the event that a county has preacquired a development easement within three years of filing an application with the Committee, the Committee shall accept the original appraisal conducted in support of the preacquisition, conditioned upon the following:

i. The valuation date of the appraisal is August 1, 2006 or thereafter or the valuation date is not more than 18 months prior to the date of the county's preacquisition, and

ii. The county did not acquire the development easement for an amount greater than the highest appraised value at the time of preacquisition.

(c) At the county's request, the Committee shall accept new appraisals which provide "before" (unrestricted) and "after" (restricted) values based on the valuation date contained in the original appraisals conducted in support of the preacquisition, subject to (b)2 and 3 above.

(d) For the purpose of (b) above, "preacquisition" shall mean the date of settlement on the county's purchase of fee simple title or a development easement.

(e) The Committee shall appoint a review appraiser to evaluate the appraisals submitted by the county and to recommend a market value of the development easement for each farm. The review appraisal shall be conducted in accordance with the appraisal standards contained in N.J.A.C. 2:76-10.

(f) The Committee shall have final authority for certifying the market value of the development easement pursuant to N.J.A.C. 2:76-6.8.

(g) The Committee shall certify the market value of the development easement and report the certified value to the county.

(h) The Committee may determine not to certify the market value of the development easement if an appraisal does not comply with the appraisal handbook for standards at N.J.A.C. 2:76-10 or generally recognized appraisal practices.

1. If the appraisal is not amended to comply with the appraisal handbook or generally recognized appraisal practice within 60 days of the Committee review appraiser requesting such amendments, the Committee may invalidate the appraisal.

Amended by R.2009 d.168, effective May 18, 2009.
See: 41 N.J.R. 6(a), 41 N.J.R. 2093(b).
Added new (b) through (d); and recodified former (b) through (e) as (e) through (h).

2:76-17.12 Landowner offer

(a) Within 30 days of receipt of the Committee's certification of market value of the development easement, the board shall report the certified value to the landowner.

1. The county may negotiate a purchase price of the development easement for an amount greater than or less than the Committee's certified market value of the development easement, but not greater than the higher of the two independent appraised development easement values determined pursuant to N.J.S.A. 4:1C-31(c) and 13:8C-1 et seq., P.L. 1999, c. 152 and N.J.A.C. 2:76-17.11.

2. If applicable, the county shall inform the landowner of the terms and conditions of any installment purchase agreements, options or potential donations.

(b) Within 60 days of the landowner's receipt of the Committee's certification of market value of the development easement, the landowner shall submit, in writing, an acceptance or rejection of the offer. A copy of the acceptance or rejection shall be provided to the Committee.

1. An offer by a landowner requesting to sell his development easement for a value that is greater than the higher of the two independent appraised development easement values determined pursuant to N.J.S.A. 4:1C-31(c), and 13:8C-1 et seq., P.L. 1999, c. 152 and N.J.A.C. 2:76-17.11 shall be deemed a rejection of the offer.

2. If the landowner accepts the county's offer, the county shall enter into an agreement with the landowner contingent upon the county's final review pursuant to N.J.A.C. 2:76-17.13 and the Committee's final review pursuant to N.J.A.C. 2:76-17.14 and shall provide a copy of the agreement to the Committee, and in the event municipal funds are provided, to the municipality.

3. If a landowner rejects an offer for an amount equal to or greater than the certified market value, the Committee shall not accept for processing any application for the sale of a development easement or for sale of land in fee simple pursuant to the planning incentive grant program or any other farmland preservation program authorized pursuant to N.J.S.A. 4:1C-11 et seq., or 13:1C-1 et seq. for two years from the date that the county originally submitted an application for the sale of a development easement. This provision applies only to an application from the same landowner for the same farm property.

2:76-17.13 Final county review

(a) The county shall approve or disapprove the acquisition of a development easement on an eligible farm based on total available funding and provide the following to the Committee:

1. A commitment of funding by the county and each level of government that is providing funding, as evidenced by an adopted resolution of each governing body.

i. In the event that municipal funding is not being provided, the municipality, by resolution, must approve of the purchase of the development easement.

2. A commitment of funding in the event the development easement shall be acquired under installment purchase pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-32, as amended.

3. In the event that donation or other method of leveraging monies authorized pursuant to N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152, is being utilized, a commitment of funding as required to purchase the easement.

(b) Nothing in this subchapter shall be construed to require that any eligible farm in a project area shall receive a price per acre that is the same as any other eligible farm in that project area, or that any eligible farm must be purchased with installment payments because other eligible farms in the project area are so purchased.

(c) No development easement shall be purchased at a price greater than the higher of the two independent appraised values determined pursuant to N.J.A.C. 2:76-17.11 and N.J.S.A. 4:1C-31(c) and 13:8C-1 et seq., P.L. 1999, c. 152.

(d) In the event that there are insufficient county, municipal, or other non-SADC funds to acquire development easements on all of the eligible farms, the county shall establish a priority ranking of farms pursuant to its ranking criteria and N.J.A.C. 2:76-6.10(a)1i and shall forward to the Committee requests for final approval only for those farms for which there is a sufficient local funding commitment.

2:76-17.14 Final committee review

(a) The Committee shall review all requests for funding for the purchase of a development easement on an eligible farm approved by the county for compliance with all applicable statutes, rules and regulations and policies.

1. The Committee shall confirm receipt of appropriate resolutions from the board, the governing body of the county and governing body of the municipality approving of the purchase of a development easement and dedicating sufficient funds to account for local cost share, if appropriate.

2. The Committee shall confirm receipt of the agreement between the county and the landowner.

(b) The Committee's cost share for the purchase of the development easement shall be consistent with the provisions of N.J.A.C. 2:76-6.11(d).

(c) The Committee shall approve a cost share grant for any farm that qualified for final approval and for which there are sufficient funds available in the county's base grant.

(d) In the event that there are insufficient funds available in a county's base grant to acquire a development easement on the farm(s) being submitted for final approval by any county, the county may request additional funding from the competitive grant fund.

(e) The Committee shall establish a priority ranking that will prioritize applications for grants from the competitive grant fund based on the number of cumulative points awarded according to the following criteria, subject to a county's maximum funding eligibility and available funding:

1. The density score of the project area, as identified in N.J.A.C. 2:76-17.5(a)3, is determined as follows:

Density ratio	
90 to 100 percent	50 points
80 to <90 percent	40 points
60 to <80 percent	30 points
40 to <60 percent	20 points
20 to <40 percent	10 points
<20 percent	0 points

2. The soil productivity score of the important farmland soils present on targeted farms within the project area, as identified in N.J.A.C. 2:76-17.5(a)4, is determined as follows:

Soil productivity ratio	
90 to 100 percent	50 points
80 to <90 percent	40 points
60 to <80 percent	30 points
40 to <60 percent	20 points
20 to <40 percent	10 points
<20 percent	0 points

3. The proximity score of the eligible farm in relation to lands from which development easements have already been purchased or other permanently deed restricted farmlands within the project area, as identified in N.J.A.C. 2:76-17.5(a)1ii, iii, iv, v and vi, is determined as follows:

Distance	
Contiguous	50 points
<500 feet	40 points
500 to 1000 feet	30 points
>1000 to 2500 feet	20 points
>2500 to 5000 feet	10 points
>5000 feet	0 points

4. The relative best buy score of the farm is determined as follows:

$$\frac{\text{nonagricultural development value} - \text{agricultural value} - \text{landowner's asking price}}{\text{nonagricultural development value} - \text{agricultural value}} = \text{Formula Index}$$

Formula Index × 200 = Total points

5. The total score for the eligible farm is equal to the sum of (e)1, 2, 3 and 4 above.

(f) If further prioritization is necessary, the Committee shall give funding priority to those farms that utilize option agreements, installment purchases, donations, or other methods for the purpose of leveraging monies made available by P.L. 1999, c. 152 (N.J.S.A. 13:8C-1 et seq.).

(g) In the event that the approval requires a schedule of installment payments, the Committee shall enter into an agreement for the provision of grant funds with the county subject to the following:

1. The provisions of N.J.S.A. 4:1C-32, as amended;

2. The approval of funding by the Garden State Preservation Trust; and

3. The appropriation of funds.

(h) The Committee shall inform the county of its decision.

(i) The Committee shall post on its website the status of available funds following the Committee's actions.

2:76-17.15 Deed restrictions

(a) Deed restrictions shall be attached to and recorded with the deed of the land and shall be consistent with N.J.A.C. 2:76-6.15.

(b) The development easement shall be held by the county if county funds are utilized in the purchase of a development easement on a farm.

2:76-17.16 Terms, contingencies and conditions of purchase

Terms, contingencies and conditions of purchase shall be consistent with the provisions of N.J.A.C. 2:76-6.13.

SUBCHAPTER 17A. MUNICIPAL PLANNING INCENTIVE GRANTS

2:76-17A.1 Applicability

This subchapter implements N.J.S.A. 4:1C-43.1 by establishing a municipal farmland preservation planning incentive grant program. The rules describe the procedures that the State Agriculture Development Committee shall follow to provide grants to eligible municipalities, which grants shall be for the purpose of preserving a significant area of reasonably contiguous farmland that will promote the long-term economic viability of agriculture as an industry in a municipality.

2:76-17A.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural Development Area" or "ADA" means an area identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

"An application for the sale of a development easement" means a standard form, as developed and identified by the Committee, to be submitted to the municipality from a landowner interested in selling his or her development easement, in which the landowner shall provide parcel-specific information to the municipality.

"Application" means the formal submission of a planning incentive grant program application by the municipality to the Committee, which includes a copy of the municipality's farmland preservation plan element and a project area summary for each project area submitted for approval, and other information required by the Committee.

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

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

"Eligible farm" means a property included within an SADC-approved project area that is deemed eligible by the municipality to be preserved through the municipality's farmland preservation program, which, at a minimum, meets the criteria at N.J.A.C. 2:76-6.20.

"Garden State Preservation Trust" means the public body created pursuant to N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152.

"Governing body" means, in the case of a county, the board of chosen freeholders, and in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality.

"Mayor" means the municipal official identified pursuant to section 3.2 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-5).

"Project area" means an area identified by a municipality that identifies discrete areas within the municipality's farmland preservation plan that constitute separate, significant areas of reasonably contiguous farmland that will promote the long-term viability of agriculture as an industry in the municipality, and which consists of the following lands and lands that are within one mile of any of the following lands:

1. Targeted farms located within an ADA;

2. Lands from which an application for the sale of a development easement has been granted final approval by the municipality, the county and/or the Committee pursuant to the Agriculture Retention and Development Act, as amended, and the Garden State Preservation Act;

3. Lands from which development easements have already been purchased;

4. Other permanently deed restricted farmlands;

5. Lands enrolled in an eight-year farmland preservation program or municipally-approved farmland preservation programs; and

6. Other permanently preserved lands dedicated for open space purposes that are compatible with agriculture, as approved by the Committee.

"Targeted farm" means a specific property, contained within an approved project area, that a municipality may seek to solicit for preservation through the municipal planning incentive grant program. In the event a landowner requests his or her land to be removed from consideration as a targeted farm, the municipal agricultural advisory committee shall remove the targeted farm from its project area.

2:76-17A.3 Grant eligibility

(a) A municipality seeking to establish its eligibility for a grant under this subchapter shall establish or develop the following:

1. An agricultural advisory committee shall be appointed by the mayor with the consent of the municipal governing body. The municipal agricultural advisory committee shall report to the municipal planning board. A municipal agricultural advisory committee shall be composed of:

i. At least three, but not more than five, residents of the municipality;

ii. A majority of the members actively engaged in farming and owning a portion of the land they farm; and

iii. A member of the committee or a member of his or her immediate family, is prohibited from selling or applying to sell a development easement on his or her property or from selling or applying to sell his or her property in fee simple title pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq.

(1) "Member of the immediate family" means a member's spouse, child, parent, or sibling, residing in the same household;

2. Maintain a dedicated source of funding for farmland preservation pursuant to P.L. 1997, c. 24 (N.J.S.A. 40:12-15.1 et seq.), or an alternative means of funding for farmland preservation, such as, but not limited to:

i. A dedicated tax pursuant to P.L. 1997, c. 24 (N.J.S.A. 40:12-15.1 et seq.);

ii. Repeated, continuing annual appropriations; or

iii. Repeated issuance of bonded indebtedness.

(1) The Committee may determine that a funding source, other than those identified in (a)2 above, is, in effect, a dedicated source of funding based upon a demonstrated commitment to farmland preservation by the municipality;

3. Prepare and adopt a farmland preservation plan element pursuant to paragraph 13 of section 19 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-28b(13)) in consultation with the municipal agriculture advisory committee. The plan shall include, at a minimum, the following:

i. An inventory of farm properties in the entire municipality and a map illustrating significant areas of agricultural land;

ii. A detailed statement showing that municipal plans and ordinances support and promote agriculture as a business; and

iii. A plan for preserving as much farmland as possible in the short term by leveraging monies made available by the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152 through a variety of mechanisms including, but not limited to, utilizing:

(1) Option agreements;

(2) Installment purchases; and

(3) Encouraging donations for permanent development easements;

iv. A statement of farming trends, characterizing the type(s) of agricultural production in the municipality; and

v. A discussion of plans to develop the agricultural industry in the municipality; and

4. Prepare and adopt a right-to-farm ordinance that is consistent with, or provides greater protections to commercial farm operators and owners than, the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., as determined by the Committee.

2:76-17A.4 Municipal farmland preservation plan

(a) A comprehensive farmland preservation plan shall include, at a minimum, the following components:

1. The adopted farmland preservation plan element of the municipal master plan;

2. A map and description of the municipality's agricultural resource base including, at a minimum, the proposed farmland preservation project areas;

3. A description of the land use planning context for the municipality's farmland preservation initiatives including the following:

i. Identification and detailed map of the county's adopted ADA within the municipality;

ii. Consistency of the municipality's farmland preservation program with county and other farmland preservation program initiatives; and

iii. Consistency with municipal, regional and State land use planning and conservation efforts;

4. A description of the municipality's past and future farmland preservation program activities, including program goals and objectives, as follows:

i. A summary identifying municipal funding dedicated to, or available for, preservation of farmland through the State farmland preservation program; and

ii. A funding plan for the preservation of land consistent with the municipality's one-, five- and 10-year preservation projections that includes identification of available funding sources and any approved policies related to funding sources;

5. A discussion of actions the municipality has taken, or plans to take, to promote agricultural economic development in order to sustain the agricultural industry;

6. Other farmland preservation techniques being utilized or considered by the municipality;

7. A description of the policies, guidelines or standards used by the municipality in conducting its farmland preservation efforts including the following:

i. Any minimum eligibility criteria or standards used by the municipality for solicitation and approval of farmland preservation program applications, which shall address the criteria at N.J.A.C. 2:76-6.20;

ii. The adopted ranking criteria that the municipality will use to prioritize farms for farmland preservation funding, which, at a minimum, shall address the factors included in the criteria at N.J.A.C. 2:76-6.16;

iii. Any other policies, guidelines or standards used by the municipality that affect farmland preservation application evaluation or selection;

8. A description of municipal staff and/or consultants used to facilitate the preservation of farms; and

9. Any other information as deemed appropriate by the municipality.

2:76-17A.5 Project area summary

(a) The municipality shall prepare a project area summary containing the following information for each project area designated within the municipality's farmland preservation plan for which the municipality intends to seek Committee funding:

1. An inventory showing the number of farms or properties, and their individual and aggregate acreage, for each of the following categories of land within the project area:

i. Targeted farms;

ii. Lands from which an application for the sale of a development easement has been granted final approval by the municipality, county and/or the Committee pursuant to the Agriculture Retention and Development Act, as amended, and the Garden State Preservation Trust Act;

iii. Lands from which development easements have already been purchased;

iv. Other permanently deed-restricted farmlands;

v. Lands enrolled in an eight-year farmland preservation program or municipally-approved farmland preservation program; and

vi. Other permanently preserved lands dedicated for open space purposes that are compatible with agriculture, as approved by the Committee;

2. Aggregate size of the entire project area;

3. Density of the project area expressed as the ratio between the total area of the properties listed (a)1ii, iii, iv, v and vi above and the total area of the project area;

4. Description of soil productivity of the targeted farms in the project area expressed as the ratio between the total area of the following important farmland soils and the total area of the targeted farms:

i. Prime soils identified by the U.S.D.A. Natural Resources Conservation Service;

ii. Soils of Statewide importance as identified by the New Jersey Department of Agriculture, State Soil Conservation Committee; and

iii. Unique soils which are specially suited for the production of specialty crops and are being used, or intended to be used, for that purpose;

5. An estimate of the cost of purchasing development easements on the targeted farms in the designated project area, which shall be determined through existing appraisal data, or an appraisal for the entire project area; and

6. The municipality's multi-year plan for the purchase of development easements on the targeted farms in the project area, indicating the municipality's and, if appro-

priate, any other funding partner's share of the estimated purchase price.

i. If a municipality intends to leverage monies made available through N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152, the municipality shall provide an accounting of such leveraging, including, but not limited to, the estimated percentage of leveraged State funds in the application, and the time period of installment purchase agreements.

2:76-17A.6 Municipal application procedures

(a) All planning incentive grant applications shall be received by the Committee no later than December 15 of each year for the following fiscal year in which the municipality seeks to participate in the planning incentive grant program subject to the following:

1. The municipality's initial application shall include a copy of the municipality's comprehensive farmland preservation plan and all applicable project area summaries.

2. In any subsequent year, the municipality's application shall include the following:

i. A copy of the municipality's comprehensive farmland preservation plan, as amended, if appropriate;

ii. Project area summaries for any new or amended project areas; and

iii. A report summarizing the status of the purchase of development easements on farms identified in prior year's applications and expenditure of Committee funds previously available pursuant to N.J.A.C. 2:76-17A.8.

(b) To improve municipal and county farmland preservation coordination, the municipality shall forward its application to the county for review no later than 90 days prior to the date on which it submits its application to the Committee, and no less than 90 days prior to the December 15 deadline.

1. If county funding is sought, the county shall review the application and provide comments within 60 days of receipt of the application to ensure that the application is consistent with the county's comprehensive farmland preservation plan.

i. The county shall provide any comments and, if appropriate, identify the level of funding that the county is willing to provide to assist in the purchase of development easements on targeted farms.

ii. The municipality shall consider the county's comments before submitting the application to the Committee, amend the application, if appropriate, and forward the approved application to the Committee.

2. If county funding is not sought, the county shall review the application and provide comments to the municipality within 60 days of receipt of the application to determine to what extent the municipality's application is consistent with the county's comprehensive farmland preservation plan.

(c) A municipality may enhance its application by submitting a joint proposal with one or more contiguous municipalities resulting in the preservation of a more significant area of reasonably contiguous farmland and submit it to the board pursuant to the provisions in (b) above.

