

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.

(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.

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).

**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;