

# CHAPTER 76

## STATE AGRICULTURE DEVELOPMENT COMMITTEE

### Authority

N.J.S.A. 4:1C-5f, 4:1C-10.4 and 13:8C-1 et seq.

### Source and Effective Date

R.2010 d.047, effective January 15, 2010.  
See: 41 N.J.R. 1300(a), 42 N.J.R. 587(a).

### Chapter Expiration Date

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

### 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: Source and Effective Date.

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

## 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

(a) As used in this section, "pick-your-own operation" means a direct marketing alternative wherein retail or wholesale customers are invited onto a commercial farm in order to harvest agricultural, floricultural or horticultural products.

(b) A pick-your-own operation is determined to be a permissible activity entitled to receive the protections and benefits of the Right to Farm Act, provided that the commercial farm operation of which the pick-your-own operation is a component meets the criteria as set forth in N.J.S.A. 4:1C-9.

### 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 topography. 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," "per-

manent 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 constructed, 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](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".