(d) Any application submitted after December 15 shall be considered by the Committee as an application for the subsequent program year.

2:76-17A.7 Committee review of municipal planning incentive grant applications

(a) Within 60 days of receipt thereof, the Committee shall review and evaluate the municipality's application submitted pursuant to N.J.A.C. 2:76-17A.6 as follows:

1. The Committee shall determine whether all of the components of the comprehensive farmland preservation plan are fully addressed and complete; and

2. The Committee shall determine, for each designated project area, whether the project area summary is complete and technically accurate.

(b) If the Committee finds that the application is complete and accurate, and that it is designed to preserve a significant area of reasonably contiguous farmland that will promote the long-term economic viability of agriculture as an industry, it shall approve the application.

1. Funding eligibility shall be established pursuant to N.J.A.C. 2:76-17A.8.

2. The Committee shall notify the municipality of its decision in writing.

(c) If the Committee finds that the comprehensive farmland preservation plan and/or the project area summary are not complete and accurate, it may grant conditional preliminary approval of the application.

1. The Committee shall notify the municipality of its decision in writing of the deficiencies in the application.

2. The municipality shall respond with the required information to the Committee within 60 days of receiving notification of the submission deficiencies.

3. Upon receipt of the required information, the Committee shall review the information within 60 days of receipt thereof, and if appropriate grant approval pursuant to N.J.A.C. 2:76-17A.7.

(d) The municipality's failure to provide the requested information within the 60 days of receiving notification of the submission deficiencies shall result in a rejection of the application by the Committee.

1. An application rejected by the Committee shall not be re-submitted by the municipality until the following fiscal year.

2:76-17A.8 Annual funding eligibility

(a) The Committee shall establish a preliminary funding eligibility to the municipality for all project areas receiving approval. Preliminary funding allocations shall be established as follows:

1. The Committee shall determine the estimated total cost of development easement acquisitions contained in the application. (Example: 10-year funding plan requiring $1 million per year = $10 million total development easement cost.)

2. The Committee's estimated cost share shall be calculated based on the average county or municipal cost share of development easements to date. If data is not available, the Committee's current average Statewide cost share for the purchase of development easements shall be utilized. (Example: $10 million total development easement cost × 65 percent = $6.5 million.)

3. The Committee shall establish an eligibility of 75 percent of the total of the estimated Committee cost share needed for the purchase of development easements on the targeted farms contained in the application subject to the following:

i. The available funds earmarked by the Committee for municipal planning incentive grants;

ii. The maximum eligibility, which shall not exceed $1.5 million per municipality per year; and

iii. The maximum allocation of $1.5 million per municipality per year may be increased with the approval of the Committee pursuant to N.J.A.C. 2:76-17A.17.

(b) The Committee's preliminary funding eligibility for each applicant shall be submitted to the Garden State Preservation Trust.

1. The Garden State Preservation Trust shall be notified of future funding requests for the purchase of development easements through installment purchases based on the anticipated schedule of installment payments as contained in the application.

(c) The Committee shall monitor the municipality's funding plan pursuant to N.J.A.C. 2:76-17A.17 and adjust the eligibility of funds based on the municipality's progress in implementing the proposed funding plan.

1. The municipality shall expend its funding eligibility within three years from the date the funds were appropriated or risk the loss of those funds or funds to be allocated in subsequent funding cycles.

2:76-17A.9 Committee review of an application for the sale of a development easement

(a) At any time after the Committee has granted approval of an application, and prior to commencement of any appraisals to be submitted to the Committee for review and certification, the municipality shall submit to the Committee the following information for any eligible farm that the municipality intends to commence processing for purchase:

1. A completed application for the sale of a development easement;

2. Appropriate GIS mapping and soils analysis, as required by the Committee;

3. Clear delineation of all exception areas, whether severable or non-severable, all housing opportunities and all pre-existing nonagricultural uses that shall identify the information in (a)3i and ii below. Exception areas shall be permitted only if they do not cause a substantially negative impact on the continued use of the land for agricultural purposes.

i. The allocation of any residual dwelling site opportunities authorized pursuant to N.J.A.C. 2:76-6.17; and

ii. Any other residential opportunities that currently exist on the premises;

4. Confirmation that the farm meets the minimum eligibility criteria established by the municipality in its comprehensive farmland preservation plan developed in accordance with N.J.A.C. 2:76-17A.4(a)7; and

5. Rank score of the farm based on the municipality's adopted ranking criteria.

(b) The Committee shall conduct a review of the application(s) for the sale of a development easement submitted and confirm that it is complete and accurate and that it otherwise meets the criteria of (a) above.

1. If an application for the sale of a development easement is determined to be complete and meets the criteria as set forth in (a) above, the Committee shall notify the municipality, in writing, that the application is approved and that appraisals may commence pursuant to N.J.A.C. 2:76-17A.10.

2. If an application for the sale of a development easement is determined to be incomplete, the Committee shall notify the municipality, in writing, to address the deficiencies.

i. Upon receipt and review of an amended application for the sale of a development easement that is determined to be complete and meets the criteria as set forth in (a) above, the Committee shall notify the municipality, in writing, that the application is approved and that appraisals may commence pursuant to N.J.A.C. 2:76-17A.10.

2:76-17A.10 Appraisal of an eligible farm

(a) Upon Committee approval of an application for the sale of a development easement pursuant to N.J.A.C. 2:76-17A.9(b), the municipality shall select two appraisers from the list of appraisers approved by the Committee pursuant to N.J.A.C. 2:76-6.22 to conduct independent appraisals of each farm to determine the market value of the development easement for which funding is requested.

1. The municipality shall provide to the appraisers a completed appraisal order checklist as required by the Committee and a copy of the application for the purchase of a development easement including, but not limited to, residential opportunities, exceptions, soils, wetlands and any other factors that may affect the market value of the development easement.

2. The appraisers shall perform appraisals in accordance with procedures detailed in the appraisal handbook for standards at N.J.A.C. 2:76-6.10, generally recognized appraisal practices, N.J.S.A. 4:1C-11 et seq., and 13:8C-1 et seq., P.L. 1999, c. 152 and the Committee's appraisal handbook.

(b) The two appraisers shall certify the current market value of the development easement as of a uniform date established by the municipality pursuant to (a)1 above.

(c) The valuation of a development easement for lands located in the Pinelands with Pinelands Development Credits shall be determined pursuant to N.J.S.A. 13:8C-1 et seq., P.L. 1999, c. 152, and 4:1C-11 et seq., N.J.A.C. 2:76-19 and the Committee's appraisal handbook.

(d) Upon completion of the appraisals, the appraisers shall forward the appraisal reports to a person designated by the municipality, who shall review the reports for completeness of contractual requirements.

(e) The municipality shall forward the completed appraisals to the Committee.

2:76-17A.11 Committee certification of development easement values

(a) The Committee shall review appraisals of eligible farms only after they have been authorized for appraisal pursuant to N.J.A.C. 2:76-17A.9(b).

(b) The Committee shall appoint a review appraiser to evaluate the appraisals submitted by the municipality and to recommend a market value of the development easement for each farm. The review appraisal shall be conducted in accordance with the appraisal standards contained in N.J.A.C. 2:76-10.

(c) The Committee shall have final authority for certifying the market value of the development easement pursuant to N.J.A.C. 2:76-6.8.

(d) The Committee shall certify the market value of the development easement and report the certified value to the municipality.

(e) The Committee may determine not to certify the market value of the development easement if an appraisal does not comply with the appraisal handbook for standards at N.J.A.C. 2:76-10 or generally recognized appraisal practices.

1. If the appraisal is not amended to comply with the appraisal handbook or generally recognized appraisal practice within 60 days of the Committee review appraiser requesting such amendments, the Committee may invalidate the appraisal.

2:76-17A.12 Landowner offer

(a) Within 30 days of receipt of the Committee's certification of market value of the development easement, the municipality shall report the certified value to the landowner.

1. The municipality may negotiate a purchase price of the development easement for an amount greater than or less than the Committee's certified market value of the development easement, but not greater than the higher of the two independent appraised development easement values determined pursuant to N.J.S.A. 4:1C-31(c) and 13:8C-1 et seq., P.L. 1999, c. 152 and N.J.A.C. 2:76-17A.11.

2. If applicable, the municipality shall inform the landowner of the terms and conditions of any installment purchase agreements, options or potential donations.

(b) Within 60 days of the landowner's receipt of the Committee's certification of market value of the development easement, the landowner shall submit, in writing, an acceptance or rejection of the offer. A copy of the acceptance or rejection shall be provided to the Committee.

1. An offer by a landowner to sell his or her development easement for a value that is greater than the higher of the two independent appraised development easement values determined pursuant to N.J.S.A. 4:1C-31(c), and 13:8C-1 et seq., P.L. 1999, c. 152 and N.J.A.C. 2:76-17A.11 shall be deemed a rejection of the offer.

2. If the landowner accepts the municipality's offer, and the development easement is to be held by the county, the municipality shall cause the preparation of an agreement between the landowner and the municipality and/or county, contingent upon the municipality's final review pursuant to N.J.A.C. 2:76-17A.13, the Committee's final review pursuant to N.J.A.C. 2:76-17A.14, and the county's final approval. A copy of the agreement shall be provided to the Committee and the county.

i. If the development easement is to be held by the Committee, the municipality shall request the Committee to prepare an agreement between the landowner and the Committee contingent on all appropriate final re-

views pursuant to (b)2 above. A copy of the agreement shall be provided to the municipality.

3. If a landowner rejects an offer for an amount equal to or greater than the certified market value, the Committee shall not accept for processing any application for the sale of a development easement or for sale of land in fee simple pursuant to the planning incentive grant program or any other farmland preservation program authorized pursuant to N.J.S.A. 4:1C-11 et seq., or 13:1C-1 et seq. for two years from the date that the municipality originally submitted an application for the sale of a development easement. This provision applies only to an application from the same landowner for the same farm property.

2:76-17A.13 Final municipal review

(a) The municipality shall approve or disapprove the acquisition of a development easement on an eligible farm based on total available funding and provide the following to the Committee:

1. A commitment of funding by the municipality and each level of government that is providing funding, as evidenced by an adopted resolution of each governing body.

i. In the event that the municipality is acquiring the development easement, it shall adopt the appropriate ordinance pursuant to the local lands and building law at N.J.S.A. 40A:12-1 et seq.

ii. In the event that the county is not providing funding, the county must be notified that an application for the purchase of the development easement was granted final approval and submitted to the Committee for final review;

2. A commitment of funding in the event the development easement shall be acquired under installment purchase pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-32, as amended; and

3. In the event that a donation or other method of leveraging monies authorized pursuant to N.J.S.A. 13:1C-1 et seq., P.L. 1999, c. 152, is being utilized, a commitment of funding.

(b) Nothing in this subchapter shall be construed to require that any eligible farm in a project area shall receive a price per acre that is the same as any other farm in that project area or that any eligible farm must be purchased with installment payments because other farms in the project area are so purchased.

(c) No development easement shall be purchased at a price greater than the higher of the two independent appraised values determined pursuant to N.J.A.C. 2:76-17A.11, N.J.S.A. 4:1C-31(c) and 13:8C-1 et seq., P.L. 1999, c. 152.

(d) In the event that the municipality submits a request for a cost share grant on more than one farm at a time in excess of its eligible funds, the municipality shall establish a priority ranking of farms pursuant to its ranking criteria and N.J.A.C. 2:76-6.10(a)1i and shall forward to the Committee requests for final approval for only those farms for which there is a sufficient local funding commitment.

(e) Copies of the municipal governing body's resolution, county governing body's resolution and the board's resolution approving the funding proposal and the purchase of the development easement shall be submitted to the Committee.

2:76-17A.14 Final committee review

(a) The Committee shall review all requests for funding for the purchase of a development easement on an eligible farm approved by the municipality for compliance with all applicable statutes, rules and regulations.

1. The Committee shall confirm receipt of appropriate resolutions from the municipality, and if funding is being provided, the board and governing body of the county approving of the purchase of a development easement and dedicating sufficient funds to account for local cost share.

2. The Committee shall confirm receipt of the adopted ordinance if appropriate pursuant to N.J.A.C. 2:76-17A.13(a)1i.

3. The Committee shall confirm receipt of the agreement between the municipality and/or county, and the landowner.

(b) The Committee shall approve a cost share grant for any farm that qualifies for final approval and for which there are sufficient State funds available.

1. The Committee's cost share for the purchase of the development easement shall be consistent with the provisions of N.J.A.C. 2:76-6.11(d).

(c) In the event that the approval requires a schedule of installment payments, the Committee shall enter into an agreement with the municipality and, if appropriate the county, pursuant to N.J.A.C. 2:76-17.20(c), subject to the following:

1. The provisions of N.J.S.A. 4:1C-32, as amended;

2. The approval of funding by the Garden State Preservation Trust; and

3. The appropriation of funds.

(d) The Committee shall inform the municipality, and if appropriate the county, of its decision.

2:76-17A.15 Deed restrictions

(a) Deed restrictions shall be attached to and recorded with the deed of the land and shall be consistent with N.J.A.C. 2:76-6.15.

(b) A development easement shall be held by the Committee, or by the appropriate county if county funds are utilized in the purchase of development easements on a farm.

2:76-17A.16 Terms, contingencies and conditions of purchase

(a) Terms, contingencies and conditions of a purchase shall be consistent with the provisions of N.J.A.C. 2:76-6.13.

1. For monitoring purposes, if the county does not provide funding toward the purchase of the development easement, the Committee shall be responsible for monitoring the farm annually to ensure compliance with the deed of easement.

2:76-17A.17 Annual review of planning incentive grant application

(a) The Committee shall review each application annually, within 60 days of the anniversary of the Committee's preliminary approval pursuant to N.J.A.C. 2:76-17A.7.

(b) The Committee may modify its preliminary funding eligibility for a municipality pursuant to N.J.A.C. 2:76-17A.8 or approval of a grant pursuant to N.J.A.C. 2:76-17A.7. In determining whether to modify the preliminary funding allocation, the Committee shall consider the following:

1. Geographic distribution of funds;

2. Available funds;

3. Unanticipated imminence of conversion of the land to a nonagricultural use;

4. Increased costs due to higher than anticipated Committee-certified development easement values;

5. Increased costs due to a higher than anticipated rate of acceptances by landowners in the list of farms;

6. Ancillary costs associated with successful acquisitions;

7. An amendment to the schedule of payments in which funding may be needed sooner than anticipated to acquire a development easement on an eligible farm;

8. The municipality and/or the county have not completed easement acquisitions by the specified dates in the application or agreement;

9. The actual purchase price relative to the Committee's certified development easement value; and

10. The degree of adherence by the municipality to its application.

(c) Any unexpended funds resulting from a modification pursuant to (b) above may be reallocated by the Committee to any farmland preservation program administered by the Committee, subject to the provisions of the Garden State Preservation Trust Act.

SUBCHAPTER 18. AGRICULTURAL MEDIATION PROGRAM

2:76-18.1 Applicability

(a) This subchapter establishes procedures to be followed by certified mediators, disputants and State Agriculture Development Committee staff for implementing the New Jersey Agricultural Mediation Program as administered by the State Agriculture Development Committee.

(b) The Committee's Agricultural Mediation Program is a certified mediation program, in that it meets the United States Department of Agriculture-Farm Service Agency's (USDA-FSA's) requirements for certification.

(c) The Committee shall offer the services of the Agricultural Mediation Program to disputants provided there is adequate funding for the program.

2:76-18.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement to Mediate" means a document wherein the assigned certified agricultural mediator and disputants are named, the nature of the dispute is identified and the terms and conditions of the mediation proceedings are outlined.

"Certified agricultural mediator" means an impartial third party neutral (mediator) who has satisfied the requirements of the Committee and facilitates communication between disputants for the purpose of assisting them in reaching a mutually acceptable agreement.

"Confidentiality" means the mediator and disputants shall not disclose any written or oral communication divulged during the mediation process, unless it is expressly agreed upon by all parties to a mediation that such communications may be divulged. Unless the participants otherwise consent, no disclosure made by a party shall be admitted as evidence against the party in any such proceeding by independent evidence, and the mediator shall not be called as a witness in any subsequent proceedings.

"Disputant" means any person engaged in a dispute and, during a mediation proceeding, who is a primary decision maker.

"Dispute" means a disagreement between two or more parties who perceive incompatible goals and/or interference from the other party in achieving their goals with respect to one or more of the following issues:

1. Nuisance allegations;
2. Wetlands determinations;
3. Compliance with farm programs, including conservation programs;
4. Agricultural credit;
5. Rural water loan programs;
6. Pesticides; or
7. As concerns activities as addressed in N.J.S.A. 4:1C–9.

"Mediation" means a process including the intake and scheduling of cases, the provision of background information regarding the mediation process, financial advisory and counseling services (as appropriate), and the mediation sessions in which a trained, neutral person assists disputants in voluntarily reaching their own settlement of issues, even for those cases that are resolved prior to a formal mediation session.

2:76–18.3 Certification and assignment of mediators

(a) Persons interested in becoming certified agricultural mediators shall contact the Committee in writing.

(b) In order to be qualified as an agricultural mediator, each mediator shall be certified as having satisfied the requirements of a Committee-approved agricultural mediation training session, which shall be a minimum of 18 hours of core mediator knowledge and skills training, including role-play simulations of mediated disputes, as provided by the Committee.

(c) The Committee shall certify each mediator who has satisfactorily completed the requirements of the Committee.

(d) Certified agricultural mediators shall be placed on the Committee's certified list according to where they reside, in alphabetical order based on their last names.

(e) The certified list shall be divided into three regions: Northern New Jersey (representing the counties of Bergen, Essex, Hudson, Passaic, Sussex and Warren), Central New Jersey (representing the counties of Hunterdon, Mercer, Middlesex, Monmouth, Morris, Somerset and Union) and Southern New Jersey (representing the counties of Atlantic, Burlington, Cape May, Camden, Cumberland, Gloucester, Ocean and Salem).

(f) Mediators shall be selected and assigned cases on a rotating basis from the certified list representing the geographic region where the dispute occurs.

1. In the event the selected mediator is unavailable for the assigned mediation, the next mediator on the certified list in the appropriate region shall be assigned to the case.

2:76–18.4 Duties of certified agricultural mediators

(a) Mediation is a voluntary process for settlement negotiation. In performing his or her duties, an agricultural mediator shall:

1. Act as a third party and not represent any disputant;
2. Not give legal advice in any capacity relating to or in the rendering of services;
3. Not have the power or the authority to compel or enforce settlements;
4. Not have conflicts of interest with respect to matters to be mediated or parties involved in mediation;
5. Not have subpoena power; and
6. Comply with this section.

2:76–18.5 Mediation initiation

(a) A request for voluntary mediation shall be submitted to the Committee in writing.

