

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".

2:76-3.3 Petition

(a) One or more owners of land may voluntarily enter into a farmland preservation program provided the following statutory criteria are satisfied:

1. The land must qualify for farmland assessment in accordance with the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.;
2. Is located within an ADA;
3. Eligibility criteria established by the board;
4. Eligibility criteria established by the committee.

(b) A landowner meeting the statutory provisions contained in (a) above shall submit the following documents to the local board for the creation of a farmland preservation program:

1. A signed petition (petitions may be obtained from the local board upon request.);
2. A tax map and any other documents as designed by the board for identifying the boundaries of the proposed program;
3. A true copy of the deed of the subject lands.

2:76-3.4 Board review

(a) Upon receipt of a petition and required documents, the board shall conduct a review to assure compliance with the provisions contained in N.J.A.C. 2:76-3.3 and approve, conditionally approve or disapprove the petition and so notify the applicant(s).

(b) The board shall conduct an owner of last record search on all lands receiving board approval to verify that the landowner is the true owner of record.

2:76-3.5 Agreement

(a) Approval of the petition by the board and creation of the farmland preservation program shall be signified by an agreement between the board and the landowner to retain the land in agricultural production for a minimum period of eight years.

(b) The agreement shall constitute a restrictive covenant and shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed.

(c) Deed restrictions established by the committee shall be placed on all lands that are to be included in the farmland preservation program. These restrictions shall remain in effect for the length of the agreement unless the land is withdrawn from the program in compliance with provisions contained in N.J.S.A. 4:1C-30 and N.J.A.C. 2:76-3.11. Any landowner intending to subdivide the subject lands shall advise the board prior to initiating such action (see N.J.A.C. 2:76-3.12).

(d) Subject to committee approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(e) Eligibility of benefits follows:

1. The land or owner(s) of the land in a farmland preservation program are eligible for the following:

i. To apply, to the board to sell a development easement on the land subject to the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32;

ii. To apply, or have a farm operator as an agent apply to the local soil conservation district and the board for a grant for a soil and water conservation project as approved by the State Soil Conservation Committee and authorized by the committee;

iii. To use a farm structure design as an acceptable minimum construction standard to build farm structures based on criteria developed by a land grant college or a recognized organization of agricultural engineers and approved by the committee. In addition, the use of the approved design shall exempt the owner or operator from any requirement concerning the seal of approval or fee of an architect or professional engineer;

iv. Additional benefits as determined by the board in accordance with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32;

v. Additional benefits as may be made available from time to time through amendments to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and all other pertinent State, county, and municipal laws, rules, or policies.

(f) The agreement and the creation of a farmland preservation program shall not become effective until such time that it is certified in accordance with N.J.A.C. 2:76-3.7 and recorded with the county clerk in the same manner as a deed.

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. *Dilts v. Franklin Tp. Planning Bd.*, 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76-3.6 Certification request

(a) The board shall submit the following to the committee:

1. A copy of the approved petition;
2. The original copy of the agreement (the board shall retain appropriate copies.);
3. A copy of the tax map and any other documents designated by the board for identifying the boundaries of the proposed program. The board shall certify that the

land(s) are in a certified ADA and all other criteria pursuant to N.J.A.C. 2:76-3.3 have been satisfied;

4. A copy of the owner of last record search;
5. Any other pertinent information or comments from the board.

2:76-3.7 Certification

After review and evaluation of the certification request, the committee shall certify, certify with conditions or deny the approval of the farmland preservation program and present its findings to the Secretary of Agriculture.

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. *Dilts v. Franklin Tp. Planning Bd.*, 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76-3.8 Recording of the farmland preservation program

(a) Upon receipt of certification, the board shall retain a copy of the agreement and within ten working days send a copy to the following:

1. The municipal tax assessor;
2. The county clerk for recording in the same manner as a deed;
3. The municipal governing body;
4. The county governing body;
5. The municipal planning board;
6. The county planning board;
7. The soil conservation district; and
8. The landowner.

2:76-3.9 Renewal, termination, reformation

(a) The farmland preservation program shall remain in effect for a minimum of eight years from the effective date of the creation of a farmland preservation program.

(b) The board shall conduct a review of the practicability and feasibility to continue the program within one year of the effective date of termination. During this period, the board shall, in writing, notify all parties which have entered into an agreement to contact the board if they want to continue the program for another eight years or to terminate the program at the end of the initial eight year period. The landowner's decision shall be documented in the agreement.

(c) If the board does not receive any notice to terminate the farmland preservation program within the one year period, the program shall continue for another eight year period and may continue for succeeding eight year periods provided that no notice of termination is received by the board during subsequent periods of review.

(d) Termination of the farmland preservation program at the end of the eight year period shall occur following the receipt by the board of any notice of termination. The committee, landowner, soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, municipal planning board and county clerk shall be notified that the farmland preservation program was terminated.

(e) Reformation of a farmland preservation program must comply with provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and all rules promulgated by the committee.

2:76-3.10 Inclusion of additional lands

(a) Any landowner not included in the farmland preservation program, as initially created, may within two years following the creation date, request inclusion, and upon review by the board and a finding that this inclusion is warranted, become part of the farmland preservation program provided that the landowner enters into an agreement pursuant to provisions of N.J.A.C. 2:76-3.5 for the remaining duration of the farmland preservation program.

(b) Any landowner not included in farmland preservation program may request inclusion at any time during the review conducted pursuant to N.J.A.C. 2:76-3.9(b). The inclusion shall be approved provided the board finds this inclusion would promote agriculture production.

2:76-3.11 Withdrawal

(a) Under provisions of N.J.S.A. 4:1C-30, withdrawal of land from a farmland preservation program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act", N.J.S.A. 10:4-6 et seq., and approved by the board.

(b) The board shall document this approval by resolution and shall file a copy with the following:

1. Soil conservation district;
2. County clerk;
3. Municipal tax assessor;
4. Landowner;
5. Committee;
6. County planning board;
7. County governing body;

- 8. Municipal governing body;
- 9. Municipal planning board.

2:76-3.12 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board and the landowner(s) when a farmland preservation program is adopted and shall run with the land:

“Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

“1. The Premises shall be retained in agricultural use and production unless the land is withdrawn from the program in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of land for common farmsite activities 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 and water management, and grazing.

“2. Grantor certifies that at the time of petitioning the Grantee to enter into a farmland preservation program the nonagricultural uses indicated on attached Schedule (C) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this agreement.

“3. All nonagricultural uses existing on the Premises at the time of the landowner’s petition to the Grantee as set forth in Section 2 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

- i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;
- ii. No change in the pre-existing nonagricultural use is permitted;
- iii. No expansion of the pre-existing nonagricultural use is permitted; and
- iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

“4. Grantor shall comply with agricultural management practices recommended by the Committee, insofar as those practices are applicable to the land and the type of farming conducted on the Premises.

“5. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1, of this agreement.

“6. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting

only those materials required for the agricultural purpose for which the land is being used. Grantor retains and reserves all oil, gas, and other mineral rights in the land underlying the Premises, provided that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.

“7. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

“8. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the land.

“9. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

“10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this agreement or as otherwise provided by law.

“11. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this agreement.

