

CHAPTER 76

**STATE AGRICULTURE DEVELOPMENT
COMMITTEE**

Authority

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

Source and Effective Date

R.1994 d.393, effective June 28, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).

Executive Order No. 66(1978) Expiration Date

Chapter 76, State Agriculture Development Committee, expires on June 28, 1999.

Chapter Historical Note

Chapter 76 became effective March 19, 1984 as R.1984 d.58. See: 15 N.J.R. 2086(a), 16 N.J.R. 518(b). Subchapter 2 became effective April 2, 1984 as R.1984 d.84. See: 16 N.J.R. 95(b), 16 N.J.R. 707(c). Subchapters 3 and 4 became effective June 18, 1984 as R.1984 d.229 and d.230. See: 16 N.J.R. 579(a), 16 N.J.R. 582(a); 16 N.J.R. 1471(c), 16 N.J.R. 1475(a). Subchapters 5 and 6 became effective September 17, 1984 as R.1984 d.418 and d.419. See: 16 N.J.R. 1637(a), 16 N.J.R. 2426(a), 16 N.J.R. 2427(a). Subchapter 7 became effective November 16, 1987 as R.1987 d.482. 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 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 was readopted as R.1994 d.393. 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:

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
CN 330
Trenton, New Jersey 08625

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. AGRICULTURAL
MANAGEMENT PRACTICES**

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 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 any place producing agricultural or horticultural products worth \$2,500 or more annually.

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

“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”.

2:76-2.2 Recommendations of 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;
3. County Agriculture Development Boards;

4. The State Soil Conservation Committee; or
5. 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.

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".

2:76-2.3 Utilization of agricultural management practices

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 and Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended.

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".

2:76-2.4 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).

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".

“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 Committee's preliminary approval is not required for seven or fewer applications designated by the board.

(g) The board shall submit a request for a grant for the purchase of a development easement to the Committee within 30 days of the date appraisal work is authorized pursuant to N.J.A.C. 2:76-6.7. 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.

(h) 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 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.

(i) In the event that the board grants preliminary approval to more than seven applications it shall forward to the Committee all such application(s) in excess of seven with its justifications for granting such approvals along with other information required in subsection (g) above.

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).

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.

(b) Except for those applications submitted pursuant to (c) below, for any application which is submitted in excess of seven 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 seven 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).
Repeat 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).

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 appraisers who are designated as state certified general real estate appraisers (SCGREA) pursuant to N.J.A.C. 13:40A-1.2;

i. The Committee may remove appraisers from the adopted list if the appraisals are not conducted in conformance with the appraisal handbook standards pursuant to N.J.A.C. 2:76-10 or generally recognized appraisal practices.

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 in the appraisal handbook.

i. The appraiser shall certify the fair market value of the development easement as of September 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. The board shall forward the completed appraisals to the Committee on or before January 15th following 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).

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 fair 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 fair market value of the development easement.

(c) The Committee's certified fair 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.

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 fair 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.

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:

$$\frac{\text{nonagricultural development value} - \text{agricultural value}}{\text{landowner's asking price} - \text{agricultural value}}$$

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 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:

$$\frac{\text{nonagricultural development value} - \text{agricultural value}}{\text{nonagricultural development value} - \text{agricultural value}} - \frac{\text{landowner's asking price}}{\text{landowner's asking price}} = \text{formula index}$$

(c) The Committee's funding priority shall be given to those applications which have higher numerical values obtained by application of the following formula:

$$(\text{quality score}) + (\text{formula index} \times 200) = \text{final score}$$

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 fair market value of the development easement or the board and/or county's purchase price of the development easement, whichever is lower.

1. The percent Committee cost share shall be based upon the higher cost share percentage determined pursuant to the following two methods:

Discount method:

Landowner's formula index	Percent committee cost share
Less than 0.10	60
0.10 up to less than 0.20	65
0.20 up to less than 0.30	70
0.30 up to less than 0.40	75
0.40 or greater	80

(or)

Sliding scale method:

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 \$10,000 =	\$3,400 + 50% above \$ 5,000
From > \$10,000 to \$15,000 =	\$5,900 + 25% above \$10,000
From > \$15,000 to \$20,000 =	\$7,150 + 10% above \$15,000

Landowner's asking price
From > \$20,000 =

Percent committee cost share
\$7,650

i. If the landowner's asking price is greater than the certified fair market value, the Committee's cost share grant shall be based upon the Committee's certified fair market value.

ii. Notwithstanding (d)1 above, the board may choose, for each application, which of the two methods the Committee shall use to determine the percent cost share.

2. Notwithstanding (d)1 above, the Committee shall provide a grant for the purchase of a development easement purchase on the top ranked application in a county at an 80 percent cost share in those counties which have not received an 80 percent committee cost share for development easement purchase.

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).

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).