(b) In the event that a court of law mandates agricultural mediation, a copy of the document mandating mediation shall be submitted to the Committee by the appropriate court personnel or the disputants.

(c) The Committee shall provide a standard request for voluntary mediation form to mediation requesters which shall require the following information:

1. Requesters' name(s), address(es) and telephone number(s);

2. A brief description of the dispute;

3. The nature of the requesters' relationship to the party(ies) with which the requester(s) has/have a dispute; and

4. The name(s), address(es) and telephone number(s) of the party(ies) with which the requester(s) has/have a dispute.

2:76–18.6 Agreement to Mediate

(a) Upon receipt of the completed standard form, the Committee shall forward copies of the standard form and an Agreement to Mediate provided by the Committee to the named disputants along with an explanation of the mediation process.

(b) No mediation shall be conducted until all participants sign the Agreement to Mediate as provided by the Committee, and the Committee is in receipt of same.

1. Additional parties may participate in a mediation proceeding by signing the Agreement to Mediate and by obtaining the consent of the parties signing the request for mediation.

2. The Committee shall be in receipt of the revised Agreement to Mediate prior to the commencement of the mediation session.

(c) The Agreement to Mediate shall contain the following:

1. The name of the mediator appointed by the Committee;

2. A brief statement of the issue to be mediated;

3. The names of the disputants;

4. An agreement not to subpoena either the mediator or data gathered for the mediation session to prove facts alleged in an action concerning the same subject matter;

5. A statement waiving participants' rights to take civil action against the Committee and the designated mediator or agent of the mediation program, and release the Committee and its designated mediator from civil liability within the scope of the mediation services; and

6. A statement agreeing to follow the written terms of any settlement agreement arising out of the mediation process.

2:76–18.7 Mediation Agreement

(a) Every mediator retained by the Committee shall enter into a Mediation Agreement with the Committee setting forth the terms and conditions for the mediation services to be provided for each mediation session.

(b) Mediators shall be compensated for their services at an agreed-upon rate which will be reflected in the Mediator Agreement between the mediator and the Committee.

1. Mediators shall receive compensation for travel expenses in an amount not to exceed the amount allowed State employees.

2. Mediators shall be reimbursed for other necessary expenses, including meals, tolls and parking, agreed to by the mediator and the Committee. Any expenses not agreed to by the mediator and the Committee shall not be reimbursed.

3. Mediators shall, at the termination of mediation, file with the Committee a statement on a form approved by the Committee listing the number of hours of mediation conducted, fee totals for mediation services, and any compensation for travel or other reimbursable expenses.

2:76–18.8 Mediation proceedings

(a) Mediation proceedings shall be conducted by the mediator at times and locations which are agreed upon by the parties and the mediator, and coordinated through the Committee.

(b) Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures for the process.

(c) The mediator may hold joint or separate meetings with the disputants, and the mediator may request other persons to participate in the mediation proceedings, upon written consent of the original disputants. Parties may have representatives present at mediation sessions. The mediator shall regulate the proceedings to prevent disruptions, and may terminate mediation sessions in his or her discretion.

(d) Absolute confidentiality of all material and information shall be strictly maintained. All statements made during the mediation process are deemed to be privileged and inadmissible for any purpose in any proceeding, unless it is expressly agreed upon by all parties to a mediation that such communications may be divulged. The parties shall not subpoena or otherwise require the mediator to testify or produce records, reports, notes or other documents reviewed, received, or prepared by the mediator during the course of the mediation process.

(e) No stenographic record or tape recording of the mediation session shall be permitted.

(f) With respect to the parties to the mediation, no mediator shall:

1. Provide legal or other advice to the parties in a mediation proceeding, or offer or deliver services, other than mediation services on any issue raised in the mediation session;

2. Solicit or accept from any person or entity, either directly or indirectly, anything of value;

3. Disclose confidential information gained as a result of his or her service as a mediator, except upon agreement with the parties and the Committee;

4. Use information gained as a result of his or her service as a mediator in any way which could result in the receipt of anything of value by the mediator or any person or organization with which the mediator is associated; and

5. Use or attempt to use his or her position as a mediator to gain unlawful benefits, advantages or privileges for himself or herself, or for others.

(g) A mediator shall disclose to the Committee, and to the parties to a mediation session, every potential conflict of interest and every other matter which may affect the mediator's ability to act in a fair, diligent and impartial manner during the proceeding. A mediator shall withdraw from the proceeding if the mediator is unable to act in a fair and impartial manner.

(h) Interim and final agreements of the parties, if any, shall be reduced to writing and placed on a form provided by the Committee. The mediator shall assist in the preparation of the written agreement. The mediator shall forward the original, executed agreement to the Committee and it is the responsibility of the Committee to distribute copies of the agreements to all parties to the mediation.

(i) If an agreement is not reached, the mediator shall prepare a Notice of Termination of Mediation, on a form provided by the Committee, and have it executed by all parties. The mediator shall forward the Notice of Termination to the Committee and it is the responsibility of the Committee to distribute copies of the Notice of Termination to all parties to the mediation.

(j) Agreements may provide for continued mediation at a future date. The parties to a mediation proceeding are solely responsible for any agreement reached, and for the enforcement of any agreement. An agreement is subject to applicable laws and court orders, and is subject to the exercise of rights by persons not parties to the agreement. All agreements requiring acceptance by a party not participating in the process shall be considered tentative, nonbinding agreements until such acceptance has been obtained.

2:76–18.9 Mediator and disputant withdrawal

(a) Any party shall have the right, upon written request, to direct the Committee to select a different mediator prior to the initial mediation meeting.

(b) Upon written agreement by the parties and the Committee, the mediation proceedings shall continue with a new mediator.

(c) In the case of a mediation with multiple disputants, a mediation session shall continue if one or more parties withdraw, upon agreement by the remaining parties.

(d) A party or a mediator may withdraw from mediation at any time. The party or mediator shall notify the Committee of his or her withdrawal and set forth the reasons for same.

2:76–18.10 Annual renewal of mediator certification

(a) The Committee shall annually review and renew the certificates of certified mediators to insure satisfactory performance of mediation responsibilities by June 30th of each year.

1. In order to have his or her certification renewed, a certified mediator, if assigned a case(s) during the fiscal year, must have satisfied the requirements of this subchapter.

2. If a certified agricultural mediator has not been assigned a case(s) during the fiscal year, his or her certification shall be renewed.

(b) The Committee shall schedule training courses as necessary to maintain a list of certified mediators to satisfy the requests for services.

SUBCHAPTER 19. VALUATION OF DEVELOPMENT EASEMENTS IN THE PINELANDS AREA

2:76–19.1 Applicability

This subchapter applies to the valuation of development easements in three management areas of the Pinelands area (agricultural production areas, special agricultural production areas, and preservation areas) whenever the value of a development easement on farmland to be acquired using constitutionally dedicated moneys in whole or in part pursuant to the Garden State Preservation Trust Act, P.L. 1999, c.152, is determined based upon the value of any Pinelands Development Credits allocated to the parcel pursuant to P.L. 1979, c.111 and the Pinelands Comprehensive Management Plan adopted pursuant thereto.

2:76–19.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agricultural production areas" means those areas established by the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50–5.13(c).

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by the provisions of N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32 and any relevant rules or regulations promulgated pursuant thereto.

"Pinelands area" means that area defined in N.J.S.A. 13:18A–3h and designated by N.J.S.A. 13:18A–11.

"Pinelands Development Credit" or "PDC" means a transferable development right created pursuant to the Pinelands Comprehensive Management Plan, and further defined by N.J.S.A. 13:18A–32h and N.J.A.C. 3:42–2.2.

"Pinelands National Reserve" means the approximately 1,000,000 acre area so designated by section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 471i., Pub. L. 95–625.

"Preservation area" means that area defined in N.J.S.A. 13:18A–3j and designated by N.J.S.A. 13:18A–11b.

"Protection area" means that portion of the Pinelands area not included within the preservation area, as defined in N.J.S.A. 13:18A–3k.

"Reasonably contiguous" means within one mile.

"Regional growth areas" means those areas as defined in the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50–5.13(g).

"Special agricultural production areas" means those areas established by the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50–5.13(d).

"Streams" means bodies of water which continuously contain moving water or which form a link between two bodies of standing water.

"Towns" means those areas established by the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50–5.13(f).

"Villages" means those areas established by the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50–5.13(f).

2:76–19.3 Valuation of development easements

(a) Development easements shall be valued by adjusting the base value of the easement as determined in accordance with N.J.A.C. 2:76–19.4 pursuant to the factors set forth in this subchapter.

(b) Landowners shall have a choice of having their development easements appraised pursuant to this subchapter or pursuant to N.J.S.A. 4:1C–31.

(c) For those properties on which a portion of the total amount of PDCs allocated have been severed and on which Pinelands restrictions have been placed, the remaining portion of the property (on which PDCs have not been severed and on which Pinelands restrictions have not been placed) shall be eligible for valuation pursuant to this subchapter. Properties on which all allocated PDCs have been severed (and on which Pinelands restrictions have been placed), except for a portion reserved for the sole purpose of constructing residences or other buildings on the property, shall not be eligible for valuation pursuant to this subchapter.

2:76–19.4 Base value

(a) The base value of a development easement shall be determined according to whether the property is uplands or wetlands and the allocation of Pinelands Development Credits on the property from which the development easement will be conveyed.

1. For those development easements on property located in Pinelands area where the property is eligible for a Pinelands Development Credit (PDC) allocation of two PDCs per 39 acres (uplands and cultivated lands), the base value of the development easement shall be $1,600 per acre.

2. For those development easements on property located in Pinelands Area where the property is eligible for a Pinelands Development Credit allocation of 0.2 PDCs per 39 acres, the base value of the development easement shall be $160.00 per acre.

3. For those development easements on property located in Pinelands area where the property is eligible for a Pinelands Development Credit allocation of one PDC per 39 acres, the base value of the development easement shall be $800.00 per acre.

(b) If the property contains both uplands and wetlands, a weighted formula shall be utilized based on the percentage of uplands and the percentage of wetlands.

1. Example: A farm contains a total of 42 acres; 35.7 acres are uplands (85 percent) and 6.3 acres are wetlands (15 percent). The base value is (85 percent x $1,600) + (15 percent x $160.00), or $1,384 per acre.

(c) In the event that a landowner chooses to place a deed restriction on his or her property limiting impervious coverage on the property pursuant to N.J.A.C. 2:76–19.13, then the base value for that property shall be:

1. $1,800 per acre for property that is eligible for a PDC credit allocation of two PDCs per 39 acres;

2. $180.00 per acre for property that is eligible for a PDC allocation of .2 PDCs per 39 acres; and

3. $900.00 per acre for property that is eligible for a PDC allocation of one PDC per 39 acres.

2:76–19.5 Adjustments to base value, generally

(a) The base values of a development easement shall be adjusted by the following:

1. Regional Environmental Quality Areas;
2. Site-specific environmental quality factors;
3. Scenic corridors and access to markets;
4. On-site septic suitability;
5. Agriculture viability factors; and
6. Special importance environmental resource factors.

(b) Adjustments to base values shall not be cumulative. Each adjustment shall be made on the original base value.

2:76–19.6 Regional Environmental Quality Areas

(a) The base value shall be increased by the percentage factor associated with the environmental quality area in which the property is situated. Only one area adjustment factor shall be applied to each development easement. If the property on which a development easement is being valued lies within two environmental quality areas, the area in which the majority of the property lies shall apply.

1. Northern Environmental Quality Area (consisting of those properties in the Protection Area in Ocean County, but which are not in the Pinelands National Reserve)—24 percent;

2. Western Environmental Quality Area (consisting of properties located in the Protection Area in Burlington County and properties that are reasonably contiguous to the Protection Area in Burlington County)—44 percent;

3. Central Environmental Quality Area (consisting of properties located in the Protection Area in Camden and Atlantic Counties)—33 percent;

4. Southern Environmental Quality Area (consisting of properties located in the Protection Area in Gloucester and Cumberland Counties)—15 percent;

5. Pinelands National Reserve Area (consisting of properties located in the Pinelands National Reserve, but not in the Pinelands Area, in Ocean, Atlantic, Cumberland and Cape May Counties)—24 percent; and

6. Preservation Area (consisting of properties located in the Preservation Area which do not fall within any of the other areas)—14 percent.

2:76–19.7 Site-specific environmental quality factors

The base value shall be increased based upon the property's proximity to towns, regional growth areas, Pinelands area boundaries, and villages, pursuant to the following chart. The maximum adjustment for this factor shall be 25 percent.

	Distance to Management Area and Pinelands Area Boundary (Miles)				
Management Area	<0.5	0.5–2.0	2.0–4.0	4.0–6.0	>6.0
Town or Regional Growth Area or Pinelands Area Boundary	15%	15%	10%	5%	0%
Village	10%	5%	0%	0%	0%

2:76–19.8 Scenic corridors and access to markets

(a) The base value shall be increased based upon the property's proximity to roads which provide access to scenic corridors and markets in which agricultural products may be sold or purchased, pursuant to the following chart. No more than two factors may be utilized.

	Distance to Highways and Roads in Miles				
	.5mi.	.5–2 mi.	2–4 mi.	4–6 mi.	6–8 mi.
Limited Access Highway	20%	20%	15%	10%	5%
Federal or State Highway	15%	10%	5%	0%	0%
County Road	10%	5%	0%	0%	0%
Municipal Road	5%	0%	0%	0%	0%
Unpaved	0%	0%	0%	0%	0%

(b) The base value shall be increased based upon the following road frontage ratios. Road frontage shall be the ratio of total road frontage, measured in feet, to total property size, measured in acres.

1. Greater than 30:1—10 percent;
2. 11:1 to 30:1—six percent; and
3. 1:1 to 10:1—two percent.

2:76–19.9 On-site septic suitability

(a) The base value shall be adjusted for the property's on-site septic suitability rating as one indicator of the environmental conditions on the parcel under the provisions of the Pinelands Comprehensive Management Plan. Base values shall be increased based upon the following septic suitability limitations:

1. Seventy-six percent to 100 percent slight limitations—10 percent;

2. Fifty-one percent to 75 percent slight limitations—seven percent;

3. Twenty-six percent to 50 percent slight limitations—five percent; and

4. Five percent to 25 percent slight limitations—two percent.

2:76–19.10 Agriculture viability

(a) The base value shall be increased based upon the type of soil on the property pursuant to the following chart. The maximum adjustment for this factor shall be 20 percent.

	Prime	Statewide Importance	Unique
76% to 100%	20%	18%	12%
51% to 75%	15%	14%	9%
26% to 50%	10%	9%	6%
Less than 26%	5%	4%	3%

(b) If the property is reasonably contiguous to land that has been permanently preserved, the base value shall be increased by 12 percent.

2:76–19.11 Special importance environmental resource factors

(a) If the property contains lakes and reservoirs that significantly impact the recharge of the Cohansey Aquifer, contain water year round, and are greater than two acres, the base value shall be increased by .375 percent per acre pursuant to N.J.A.C. 2:76–19.12. The maximum adjustment for this factor shall be 15 percent pursuant to N.J.A.C. 2:76–19.12.

(b) If the property contains any streams, the base value shall be increased by 20 percent pursuant to N.J.A.C. 2:76–19.12.

2:76–19.12 Wetlands and wetlands transition areas

(a) If a property contains lakes and reservoirs as described in N.J.A.C. 2:76–19.11(a) or streams as described in N.J.A.C. 2:76–19.11(b), the owner of the property shall choose between one of the following options:

1. Receiving an increase in base value pursuant to N.J.A.C. 2:76–19.11 and having the following deed restriction placed on the property:

"Agricultural use of wetlands and areas within 300 feet of wetlands ("wetlands transition areas") shall be consistent with subchapter 6 of the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50–6, as may be amended from time to time. Specifically, except for horticulture of native Pinelands species, berry agriculture, and beekeeping, agriculture shall not be permitted in wetlands and wetlands transition areas, except if such agricultural uses existed prior to the promulgation of the Pinelands Comprehensive Management Plan in 1979 or if the Comprehensive Management Plan is amended to permit such uses."

2. Not receiving an increase in base value pursuant to N.J.A.C. 2:76–19.11 and not being required to place the deed restriction contained in N.J.A.C. 2:76–19.12(a)1 on the property.

2:76–19.13 Impervious coverage

A landowner may choose to receive a higher base value pursuant to N.J.A.C. 2:76–19.4(c) by placing a deed restriction on his or her property that limits impervious coverage on the property. The impervious coverage limitation shall be 10 percent of the total property acreage, and shall include, but not be limited to, houses, barns, stables, sheds, silos, outhouses, cabanas and other buildings, swimming pools, docks, or decks. Temporary greenhouses and other temporary coverings which do not have impervious floors shall be excluded from the computation of the impervious coverage area. If the landowner chooses to increase the base value pursuant to N.J.A.C. 2:76–19.4(c), he or she shall place such impervious coverage limitations on his or her property.

2:76–19.14 Maximum development easement value

In no instance shall the development easement value calculated pursuant to this subchapter exceed 80 percent of the fee simple market value of the property as determined by the Committee.

SUBCHAPTER 20. FARMLAND STEWARDSHIP PROGRAM

2:76–20.1 Applicability

This subchapter sets forth State Agriculture Development Committee rules which provide for a landowner, or a farm operator as an agent for the landowner, whose land is within a permanent farmland preservation program, to apply for and receive grants for farmland stewardship projects.

2:76–20.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural use" means the use of land for common farmsite activities including, but not limited to:

1. Production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities; and

2. The use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

"Aquatic organism" means and includes, but is not limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

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

"Costs" mean monetary outlays for those projects to be installed or contracted for in implementing an approved farmland stewardship feasibility plan including, but not limited to, professional fees, supplies, materials, equipment, office or facility expenses and contractual services as determined by the Committee.

"Eligible projects" mean the projects necessary to improve the profitability, efficiency and farm income of farm operations deemed eligible by the Committee and for which an approved feasibility plan has been prepared.

"Established farmer" means an owner-operator or immediate family member of the owner-operator of a family farm who actively participates in the operation and management of a farming operation, is a resident of the State of New Jersey, spends a substantial portion of time in carrying out a farming operation and planted a crop or acquired livestock or aquatic organisms which were on the farm at the time of the completion of the feasibility plan application. If the applicant is a cooperative, a corporation, a partnership or a joint operation, it must be primarily engaged in farming, that is, the applicant entity must derive over 50 percent of its gross income from all sources from its farming operation and its principle place of business shall be in New Jersey.

"Farmland preservation program" means any permanent program as developed pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C–1 et seq., the Garden State Preservation Trust Act, P.L. 1999, c.180, N.J.S.A. 4:1C–43.1, N.J.S.A. 4:1C–31.1 and which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within the agricultural development areas adopted pursuant to N.J.S.A. 4:1C–11 et seq., P.L. 1983, c.32 and the maintenance and support of increased agricultural production as the first priority use of that land from which a permanent development easement has been acquired or retained for farmland preservation purposes and which land is eligible for the benefits of the farmland preservation program.