“12. At the time of this conveyance, Grantor has (—) existing single family residential building(s) on the Premises and (—) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

- i. Improvements to agricultural buildings shall be consistent with agricultural uses;
- ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and
- iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

“13. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which shall serve as a residential use, regardless of its purpose, shall be prohibited except as follows:

- i. To provide structures for housing of agricultural labor employed on the Premises;

ii. To construct one new permanent single family residential unit only if the Premises does not contain at least one permanent residential building; and

iii. To construct a single family residential building anywhere on the Premises in order to replace any existing single family residential unit.

iv. The above exceptions shall not be permitted unless jointly approved in writing by the Grantee and the Committee. Approval for such exceptions shall only be granted upon the determination that the proposed construction would have a positive impact on the continued use of the Premises for agricultural production. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural.

"14. Nothing in this agreement shall be deemed to restrict the right of Grantor, to maintain all roads and trails existing upon the Premises as of the date of this agreement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, buildings, or reservoirs as may be necessary.

"15. In the event of any violation of the terms and conditions of this agreement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require the restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purposes of this agreement by a prior failure to act.

"16. It is understood that this agreement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this agreement.

"17. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns grants the Committee the first right and option to purchase the Premises in fee simple absolute in accordance with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns, agree to give the Committee written notice, by certified mail, that a contract of sale has been executed for the property. The notice shall set forth the terms and conditions of the executed contract of sale and shall have attached a copy of that contract. The notice of executed contract of sale shall also include any other information required by the Committee by regulation. The Committee may exercise its first right and option to purchase the Premises in fee simple absolute by complying with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310.

"18. This agreement shall be binding upon the Grantor and upon the Grantee.

"19. Throughout this agreement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"20. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to his heirs, executors, administrators, personal or legal representatives, successors and assigns.

"21. Wherever in this agreement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrators, personal or legal representatives, successors and assigns' have been inserted after each and every designation."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, as amended by P.L. 1987, c.240, the Open Space Preservation Bond Act of 1989, P.L. 1989, c.183 and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended.

Amended by R.1984 d.596, effective January 7, 1985.

See: 16 N.J.R. 2867(a), 17 N.J.R. 63(a).

Section substantially amended.

Amended by R.1986 d.196, effective June 2, 1986.

See: 18 N.J.R. 508(a), 18 N.J.R. 1193(b).

Substantially amended.

Amended by R.1989 d.451, effective August 21, 1989.

See: 21 N.J.R. 1183(a), 21 N.J.R. 2472(c).

Amendment at new 15. to implement the right of first refusal as authorized by P.L. 1989, c.28.

Amended by R.1992 d.325, effective August 17, 1992.

See: 24 N.J.R. 893(b), 245 N.J.R. 2831(a).

Revised text.

Amended by R.1993 d.181, effective May 3, 1993.

See: 25 N.J.R. 222(a), 25 N.J.R. 1866(a).

Revised (a)13iv.

2:76-3.13 Compliance

(a) All farmland preservation programs shall comply with the provisions of the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and the provisions of this subchapter.

SUBCHAPTER 4. CREATION OF MUNICIPALLY APPROVED FARMLAND PRESERVATION PROGRAMS

2:76-4.1 Applicability

(a) 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 municipally approved farmland preservation program. These rules supplement N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and shall not be construed to be a conclusive set of regulations involving all aspects of the municipally approved farmland preservation program. N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 shall be referenced for clarification of provisions not contained in the rules.

2:76-4.2 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), the board, and the municipal governing body, which must be signed by all parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a municipally approved 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.

“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.

“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.

“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 municipally approved program.

“Premises” means the property under easement which is defined by the legal metes and bounds description contained in the Agreement.

Amended by R.1986 d.197, effective June 2, 1986.
See: 18 N.J.R. 511(a), 18 N.J.R. 1195(a).
Added definition “premises”.

2:76-4.3 Petition

(a) One or more owners of land may voluntarily enter into a municipally approved program provided the following statutory criteria are satisfied:

1. The land must qualify for farmland assessment in accordance with the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.;
2. Is located within an ADA;
3. Eligibility criteria established by the board;
4. Eligibility criteria established by the committee.

(b) A landowner meeting the statutory provisions contained in (a) above shall submit the following documents to the local board for the creation of a municipally approved program:

1. A signed petition (petitions may be obtained from the local board upon request.);
2. A tax map and any other documents as designed by the board for identifying the boundaries of the proposed program;
3. A true copy of the deed of the subject lands.

2:76-4.4 Board review

(a) Upon receipt of a petition and required documents the board shall conduct a review to assure compliance with the provisions contained in N.J.A.C. 2:76-4.3.

(b) The board shall conduct an owner of last record search on all lands that have complied with the provisions of N.J.A.C. 2:76-4.3, to verify that the landowner is the true owner of record.

(c) If all criteria have been satisfied, the board shall immediately forward a copy of the petition to the following:

1. County planning board;
2. Governing body of any municipality wherein the proposed municipally approved program is located;
3. Planning board of each affected municipality.

(d) The board shall, by public notice, advise owners of any land contiguous to the proposed municipally approved program that a petition has been received, solicit opinions concerning inclusion of this land and, if the board deems appropriate, encourage the inclusion of the land in the municipally approved program.

1. Public notice shall comply with provisions of N.J.S.A. 40:55D-12 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

2. These procedures shall only be applicable to landowners contiguous to the proposed municipally approved program.

3. Landowners in an adjoining municipality shall be notified by personal service or certified mail.

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. *Dilts v. Franklin Tp. Planning Bd.*, 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76-4.5 Agreement

(a) Approval of a petition by the municipal governing body and the board and creation of a municipally approved program shall be signified by an agreement between the board, municipal governing body and the landowner to retain the land in agricultural production for a minimum period of eight years.

(b) The agreement shall constitute a restrictive covenant and shall be filed in accordance with N.J.A.C. 2:76-4.8.

(c) Deed restrictions established by the committee shall be placed on all lands that are to be included in the municipally approved program. These restrictions will remain in effect for the length of the agreement unless the land is withdrawn from the program in compliance with the provisions contained in N.J.S.A. 4:1C-30 and N.J.A.C. 2:76-4.10 (see 2:76-4.11).

(d) Subject to committee approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(e) Eligibility of benefits follows:

1. The land or owner of the land in a municipally approved program are eligible for the following:

i. Benefits contained in N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32;

ii. Additional benefits as determined by the board in accordance with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32;

iii. Additional benefits as may be made available from time to time through amendments to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and all other pertinent State, county and municipal laws, rules or policies.

(f) The agreement and the creation of a municipally approved program shall not become effective until such time that it is certified in accordance with N.J.A.C. 2:76-4.7 and recorded with the county clerk in the same manner as a deed.

Case Notes

Township planning board lacked power to deny application for failure to prove agricultural viability, despite instruction of county board that landowners seek subdivision approval from board. *Dilts v. Franklin Tp. Planning Bd.*, 272 N.J.Super. 253, 639 A.2d 752 (L.1993), affirmed 272 N.J.Super. 234, 639 A.2d 743.

2:76-4.6 Certification request

(a) The board shall submit the following to the committee:

1. A copy of the approved petition;

2. A copy of the municipal ordinance approving the municipally approved program;

3. A copy of the county resolution or ordinance of adoption;

4. A copy of the tax map and any other documents designated by the board for identifying the boundaries of the proposed programs. The board shall certify that the land(s) are in a certified ADA and all other criteria pursuant to N.J.A.C. 2:76-4.3 have been satisfied.

