

CHAPTER 76

**STATE AGRICULTURE DEVELOPMENT
COMMITTEE**

Authority

N.J.S.A. 4:1C-5f and 4:1C-10.4.

Source and Effective Date

R.1999 d.198, effective May 28, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Executive Order No. 66(1978) Expiration Date

Chapter 76, State Agriculture Development Committee, expires on May 28, 2004.

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 by R.1999, d.198, effective June 21, 1999. See: Source and Effective Date. See, also, section annotations.

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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:

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 from 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 "1999 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 "1999 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 "1999 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. 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.366, effective October 18, 1999.
See: 31 N.J.R. 2021(a), 31 N.J.R. 3081(b).

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 1999" 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 1999" 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).

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”.

“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.

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.

(c) In addition to the criteria and factors in (a) and (b) above, priority consideration shall be given to farms which have experienced crop losses as a result of the drought of 1999 in excess of 50 percent of the average yield of commodities that comprise at least 35 percent of the farm’s total yield based on market value or that comprise at least 35 percent of the acreage devoted to the commodities suffering such crop loss.

(d) The Committee shall grant or deny preliminary approval based upon this subsection.

2:76-11.6 Yield determination and recordkeeping

(a) In determining the average record yield and any crop loss, the landowner shall submit to the Committee, Farm Service Administration Form, FmHA 1945-22, “Certification of Disaster Losses,” which states the physical and production losses suffered as a result of the drought emergency.

(b) The applicant shall report total acres and actual yields for all crops planted and/or grown as a result of the drought, and the number of all animal units and production per animal units being maintained at the time of the drought emergency. The information shall come from the applicant’s own records or from Farm Service Administration records of acres grown and proven actual yields in the year of the drought emergency.

(c) The landowner shall also submit previous five-year production levels.

(d) Landowners are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945-22 can be supported by written records.

(e) When appropriate, the committee shall rely upon the Farm Service Administration’s determination of crop loss.

2:76-11.7 Appraisals

(a) If the Committee grants preliminary approval of the offer to acquire the development easement, it shall select two independent professional appraisers from among members of recognized organizations of real estate appraisers to perform appraisals on the offered development easement farmland.

(b) Appraisals to determine the fair market value 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) and sections 38(e) and 38(g) of the Garden State Preservation Trust Act, P.L. 1999, c.152.

(c) Upon completion of the appraisals, the appraisers shall forward the appraisal reports to the Committee.

(d) The Committee shall appoint a review appraiser to evaluate the two appraisals and establish a recommended fair market value for the development easement.

2:76-11.8 Final Committee action

(a) Upon receipt of the fair market value determination, the Committee shall either:

1. Approve the purchase of the development easement at a maximum purchase price; or
2. Disapprove the application and state the reasons for the denial.

(b) The Committee may authorize staff to negotiate with the landowner for a purchase price less than the appraised fair market value of the development easement.

(c) The Committee may require a local government to contribute to the Committee a portion of the cost of acquiring the development easement.

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":	_____	_____
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ESTIMATE OF DEVELOPMENT EASEMENT VALUE:	_____	_____
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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