"Farm transfer plan" means an assessment of the legal, social and economic factors involved in transferring the ownership of the preserved farm and its assets, including equipment, supplier lists, and customer mailing lists.

"Feasibility plan" means a plan which shall consist of the components as set forth in N.J.A.C. 2:76–20.14 and shall only recommend projects that are necessary and may feasibly result in enhancing the economic viability of the farm operation.

"Implementation projects" are projects recommended in approved feasibility plans that may feasibly result in enhancing the economic viability of the farm operation.

"Lead coordinator" means a technical consultant who shall assist in the assemblage of technical teams and the preparation and submission of feasibility plans.

"Personal property" means temporary or movable property as distinguished from real property, and used for non-farm purposes.

"Technical consultant" mean a specialist who shall have a minimum of five years of experience in a particular field of expertise and has applied to and has been approved by the Committee to participate in the preparation of feasibility plan(s) under the Farmland Stewardship Program.

2:76–20.3 Applicant eligibility

(a) Any landowner enrolled in a farmland preservation program is eligible to apply for State funding assistance for farmland stewardship cost-share projects approved by the Committee and promulgated in this subchapter, provided he or she is an established farmer.

(b) Implementation projects shall not be in violation of restrictions as found in the Deed of Easement.

2:76–20.4 Availability of State farmland stewardship cost-share funds

(a) Grant amounts available to established farmers shall be in the form of a 50 percent matching grant, with 50 percent of the cost associated with the project provided by the established farmer.

(b) Grant amounts available to established farmers shall be based on common deed ownership, shall not exceed $200.00 per acre and shall not exceed a total grant amount of $20,000 per application.

(c) The applicant shall not be eligible to apply for additional Farmland Stewardship Program cost-share grants for a period of at least eight years from the date of completion of a previously approved feasibility plan and/or implementation project.

2:76–20.5 Feasibility plan application contents and procedure

(a) An applicant agrees that, as a condition of approval for a farmland stewardship cost-share grant, a feasibility plan shall be prepared by a team of technical consultants.

(b) An applicant shall apply directly to the Committee for up to 50 percent of the cost of implementing a farmland stewardship project(s).

(c) The feasibility plan application shall include the following:

1. A full description of the current agricultural activities occurring on the land including: the type and quantity of crops, number of livestock, and/or acreage leased or used by others and the applicant for agricultural purposes;

2. A statement of the present financial situation of the farm including the gross farm income, copies of Internal Revenue Service forms Schedule F or 1120S for the three most recent tax years and a net worth statement;

3. A statement identifying any farm debt;

4. A statement indicating if the established farmer has income from employment other than farm income identified in (c)2 above;

5. A statement as to the established farmer's history of farm operation and management;

6. A statement as to the established farmer's history of agricultural education; and

7. Authorization for the Committee to visit, by appointment, the farmland which is the subject of the feasibility plan.

(d) The Committee shall advise the applicant of program provisions and policies that may assist the applicant in his or her completion of the feasibility plan application.

(e) The Committee may authorize its staff to carry out the functions necessary to administer the farmland stewardship cost-share grant program.

2:76–20.6 Committee feasibility plan application review

(a) The Committee shall notify the applicant in writing of its receipt of the feasibility plan application.

(b) If the Committee makes an initial determination that the feasibility plan application is ineligible due to nonconformance with the provisions of this subchapter, the Committee shall notify the applicant in writing. The Committee's notification shall include methods by which the applicant may conform with the provisions of this subchapter, if appropriate.

2:76–20.7 Committee feasibility plan application approval process

(a) Following Committee coordination with other cost-share programs, the Committee shall review the feasibility plan application for program conformance.

(b) Upon verification that all eligibility criteria and other program provisions have been satisfied, the Committee shall approve, conditionally approve, or reject the feasibility plan application.

(c) In the event that the feasibility plan application is conditionally approved, the Committee shall inform the applicant of methods which the applicant may employ in order to conform with the provisions of this subchapter, if appropriate.

(d) The Committee shall promptly advise the applicant of its determination in writing.

(e) In the event that the feasibility plan application is not approved by the Committee due to lack of sufficient funding, the Committee shall retain the application for future consideration.

2:76–20.8 Committee evaluation process for feasibility plan applications

(a) The Committee shall evaluate feasibility plan applications based on whether the feasibility plan will promote the long-term viability of the preserved farm.

(b) The Committee shall evaluate applications from established farmers based upon the following factors:

1. The education and experience of the established farmer;

2. The need as demonstrated by the established farmer; and

3. The geographic distribution of feasibility plan applications.

(c) The Committee shall approve the creation of feasibility plans subject to available funds based on the factors in (a) and (b) above.

2:76–20.9 Qualifications of technical consultants

(a) Persons interested in becoming technical consultants shall contact the Committee in writing.

(b) In order to be qualified as a technical consultant, each candidate shall submit to the Committee a résumé reflecting their years of employment experience, education (including continuing education) and field(s) of expertise.

(c) In order to be certified as a technical consultant, each candidate shall have at least five years of employment experience in their field(s) of expertise. Candidates shall submit two employment references with their submission to the Committee.

(d) The Committee shall certify each technical consultant who satisfies the requirements in (c) above.

(e) Certified technical consultants shall be placed on the Committee's certified list in alphabetical order based on their last names.

2:76–20.10 Assignment of technical consultants

(a) The certified list of technical consultants shall be divided into their categories of specialization.

(b) Subject to N.J.A.C. 2:76–20.11, technical consultants shall be selected and assigned to technical teams on a rotating basis from the certified list.

1. In the event the selected technical consultant(s) is unavailable for the assigned technical team, the next technical consultant on the certified list shall be assigned to the technical team.

2:76–20.11 Technical team assemblage

(a) Upon approval of the feasibility plan application by the Committee, the Committee shall select a lead coordinator from the certified list, to assist in the assemblage of the technical team.

(b) The Committee, with the approval of the applicant and the lead coordinator, shall assemble a team of technical consultants to develop a feasibility plan.

2:76–20.12 Duties of the lead coordinator

(a) The lead coordinator shall be responsible for the following:

1. Assisting the Committee in the coordination of the technical team;

2. Reviewing the feasibility plan application prior to attending the orientation meeting; and

3. Attending an orientation meeting at the farm with the applicant.

(b) The lead coordinator shall be responsible for the coordination of the technical team and applicant with the preparation of the feasibility plan. The lead coordinator shall be responsible for preparing and submitting an original and one copy of the final feasibility plan to the Committee.

2:76–20.13 Duties of technical consultants

(a) Technical consultants shall be responsible for the following:

1. Reviewing the feasibility plan application prior to attending the orientation meeting; and

2. Attending an orientation meeting at the farm with the applicant.

(b) Technical consultants shall assist in the preparation of a feasibility plan for the farmer, and coordinate with the assigned lead coordinator and applicant.

2:76–20.14 Preparation and contents of the feasibility plan

(a) The Committee shall coordinate an orientation meeting with the applicant and the technical team at the preserved farm.

(b) If the technical team determines after the orientation meeting that the potential exists for the viability of the farm to be improved, a feasibility plan shall be prepared by the technical team.

(c) The feasibility plan shall include the following:

1. A business plan, which shall be one of the following three types:

i. A business plan as prepared by the Garden State Agricultural Re Engineering Initiative;

ii. A business plan as prepared by a New Jersey Small Business Development Center; or

iii. A business plan as prepared or approved by the technical team; and

2. A detailed description of the recommended project(s), including:

i. The anticipated benefits to the agricultural operation;

ii. A timeline for the installation of the project(s), including an operations and management statement, which shall set forth the names of individuals who will manage the installation of the project as well as its use, if applicable;

iii. A maintenance schedule associated with the project(s), if appropriate;

iv. A spreadsheet of the estimated costs of the project(s), including all sources of anticipated funding for the project;

v. A description of the targeted market as well as any marketing techniques to be employed, if applicable;

vi. A projected revenue and expense analysis, including the anticipated hiring of employees, increase in customer base, increase in farm purchases from local agribusinesses and the increase in value of the agricultural product; and

vii. A farm transfer plan, if deemed appropriate by the technical team.

(b) A feasibility plan shall be prepared by the technical team within three months of the date of the orientation meeting.

1. The lead coordinator shall provide a copy of the feasibility plan to the Committee and the applicant.

2:76–20.15 Committee feasibility plan approval process

(a) The Committee shall review the feasibility plan for program conformance pursuant to this subchapter.

(b) Upon verification that all eligibility criteria and other program provisions have been satisfied, the Committee shall approve or conditionally approve the feasibility plan, subject to funding limitations as set forth in N.J.A.C. 2:76–20 and available funds.

1. In the event that the feasibility plan is conditionally approved, the Committee shall inform the lead coordinator of deficiencies.

2. The lead coordinator shall review the feasibility plan with the technical team members and applicant, correct any deficiencies and forward a revised feasibility plan to the Committee.

(c) The Committee shall notify the applicant of its determination in writing.

2:76–20.16 Eligible farmland stewardship implementation projects

(a) Applicants shall notify the Committee in writing of their desire to implement a project as recommended in the approved feasibility plan.

(b) The Committee shall approve the implementation of projects for agricultural use that are eligible for grant awards. Eligible projects include the following five program areas:

1. Capital fixed assets including agricultural buildings and markets and maintenance and improvements thereof, equipment (such as cider pasteurizers, vegetable washers, tractors and milk bottlers), brewery and winery facilities and fencing;

2. Production diversification including conversion from agriculture to aquaculture and conversion from one type of production to another (for example, dairy to vegetable production);

3. Production efficiency including on-farm recycling and composting, vehicle and computer/software acquisition, provided that the sole and exclusive use is for agricultural purposes, precision agriculture systems and integration of integrated pest management and integrated crop management technologies;

4. Site diversification and improvement including parking lot installation and wheelchair accessibility; and

5. Marketing improvements including adding value to agricultural products, first line processing, web site development and maintenance, and signage.

(c) All projects shall be in conformance with the restrictions as found in the Deed of Easement.

(d) Ineligible projects include purchases of personal property and projects that are eligible for funding pursuant to the Soil and Water Conservation Project Cost Sharing Program, N.J.A.C. 2:90–3, or the Agricultural Conservation Cost Share Program, N.J.A.C. 2:90–4.

2:76–20.17 Evaluation of implementation projects

(a) The Committee shall evaluate implementation projects based on whether the projects will promote the long-term viability of the preserved farm as well as agriculture as an industry in the State.

(b) The Committee shall evaluate implementation projects based upon the following criteria as found in the feasibility plans:

1. Beneficial business impact:

i. Priority shall be given to implementation projects wherein the opportunity to increase farm employment opportunities, customer access to agricultural products, value of the agricultural output and farm purchases from local agribusinesses exists; and

2. Future farm viability:

i. Priority shall be given to the implementation of projects which demonstrate a potential to enhance the future viability of the agricultural operation.

(c) The Committee shall consider the geographic distribution of implementation projects.

(d) Subject to available funds, the Committee shall approve implementation projects based on the factors in (a), (b) and (c) above.

2:76–20.18 Implementation of approved implementation projects

(a) Project implementation shall commence within six months of funding approval or the application may be cancelled unless the farmer submits a request for extension, in writing, to the Committee, providing reasons for such extension. In no case shall such extensions be granted for more than six additional months.

(b) Project completion shall be in conformance with the recommendations as set forth in the approved feasibility plan.

(c) The Committee shall obligate the funds necessary for the implementation of feasibility plan recommendations for a period of three years. The applicant, in writing, may request an extension of completion of the project of the Committee, providing reasons for such extension. In no case shall such extensions be granted for more than one year.

2:76–20.19 Lead coordinator and technical consultant fee payment

(a) Every lead coordinator and technical consultant retained by the Committee shall enter into a consultant agreement with the Committee setting forth the terms and conditions for the technical services to be provided for each feasibility plan.

(b) Lead coordinators and technical consultants shall be compensated for their services at an agreed-upon rate which will be reflected in the consultant agreement between the lead coordinators, technical consultants and the Committee.

1. Lead coordinators and technical consultants shall not receive compensation for travel expenses.

2. Lead coordinators and technical consultants shall not be reimbursed for other expenses, including meals, tolls and parking.

3. Lead coordinators and technical consultants shall, at the termination of the services, file with the Committee a statement on a form approved by the Committee listing the total fee for services rendered.

4. Lead coordinators and technical consultants shall not be considered employees of the Committee.

2:76–20.20 Project completion and payment

(a) Upon project completion, the applicant shall notify the Committee and request payment on a payment claim voucher form authorized by the Committee.

(b) The payment request shall be accompanied by the completed payment claim voucher, itemized bills, and related documentation that substantiates all costs incurred.

(c) In-kind services performed by the applicant or applicant's employees shall be permitted to be used as the applicant's matching portion of costs for a project(s) or any component of a project(s) funded under the provisions of this program. All contributions, including cash and approved third party in-kind, shall be accepted as part of the applicant's cost sharing or matching when such contributions meet all of the following criteria:

1. The contributions are verifiable from the applicant's records;

2. The contributions are not included as contributions for any other Federally or State assisted project or program;

3. The contributions are necessary and reasonable for proper and efficient accomplishment of project objectives;

4. The contributions are not paid by the State and/or Federal government under another award, except where authorized by State and/or Federal statute to be used for cost sharing or matching;

5. The donation of buildings for construction/facility acquisition projects or long-term use is allowable under the program, and the value of the donated buildings for cost sharing or matching shall be the lesser of (c)5i or ii below;

i. The certified value of the remaining life of the buildings recorded in the applicant's accounting records at the time of donation; or

ii. The current fair market value. However, when there is sufficient justification, the Committee may approve the use of the current fair market value of the donated buildings, even if it exceeds the certified value at the time of donation to the project;

6. Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor, if approved by the Committee, may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project. Rates for volunteer services shall be consistent with those paid for similar work in the applicant's organization. In those instances in which the required skills are not found in the applicant's organization, rates shall be consistent with those paid for similar work in the labor market in which the applicant competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation;

7. When an employer other than the applicant furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid;

8. Donated supplies may include such items as expendable equipment, office supplies or workshop supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation;

9. The method used for determining cost sharing or matching for donated equipment and buildings for which title passes to the applicant may differ according to the purpose of the award, if (c)9i or ii below apply;

i. If the purpose of the grant is to assist the applicant in the acquisition of equipment and buildings, the total value of the donated property may be claimed as cost sharing or matching;

ii. If the purpose of the grant is to support activities that require the use of equipment and buildings, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for buildings shall be allowed, provided that the Committee has approved the charges;

10. The value of donated property shall be determined in accordance with the usual accounting policies of the applicant, with the following qualifications:

i. The value of donated buildings shall not exceed its fair market value at the time of donation to the applicant as established by an independent appraiser (for example, certified real property appraiser) and certified by a responsible official of the applicant; and

ii. The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation;

11. The value of donated facility space shall not exceed the fair rental value of comparable facility space as established by an independent appraisal of comparable facility space in a privately-owned building in the same locality;

12. The value of loaned equipment shall not exceed its fair rental value; and

13. The following requirements pertain to the applicant's supporting records for in-kind contributions from third parties:

i. Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the applicant for its own employees; and

ii. The basis for determining the valuation of personal service, material, equipment and buildings shall be documented.

(d) The Committee shall verify that the project(s) have been completed in accordance with the feasibility plan and also verify applicant's payment claims. If payment claims are satisfactory, the Committee shall forward payment.

(e) No Federal or State cost share program shall be used as the applicant's matching portion of costs for a project(s) or any component of a project(s) funded under the provisions of this program.

(f) No portion of the State cost share program shall be used as the landowner's portion of costs for a project(s) or any component of a project funded under the provisions of any Federal or State cost share program.

2:76–20.21 Failure to comply

(a) If the Committee determines that an applicant fails to comply with the provisions for maintenance of the project, the Committee shall advise the landowner of required corrective measures.

(b) The landowner shall not be liable for inadequate maintenance or destruction of a project(s) if caused by a natural disaster that could not have been reasonably anticipated.

2:76–20.22 Records

(a) The Committee shall retain copies of application forms, feasibility plans, performance reports, and all other related information pertaining to the applicant and approved projects for a period of eight years.

(b) All application forms, feasibility plans, performance reports, and all other related information pertaining to the applicant and approved projects containing commercial or financial information of a sort not customarily disclosed to the public and which disclosure would be likely to result in placing the person submitting the information at a competitive disadvantage, shall be deemed to be confidential and not subject to review or reproduction under the provisions of N.J.S.A. 47:1A–1 et seq.

SUBCHAPTER 21. ADMINISTRATIVE GRANTS TO COUNTIES

2:76–21.1 Applicability

This subchapter establishes a program to provide matching grants to county agriculture development boards (boards) for the administration of the development easement acquisition program (N.J.A.C. 2:76–6) and the planning incentive grant program (N.J.A.C. 2:76–17) subject to available funding.

2:76–21.2 Definitions

As used in this subchapter, the following words and terms shall have the following meaning:

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

"Farmland preservation plan" means a comprehensive plan prepared by boards projecting a county's farmland preservation goals for the next five to 10 years.

2:76–21.3 Eligibility

(a) To be eligible for a grant, a board shall have already completed a farmland preservation plan or shall agree to complete a farmland preservation plan within six months of the Committee's approval of a grant request.

1. The farmland preservation plan shall be updated annually and submitted to the Committee each year in which a grant is awarded by the Committee.

2:76–21.4 Grant requirements

Grants shall be used for creating and filling staff positions that were created subsequent to January 2001 solely for generating and processing applications under the development easement acquisition program and the planning incentive grant program.

2:76-21.5 Amount of grant

(a) Grant amounts shall be 50 percent of the cost of creating and filling new staff positions. Cost shall be limited to the following:

1. Salary; and

2. Fringe benefits.

(b) A grant shall not exceed $20,000 per county.

2:76-21.6 Applications

(a) A county shall obtain grant application forms from the Committee.

(b) Completed application forms shall be submitted to the Committee by January 17, 2002, for fiscal year 2002 and by April 1 for future grant requests.