5. The original copy of the agreement (the board shall retain appropriate copies);

6. A copy of the owner of last record search;

7. Any other pertinent information or comments from the board.

2:76-4.7 Certification

(a) After review and evaluation of the certification request, the commission shall certify, certify with conditions or deny the approval of the municipally approved program and present its findings to the Secretary of Agriculture.

2:76-4.8 Recording of the municipally approved program

(a) Upon receipt of certification, the board shall retain a copy of the agreement and within ten working days document the recording of the municipally approved program in the following manner:

1. The petition in its final form shall be filed and recorded, in the same manner as a deed, with the county clerk and shall be filed with the municipal clerk;

2. The petition in its final form shall be filed with the municipal tax assessor;

3. The agreement shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed;

4. A copy of the agreement shall be filed with the local soil conservation district, municipal governing body, county governing body, municipal planning board, county planning board and the landowner.

2:76-4.9 Renewal, termination, reformation

(a) The renewal, termination and reformation of a municipality approved program shall comply with N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32. Any action taken by the landowner shall be documented in the agreement.

2:76-4.10 Withdrawal

(a) Under provisions of N.J.S.A. 4:1C-30, withdrawal of land from the municipally approved program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act", N.J.S.A. 10:4-6 et seq., and approved by the board and municipal governing body at a regular or special meeting thereof.

(b) The Board shall document this approval by resolution and the municipal governing body by resolution or ordinance and shall file a copy with the following:

1. Committee;
2. Soil conservation district;
3. Municipal tax assessor;
4. Municipal clerk;
5. County clerk;
6. Municipal governing body;
7. County governing body;
8. Municipal planning board;
9. County planning board;
10. Landowner.

2:76-4.11 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board, the municipal governing body and the landowner(s) when a municipally approved farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

"1. The Premises shall be retained in agricultural use and production unless the land is withdrawn from the program in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State

Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of land for common farmsite activities 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 and water management, and grazing.

"2. Grantor certifies that at the time of petitioning the Grantee to enter into a farmland preservation program the nonagricultural uses indicated on attached Schedule (C) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this agreement.

"3. All nonagricultural uses existing on the Premises at the time of the landowner's petition to the Grantee as set forth in Section 2 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

- i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;
- ii. No change in the pre-existing nonagricultural use is permitted;
- iii. No expansion of the pre-existing nonagricultural use is permitted; and
- iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

"4. Grantor shall comply with agricultural management practices recommended by the Committee, insofar as those practices are applicable to the land and the type of farming conducted on the Premises.

"5. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1, of this agreement.

"6. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used. Grantor retains and reserves all oil, gas, and other mineral rights in the land underlying the Premises, provided that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.

"7. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

"8. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the land.

"9. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

"10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this agreement or as otherwise provided by law.

"11. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this agreement.

"12. At the time of this conveyance, Grantor has (_____) existing single family residential building(s) on the Premises and (_____) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

i. Improvements to agricultural buildings shall be consistent with agricultural uses;

ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and

iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

"13. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which shall serve as a residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises;

ii. To construct one new permanent single family residential unit only if the Premises does not contain at least one permanent residential building; and

iii. To construct a single family residential building anywhere on the Premises in order to replace any existing single family residential unit.

iv. The above exceptions shall not be permitted unless jointly approved in writing by the Grantee and the Committee. Approval for such exceptions shall only be granted upon the determination that the proposed construction would have a positive impact on the continued use of the Premises for agricultural production. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural.

"14. Nothing in this agreement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this agreement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, buildings, or reservoirs as may be necessary.

"15. In the event of any violation of the terms and conditions of this agreement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require the restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purposes of this agreement by a prior failure to act.

"16. It is understood that this agreement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this agreement.

"17. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns grants the Committee the first right and option to purchase the Premises in fee simple absolute in accordance with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns, agree to give the Committee written notice, by certified mail, that a contract of sale has been executed for the property. The notice shall set forth the terms and conditions of the executed contract of sale and shall have attached a copy of that contract. The notice of executed contract of sale shall also include any other information required by the Committee by regulation. The Committee may exercise its first right and option to purchase the Premises in fee simple absolute by complying with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28 and P.L. 1989, c.310.

"18. This agreement shall be binding upon the Grantor and upon the Grantee.

"19. Throughout this agreement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"20. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to his heirs, executors, administrators, personal or legal representatives, successors and assigns.

"21. Wherever in this agreement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrators, personal or legal representatives, successors and assigns' have been inserted after each and every designation."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, as amended by P.L. 1987, c.240, the Open Space Preservation Bond Act of 1989, P.L. 1989, c.183 and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended.

Amended by R.1984 d.597, effective January 7, 1985.
See: 16 N.J.R. 2869(a), 17 N.J.R. 64(a).

Section substantially amended.
Amended by R.1986 d.197, effective June 2, 1986.
See: 18 N.J.R. 511(a), 18 N.J.R. 1195(a).

Substantially amended.
Amended by R.1989 d.452, effective August 21, 1989.
See: 21 N.J.R. 1183(b), 21 N.J.R. 2473(a).

New paragraph 15 added to implement the right of first refusal policy established by P.L. 1989, c.28.

Amended by R.1992 d.325, effective August 17, 1992.
See: 24 N.J.R. 893(b), 24 N.J.R. 2831(a).

Amended by R.1993 d.223, effective May 17, 1993.
See: 25 N.J.R. 740(a), 25 N.J.R. 1963(a).

Revised (a)13iv.

2:76-4.12 Compliance

(a) All municipally approved programs shall comply with the provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and the provisions of this subchapter.

**SUBCHAPTER 5. SOIL AND WATER
CONSERVATION PROJECT COST-SHARING**

2:76-5.1 Applicability

This subchapter identifies State Agriculture Development Committee rules which provide for a landowner, or a farm operator as an agent for the landowner, whose land is within

a municipally approved farmland preservation program or other farmland preservation program, or is subject to a development easement conveyed pursuant to N.J.S.A. 4:1C-24a to apply for and receive grants for soil and water conservation projects. These rules shall be utilized in conjunction with N.J.A.C. 2:90-2 and 2:90-3, promulgated by the State Soil Conservation Committee, which prescribes procedures for development of conservation plans and approval of projects.

Amended by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76-5.2 Definitions

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

"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 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.

"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 the 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.

"Fund" means the "Farmland Preservation Fund" created pursuant to the "Farmland Preservation Bond Act of 1981," P.L. 1981, c.276, and any future funds authorized for the purpose of providing grants to landowners for soil and water conservation projects.

"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.

"Secretary" means the Secretary of Agriculture.

"Soil and water conservation project", hereinafter referred to as 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.

"Soil conservation district" means a governmental subdivision of this State organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

"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.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76-5.3 Approved soil and water conservation projects

The State Soil Conservation Committee, pursuant to procedures established in N.J.A.C. 2:90-2, shall approve projects that are eligible for cost-sharing.

Amended by R.1987 d.90, effective February 2, 1987.
See: 18 N.J.R. 1981(a), 19 N.J.R. 288(a).

Subsection (b) substantially amended.

Amended by R.1987 d.427, effective October 19, 1987.
See: 19 N.J.R. 1123(a), 19 N.J.R. 1892(a).

Money for soil and conservation projects dedicated, raised from \$4.9 million to \$6.0 million.

Amended by R.1989 d.213, effective April 17, 1989.
See: 21 N.J.R. 230(a), 21 N.J.R. 981(a).

