

2:76-6.2 Definitions.

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

the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

“Agricultural Development Area”, hereinafter referred to as ADA, means an area identified by a board pursuant to

“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.

“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".

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.

(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.

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).

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 and respective project area 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 October 15, 2001 for requests submitted in 2001 and on or before September 15 for requests submitted after 2001. 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. CADB preliminary ranking with its justification; and
4. Other information relating to the specific application as required by the Committee.

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.

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).

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.