(c) The application form shall request the following information:

1. County requesting grant;

2. Grant amount requested;

3. Title of new position created subsequent to January 2001, for purposes described in N.J.A.C. 2:76-21.4;

4. Agency or unit where the position will be established;

5. Person supervising position;

6. Salary and fringe benefits allocated to fund the position;

7. Verification that the position was approved by the Board of Chosen Freeholders or other appropriate authority;

8. Anticipated work hours and permanency of the position;

9. Anticipated duties of the position;

10. Copy (if available) and status of county's farmland preservation plan; and

11. Number and acres of applications pending pursuant to N.J.A.C. 2:76-21.7(a)2.

2:76-21.7 Awarding of grant

(a) The Committee shall determine the priority of allocating grants to counties according to the following factors:

1. Priority shall first be given to counties that have the most agricultural lands to potentially be preserved, indexed to the county in the State with the most agricultural land to potentially be preserved, based on the 1997 Agricultural Census or most current U.S. Agricultural Census data available and adjusted for acreage already preserved for agricultural purposes.

i. Grant applications shall be assigned a maximum of 50 points identifying farmland preservation potential based on the following formula:

$$\frac{\text{County Preservation Potential (Acres)}}{\text{County With Highest Preservation Potential (Acres)}} \times 50 = \_\_\_ \text{points}$$

2. Priority shall next be given to counties that have the most acreage from farmland preservation applications pending before the county and the Committee, indexed to the county in the State with the most acreage from farmland applications pending before the county and the Committee.

i. Grant applications shall be assigned a maximum of 25 points identifying applications pending based on the following formula:

$$\frac{\text{County Applications Pending (Acres)}}{\text{County With Most Applications Pending (Acres)}} \times 25 = \_\_\_ \text{points}$$

(b) Grants shall be awarded by the Committee in the order of those counties with the highest point total resulting from the combination of (a)1 and 2 above.

(c) The Committee shall enter into a grant agreement with the county.

2:76-21.8 Annual review

(a) A Board that has received a grant shall provide the Committee with an annual performance review of each new staff person that was funded with the grant indicating the benefits and accomplishments resulting from the position.

(b) Annual performance summaries shall be filed with the Committee by August 15 of each year a grant is awarded.

SUBCHAPTER 22. SPECIAL PERMIT FOR COMMERCIAL NONAGRICULTURAL ACTIVITY ON PRESERVED FARMLAND

2:76-22.1 Applicability

This subchapter applies to the issuance of any special permit pursuant to N.J.S.A. 4:1C-32.1 to allow a commercial nonagricultural activity to occur on qualifying land on which a development easement was conveyed to, or retained by, the Committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40).

2:76-22.2 Purpose

The purpose of this subchapter is to establish the process for any person who owns qualifying land from which a development easement was conveyed to, or retained by, the Committee, a board, or a qualifying tax exempt nonprofit organization to apply for a special permit, pursuant to N.J.S.A. 4:1C-32.1, to allow a commercial nonagricultural activity to occur on the premises and to identify the standards for review of such an application by the Committee, board or qualifying tax exempt non-profit organization.

2:76-22.3 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Application" means a request for a special permit to allow for a commercial nonagricultural activity as detailed in a standard form adopted by the Committee.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-17 or a sub-regional agricultural retention board established pursuant to N.J.S.A. 4:1C-20.

"Commercial farm" means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.; or

2. A farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.

"Commercial nonagricultural activity" means a small enterprise or low impact use that is not permitted under the terms of the deed of easement, but which may be permitted pursuant to N.J.S.A. 4:1C-32.1 and this subchapter. It does not include franchises, chain stores, big box stores, high volume businesses, or a personal wireless service facility as defined in this section and regulated pursuant to N.J.S.A. 4:1C-32.2.

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

"Deed of easement" means the instrument restricting the premises for agricultural purposes that is recorded with the county clerk's office pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40). For land acquired in fee simple title for farmland preservation purposes, the deed transferring the restricted fee ownership of the land by the Committee or other entity is considered the deed of easement.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11.1 et seq. and any relevant rules or regulations promulgated pursuant thereto.

"Exception" means a portion of an applicant's landholdings excluded from the premises and although identified in the deed of easement, is unencumbered by the farmland preservation restrictions mandated by N.J.A.C. 2:76-6.15(a) and set forth in the deed of easement.

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

"Person" means natural persons, public or private corporations, companies, associations, societies, firms, partnerships and joint stock companies.

"Personal wireless service facility" means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to Federal law.

"Premises" means the property subject to the deed of easement as defined by the legal metes and bounds description contained in the deed of easement.

"Qualifying land" means a farm that was preserved for farmland preservation purposes prior to the date of enactment of N.J.S.A. 4:1C-32.1 et seq., under any of the laws cited in N.J.S.A. 4:1C-32.1a and for which no portion of the farm was excluded from the area preserved under the deed of easement by means of an exception. Lands preserved by a county, local government unit or qualifying tax exempt nonprofit organization for farmland preservation purposes by the acquisition of a deed of easement prior to the date of enactment of N.J.S.A. 4:1C-32.1 et seq. shall be deemed "qualifying land" even if the instrument memorializing the Committee's interests in the deed of easement is not recorded until after the date of enactment of N.J.S.A. 4:1C-32.1 et seq.

"Qualifying tax exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

"Special permit" means a permit to allow one commercial nonagricultural activity to occur on qualifying land issued by the Committee (in its sole discretion if the Committee owns the development easement or in the joint discretion of the Committee and a board or qualifying tax exempt nonprofit

organization holding the deed of easement), pursuant to N.J.S.A. 4:1C-32.1 and the procedures and criteria set forth in this subchapter.

2:76-22.4 Eligibility to apply for a commercial nonagricultural activity

(a) Any person who owns qualifying land may apply for a special permit to allow a commercial nonagricultural activity to occur on the land, provided that:

1. The qualifying land is a commercial farm;

2. No other special permit for a commercial nonagricultural activity exists on the premises;

3. There is no commercial nonagricultural activity in existence on the premises at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the Committee may waive the requirements of this paragraph entirely or subject to any appropriate conditions:

i. If such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to N.J.S.A. 4:10-1, derived from the farm; or

ii. For other good cause shown by the applicant; and

4. The development easement was acquired without the participation of Federal Farm and Ranch Lands Protection Program funds.

(b) In the event the premises were divided after conveyance of the development easement in accordance with N.J.A.C. 2:76-6.15(a)15, only one special permit for a commercial nonagricultural activity may be issued by the Committee for the originally preserved premises, regardless of the number of resulting parcels of land.

1. If a special permit for a commercial nonagricultural activity has been previously issued on a parcel of land created as a result of a division of premises, no other special permits for a commercial nonagricultural activity may be issued on any of the remaining parcel(s) of land created by the division.

2. If there was an exception on the original premises, no special permit shall be issued to any of the parcels resulting from a division of the premises, even if one or more of the resulting parcels have no exceptions following the division.

(c) Any person who has been granted a special permit for the erection of a personal wireless service facility pursuant to N.J.A.C. 2:76-23 is eligible for a special permit on the same premises pursuant to this subchapter.

2:76-22.5 Application for commercial nonagricultural activity

(a) Any person who meets the qualifications contained in N.J.A.C. 2:76-22.4 may apply for a special permit for a commercial nonagricultural activity by simultaneously submitting an application to the owner of the development easement and to the Committee. The application shall include the following information:

1. A copy of the recorded deed showing the current record owner of the restricted premises;

2. A copy of the recorded deed of easement;

3. The block(s) and lot(s) designations of the premises;

4. Proof that the premises is a commercial farm;

5. A survey plat of the premises that identifies and labels:

i. The structure(s) in which the commercial nonagricultural activity will be located;

ii. The proposed expansion of any existing structures to accommodate the commercial nonagricultural activity;

iii. All existing structures, streams, and other features of the premises;

iv. The location of proposed access to the commercial nonagricultural activity; and

v. Identification of the area that will be used to accommodate parking, including the number of existing parking spaces, the number of parking spaces that will be needed and delineation of the proposed parking spaces;

6. Photographs (preferably, digital, with one printed copy and one electronic copy) of:

i. The interior and exterior of the structure(s) in which the commercial nonagricultural activity is proposed; and

ii. The exterior of all structures within 200 feet of the structure(s) in which the commercial nonagricultural activity is proposed;

7. A description of any commercial nonagricultural activity already in existence on the premises at the time of application for the special permit or on any portion of the farm that is not subject to the development easement;

8. Proof that the structure(s) to be used for the commercial nonagricultural activity existed on the date of enactment of N.J.S.A. 4:1C-32.1 (January 12, 2006). The applicant shall also:

i. Identify and describe all improvements made to the structure since the enactment of N.J.S.A. 4:1C-32.1 (January 12, 2006);

ii. State whether he or she intends to construct a new agricultural building to take the place of the structure to be used for the nonagricultural use; and

iii. Identify any new agricultural structure(s) constructed on the premises within three years prior to the date of application and indicate whether these new structures will serve a function previously served by the structure(s) proposed to accommodate the non-agricultural use;

9. A description of the proposed commercial nonagricultural activity, including:

i. All improvements and new utilities that will be needed to accommodate the activity;

ii. An estimate of the cost and time needed for completion of any improvements;

iii. Whether the activity is associated with the agricultural operation and if so, how;

iv. Whether the activity is operated by the owner or family member or if it is being leased and if so, to whom;

v. Whether the activity is seasonal or year round;

vi. The proposed hours of operation;

vii. Whether the applicant will need to expand an existing structure to accommodate the activity, including:

(1) The purpose and proposed use of the expansion;

(2) An explanation as to why the expansion is necessary for the commercial nonagricultural activity;

(3) The size of the total footprint of the proposed expanded structure and all other structures that will be used for the nonagricultural activity;

(4) A justification for the proposed size of the structure, including an explanation as to whether the proposed size is based solely on the need to accommodate the commercial nonagricultural activity;

(5) An explanation of how the location, design, height and aesthetics of the expansion preserve the natural and unadulterated appearance of the landscape and structures; and

(6) A sketch of the proposed expansion on the survey plat required in (a)5 above;

viii. The time period for which the applicant would like the special permit to be effective, provided that any request for an effective period of over five years shall include a justification for the longer time period; and

ix. A copy of any proposed lease agreements that will be necessary for the proposed nonagricultural activity;

10. Copies of all necessary local, State and Federal approvals, including evidence that the proposed commercial nonagricultural activity is a permitted use under municipal zoning or that a use variance has been granted.

i. This requirement may be waived by the Committee pursuant to N.J.A.C. 2:76-22.6(a)15i;

11. An explanation as to whether the commercial nonagricultural activity interferes with the use of the land for agricultural production;

12. An explanation as to whether the commercial nonagricultural activity utilizes the land and structures in their existing condition;

13. An explanation as to whether the commercial nonagricultural activity will have an adverse impact upon the soils, water resources, air quality or other natural resources of the land or the surrounding area;

14. Using a scale, established in the application, identification of the location of the proposed commercial nonagricultural activity on:

i. A United States Department of Agriculture, Natural Resource Conservation Service (NRCS) soils map that uses the most current NRCS Soil Survey Geographic (SSURGO) Database, with a summary of the soil mapping units and designation of important soils (prime soils, soils of Statewide importance, unique or local importance);

ii. A United States Geological Service (USGS) topographic quadrangle map;

iii. A current tax map; and

iv. A New Jersey Department of Environmental Protection wetlands map;

15. A description of the amount of traffic or business that the applicant expects to be generated on a daily, weekly and annual basis and on anticipated peak times of the year;

16. The maximum number of employees needed on a daily, weekly and annual basis and for anticipated peak times of the year; and

17. An application fee in the amount of $1,000 made payable to the State of New Jersey, State Agriculture Development Committee, in the form of a money order or bank check.

i. The application fee is nonrefundable, regardless of whether a special permit is issued.

(b) If the Committee or easement holder deems the application incomplete, the applicant shall have 120 days of

receipt of written notice to provide the necessary information, unless otherwise extended by the reviewing entity.

2:76-22.6 Evaluation criteria for a commercial nonagricultural use

(a) When reviewing special permit applications, the Committee (or Committee and easement holder jointly) shall determine whether the application meets the following criteria:

1. The premises meets the definition of "commercial farm" set forth in this subchapter;

2. The premises meets the definition of "qualifying land" set forth in this subchapter;

3. The premises was preserved prior to the enactment of N.J.S.A. 4:1C-32.1 (January 12, 2006);

4. There is no commercial nonagricultural activity in existence on the premises at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the Committee may waive the requirements of this paragraph entirely or subject to any appropriate conditions:

i. If such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to N.J.S.A. 4:10-1, derived from the farm; or

ii. For other good cause shown by the applicant;

5. No other special permits for a commercial nonagricultural activity have been issued by the Committee;

6. The proposed commercial nonagricultural activity is located within a structure(s) that was existing at the time of the enactment of N.J.S.A. 4:1C-32.1 (January 12, 2006);

7. The proposed commercial nonagricultural activity utilizes a structure(s) in its existing condition, except that:

i. Existing residential units can be improved for a commercial nonagricultural use permitted pursuant to this subchapter, subject to the following limitation:

(1) No more than 2,500 square feet of the interior of an existing residential structure may be converted or "finished" for a commercial nonagricultural use if such conversion or finishing requires improvements to the structure, such as installation of new walls, insulation, flooring, lighting, HVAC systems, sanitary plumbing, and associated wiring;

ii. Improvements to a non-residential structure shall not substantially interfere with the ability of the structure as a whole to be used to support agricultural activities in the future.

(1) No more than 2,500 square feet of the interior of an existing residential structure may be converted or "finished" for a commercial nonagricultural use if such conversion or finishing requires improvements to the structure, such as installation of new walls, insulation, flooring, lighting, HVAC systems, sanitary plumbing, and associated wiring;

iii. Improvements that require the expansion of wastewater facilities, including, but not limited to, connection to public wastewater facilities or expansion of sewage or septic capacity generally, shall not be permitted. At no time shall a change in wastewater facilities required for the commercial nonagricultural activity render land subject to the deed of easement, which otherwise would have been suitable for agricultural production, incapable of supporting agricultural production activities;

iv. No public utilities, other than those already available on the premises, shall be permitted, including, but not limited to, water, gas, electric or sewage;

v. Improvements to the exterior of the structure shall be compatible with the agricultural character of the premises and shall not diminish the historic character of the structure;

vi. There shall be no storage of equipment, vehicles, supplies, products, or by-products associated with the commercial nonagricultural activity outside of the structure except as provided in (a)13iv below;

vii. Improvements cannot be made to the interior of a non-residential structure(s) to adapt it for residential use; and

viii. Expansion of a structure shall be permitted provided that:

(1) The total footprint of the expanded structure and other structures that will be used for the commercial nonagricultural activity does not exceed 500 square feet;

(2) The purpose or use of the expansion is necessary to the operation or functioning of the commercial nonagricultural activity;

(3) The area of the proposed footprint is reasonably calculated based solely upon the demands of accommodating the commercial nonagricultural activity and does not incorporate excess space; and

(4) The location, design, height and aesthetics of the expansion reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

8. Any new agricultural structure(s) constructed or relocated anywhere on the premises within the three years preceding the date of application for the special permit does not (and will not) serve a function previously served by the structure(s) proposed to accommodate the nonagricultural use;

9. The application does not propose to use agricultural labor housing (constructed before or after the conveyance of the development easement) for the commercial nonagricultural activity;

10. The proposed commercial nonagricultural activity does not interfere with the use of the land for agricultural purposes;

11. The commercial nonagricultural activity is incidental to the use of the premises as a farm or subordinate to the agricultural use of the premises;

12. The commercial nonagricultural activity is compatible with the agricultural use of the premises and surrounding land use of adjacent properties.

i. Characteristics to be considered in determining whether the commercial nonagricultural activity is compatible shall include, but not be limited to, whether the activity uses equipment or processes that create noise, vibration, glare, fumes, odors or electrical or electronic interference (including interference with radio or television reception), which interfere with the quiet enjoyment of neighboring properties;

13. The commercial nonagricultural activity uses the land in its existing condition. Use of the land in its existing condition shall mean the following:

i. No new road improvements including new ingress and egress improvements, curbing, or changes needed to accommodate a new traffic pattern shall be created;

ii. No new parking areas, paved or unpaved shall be created;

iii. The area dedicated to parking shall not exceed 1,000 square feet and provide for greater than five parking spaces, with each parking space not to exceed 10 feet by 20 feet; and

iv. Vehicles or equipment too large to store within the structure, such as vehicles, trailers, etc., may be stored outside the structure, but within the permissible 1,000 square foot parking area. Products, supplies or by-products of the non-agricultural use shall not be stored outside the structure;

14. The commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area and does not require the creation of additional parking spaces, paved or unpaved and is consistent with the deed of easement and land use approvals and any other applicable approvals that may be required by Federal, State, or local law, rules, regulations, or ordinances, provided that if such approvals contain any requirements for implementation of the nonagricultural use that are inconsistent with N.J.S.A. 4:1C-32.1, this subchapter or the special permit itself, the special permit will be denied;

15. The owner has obtained local zoning and land use approvals and any other applicable approvals that may be required by Federal, State, or local law, rule, regulation, or ordinance, provided that if such approvals contain any requirements for implementation of the nonagricultural use that are inconsistent with N.J.S.A. 4:1C-32.1, this subchapter or the special permit itself, the special permit will be denied.

i. If this requirement has not been met at the time of application, the Committee may issue a special permit that will be conditioned on, and which will become effective only upon, the applicant's receipt of all necessary local, State and Federal approvals, provided that if such approvals contain any requirements for implementation of the nonagricultural use that are inconsistent with N.J.S.A. 4:1C-32.1, this subchapter, or the special permit itself, the special permit will be denied;

16. The commercial nonagricultural activity does not contain multiple businesses/uses, including, but not limited to, commercial, industrial or office use, within the same structure or structures;

17. Lighting to support the nonagricultural use shall meet the following criteria:

i. Adequate lighting shall be provided to insure safe movement of pedestrians and vehicles during working hours;

ii. The height, intensity and number of lighting facilities shall not be in excess of what is customary for agricultural use and shall be consistent with the agricultural setting;

iii. Any new lighting shall be compatible with the agricultural use of the property and surrounding land use of adjacent properties; and

iv. The lighting shall not cause glare or intrusion of light onto neighboring properties;

18. The commercial nonagricultural activity is not a "high traffic volume business."

i. The volume and frequency of visitors, deliveries, truck and other vehicle traffic shall not exceed the number of designated parking spaces at any given time and shall not create a nuisance for neighboring properties or the municipality; and

ii. The number of employees needed to operate the commercial nonagricultural activity is not indicative of a high traffic volume business.

(1) The proposed use shall not require more than four full-time employees at peak operational periods;

19. The owner of the premises is not in violation of any provision of the deed of easement; and

20. The commercial nonagricultural activity otherwise complies with N.J.S.A. 4:1C-32.1.

2:76-22.7 Review by board or nonprofit easement owner

(a) If a board or a qualifying tax exempt nonprofit organization owns the development easement, it shall review an application for a special permit using the criteria set forth in N.J.A.C. 2:76-22.6, prior to the Committee's review.