(b)1 deleted, recodified 2 and 3 as 1 and 2, decreased \$6 million allocation for soil and water conservation as that amount exceeded demand.

Amended by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76-5.4 Eligibility for State soil and water conservation cost-share funds

(a) Upon certification of a farmland preservation program or a municipally approved program, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= \$400.00/acre
From greater than 50 to 100 acres	= \$20,000 + \$100.00/acre above 50 acres
From greater than 100 to 516.7 acres	= \$25,000 + \$60.00/acre above 100 acres
Greater than 516.7 acres	= \$50,000

1. The total eligible amount of cost-share funds determined shall remain in effect for the duration of the initial farmland preservation program or municipally approved program.

2. Upon renewal of the farmland preservation program or municipally approved program, the eligibility of cost-share funds shall be based upon the formula current at the time of program renewal set forth in this section.

(b) On land that has had a development easement conveyed from it pursuant to N.J.S.A. 4:1C-24a, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= \$400.00/acre
From greater than 50 to 100 acres	= \$20,000 + \$100.00/acre above 50 acres
From greater than 100 to 516.7 acres	= \$25,000 + \$60.00/acre above 100 acres
Greater than 516.7 acres	= \$50,000

1. The total eligible amount of cost-share funds determined shall remain in effect for a period of eight years from the date the development easement was conveyed to the board.

2. At the end of the eight-year period, the eligibility of cost-share funds shall be based upon the formula current at that time and set forth in this section for subsequent eight-year periods.

(c) Notwithstanding (a) and (b) above, if a governmental body or a not-for-profit corporation is the record owner of land enrolled in a farmland preservation program, municipally approved program or is subject to a development easement conveyed pursuant to the provisions of the Agriculture Retention and Development Act, the owner is eligible for State soil and water project cost-share funds on the basis of the acreage contained in each farm in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= \$400.00/acre
From greater than 50 to 100 acres	= \$20,000 + \$100.00/acre above 50 acres
From greater than 100 to 516.7 acres	= \$25,000 + \$60.00/acre above 100 acres
Greater than 516.7 acres	= \$50,000

(d) Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76-5.7 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

1. Approval of funds shall not exceed the amount determined in (a), (b) and (c) above.

2. The term of obligation may be extended due to seasonal constraints or other unavoidable delays only upon the approval of the local soil conservation district, the State Soil Conservation Committee and the State Agriculture Development Committee.

New Rule, R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76-5.5 Eligible applicants

(a) Any landowner or farm operator as an agent for the landowner who is in a farmland preservation program or a municipally approved program shall be eligible to apply for a grant for projects.

(b) The farm operator, as an agent for the landowner, shall be designated in writing by the landowner.

Recodified from 2:76-5.4 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76-5.6 Submission of the application

An applicant shall apply to the soil conservation district and the board for a grant for a project pursuant to N.J.A.C. 2:90-3.

Recodified from 2:76-5.5 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 25 N.J.R. 4899(a).

2:76-5.7 Approval for project funding

(a) For projects where the applicant provides at least 50 percent of the project cost without assistance from the county and upon the soil conservation district's approval in accordance with N.J.A.C. 2:90-3, the following procedures shall apply:

1. The application shall be forwarded to the State Soil Conservation Committee for approval;
2. A copy of the approved application shall be sent to the board for its information.

(b) For projects where the applicant receives financial assistance from county funds for the cost of projects and upon soil conservation district approval in accordance with N.J.A.C. 2:90-3, the following procedures shall apply:

1. The soil conservation district approved application shall be forwarded to the board for concurrence;
2. Following board approval, the application shall be forwarded to the State Soil Conservation Committee for approval.

(c) The State Soil Conservation Committee upon review and verification of conformance with this subchapter, N.J.A.C. 2:90-2 and 2:90-3 shall recommend funding approval by the committee.

(d) The committee shall review and approve, conditionally approve or disapprove applications for project funding and;

1. Certify that the land is part of a municipally approved program or farmland preservation program;
2. Proceed to secure project funding when approval has been granted; and

3. Notify the soil conservation district of committee's action (informational copy sent to the State Soil Conservation Committee and the board).

Recodified from 2:76-5.6 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 24 N.J.R. 4899(a).

2:76-5.8 Payment

(a) Upon project completion, as verified by the soil conservation district the applicant shall request payment pursuant to procedures established by N.J.A.C. 2:90-3.

(b) The committee, following State Soil Conservation Committee verification of compliance with N.J.A.C. 2:90-2 and 2:90-3, shall request the Secretary to direct payment to the applicant. The State Soil Conservation Committee, soil conservation district and board shall be advised to such action.

Recodified from 2:76-5.7 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 24 N.J.R. 4899(a).

2:76-5.9 Allocation of soil and water cost-share eligibility after subdivision

(a) A subdivision for change of ownership of any lands under common deed of ownership shall affect eligibility for soil and water conservation project cost-share grants as follows:

1. Subdivision(s) of the land(s) in a program will not alter the total eligibility for soil and water cost-share funding as determined at program enrollment.
2. That portion of the original eligible amount not already obligated and/or expended for specific projects shall be reallocated pro rata on a per acre basis among the parcels.
3. Funds obligated for specific projects at time of sale or subdivision that lapse under the provisions of N.J.A.C. 2:76-5.3(b)3 shall be reallocated as eligible funds according to (a)2 above.

New Rule, R.1987 d.427, effective October 19, 1987.
See: 19 N.J.R. 1123(a), 19 N.J.R. 1892(a).
Recodified from 2:76-5.8 by R.1993 d.521, effective November 1, 1993.
See: 25 N.J.R. 3279(a), 24 N.J.R. 4899(a).

SUBCHAPTER 6. ACQUISITION OF DEVELOPMENT EASEMENTS

2:76-6.1 Applicability

The principal purpose for acquisition of development easements is for the long term preservation of agricultural lands in order to maintain and enhance the agricultural industry in the State. These lands shall be retained for agricultural production and shall be restricted from any non-agricultural development.

2:76-6.2 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 board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

“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

Under the provision of N.J.A.C. 2:76-6.3, the landowner shall submit a completed application to the board.

Amended by R.1993 d.392, effective August 2, 1993.

See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).

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).

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.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:

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

- 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

Landowner's formula index	Percent committee cost share
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
From > \$20,000 =	\$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 settle-

ment. 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).

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1. Any development of the Premises for nonagricultural purposes is expressly prohibited.

"2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of the premises for common farmsite activities 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 and water management, and grazing.

"3. Grantor certifies that at the time of the application to sell the development easement to the Grantee and at the time of the execution of this Deed of Easement the nonagricultural uses indicated on attached Schedule (B) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Deed of Easement.

"4. All nonagricultural uses, if any, existing on the Premises at the time of the landowner's application to the Grantee as set forth in Section 3 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

- i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;
- ii. No change in the pre-existing nonagricultural use is permitted.

iii. No expansion of the pre-existing nonagricultural use is permitted; and

iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

"5. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used.

"6. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

"7. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

i. Grantor shall obtain within one year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district.

ii. Grantor's long term objectives shall conform with the provisions of the farm conservation plan.

"8. Grantee and Committee and their agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this Deed of Easement. Grantee agrees to give Grantor, at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week.

"9. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

"10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this Deed of Easement or as otherwise provided by law.

"11. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this Deed of Easement.

"12. Nothing in this Deed of Easement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this Deed of Easement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary.

"13. At the time of this conveyance, Grantor has () existing single family residential building(s) on the Premises and () residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

- i. Improvements to agricultural buildings shall be consistent with agricultural uses;
- ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and
- iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

"14. Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

- i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural; and
- ii. To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.
- iii. () 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.

(or)

No residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17. No residential buildings are permitted on the Premises except as provided in this Deed of Easement.

For purposes of this Deed of Easement:

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures as 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.

"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.

"15. The land and its buildings which are affected may be sold collectively or individually for continued agricultural use as defined in Section 2 of this Deed of Easement. However, no division of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. In order for the Grantor to receive approval, the Grantee and Committee must find that the division shall be for an agricultural purpose and result in agriculturally viable parcels. Division means any division of the Premises, for any purpose, subsequent to the effective date of this Deed of Easement.

i. For purposes of this Deed of Easement, "Agriculturally viable parcel" means that each parcel 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.

"16. In the event of any violation of the terms and conditions of this Deed of Easement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purpose of this Deed of Easement by a prior failure to act.

"17. This Deed of Easement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this Deed of Easement.

"18. This Deed of Easement is binding upon the Grantor, the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as a restriction running with the land and shall be binding upon any person to whom title to the Premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.

"19. Throughout this Deed of Easement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"20. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns.

"21. Wherever in this Deed of Easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words, 'heirs, executors, administrators, personal or legal representatives, successors and assigns' have been inserted after each and every designation.

"22. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns further transfers and conveys to Grantee all of the non-agricultural development rights and development credits appurtenant to the lands and Premises described herein. Nothing contained herein shall preclude the conveyance or retention of said rights by the Grantee as may be permitted by the laws of the State of New Jersey in the future. In the event that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee () percent of the value of the development rights as determined at the time of the subsequent conveyance.

"23. That portion of the net proceeds, representing the value of the land only (and not the value of the improvements), of a condemnation award or other disposition of the Premises following termination of this Deed of Easement, as permitted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, shall be distributed among the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Premises on the date of execution of this Deed of Easement. For this purpose, the Grantee's allocable share of the proceeds shall be the net proceeds multiplied by a fraction, the numerator of which is the fair market value of the development easement as certified by the Committee at the time of the initial acquisition and the denominator of which is the full fair market value of the unrestricted Premises as certified by the Committee at the time of the initial acquisition, which is identified as (—/—). Furthermore, the Grantee's proceeds shall be distributed among the Grantee and the Committee in shares in proportion to their respective cost share grants on the date of execution of this Deed of Easement. The Grantee shall use its share of the proceeds in a manner consistent with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

Amended by R.1984 d.595, effective January 7, 1985.
See: 16 N.J.R. 2871(a), 17 N.J.R. 65(a).

Section substantially amended.

Amended by R.1986 d.386, effective September 22, 1986.

See: 18 N.J.R. 1328(a), 18 N.J.R. 1930(a).

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 (d).

Amended by R.1990 d.529, effective November 5, 1990.

See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).

Modified deed restrictions at (a)11, 12, 13, 16 and 20.

Amended by R.1992 d.324, effective August 17, 1992.

See: 24 N.J.R. 896(a), 24 N.J.R. 2833(a).

Revised (a).

Amended by R.1993 d.182, effective May 3, 1993.

See: 25 N.J.R. 223(a), 25 N.J.R. 1867(a).

Revised (a)14i.

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).

Law Review Commentaries

Farmlands—Municipal Land Use. Judith Nallin, 137 N.J.L.J. No. 14, 52 (1994).

Case Notes

Denial for failing to demonstrate agricultural viability of newly created parcel exceeded authority of township planning board. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 234, 639 A.2d 743 (A.D. 1994).

Landowners seeking to divide agricultural land subject to deed restrictions under farmland preservation programs; demonstration to municipal governing body of agricultural viability. Dilts v. Franklin Tp. Planning Bd., 272 N.J.Super. 234, 639 A.2d 743 (A.D.1994).

2:76-6.16 Criteria for evaluating development easement applications

(a) The evaluation shall be based on the merits of the individual application and the application's contribution to its respective project area. The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.

(b) The criteria listed in (c), (d), (e), (f), (g), and (h) below shall be combined to demonstrate the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture.

(c) The soil quality criterion (weight 15) is as follows:

1. Priority will be given to soils which exhibit superior quality, require minimal maintenance and have a greater potential for long term viability for a variety of agricultural purposes.

2. Factors to be considered are as follows:

i. Prime soils identified by the U.S.D.A., Soil Conservation Service;

ii. Soils of Statewide importance as identified by the New Jersey Department of Agriculture, State Soil Conservation Committee; and

iii. Other soils which are specifically suited for the production of specialty crops and are being used or intended to be used for that purpose.

(d) The tillable acres criterion (weight 15) is as follows:

1. Priority will be given to the proportion of the land that is deemed tillable.

2. Factors to be considered and deemed to be tillable will be lands devoted to cropland harvested, cropland pastured and permanent pasture. For purposes of evaluating these factors, the following terms shall have the following meanings:

i. "Cropland harvested" means land from which a crop was harvested in the current year. Cropland harvested shall include the land under structures utilized for agricultural or horticultural production.

ii. "Cropland pastured" means land which can be and often is used to produce crops, but its maximum income may not be realized in a particular year. This includes land that is fallow or in cover crops as part of a rotational program.

iii. "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 the farm operation.

(e) The boundaries and buffers criterion (weight 20) is as follows:

1. Priority will be given to the greatest proportion of boundaries with buffers which help protect the integrity of the individual application and/or project area from conflicting nonagricultural uses.

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

(1) Compatible uses as follows:

(A) Deed restricted farmland (permanent);

(B) Deed restricted wildlife areas;

(C) Eight year programs;

(D) Farmland (unrestricted);

(E) Streams (perennial) and wetlands;

(F) Parks (limited public access);

(G) Parks (high use);

(H) Military installations;

(I) Highways (limited access);

(J) Golf course (public); and

(K) Other compatible buffers.

(2) Conflicting uses as follows:

(A) Residential; and

(B) Other;

(3) Negative consideration:

(A) Exceptions which adversely affect the applicant's agricultural operation (weight 10); and

ii. Percentage of boundaries buffering the individual application.

(f) The local commitment criterion (weight 20) is as follows:

1. Priority will be given where municipal and county land use regulations and policies support the long term viability of the agricultural industry.

2. Factors to be considered are as follows:

i. Zoning ordinances and densities which discourage conflicting nonagricultural development;

ii. Absence of sewer or other growth leading infrastructure;

iii. Consistency with municipal, county, state and regional plans;

iv. Municipal commitment to actively participate in the Agriculture Retention and Development Program;

v. Right to farm and other ordinances supporting agriculture; and

vi. Community financial support for the project area.

(g) The size and density criterion (weight 20) is as follows:

1. Priority will be given to larger masses with higher density of the lands dedicated to farmland preservation.

2. Factors to be considered are as follows:

i. The size of the individual application;

ii. The size of the individual application in relation to the average farm size in the respective county; and

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(a).

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(a).