(b) The board or qualifying tax exempt nonprofit organization shall confirm that it has the following documents related to the development easement:

1. A copy of the recorded deed of easement;

2. A copy of the title policy issued at the time the deed of easement was recorded;

3. A copy of the original survey of the premises; and

4. A complete application for a commercial nonagricultural activity special permit.

(c) The board or qualifying tax exempt nonprofit organization shall inform the Committee of its decision to approve or disapprove the issuance of the special permit, state the reasons for its decision, and submit the following to the Committee for review:

1. Notification of any commercial nonagricultural activities already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement;

2. The recommended time period for which the special permit shall be effective, and any conditions of approval;

3. A resolution of the board or qualifying tax exempt nonprofit organization setting forth the approval or denial of the application and the reasons therefore;

4. Confirmation that the owner of the premises is not in violation of any provision of the deed of easement; and

5. A checklist of documents provided by the applicant to the board/qualifying tax exempt nonprofit organization.

2:76-22.8 Committee review and issuance of permit

(a) The Committee, as the owner of a development easement, shall review an application and in its sole discretion may issue a special permit pursuant to N.J.S.A. 4:1C-32.1 and this subchapter.

(b) If a development easement is owned by a board or qualifying tax exempt nonprofit organization, the Committee, upon receipt of a complete application and notice of approval by the board or qualifying tax exempt nonprofit organization, shall decide whether to issue a permit based on its review of the application using the criteria set forth in this subchapter.

1. Approval of an application by a board or qualifying tax exempt nonprofit organization shall not be binding on the Committee if the Committee makes an independent determination that the application does not meet the criteria set forth in this subchapter.

2. If an application has been denied by a board or qualifying tax exempt nonprofit organization, no further action by the Committee is required.

3. If the Committee is missing any of the following documents related to the preservation of the premises, the board or qualifying tax exempt nonprofit organization shall provide the Committee with the documents upon request:

i. A copy of the recorded deed of easement;

ii. A copy of the title policy; and

iii. A copy of the original survey of the premises.

(c) The Committee shall inform the applicant of its decision to approve or deny the application and shall also inform the board or qualifying tax exempt nonprofit organization that owns the development easement.

(d) The Committee may issue a special permit that will be conditioned on, and which will become effective only upon, the applicant's receipt of all necessary local, State and Federal approvals, provided that if such approvals contain any requirements for implementation of the nonagricultural use that are inconsistent with N.J.S.A. 4:1C-32.1, this subchapter, or the special permit itself, the special permit will be deemed denied.

(e) The Committee may include other reasonable requirements to limit, to the maximum extent possible, the intensity of the permitted activity and its impact on the land and surrounding area.

(f) When issuing a special permit, the Committee shall:

1. Identify the time period for which the special permit shall be effective; and

2. Stipulate a time period during which the landowner must exercise the special permit and initiate the commercial nonagricultural activity.

i. The Committee may provide for an extension up to six months upon a showing of special circumstances or need presented by the applicant.

ii. If the owner fails to exercise the special permit and initiate the commercial nonagricultural use within the period designated by the Committee, the special permit shall automatically expire, unless an extension is approved by the Committee pursuant to (f)2i above.

(g) In the event that the record owner obtains a special permit from the Committee, and subsequently contracts for the sale of the premises, the contract purchaser of the premises may seek approval to continue the commercial nonagricultural activity special permit after conveyance of the property by applying for a new special permit pursuant to N.J.A.C. 2:76-22.5, prior to the actual sale.

1. The contract purchaser shall provide a copy of the executed contract for the purchase of the premises as part of his or her application.

2. The contract purchaser must obtain a special permit issued by the Committee pursuant to N.J.A.C. 2:76-22.8 prior to the conveyance of the premises.

(h) Upon the death of the record owner of the premises, the heir(s) or estate representative may apply for a special permit pursuant to N.J.A.C. 2:76-22.5 to avoid termination of the special permit.

1. The heir(s) or estate representative may apply for and obtain Committee approval for a special permit within six months of the record owner's death.

2. The special permit shall automatically expire six months from the date of death of the record owner of the property holding that permit unless the heir(s) or estate representative applies for and obtains a special permit, or applies for and obtains an extension of the six-month period, within that time.

3. Upon request by the estate representative or heir(s), the Committee may extend the period to apply for and obtain approval of the special permit for up to one year where required for settlement of estate issues provided that the period of any such extension shall not exceed the period of the initial special permit.

(i) All application fees submitted to the Committee pursuant to this subchapter are nonrefundable, regardless of whether a special permit is issued, and shall be used for farmland preservation purposes.

2:76-22.9 Special permit

(a) No more than one special permit for a commercial nonagricultural activity shall be valid at any one time for use on the premises.

(b) The standard duration of a special permit approved by the Committee shall not exceed five years.

1. A special permit may be approved for a duration greater than five years, but not more than 20 years, if the applicant provides sufficient justification pursuant to N.J.A.C. 2:76-22.5(a)9viii.

(c) No special permit shall be valid for more than 20 years unless an application for renewal is approved by the Committee and a board or qualifying tax exempt nonprofit organization, if appropriate.

1. Renewal of a special permit may be sought within two years of the date of scheduled permit expiration.

2. There shall be no fee for permit renewal.

(d) The special permit shall not run with the land, and each special permit shall explicitly state this, in addition to the following:

1. The permit shall automatically terminate if there is a change in the record ownership of the premises subject to the following:

i. The contract purchaser of the premises obtains approval for a special permit prior to the conveyance of the premises pursuant to N.J.A.C. 2:76-22.8(g); or

ii. Upon the death of the record owner of the premise, the heir(s) obtains approval for a special permit pursuant to N.J.A.C. 2:76-22.8(h);

2. The owner/seller of the restricted premises and the purchaser of the restricted premises shall notify the Committee, the owner of the development easement, and the municipality in the event there is a change in record ownership of the premises after a special permit has been issued; and

3. The commercial nonagricultural activity shall cease immediately upon a change in record ownership of the premises, except as provided for in (d)1 above.

i. An application may be submitted pursuant to N.J.A.C. 2:76-22.5, if the new owner of the premises wishes to continue the commercial nonagricultural activity. The application shall be treated as a new application, and the new owner shall be required to comply with all procedures set forth in N.J.A.C. 2:76-22.5, including payment of an application fee.

(e) The special permit shall not be assigned or conveyed in any manner.

(f) The special permit shall be recorded by the owner of the premises with the County Clerk's Office in the same manner as a deed.

1. A copy of the recorded special permit shall be provided to the Committee, the municipality, the owner of the development easement and to any owner of land that was subdivided from the initial preserved farm, if applicable.

(g) The special permit shall be displayed in clear view on the structure(s) for which it was issued.

2:76-22.10 Signs

(a) The placement of signs on the premises for purposes related to the commercial nonagricultural activity is prohibited except for the following:

1. Directional signs indicating where persons visiting the nonagricultural use should drive and/or park; and

2. One flush-mounted sign, not to exceed 20 square feet to be placed on the structure, which shall not be illuminated internally.

(b) Nothing in this section shall be construed to permit the use of signs in a manner inconsistent with municipal, county, or Department of Transportation requirements or standards.

Administrative correction.
See: 40 N.J.R. 4519(a).

2:76-22.11 Monitoring

(a) The owner of the development easement on the premises on which a special permit was issued by the Committee shall monitor the commercial nonagricultural activity annually to ensure compliance with the special permit and this subchapter.

1. A written report with photographs confirming the on-site inspection and determination of compliance or violation shall be provided to the Committee.

(b) The owner of the development easement shall be permitted access to, and to enter upon, the premises at all reasonable times for the purpose of inspection to enforce and assure compliance with the special permit. The owner of the development easement agrees to give the landowner at least 24 hours advance notice of its intention to enter the premises.

2:76-22.12 Suspension or revocation of a special permit

(a) The Committee may suspend or revoke the special permit for a violation of N.J.S.A. 4:1C-32.1, this subchapter, or any term or condition of the special permit, if it owns the development easement on the farm.

(b) The Committee may suspend or revoke the special permit on a farm in which the development easement is owned by a board or qualifying tax exempt nonprofit organization, if the Committee and board/nonprofit organization jointly determine that the applicant is in violation of any term or condition of the special permit, N.J.S.A. 4:1C-32.1 or this subchapter.

2:76-22.13 Request for hearing

(a) Any applicant or permit holder who is aggrieved by an action of the Committee regarding a permit or renewal application or the suspension or revocation of a permit may submit a written request to the Committee for a hearing.

1. A request for a hearing shall be sent to the Committee within 20 days of receipt of notice of the Committee's action.

2. Requests shall be sent to the Executive Director, State Agriculture Development Committee, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.

3. Applicants or permit holders shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

4. The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.

2:76-22.14 Report of activities

(a) The Committee shall submit a report every two years to the Governor, President of the Senate, the Speaker of the General Assembly, the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee or their designated successors, in accordance with N.J.S.A. 4:1C-32.3.

(b) Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted on the website of the Committee.

SUBCHAPTER 23. SPECIAL PERMIT FOR INSTALLATION OF PERSONAL WIRELESS SERVICE FACILITY ON PRESERVED FARMLAND

2:76-23.1 Applicability

This subchapter applies to the issuance of any special permit pursuant to N.J.S.A. 4:1C-32.2, to allow a personal wireless service facility to be erected on land on which a development easement was conveyed to, or retained by the Committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40), or any other State law enacted for farmland preservation purposes.

2:76-23.2 Purpose

The purpose of this subchapter is to establish the process for any person who owns land on which a development easement was conveyed to, or retained by, the Committee, a board, or a qualifying tax exempt nonprofit organization pursuant to N.J.S.A. 4:1C-32.2, to apply for a special permit to allow for a personal wireless service facility to be erected on the premises, and to identify the standards for review of an application for a special permit by the Committee, board or qualifying tax exempt nonprofit organization.

2:76-23.3 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Application" means a request for a special permit to allow for erection of a personal wireless service facility as detailed in a standard form adopted by the Committee.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-17 or a sub-regional

agricultural retention board established pursuant to N.J.S.A. 4:1C-20.

"Commercial farm" means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.; or

2. A farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.

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

"Deed of easement" means the deed restricting the premises for agricultural purposes that is recorded with the county clerk's office pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40). For land acquired in fee simple title for farmland preservation purposes, the deed transferring the restricted fee ownership of the land by the committee or other entity is considered the deed of easement.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-32.1 and any relevant rules or regulations promulgated pursuant thereto.

"Exception" means a portion of an applicant's landholdings excluded from the premises and although identified in the deed of easement, is unencumbered by the farmland preservation restrictions mandated by N.J.A.C. 2:76-6.15(a) and set forth in the deed of easement.

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

"Person" means natural persons, public or private corporations, companies, associations, societies, firms, partnerships and joint stock companies.

"Personal wireless service facility" means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to Federal law.

"Premises" means the property subject to the deed of easement as defined by the legal metes and bounds description contained in the deed of easement.

"Qualifying tax exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

"Special permit" means a permit to allow one personal wireless communication facility on a preserved farm, issued by the Committee (in its sole discretion if the Committee owns the development easement or in the joint discretion of the Committee and a board or qualifying tax exempt nonprofit organization holding the deed of easement), pursuant to N.J.S.A. 4:1C-32.2 and the procedures and criteria set forth in this subchapter.

2:76-23.4 Eligibility to apply for a personal wireless service facility

(a) Any person who owns land on which a development easement was conveyed to, or retained by, the Committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40), or any other State law enacted for farmland preservation purposes may apply for a special permit to allow a personal wireless service facility to be erected on the land, provided that:

1. The land is a commercial farm;

2. No other special permit for a personal wireless service facility on the premises has been granted;

3. There is no commercial nonagricultural activity in existence on the premises at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the Committee may waive the requirements of this paragraph entirely or subject to any appropriate conditions:

i. If such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to N.J.S.A. 4:10-1, derived from the farm; or

ii. For other good cause shown by the applicant;

4. Notwithstanding (a)3 above, a person who has been granted a special permit for a commercial nonagricultural activity pursuant to N.J.A.C. 2:76-22 is eligible for a special permit on the same premises pursuant to this subchapter; and

5. The development easement was acquired without the participation of Federal Farm and Ranch Lands Protection Program funds.

(b) In the event the premises were divided after conveyance of the development easement in accordance with N.J.A.C. 2:76-6.15(a)15, only one special permit for a personal wireless facility may be issued by the Committee for the originally preserved premises, regardless of the number of resulting parcels of land.

1. If a special permit for a personal wireless facility has been previously issued on a parcel of land created as a result of a division of premises, no other special permits for a personal wireless facility may be issued on any of the remaining parcel(s) of land created by the division.

2:76-23.5 Application for personal wireless service facility

(a) Any person who meets the qualifications contained in N.J.A.C. 2:76-23.4 may apply for a special permit for the erection of a personal wireless service facility by simultaneously submitting an application to the owner of the development easement and to the Committee. The application shall include the following information and documents:

1. A copy of the recorded deed showing the current record owner of the restricted premises;

2. A copy of the recorded deed of easement;

3. The block(s) and lot(s) designations of the premises;

4. Proof that the premises is a commercial farm;

5. A survey plat of the premises that identifies and labels:

i. The existing structure(s) on which the personal wireless facility will be placed;

ii. The location and size of proposed structure(s) to accommodate the personal wireless facility (not to exceed 500 square feet);

iii. The proposed expansion of any existing structure(s) to accommodate the personal wireless facility (not to exceed 500 square feet in footprint area in total for all structures necessary to accommodate personal wireless facility); and

iv. All existing structures, streams, and other features of the premises;

6. A description of how the location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures, including a description of any camouflage of the personal wireless service facility to minimize visual impact.

i. The applicant shall provide photographs (preferably digital, with one printed copy and one electronic copy) of the location of the proposed personal wireless facility, taken from an adequate distance and from all directions to assist in visualizing the impact of the proposed facility on the existing landscape;

7. A description of any commercial nonagricultural activity already in existence on the premises at the time of application for the special permit or on any portion of the farm that is not subject to the development easement;

8. Proof that the structure(s) to be used for the personal wireless facility existed on the date of application for the special permit.

i. The applicant shall provide photographs (preferably digital, with one printed copy and one electronic copy) of the interior and exterior of the structure(s) in which the personal wireless facility is proposed;

9. Justification that any proposed construction of a new structure or expansion of an existing structure is necessary to the operation or functioning of the personal wireless facility.

i. If a new structure is being proposed, the applicant shall certify that there are no existing structures on the premises that could be utilized or occupied to adequately support the personal wireless service facility, and describe the deficiencies associated with each existing structure to support that certification.

ii. If an existing structure is being expanded, the applicant shall justify that the area of the proposed footprint of the expanded structure is reasonably calculated based solely on the demands of accommodating the personal wireless service facility and does not include excess space;

10. An explanation as to whether the personal wireless service facility interferes with the use of the land for agricultural production;

11. An explanation as to whether the personal wireless service facility utilizes the land and structures in their existing condition;

12. An explanation as to whether the personal wireless service facility will have an adverse impact upon the soils, water resources, air quality or other natural resources of the land or the surrounding area and whether the applicant will need to create parking spaces, paved or unpaved.

i. The applicant shall identify the number of existing parking spaces and the number of parking spaces that will be needed to accommodate the personal wireless service facility;

13. Using a scale, established in the application, identification of the location of the proposed personal wireless service facility on:

i. A United States Department of Agriculture, Natural Resources Conservation Service (NRCS) soils map

that uses the most current NRCS Soil Survey Geographic (SSURGO) Database, with a summary of the soil mapping units and designation of important soils (prime soils, soils of statewide importance, unique or local importance);

ii. A United States Geological Service (USGS) topographic quadrangle map;

iii. A current tax map; and

iv. A New Jersey Department of Environmental Protection wetlands map;

14. A description of the amount of traffic the applicant expects to be generated, and the number of employees required, as a result of the personal wireless facility.

15. Copies of all local zoning and land use approvals obtained by the applicant and/or the personal wireless service company, and any other approvals required by State, federal, or local law, rule, regulation, or ordinance, even if the proposed facility includes a compatible wireless communication use, such as law enforcement or emergency response communication equipment, which may otherwise exempt the proposed facility from obtaining such approvals.

16. A commitment in writing from the personal wireless service facility company that it will allow, at no charge to the requesting State or local governmental entity, the sharing of the facility for any State or local owned or sponsored compatible wireless communications use for public purposes, such as law enforcement or emergency response communication equipment approved by the Committee;

17. Documentation from the wireless service company showing that the personal wireless service facility is necessary and serves a public benefit by potentially improving cellular communications, in particular for emergency purposes;

18. The time period for which the applicant would like the special permit to be effective, provided that any request for an effective period of over five years shall include a justification for the longer time period.

i. The applicant shall provide a copy of the proposed contract or lease agreement with the wireless service company;

19. Whether the wireless service company is requiring the conveyance of an easement or another interest in the premises to construct or access the personal wireless service facility;

20. An estimate of the cost and time needed for completion of a functional wireless service facility; and

21. An application fee in the amount of $1,000 made payable to the State of New Jersey, State Agriculture Development Committee, in the form of a money order or bank check.

i. The application fee is nonrefundable, regardless of whether a special permit is issued.

(b) If the Committee or easement holder deems the application incomplete, the applicant shall have 120 days of receipt of written notice to provide the necessary information, unless otherwise extended by the reviewing entity.