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 agree-

ment 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;

2. Coordinate the initial onsite investigation of the property identified in Schedule A of the agreement with the SADC staff to establish the necessary baseline information for completing the Deed of Easement and for future inspection and monitoring purposes;

3. Obtain clear, valid record title, marketable, and insurable by a title company authorized to do business in New Jersey pursuant to N.J.A.C. 2:76-6.13(a);

4. Provide a copy of the title commitment to the SADC;

5. Prepare a Deed of Easement in accordance with N.J.A.C. 2:76-6.15 on the Deed of Easement form adopted by the SADC;

6. Identify the county's percent cost share and cost share grant amount for the purchase of the development easement;

7. Identify the municipal percent cost share and cost share grant amount for the purchase of the development easement;

8. Identify if the landowner is providing a donation to the county concerning the sale of the development easement pursuant to N.J.S.A. 4:1C-35;

9. Inform the SADC if the purchase of the development easement will require a lump sum payment (grant) to the County or installments over a period of up to 40 years from the date of settlement pursuant to N.J.S.A. 4:1C-32(c);

10. Subject to outstanding liens, other payments necessary to cover the easement and other special circumstances which may result in escrowing of funds, issue a check to the landowner for the total purchase price of the development easement at the time of closing for the purchase of the development easement, unless the installment purchase option is utilized;

11. Purchase the development easement on all properties set forth in Schedule A of the agreement within 18 months of the SADC's final approval;

i. The county may request the SADC to consider extending the 18 month period for one additional six month period;

12. File and record a notice of settlement prior to the easement purchase closing;

13. Immediately and properly record the fully executed Deed of Easement and all other appropriate settlement documents with the County Clerk's office following the purchase of the development easement;

14. Provide for notification of the development easement purchase pursuant to N.J.A.C. 2:76-6.13(d)2.

15. Provide the SADC with a copy of the recorded Deed of Easement immediately upon the county's receipt of the originally recorded Deed of Easement;

16. Provide the SADC with a copy of the insured title policy immediately upon receipt; and

17. Provide the SADC with an accounting of the County's ancillary costs pursuant to N.J.A.C. 2:76-6.11(d)3.

(c) During the acquisition phase, a county which is the record owner of a development easement acquired pursuant to N.J.S.A. 4:1C-34 and this subchapter and subsequent to the acquisition of the development easement, applies to the SADC for a grant under the Agriculture Retention and Development Act, shall:

1. Provide a copy of the initial survey of the property certified to the SADC, county 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;

2. Coordinate the initial onsite investigation of the property identified in Schedule A of the agreement with the SADC staff to establish the necessary baseline information for completing the Deed of Easement and for future inspection and monitoring purposes;

3. Provide a copy of the title policy for the county's original acquisition of the development easement ensuring clear, valid record title marketable, and insurable by a title company authorized to do business in New Jersey;

4. Provide a copy of the recorded Deed of Easement used to acquire the original development easement which at a minimum contained 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;

5. Identify the county's initial purchase price of the development easement;

6. Identify, if applicable, the municipal percent cost share and cost share grant amount for the purchase of the initial development easement;

7. Identify if the initial landowner provided a donation to the county concerning the sale of the development easement pursuant to N.J.S.A. 4:1C-35;

8. Provide an affidavit from the county that no new encumbrances have been imposed on the Deed of Easement subsequent to the county's acquisition;

9. Provide an affidavit from the current record owner of the premises that no new encumbrances have been imposed on the premises subsequent to the sale of the development easement;

10. In the event an affidavit cannot be provided pursuant to (c)8 and 9 above, the county shall provide a copy of an updated title commitment to the SADC which provides for a clear, valid record title, marketable, and insurable by a title company authorized to do business in New Jersey;

11. Reimburse the SADC for its respective cost share grant in the event any encumbrance(s) was placed on the property subsequent to the date the original development easement was acquired which was not disclosed by the County and/or landowner in the Affidavits provided in (c)8 and 9 above;

12. Prepare a new Deed of Easement which contains the provisions of N.J.A.C. 2:76-6.15 which were in effect at the time the development easement was acquired by the county. The document shall provide for execution by the county and current landowner of the restricted premises if necessary; and

13. Provide the SADC with an accounting of the county's ancillary costs pursuant to N.J.A.C. 2:76-6.11(d)3.

(d) During the monitoring phase the county shall:

1. Conduct an onsite inspection and monitor, at least once a year, all land from which a development easement has been acquired by the county and for which the SADC has provided a cost share grant to the county to ensure compliance with the terms of the Deed of Easement;

i. All inspections and monitoring shall be completed within the period commencing July 1 and ending June 30; and

ii. The county shall provide a written summary to the SADC 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;

2. Inform the SADC if any of the terms and conditions of the Deed of Easement were violated within 30 days of identifying such violation;

3. Take appropriate action within the county's authority to ensure that the terms and conditions of the Deed of Easement are enforced;

4. Maintain a data base of all lands from which a development easement was acquired listing at least the following:

i. Record owner;

ii. Record owner's address;

iii. Phone number;

iv. Tax map block and lots of the premises;

v. Acres;

vi. Title policy;

vii. Final survey;

viii. Inspection dates;

ix. Copy of the recorded Deed of Easement;

x. Subsequent amendments to the Deed of Easement; and

xi. Subsequent issues impacting the premises;

5. Annually inform the SADC of any record ownership changes which occur on lands from which development easements have been acquired; and

6. Inform the SADC of any actions which require the SADC's review and/or approval pursuant to N.J.A.C. 2:76-1, and the Deed of Easement.

New Rule, R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

2:76-6.18B SADC grant agreement with county: SADC responsibility

(a) In furtherance of an agreement for a grant for the purchase of a development easement by a county the SADC shall:

1. Conduct a base line inspection of the properties designated in Schedule A of the agreement in cooperation with the county;

2. Review the title commitment, final survey, and other necessary closing documents deemed to be complete and accurate by the county prior to the formal purchase of a development easement;

3. Attend the formal closing for the purchase of a development easement to ensure that the SADC's interests and obligations are fully protected;

4. Provide a grant to the county for the purchase of a development easement on the properties designated in Schedule A of the agreement subject to available funds, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and N.J.A.C. 2:76-6.11, within 18 months of the SADC's final approval, but not prior to the closing for the purchase of the development easement;

5. Consider a request by the county pursuant to N.J.A.C. 2:76-6.18A(b)11, to extend the 18 month period to provide a grant to the county as follows:

i. The SADC may extend the 18 month period for one additional six month period when it has determined that extenuating circumstances which are beyond the county's or landowner's control have caused the delay;

6. Enforce the provisions of the Deed of Easement pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and N.J.A.C. 2:76; and

7. Review and take appropriate action as required pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., this chapter and the Deed of Easement.

New Rule, R.1995 d.613, effective December 4, 1995.
See: 27 N.J.R. 13(a), 27 N.J.R. 4875(a).

SUBCHAPTER 7. REVIEW OF NON- AGRICULTURAL DEVELOPMENT PROJECTS IN AGRICULTURAL DEVELOPMENT AREAS

2:76-7.1 Applicability

This subchapter applies to any public body or public utility which intends, within an agricultural development area, to exercise the power of eminent domain for the acquisition of land, or advance a grant, loan, interest subsidy or other funds within an agricultural development area for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures.

2:76-7.2 Definitions

"Advance a grant, loan, interest subsidy or other funds" means the provision of funds in the form of a grant, loan or interest subsidy or other financial assistance for the construction of a project as defined in this subchapter.

"Agricultural development area" means the agricultural land area identified by the board and certified by the Committee pursuant to N.J.S.A. 4:1C-18 and N.J.A.C. 2:76-1.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agriculture 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.

"Initiation of an action" means the earliest of the following events: the filing of a complaint by a public body or public utility with the New Jersey Superior Court for permission to exercise the power of eminent domain; the issuance of a draft environmental impact statement or environmental assessment; the approval of a project as a "categorical exclusion" by the Federal Highway Administration; or, in the case of the advancement of funds, the time at which a public utility or public body decides to make a final commitment to advance a grant, loan, interest subsidy or other funds toward a project.

"Notice of intent" means the written notification by a public body or public utility to the Committee and the board and the supporting documents and information pursuant to N.J.A.C. 2:76-7.3(c) and 2:76-7.4(d).

"Project" means the use or purpose for which any public body or public utility intends to acquire land within an agricultural development area through the exercise of the power of eminent domain, or the construction, within an agricultural development area, of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures, for which construction any public body or public utility intends to advance a grant, loan, interest subsidy or other funds.

"Proposed action" means the intention of any public body or public utility to exercise the power of eminent domain for the acquisition of land or advance a grant, loan, interest subsidy or other funds for a project as defined in this subchapter.

"Public body" means any State, regional, county or municipal agency or governing body, including but not limited to special districts and authorities.

"Public utility" means and includes every public utility enumerated in N.J.S.A. 48:2-13, and every natural gas pipeline utility as defined at N.J.S.A. 48:10-2 et seq. vested with the power of eminent domain and subject to regulation under State or Federal law.

"Secretary" means the Secretary of Agriculture.

2:76-7.3 Responsibilities of the public body and/or public utility

(a) A notice of intent shall be filed with the board and the Committee by any public body or public utility which intends, within an agricultural development area, to:

1. Exercise the power of eminent domain for the acquisition of land; or
2. Advance a grant, loan, interest subsidy or other funds for the construction of a project as defined in this subchapter.

(b) The following are exempt from the requirements of (a) above:

1. Extension of roadside public utility electric and gas distribution lines; and
2. Minor improvements and/or repairs to existing transportation and water or sewer infrastructure systems that do not increase existing capacity or extend service into previously unserved areas.

(c) The notice of intent shall include:

1. A statement of the reasons for the proposed action;
2. An evaluation of alternatives which would not include action in the agricultural development area;
3. Information about the project and its impact as outlined in N.J.A.C. 2:76-7.4.

(d) The notice of intent shall be filed with the board and the Committee at least 30 days prior to the initiation of an action described in (a) above. The time at which the action is initiated shall be as defined in N.J.A.C. 2:76-7.2.

2:76-7.4 Information about the project

(a) The information outlined in (d) below regarding the proposed action and project shall be required in the notice of intent submitted to the board and the Committee by the public body or public utility and shall be used, along with other relevant information, by the board and the Committee to evaluate the impact of the project on the agricultural activities in the Agricultural Development Area. If the board determines that further information is required to complete its evaluation, such information shall be submitted by the public body or public utility within 10 working days of the request.

(b) If a draft environmental impact statement has been prepared in connection with the proposed action or project and includes all of the information required in (d) below, then that statement, along with the information required in N.J.A.C. 2:76-7.3(c) and together with a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such

statement is served upon the board and the Committee at least 30 days prior to the initiation of the proposed action.

(c) If a draft environmental impact statement prepared in connection with the proposed action or project does not contain all of the information required in (d) below, including the information required in N.J.A.C. 2:76-7.3(c), then that statement, together with all additional information necessary and a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such statement is served upon the board and the Committee at least 30 days prior to the undertaking of the proposed action.

(d) The following information must be submitted for each project:

1. The name of the public body or public utility involved, its address, telephone number and the name of a contact person.
2. The location and land use of the project as follows:
 - i. The location of the project, including:
 - (1) The municipality(ies), block and lot number(s) to the extent known;
 - (2) A key map adequately locating the site or proposed route of the project;
 - (3) The current use of the site; and
 - (4) The land use of area adjacent to the site, including:
 - (A) Current buffers between the project and farmland; and
 - (B) The proposed use of buffers between the project and farmland.
 - (C) Land use on adjacent lots.
 - ii. A description of the project, including:
 - (1) The type of project (utility, residential, commercial, industrial, etc.);
 - (2) The purpose of the project;
 - (3) The total area of the project;
 - (4) The phases of the project;
 - (5) The infrastructure required, including roads and utilities (water, electric, gas, etc.); and
 - (6) The alternatives considered, if any.
 - (7) The site plan, if available.
3. A discussion of farm activities impacts on the project through consideration of the following issues from the public body or public utility's perspective and identification of feasible solutions to these potential problems:

- i. Potential complaints concerning noise from use of farm machinery, irrigation pumps or other equipment;
 - ii. Potential complaints concerning odors associated with livestock, poultry, crops or manure spreading;
 - iii. Potential complaints concerning use of herbicides, pesticides and fertilizers; and
 - iv. Potential dust problems.
4. A discussion of project impacts on farm activities, including:
- i. Prevention of access to an actively farmed area;
 - ii. Potential increase in vandalism of farm equipment, buildings and/or crops;
 - iii. Potential increase in farm trespass;
 - iv. Potential increase in vehicle traffic;
 - v. Potential increase in litter (glass, plastic and/or paper) that may affect the farm operation; and
 - vi. Potential impact on aesthetics of the area.
5. A discussion of the project's impact on water resources with respect to the agricultural operation, including:
- i. The following aspects of water diversion:
 - (1) Surface runoff affecting water bodies, including irrigation ponds;
 - (2) Groundwater aquifers affected; and
 - (3) Rechanneling of streams or water courses;
 - ii. The potential effect on surface and groundwater quality; and
 - iii. The site's function as a water recharge area.

SUBCHAPTER 8. ACQUISITION OF FARMLAND IN FEE SIMPLE

2:76-8.1 Applicability

This subchapter applies to all transactions in which the State Agriculture Development Committee purchases real property pursuant to P.L.1988, c.4, N.J.S.A. 4:1C-31.1 and N.J.S.A. 4:1C-31.2 and all other relevant provisions of the Agriculture Retention and Development Act.

2:76-8.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Agricultural Development Area(s) (ADA)" means area(s) identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agricultural Development Committee (SADC).

"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. "Agricultural deed restrictions for farmland preservation purposes" means a statement containing the conditions of the conveyances and the terms of the restrictions set forth in P.L. 1983, c.32 and as additionally determined by the committee on the use and development of the land which shall be recorded with the deed in the same manner as originally recorded.

2:76-8.3 Landowner offer

(a) An owner of farmland within an agricultural development area may offer to sell to the Committee the fee simple absolute title to the farmland at a price which, in the opinion of the landowner, represents the fair market value of the property.

(b) The Committee shall forward copies of the offer to the respective board and municipality.

2:76-8.4 Board and municipal comments

The respective board and municipality may submit comments regarding the pending offer to the Committee within 30 days of the date of application.

2:76-8.5 Committee evaluation

(a) In determining the suitability of the purchase of farmland, the committee shall consider the criteria set forth in N.J.S.A. 4:1C-31.1 and any comments of the respective board and municipality.

(b) In addition to the factors set forth in (a) above, the committee shall evaluate the same criteria utilized for the evaluation of applications for development easement purchase set forth in N.J.A.C. 2:76-6.16.