2:76-23.6 Evaluation criteria for personal wireless service facilities

(a) When reviewing special permit applications, the Committee (or Committee and easement holder jointly) shall determine whether the application meets the following criteria:

1. The premises meets the definition of "commercial farm" set forth in this subchapter;

2. No other special permits for a personal wireless service facility have been granted on the premises;

3. The personal wireless service facility is necessary and serves a public benefit by potentially improving cellular communications, in particular, for emergency purposes;

4. There are no commercial nonagricultural activities in existence on the premises or on any portion of the farm that is not subject to the development easement.

i. The Committee and easement holder may waive this requirement if they find the preexisting commercial nonagricultural activity is of a minor or insignificant nature or relies principally on farm products, as defined in N.J.S.A. 4:10-1, derived from the premises or for other good cause shown by the applicant; and

ii. The issuance of a special permit for a commercial nonagricultural activity pursuant to N.J.A.C. 2:76-22 shall not preclude the issuance of a special permit for a personal wireless service facility under this subchapter;

5. The personal wireless service facility utilizes, or is supported by, a structure(s) existing on the premises as of the date of application, except for the conditions set forth in (a)6 and 7 below;

6. If an expansion of an existing structure(s) is requested:

i. The expansion cannot exceed 500 square feet in footprint area in total for all of the structures needed to accommodate the personal wireless service facility;

ii. The expansion is necessary to the operation or functioning of the personal wireless service facility; and

iii. The area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;

7. If a new structure is being proposed to support or accommodate the personal wireless service facility:

i. The new structure cannot exceed 500 square feet in footprint area;

ii. The new structure is necessary to the operation or functioning of the personal wireless service facility;

iii. The area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space; and

iv. There are no existing structures on the land, which could be utilized or occupied to adequately support the personal wireless service facility and the relevant deficiencies associated with each existing structure, as provided by the applicant pursuant to N.J.A.C. 2:76-23.5(a)9i, support that conclusion;

8. The personal wireless service facility does not interfere with the use of the land for agricultural purposes;

9. The personal wireless service facility uses the land in its existing condition, except as otherwise allowed pursuant to (a)7 above;

10. The personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area and does not require the creation of additional parking spaces, paved or unpaved and is consistent with the deed of easement and land use approvals and any other applicable approvals that may be required by Federal, State, or local laws, rules, regulations, or ordinances, provided that if such approvals contain any requirements for implementation of the personal wireless service facility that are inconsistent with N.J.S.A. 4:1C-32.2, this subchapter or the special permit itself, the special permit will be denied.

i. To the maximum extent possible, the facility shall avoid being placed on soils classified as prime farmland and Statewide importance;

11. The location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

12. All necessary local zoning and land use approvals, and any other approvals required by Federal, State, or local law, rule, regulation or ordinance have been obtained, and such approvals do not contain any requirements for implementation of the personal wireless service facility that are inconsistent with N.J.S.A. 4:1C-32.2, this subchapter or the special permit itself;

13. Additional factors, such as traffic generated and the number of employees are limited to the maximum extent possible to limit the intensity of the activity and its impact on the land and surrounding area;

14. The personal wireless service facility provider has agreed in writing to allow, at no charge to the requesting State or local governmental entity, the sharing of the facility or any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, as permitted by the Committee;

15. The personal wireless service company is not requiring conveyance of an easement or another interest in the premises to construct or access the personal wireless service facility;

16. The owner of the premises is not in violation of any provision of the deed of easement; and

17. The personal wireless service facility otherwise complies with N.J.S.A. 4:1C-32.2.

New Rule, R.2008 d.137, effective June 2, 2008 (N.J.A.C. 2:76-23.6(a)10 operative December 2, 2008).
See: 39 N.J.R. 2568(a), 40 N.J.R. 2663(b).
Notice of Extension of Delayed Operative Date of N.J.A.C. 2:76-23.6(a)10.
See: 40 N.J.R. 6539(a).
Amended by R.2009 d.44, effective January 20, 2009.
See: 40 N.J.R. 4855(a), 41 N.J.R. 399(a).
Deleted former (a)10; and recodified former (a)11 through (a)18 as (a)10 through (a)17.

2:76-23.7 Review by board or nonprofit easement owner

(a) A board or a qualifying tax exempt nonprofit organization as the owner of a development easement shall review an application for a special permit pursuant to N.J.A.C. 2:76-23.6 and N.J.S.A. 4:1C-32.2.

(b) The board or qualifying tax exempt nonprofit organization shall confirm that it is in possession of the following documents related to the purchase of development easement on the subject premises:

1. A copy of the recorded deed of easement;

2. A copy of the title policy issued at the time the deed of easement was recorded; and

3. A copy of the original survey of the premises.

(c) The board or qualifying tax exempt nonprofit organization shall inform the Committee of its determination to approve or deny the issuance of the special permit, state the reasons for its decision, and submit the following to the Committee for its review:

1. Notification of any commercial nonagricultural activities already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement;

2. The recommended time period for which the special permit shall be effective, and any appropriate conditions of approval;

3. A resolution of the board or qualifying tax exempt nonprofit organization setting forth the approval, or disapproval, of the application and the reasons therefore;

4. A determination as to whether the applicant is in violation of any provision of the deed of easement; and

5. A checklist of documents provided by the applicant to the board/qualifying tax exempt nonprofit organization.

2:76-23.8 Committee review and issuance of permit

(a) The Committee, as the owner of a development easement, shall review an application and in its sole discretion may issue a special permit pursuant to N.J.S.A. 4:1C-32.2 and this subchapter.

(b) If a development easement is owned by a board or qualifying tax exempt nonprofit organization, the Committee, upon receipt of a complete application and notice of approval by the board or qualifying tax exempt nonprofit organization, shall review the application using the criteria set forth in this subchapter.

1. Approval of an application by a board or qualifying tax exempt nonprofit organization shall not be binding on the Committee if the Committee makes an independent determination that the application does not meet the criteria set forth in this subchapter.

2. If an application has been denied by a board or qualifying tax exempt nonprofit organization, no further action by the Committee is required.

3. If the Committee is missing any of the following documents related to the preservation of the premises, the board or qualifying tax exempt nonprofit organization shall provide the Committee with the documents upon request:

i. A copy of the recorded deed of easement;

ii. A copy of the title policy;

iii. A copy of the original survey of the premises; and

iv. The special permit application.

(c) The Committee shall inform the applicant of its decision to approve or deny the application and shall inform the board or qualifying tax exempt nonprofit organization that owns the development easement.

(d) Approval of any special permit shall be subject to the applicant providing evidence that he or she has obtained all necessary local, State and Federal approvals, provided that if such approvals contain any requirements for implementation of the personal wireless service facility that are inconsistent with N.J.S.A. 4:1C-32.2, this subchapter, or the special permit itself, the special permit will be deemed denied.

(e) The Committee may include other reasonable requirements to limit, to the maximum extent possible, the intensity of the permitted activity and its impact on the land and surrounding area.

(f) When issuing a special permit, the Committee shall:

1. Identify the time period for which the special permit shall be effective; and

2. Stipulate a time period during which the landowner must exercise the special permit and initiate the erection of the personal wireless service facility.

i. The Committee may provide for an extension up to six months upon a showing of special circumstances or need presented by the applicant.

ii. If the owner fails to exercise the special permit and initiate the erection of the personal wireless service facility within the period designated by the Committee, the special permit shall automatically expire, unless an extension is approved by the Committee pursuant to (f)2i above.

(g) In the event that the record owner obtains a special permit from the Committee, and subsequently contracts for the sale of the premises, the contract-purchaser of the premises may seek approval to continue the personal wireless service facility special permit after conveyance of the property by applying for a new special permit pursuant to N.J.A.C. 2:76-23.5, prior to the actual sale to avoid termination of the special permit.

1. The contract-purchaser shall provide a copy of the executed contract for the purchase of the premises as part of his or her application.

2. The contract-purchaser must obtain a special permit issued by the Committee pursuant to N.J.A.C. 2:76-23.8 prior to the conveyance of the premises.

(h) Upon the death of the record-owner of the premises, the heir(s) or estate representative may apply for a special permit pursuant to N.J.A.C. 2:76-23.5.

1. The heir(s) or estate representative may apply for and obtain Committee approval for a special permit within six months of the record-owner's death.

2. The special permit shall automatically expire six months from the date of death of the record-owner of the property holding that permit unless the heir(s) or estate representative applies for and obtains a special permit, or applies for and obtains an extension of the six-month period, within that time.

3. Upon request by the estate representative or heir(s), the Committee may extend the period to apply for and obtain approval of the special permit for up to one year where required for settlement of estate issues provided that the period of any such extension shall not exceed the period of the initial special permit.

(i) All application fees submitted to the Committee pursuant to this subchapter are nonrefundable, regardless of whether a special permit is issued, and shall be used for farmland preservation purposes.

2:76-23.9 Special permit

(a) No more than one special permit for a personal wireless service facility shall be valid at any one time for use on the premises.

(b) The standard duration of a special permit approved by the Committee shall not exceed five years.

1. A special permit may be approved for a duration greater than five years, but not more than 20 years, if the applicant provides sufficient justification pursuant to N.J.A.C. 2:76-23.5(a)18.

(c) No special permit shall be valid for more than 20 years, unless renewed by the Committee.

1. Renewal of a special permit may be sought within two years of the date of scheduled permit expiration.

2. There shall be no fee for permit renewal.

(d) The special permit shall not run with the land, and each special permit shall explicitly state this, in addition to the following:

1. The permit shall automatically terminate if there is a change in the record ownership of the premises subject to the following:

i. A contract-purchaser of the premises obtains approval for a special permit prior to the conveyance of the premises pursuant to N.J.A.C. 2:76-23.8(g); or

ii. Upon death of the record owner of the premise, the heir(s) obtains approval for a special permit pursuant to N.J.A.C. 2:76-23.8(h);

2. The owner/seller of the restricted premises and the purchaser of the restricted premises shall notify the Committee, the owner of the development easement, and the municipality in the event there is a change in record ownership of the premises after a special permit has been issued; and

3. The personal service wireless facility shall cease operation immediately upon a change in record ownership of the premises except as provided for in (d)1 above.

i. An application may be submitted pursuant to N.J.A.C. 2:76-23.5 if the new owner of the premises wishes to continue the personal wireless service facility. The application shall be treated as a new application, and the new owner shall be required to comply with all procedures set forth in N.J.A.C. 2:76-23.5, including payment of an application fee.

(e) The special permit shall not be assigned or conveyed in any manner.

(f) The special permit shall be recorded by the owner of the premises with the County Clerk's Office in the same manner as a deed;

1. A copy of the recorded special permit shall be provided to the Committee, the municipality, the owner of the development easement and to any owner of land that was subdivided from the initial preserved farm, if applicable.

(g) The special permit shall be displayed in clear view on the structure(s) for which it was issued.

(h) Upon the expiration or termination of a special permit, the personal wireless facility, including any new structures built to accommodate the facility, and any associated footings, shall be removed and the underlying land shall be restored to its preexisting condition.

2:76-23.10 Monitoring

(a) The owner of the development easement on the premises on which a special permit was issued by the Committee shall monitor the personal wireless facility annually to ensure compliance with the special permit.

1. A written report with photographs confirming the onsite inspection and determination of compliance or violation shall be provided to the Committee.

(b) The owner of the development easement shall be permitted access to, and to enter upon, the premises at all reasonable times for the purpose of inspection to enforce and assure compliance with the special permit. The owner of the development easement agrees to give the landowner at least 24 hours advance notice of its intention to enter the Premises.

2:76-23.11 Suspension or revocation of a special permit

(a) The Committee may suspend or revoke the special permit for a violation of N.J.S.A. 4:1C-32.2, this subchapter, or any term or condition of the special permit, if it owns the development easement on the farm.

(b) The Committee may suspend or revoke the special permit on a farm in which the development easement is owned by a board or qualifying tax exempt nonprofit organization, if the Committee and board/nonprofit organization jointly determine that the applicant is in violation of any term or condition of the special permit, N.J.S.A. 4:1C-32.2 or this subchapter.

2:76-23.12 Request for hearing

(a) Any applicant or permit holder who is aggrieved by an action of the Committee regarding a permit or renewal application or the suspension or revocation of a permit may submit a written request to the Committee for a hearing.

1. A request for a hearing shall be sent to the Committee within 20 days of receipt of notice of the Committee's action.

2. Requests shall be sent to the Executive Director, State Agriculture Development Committee, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.

3. Applicants or permit holders shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

4. The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.

2:76-23.13 Report of activities

(a) The Committee shall submit a report every two years to the Governor, President of the Senate, the Speaker of the General Assembly, the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee or their designated successors, in accordance with N.J.S.A. 4:1C-32.3.

(b) Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted on the website of the Committee.

SUBCHAPTER 24. SOLAR ENERGY GENERATION ON PRESERVED FARMS

2:76-24.1 Applicability

This subchapter applies to the construction, installation, operation, and maintenance of solar energy facilities on a preserved farm for purposes of generating solar energy to provide power or heat to the farm, reduce the farm's energy costs, or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm as authorized pursuant to N.J.S.A. 4:1C-32.4.

2:76-24.2 Purpose

The purpose of this subchapter is to establish the process for the Committee to review an application submitted by any person intending to construct, install, and operate solar energy facilities on a preserved farm for the purpose of generating solar energy to provide power or heat to the farm, reduce the farm's energy costs, or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm, as well as to make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose, provided that the solar energy facilities satisfy the provisions of N.J.S.A. 4:1C-32.4 and this subchapter.

2:76-24.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement" means a legally binding written document between the landowner(s) and the board in the case of a farmland preservation program or between the landowner(s), the board, and the municipal governing body, in the case of a municipally approved farmland preservation program, which must be signed by all parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation program or municipally approved farmland preservation program and recorded with the county clerk's office.

"Application" means a request to construct solar energy facilities, structures, and equipment on a preserved farm as detailed in a standard form adopted by the Committee.

"Biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm and which can be used to generate energy in a sustainable manner.

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

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

"Conservation plan" means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical, and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

"Deed of easement" means the instrument restricting the premises for agricultural purposes that is recorded with the county clerk's office pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31); section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1); section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38); section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1); or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40). For land acquired in fee simple title for farmland preservation purposes, the deed transferring the restricted fee ownership of the land by the Committee or other entity is considered the deed of easement.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11.1 et seq. or 13:8C-1 et seq. and any relevant rules promulgated pursuant thereto.

"Electric distribution company" or "EDC" means an electric public utility, as the term is defined in N.J.S.A. 48:2-13, that transmits or distributes electricity to end users within New Jersey. An EDC cannot be an electric power supplier, but may provide basic generation service.

"Electric distribution system" means that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer's property.

"Energy costs" means the farm's expenses to provide power or heat to fixed structures on the farm during the previous calendar year. Fixed structures include buildings and permanent equipment but shall not include vehicles or vehicular equipment.

"Energy demand" means the total amount of power or heat consumed by fixed structures on the farm, expressed in kilowatt hours or kilowatt-hour equivalent, in a given period of time.

"Exception" means a portion of the applicant's landholdings that is excluded from the premises and, although identified in the deed of easement, is unencumbered by the farmland preservation restrictions mandated by N.J.A.C. 2:76-6.15(a) and set forth in the deed of easement.

"Farm" means lands from which a development easement was acquired and a deed of easement recorded with the county clerk's office or lands that are enrolled in an eight-year farmland preservation program or municipally approved farmland preservation program pursuant to N.J.S.A. 4:1C-11 et seq. and an agreement is recorded with the county clerk's office. Also included is any portion of the farm excluded from the premises that cannot be severed, known as a nonseverable exception, or any portion of the farm excluded from the premises that can be severed but has not been subdivided from the farm, known as a severable exception.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c. 276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land.

"Geotextile fabrics" means permeable, woven and non-woven fabrics that allow for water infiltration into the underlying soil.

"Impervious cover" means any structure or surface that prevents the infiltration of precipitation into the land. This includes, but is not limited to, the inverter, pilings, poles, concrete, asphalt, machine-compacted soil, compacted stone areas, plastic or other impermeable ground cover, and foundations. Impervious cover shall not include the area of the solar panels or conservation practices listed in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, and prescribes practices and standards for the conservation and management of soil, water, and related natural resources, which is available at http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg, when implemented according to the practice standard.

"Municipally approved farmland preservation program" or "municipally approved program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c. 276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C-21.

"Net metering" means a system of metering electricity in which the electric power supplier/provider and/or the EDC:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period; and

2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

"Occupied area" means the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure. The total area calculation shall include all areas of land that are devoted to or support the solar energy facilities; any areas of land no longer available for agricultural or horticultural production due to the presence of the solar energy facilities; nonfarm roadways including access roads; any areas of the farm used for underground piping or wiring to transmit solar energy or heat where the piping or wiring is less than three feet from the surface; the square footage of solar energy facilities mounted on buildings; and

areas consisting of other related facilities, structures, and equipment, including any other buildings or site amenities, deemed necessary for the production of solar energy on the farm. It shall also include the total contiguous or noncontiguous area(s) supporting any wind or biomass energy generation facilities and related infrastructure on the farm.

"Operator" means the person or entity that installs, owns, or controls the solar energy facilities, structures and equipment.

"Owner" means the owner of record of the farm.

"Person" means natural persons, public or private corporations, companies, associations, societies, firms, partnerships, and joint stock companies.

"Premises" means the property subject to the deed of easement, as defined by the legal metes and bounds description contained in the deed of easement.

"Prime farmlands" means lands so defined by the USDA Natural Resources Conservation Service, as found in the National Soil Survey Handbook at NSSH Part 622.04, which is incorporated herein by reference, as amended and supplemented and is available at http://soils.usda.gov/technical/handbook/contents/part622.html.

"Qualifying tax-exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

"Site plan" means a plot plan that includes the following:

1. Property lines and physical dimensions of the farm, including block(s) and lot(s) designations as set forth in the property survey created at the time of preservation of the farm or an updated version thereof;

2. Location, configuration, and size of the occupied area measured in square feet and acres;

3. Facility specifications, including manufacturer and model; industry technical bulletin describing the solar energy equipment; method of mounting; system height; rated capacity and expected annual generation/production in alternating current in kilowatt hours, if power will be generated, or BTUs and kilowatt-hour equivalent, if heat will be produced;

4. Location of above- and below-ground pipes, wires, and any other improvements or infrastructure to accommodate the solar energy facilities, with depths indicated for below-ground improvements and infrastructure;

5. For facilities that will be net metered, the location of electric meters and sources of energy demand that will be serviced by the facilities;

6. Proposed new roadways and existing roadways used to install, maintain, or otherwise access the solar energy facilities;

7. Computed distances for setbacks from property lines and roads;

8. Location and computed areas where concrete, asphalt, gravel, geotextile fabrics, or other such land treatments are proposed and the nature and extent of any site disturbances within the occupied area;

9. Location, rated capacity, installation date, and annual generation/production of any existing solar, wind, or biomass energy equipment or structures on the farm in alternating current kilowatt hours, if power is generated, or kilowatt-hour equivalent, if heat is produced;

10. Location of all existing structures and improvements on the farm;

11. For a farm with an occupied area of greater than one acre on the premises, a copy of the conservation plan that was approved by the soil conservation district, which is set forth at N.J.A.C. 2:76-24.6(a)1i(4); and

12. A copy of the farmland assessment form for the most recent tax year approved by the local tax assessor for the farm.

"Solar energy" means electricity or heat that is generated through a system that employs solar radiation.

"Solar energy facilities" means distinct solar energy systems that require their own dedicated inverter, electrical distribution, and transmission wiring system, and all other associated components, including, but not limited to, solar panels and films, arrays, collectors, piping, footings, supports, mounting and stabilization devices, pumps, transformers, utility poles, and other on-farm equipment, structures, and infrastructure necessary to operate and maintain the system for the generation of power or heat.

"Topsoil" means the upper part of the soil, generally the plow layer within the "A" horizon(s), ordinarily rich in organic matter, which is the most favorable material for plant growth.

"Wind energy" means electrical or mechanical power that is generated through a system that employs the kinetic energy in the wind.

2:76-24.4 Eligibility to install, operate, and maintain solar energy facilities on a farm

(a) Any person who owns a farm may submit an application to the Committee for the construction, installation, operation, and maintenance of solar energy facilities (facilities) on the farm provided that:

1. The facilities will not interfere significantly, as set forth in N.J.A.C. 2:76-24.6, with the use of the land for agricultural or horticultural production;

2. The facilities are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of

an agreement with the installer or operator of the solar energy generation facilities, structures, or equipment by which the landowner uses the income or credits realized from the solar energy generation to purchase the facilities, structures, or equipment;

3. The facilities will be used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm;

4. Solar energy facilities on the farm are limited in total annual energy generation to:

i. The farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated from facilities, structures, or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010; or

ii. Alternatively at the option of the landowner, to an occupied area consisting of no more than one percent of the area of the farm;

5. If wind or biomass energy generation systems are located on the farm, the limits in (a)4i and ii above shall apply to the cumulative total energy generated or area occupied by all the solar, wind, and biomass energy facilities;

6. The owner(s) of the farm and the solar energy facilities will sell energy only through net metering, or as otherwise permitted under an agreement pursuant to (a)2 above, and/or directly to the electric distribution system provided that the solar energy facilities occupy no greater than one percent of the farm;

7. The land occupied by the solar energy facilities is eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and will continue to be eligible for such valuation after construction of the solar energy facilities;

8. The solar energy facilities do not exceed the one acre of impervious cover on the premises; and

9. A solar energy facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

2:76-24.5 Application for the construction, installation, operation, and maintenance of a solar energy facility

(a) Any person who owns a farm may apply for approval to construct, install, operate, and maintain a solar energy facility by submitting an application to the Committee. The application shall include the following information and documents:

1. A copy of the recorded deed showing the current owner of record of the restricted premises;

2. A site plan;

3. Digital photographs showing the proposed installation site taken from various angles and distances to show the installation site and immediate surroundings;

4. A proposed or fully executed purchase or lease agreement for the solar energy facilities, structures, and equipment that clearly identifies that the owner of the qualified farm owns or will own the facilities, structures, and equipment by the end of the term of a lease agreement and the end date for that agreement;

5. For solar energy facilities that will provide power, documentation from the electric distribution company that the solar energy facilities are designed in accordance with net metering requirements pursuant to N.J.A.C. 14:8-4; documentation showing that the solar energy facilities will provide power directly to the farm outside of a meter; or documentation from PJM Interconnection, LLC or the EDC showing that the solar energy facilities will provide power directly to the electric distribution system;

6. A copy of the farm's electric utility bills, and/or copies of other bills, receipts, or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand for the previous calendar year; and

7. If the farm is located in the Pinelands Area, evidence that written confirmation has been requested from the Pinelands Commission that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

(b) Any person who owns a farm and intends to expand a previously installed solar energy facility shall submit a new application to the SADC.

2:76-24.6 Evaluation criteria

(a) When reviewing an application, the Committee shall determine whether the application meets the following criteria:

1. Factors for determining if the solar energy facilities, structures, and equipment interfere significantly with the use of the land for agricultural or horticultural production are as follows:

i. The facilities do not conflict with the deed of easement, including, but not limited to, the following:

(1) There is no detrimental impact to drainage, flood control, water conservation, erosion control, or soil conservation on the premises;

(2) During construction and installation of the solar energy facilities, appropriate measures are taken

to control soil erosion from wind and water on the premises, including, but not limited to, the following:

(A) The temporary stabilization of exposed areas using vegetative cover or mulch; and

(B) The application of nonpotable water to exposed areas and the utilization of barriers to control air current and minimize soil blowing;

(3) During operation and maintenance of solar energy facilities, appropriate measures are taken to address soil and water conservation resource concerns on the premises;

(4) Solar energy facilities with an occupied area of more than one acre on the premises shall be constructed, installed, operated, and maintained in accordance with a farm conservation plan that addresses soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water, and related natural resources, which is available at http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg. The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet;

(5) The types of agricultural use or production that can occur on the premises shall not be restricted.

(A) The presence of the solar energy facilities shall not negatively impact the ability to utilize any portion of the premises outside the occupied area for a variety of agricultural or horticultural purposes;

(6) The solar energy facilities shall not interfere with the ability to access the premises for agricultural or horticultural purposes or uses, and to ensure compliance with the deed of easement and the provisions of this subchapter;

(7) Solar energy facilities shall not supply power or heat to an off-farm source of energy demand.

(A) Solar energy facilities shall not be interconnected to any off-farm energy consumer or off-farm source of energy demand.

(B) Solar energy facilities shall not be interconnected in a series to other energy generation facilities located off the farm.

(C) Solar energy facilities may be directly connected to the electric distribution system for the primary purpose of producing wholesale power, provided the facilities do not occupy more than one percent of the farm and are otherwise consistent with N.J.S.A. 4:1C-32.4 and the provisions of this subchapter;

(8) Easements shall not be provided through the farm for the purpose of transmitting power generated by an off-farm source, or to provide for roadways to service solar energy facilities not located on the farm.

(A) The prohibition on easements through the farm in this sub-subparagraph shall not apply to severable exception areas;

(9) Facilities servicing a use in a severable exception area shall be located entirely within the severable exception area;

(10) Facilities primarily servicing nonagricultural and/or nonresidential uses in a nonseverable exception area shall be located entirely in the nonseverable exception area to the maximum extent practicable or financially feasible.

(A) Where it is not possible to locate such facilities entirely in the nonseverable exception area, priority shall be given to mounting facilities on existing buildings and structures, and the portion of the occupied area outside the nonseverable exception area shall not exceed one acre or one percent of the farm, whichever is less, and the SADC may require from the facilities installer an itemization of all energy consuming devices connected to the electric revenue meter(s) to be serviced by the facilities, by energy demand and type of use, to determine whether the facilities will primarily service nonagricultural and/or nonresidential uses in the nonseverable exception area.

(B) Facilities located outside nonseverable exception areas to service energy demand within the nonseverable exception areas, may not be permitted or may be subject to more stringent Federal limitations than described in this sub-subparagraph, if the farm was preserved with funding from the U.S. Department of Agriculture Natural Resources Conservation Service's Farm and Ranch Lands Protection Program; and

(11) The facilities shall be located and configured in a manner that maximizes the use of the premises for agricultural or horticultural purposes.

(A) Facilities shall not be constructed or installed on prime farmland to the maximum extent practicable and financially feasible.

(B) Facilities shall be located along field edges and in nonproduction areas to the maximum extent practicable and financially feasible.

(C) Facilities shall be sited and configured to avoid dividing larger fields into smaller fields and isolating areas of the farm such that they are no longer viable or efficient for agricultural production, including, but not limited to, restricting the movement of agricultural vehicles/equipment for planting, cultivation, and harvesting of crops, and creating negative impacts on support infrastructure such as irrigation systems;

ii. The mounting of solar panels, collectors, or films constructed, installed, and operated on the premises shall be done in the following manner:

(1) The preferred installation shall be on buildings or facilities to minimize adverse impacts on the productivity of the soil.

(2) In the event that the method in paragraph (a)1ii(1) above is not practicable or financially feasible, the method of installation shall be as follows:

(A) On the ground by a screw, piling, or similar system that does not require a footing, concrete, or other permanent mounting; or

(B) Where the occupied area does not exceed one acre, using gravel within contained structures, concrete block, or similar materials for the purpose of providing ballast for mounting the solar energy facilities.

(3) In the event that the methods in (a)1ii(2) above, for mounting the solar panels, collectors, or films, are not practicable or financially feasible, then written justification shall be provided by a licensed professional engineer responsible for designing the installation of the solar panels, collectors, or films that a permanent ground mounting is necessary to conform with Federal or State laws, rules, or regulations, and that the permanent mounting requires footings, concrete, or other permanent methods;

iii. The treatment of the premises for purposes of constructing, installing, operating, or maintaining the solar energy facilities within the occupied area shall be in accordance with the following standards to ensure the land can readily be returned to active agricultural or horticultural production after the removal of the solar energy facilities.

(1) Site disturbance associated with the solar energy facilities, including, but not limited to, grading, topsoil, and subsoil removal, excavation and soil compaction, shall not exceed one acre on the premises.

(A) If wind or biomass energy generation facilities are located on the premises, the one-acre limit in (a)1iii(1) above shall apply to the cumulative total site disturbance resulting from all of the solar, wind, or biomass energy systems on the premises.

(B) Land smoothing in accordance with Practice Standards (Code 466) of the Natural Resources Conservation Service New Jersey-Field Office Technical Guide (NRCS NJFOTG) shall not be considered site disturbance.

(2) Excess topsoil shall not be removed from the premises, but shall be distributed or stockpiled elsewhere on the premises.

(A) For farms with an occupied area of more than one acre, topsoil shall be distributed or stockpiled on the premises in accordance with the farm conservation plan.

(3) The use of geotextile fabrics on the premises is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section.

(4) The use of concrete or asphalt on the premises is prohibited within the occupied area, except as follows:

(A) The mounting of inverters, transformers, power conditioning units, control boxes, pumps, and other such system components;

(B) The mounting of solar panels, films, and arrays when used as ballast, as described in (a)1ii(2)(B) above; and

(C) The mounting of the solar panels, films, and arrays, if determined necessary by a licensed professional engineer as described in (a)1ii(3) above.

(5) The placement of gravel or stone on the premises is prohibited for the purpose of preventing vegetative growth unless recommended as part of an approved NRCS soil and water conservation practice.

(6) New roadways within the occupied area shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff, and soil compaction on the premises.

(A) The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary roadways during the construction of the solar energy facilities is permitted provided that the geotextile fabrics and gravel are removed once the solar energy facilities are in operation.

(7) Where it is not practicable to utilize the occupied area on the premises for agricultural or

horticultural production in accordance with N.J.S.A. 54:4-23.1 et seq.:

(A) The occupied area for ground-mounted facilities shall be maintained in vegetative cover to prevent soil erosion, mowed on a regular basis, and managed to prevent weeds or other invasive species from growing or spreading to other areas of the farm; or

(B) The occupied area beneath facilities mounted on buildings or other structures permitted pursuant to the deed of easement, including, but not limited to, carports or equipment shelters, shall be maintained in a manner consistent with the use of the buildings or structures; and

iv. The solar energy facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are no longer being utilized to produce solar energy for a period of 18 consecutive months.

(1) The decommissioning of facilities, structures, and equipment on the premises shall ensure that the agricultural productivity of the soil is restored to the greatest extent practicable, including, but not limited to, the following:

(A) All solar energy facilities shall be removed from the farm and the land shall be restored in order to achieve as much agricultural productivity of the soil as practicable and financially feasible; and

(B) The decommissioning of solar energy facilities with an occupied area of greater than one acre on the premises shall be performed in accordance with a farm conservation plan prepared pursuant to NJ-FOTG that addresses soil and water resource concerns, as set forth at (a)1i(4) above.

2. Factors for determining if the facilities, structures, and equipment are owned by the landowner or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the solar generation facilities, structures, or equipment by which the landowner uses the income or credits realized from the solar energy to purchase the facilities, structures, or equipment are as follows:

i. A copy of a fully executed purchase or lease agreement for the facilities, structures, and equipment shall be provided to the Committee that clearly identifies that the owner(s) of the farm will be the sole owner(s) of the facilities, structures, and equipment on installation, or will be the sole owner(s) by the end of the term of the agreement.

(1) The term of an agreement whereby a farm owner leases the facilities and will purchase them at the end of the agreement shall not exceed 20 years.

(2) The agreement shall include an unconditional assignment to any subsequent owner taking title to the farm prior to the conclusion of an agreement.

ii. No portion of the land on the premises may be leased for the purpose of solar energy generation or production.

(1) Solar energy facilities may be leased only pursuant to an agreement in (a)2i above.

(2) A farm owner shall not lease solar energy facilities to another individual or party.

3. Factors for determining if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm, are as follows:

i. For facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, which is available from the EDC and includes a Part 1 (Terms and Conditions) and Part 2 (Certificate of Completion) shall be provided to the Committee, and the project shall meet the definition of net metering as set forth in this subchapter; or

ii. For facilities that will not be net metered, the landowner shall provide to the Committee:

(1) Documentation that the energy will be used to provide power or heat directly to the farm outside of the meter; or

(2) Where the facilities will provide energy directly to the electric distribution system, copies of electric utility bills and/or other bills, receipts, or documentation demonstrating the cost to provide power or heat to meet the farm's energy demand and a copy of either:

(A) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at http://www.pjm.com/documents/~/media/documents/agreements/tariff.ashx, completed and signed by the EDC; or

(B) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, completed and signed by the EDC.

4. Factors for determining that the annual energy generation of solar energy facilities on the farm is limited to the farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated or collected from facilities, structures, or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010, are as follows:

i. The annual energy generation is based on the monthly sum of the farm's previous calendar year's

energy demand and does not exceed that amount plus 10 percent.

ii. The landowner shall provide copies of the farm's electric utility bills and/or other bills, receipts, or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand.

iii. The farm owner shall provide documentation of installation date(s) for energy generation facilities, structures, or equipment already existing on roofs of buildings or other structures on the farm.

iv. If wind or biomass energy generation facilities are located on the farm, the limit in (a)4i above applies to the cumulative energy generated by solar, wind, and biomass facilities on the farm.

5. Factors for determining that the solar energy facilities on the farm are limited to an occupied area consisting of no more than one percent of the area of the farm are as follows:

i. A copy of the site plan depicting the occupied area shall be provided to the Committee;

ii. Solar energy facilities installed on the farm prior to the enactment of P.L. 2009, c. 213 on January 16, 2010, shall not be considered part of the occupied area in applications for new solar energy facilities unless the applications involve the expansion of pre-existing facilities; and

iii. If wind or biomass energy generation facilities are located on the farm, the limit in this paragraph shall apply to the total cumulative area occupied by all the solar, wind, and biomass energy generation facilities on the farm.

6. Factors for determining that the person who owns the farm and the solar energy facilities may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to (a)2 above, and/or directly to the electric distribution system provided that the occupied area of the solar energy facilities does not exceed one percent of the farm.

i. For facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, which is available from the EDC and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering;

ii. For facilities that will be connected directly to the electric distribution system, the following shall be provided:

(1) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at http://www.pjm.com/documents/~/media/documents/agreements/tariff.ashx, completed and signed by the EDC; or

(2) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, completed and signed by the EDC;

iii. A copy of a fully executed purchase or lease agreement for the solar energy facilities that clearly identifies that the owner of the farm owns or will purchase and own the solar energy facilities, structures, and equipment at the end of the term of the agreement and the end date of the agreement shall be provided to the Committee.

iv. For solar energy facilities that will connect directly to the electric distribution system, the Committee shall determine from a review of the site plan that the occupied area of the proposed facilities does not exceed one percent of the farm.

(1) If wind or biomass energy generation facilities are located on the farm, the limit in this subparagraph shall apply to the total cumulative area occupied by all of the solar, wind and biomass energy facilities on the farm.

7. Factors for determining that the land occupied by the solar energy facilities is eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and continues to be eligible for such valuation pursuant to N.J.S.A. 54:4-23 are as follows:

i. A copy of the farmland assessment form approved by the local tax assessor shall be provided for the most recent tax year.

ii. The SADC shall confirm, in consultation with the New Jersey Department of the Treasury, Division of Taxation, that the solar energy facilities as proposed will not disqualify any portion of the farm from farmland assessment eligibility.

8. The impervious cover associated with the solar energy facilities shall not exceed one acre on the premises.

i. If wind or biomass energy generation facilities are located on the premises, the one-acre limit in (a)8 above shall apply to the cumulative total of impervious cover resulting from all of the solar, wind, and biomass energy facilities on the premises.

9. Factors for determining that a solar energy facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111, are as follows:

i. A copy of written correspondence from the Pinelands Commission shall be provided confirming that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

10. The construction of solar energy facilities on farms preserved with any funding provided by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) through the Farm and Ranch Lands Protection Program (FRPP), or any successor NRCS grant program protecting land for agricultural uses, shall require the advanced, written approval of the NRCS.

11. Compliance with the criteria in this section shall be in addition to any other applicable State or Federal laws or regulations, including, but not limited to:

i. N.J.S.A. 13:19-1 et seq., Coastal Area Facility Review Act;

ii. N.J.A.C. 7:38, Highlands Water Protection and Planning Act Rules; and

iii. N.J.A.C. 7:8, Stormwater Management.

2:76-24.7 Committee review of an application

(a) The Committee shall determine whether an application is complete pursuant to N.J.A.C. 2:76-24.5.

1. Once the Committee determines an application is complete:

i. If the development easement is owned by a board or qualifying tax-exempt nonprofit organization, the Committee shall forward the application to the board or qualifying tax exempt nonprofit organization; or

ii. If the farm was preserved with any USDA-NRCS Farm and Ranch Land Protection Program funding, the Committee shall forward the application to the USDA-NRCS;

2. If the Committee determines the application is incomplete, the Committee shall notify the applicant in writing and identify all information required for completion.

2:76-24.8 Board or nonprofit review of an application

The board or qualifying tax exempt nonprofit organization shall provide any comments on the application to the SADC within 30 days from the date of the Committee's notice.

2:76-24.9 Final Committee review

(a) Within 90 days from determination of a complete application, the SADC shall approve, approve with conditions, or disapprove the application.

1. The Committee's decision shall consider the factors in N.J.A.C. 2:76-24.6 and any substantive, objective issues raised in comments by the board or nonprofit organization that otherwise have not been considered.

2. The Committee's approval or denial of an application is subject to the Governor's review period following submission of the Committee's meeting minutes.

3. For a farm in the Pinelands Area, receipt of written confirmation from the Pinelands Commission that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 shall be required.

(b) The Committee may delegate review and approval authority to the Executive Director pursuant to N.J.S.A. 4:1C-5.e and 5.f for applications for solar energy facilities where the board or nonprofit organization has not submitted comments concerning negative impacts from the application, the solar energy facilities will not result in any new impervious cover, and the application is in conformance with all provisions of N.J.S.A. 4:1C-32.4 and this subchapter. This shall not preclude the Executive Director from bringing any application before the Committee for review and approval, if deemed appropriate. The Committee, at the request of the applicant, shall review an application that has been denied by the Executive Director and approve, approve with conditions, or disapprove the application.

2:76-24.10 Suspension or revocation of an approval

The Committee may suspend or revoke an approval for solar energy facilities for a violation of N.J.S.A. 4:1C-32.4, this subchapter, or any term or condition of the approval.

2:76-24.11 Request for hearing

(a) Any farm owner who is aggrieved by an action of the Committee regarding an application or suspension or revocation of an approval may submit a written request to the Committee for a hearing.

1. A request for a hearing shall be sent to the Committee within 20 days of receipt of notice of the Committee's action.

2. Requests shall be sent to the Executive Director, State Agriculture Development Committee, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.

3. Farm owners shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

4. The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.