2:76-8.6 Appraisals

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

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

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

2:76-8.7 Final Committee action

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

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

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

SUBCHAPTER 9. EMERGENCY ACQUISITION OF DEVELOPMENT EASEMENTS

2:76-9.1 Scope

This subchapter sets forth the emergency conditions under which the State Agriculture Development Committee (SADC) may provide up to 100 percent funding for the purchase of development easements on farmland pursuant to N.J.S.A. 4:1C-31(c)-(e) as amended.

2:76-9.2 Emergency purchase conditions

(a) If the SADC determines that there is a substantial likelihood that the use of the land will change from productive agriculture to non-agriculture, the SADC may provide up to 100 percent of the cost of development easements on the following:

1. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where the SADC determines that the purchase would be in the interest of the State regardless of whether the respective county agriculture development board (CADB) is willing to provide funds for the purchase.
2. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where both the SADC and the respective CADB determines that the purchase is in their respective interests and no county funding is immediately available.

(b) The SADC may require the county to provide additional cost share funds beyond those currently required for future purchases of development easements in the event of the 100 percent SADC funding pursuant to (a)2 above.

SUBCHAPTER 10. APPRAISAL HANDBOOK STANDARDS

2:76-10.1 Applicability

This subchapter provides the standards contained in the State Agriculture Development Committee's appraisal handbook for independent professional appraisers to follow when conducting appraisals of farmland for the purpose of acquiring a development easement pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended.

2:76-10.2 Definitions

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

"Agricultural value" means the value of the property based solely on its agricultural productivity which does not take into account alternative uses for the property.

"Agricultural market value" means the market value of property with a present and future highest and best use for agricultural production. This includes consideration of exposure on the market and competition for agricultural property among farmers.

"Appraiser handbook" means a document prepared and adopted by the Committee which identifies the standards for conducting appraisals which shall be available to the boards.

"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 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 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.

"Hydrologically limited area" means those areas which are designated as freshwater wetlands, transition zones, 100 year flood hazard areas, hydric soils, State open waters, State-owned riparian lands, or otherwise lack or have limited development potential due to excessive water.

"Market value restricted" means the market value of property subject to the deed restrictions placed on the title of the property as set forth in N.J.A.C. 2:76-6.15.

“Market value unrestricted” means the market value that a property will bring in the open market under all conditions requisite for a fair sale and which value includes all rights of fee simple ownership.

“Subject property” means the property being considered for the purchase of a development easement.

2:76-10.3 Appraisal report format

(a) The appraisal reports prepared by the independent appraiser pursuant to N.J.S.A. 2:76-6.7 shall follow the following format:

1. Summary;
2. General information;
3. Property valuation before development easement acquisition (market value unrestricted);
4. Property valuation after development easement acquisition (market value restricted);
5. Final estimate of development easement value; and
6. Addendum.

(b) The requirements for each section of the appraisal reports are described in N.J.A.C. 2:76-10.4 through 10.9.

2:76-10.4 Summary

(a) The summary section of the appraisal report shall contain the following:

1. A letter of transmittal which shall include the development easement value expressed as a per acre value and a total value;
2. A certification of appraisal which shall include the market value unrestricted, market value restricted, development easement value, date of valuation and the signature of the appraiser responsible for the report;
3. A summary of salient facts and important conclusions which shall include any other information which the appraiser deems relevant. The format shall conform with the sample, Appendix A of this subchapter, incorporated herein by reference; and
4. A table of contents which shall include the topic listings contained in the appraisal report with corresponding page numbers. The format shall conform with the sample, Appendix B of this subchapter, incorporated herein by reference.

2:76-10.5 General information

(a) The general information section of the appraisal report shall contain the following:

1. The purpose of the appraisal which estimates the market value of the development easement on the subject property as restricted pursuant to N.J.A.C. 2:76-6.15;

2. A statement of the rights being valued:

- i. Market value unrestricted;
- ii. Market value restricted; and
- iii. Development easement value;

3. A section defining the legal and technical terms of the report;

4. Any assumptions and limiting conditions;

5. A section identifying the subject property by municipal tax map block and lot or other means. The subject property and its current use shall be briefly described;

6. Zoning and assessment information; and

7. Information detailing community and neighborhood data. This shall include, but not be limited to, the character of the community, land use trends, degree of development pressure in the area and any other information which may impact the market value unrestricted.

2:76-10.6 Property valuation before development easement acquisition (market value unrestricted)

(a) The property valuation before development easement acquisition (market value unrestricted) section of the appraisal report shall contain the following:

1. A description of the subject property including all physical attributes and improvements which shall include, but not be limited to:

i. A discussion of the topography, soil characteristics, hydrologically limited areas, state owned or privately held riparian lands, frontage, configuration, dwellings, outbuildings and other appropriate characteristics;

ii. Any rejected, approved, or pending subdivision plans;

iii. Any residual dwelling site opportunities allocated to the subject property pursuant to N.J.A.C. 2:76-6.17. (The appraiser shall not incorporate the effect of the value of residual dwelling site opportunities into the valuation);

iv. Any exceptions to the subject property. (The appraiser shall incorporate the effect of the value of exceptions into the valuation); and

v. The estimated acreage of hydrologically limited areas.

(b) A detailed discussion of the subject property's highest and best use based upon its characteristics as set forth in this section.

(c) A determination of the subject property's market value unrestricted. The appraiser shall consider the effect of building and improvements when conducting the valuation, but only the market value of the land is required to be identified.

1. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property. At a minimum, the report shall address the following:

- i. Grantor/grantee;
- ii. Deed date/recording date;
- iii. Deed book and page;
- iv. Sale price;
- v. Property size;
- vi. Location, block and lot;
- vii. Soil types/percent tillable soils;
- viii. Frontage/access;
- ix. Conditions of sale;
- x. Color photograph(s);
- xi. Improvements;
- xii. Utilities;
- xiii. Easements;
- xiv. Verification; and
- xv. Legible copy of subject tax map.

2. The appraiser shall adjust the comparable sales to include salient characteristics in the market which may include, but not be limited to the following: soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (state owned or privately held), date of sale and financing.

i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample, Appendix C of this subchapter, incorporated herein by reference.

ii. The final estimate of value shall be expressed as a per acre figure and a total value for the property.

3. In addition, the appraiser may consider the following methods of valuation:

- i. Subdivision method;
- ii. Income capitalization method; and
- iii. Cost method.

4. The appraiser shall provide a value conclusion which identifies the final market value unrestricted for the subject property and discuss how the conclusion was determined.

2:76-10.7 Property valuation after development easement acquisition (market value restricted)

(a) The property valuation after development easement acquisition (market value restricted) section of the appraisal report shall contain the following:

1. A description of the subject property in conformance with N.J.A.C. 2:76-10.6(a)1. In addition, an evaluation of the deed restrictions contained in N.J.A.C. 2:76-6.15 and their effect on the subject property, the subject property's adaptability for agricultural use or other uses which are not in conflict with the deed restrictions, soils and their productivity and other items which are significant to the valuation of the subject property;

2. A detailed description of the subject property's highest and best use as encumbered by the deed restrictions. The highest and best use analysis shall consider the following:

- i. The legality of possible use;
- ii. The physical possibility of use;
- iii. The probability or likelihood of use; and
- iv. The economic feasibility of use.

3. A determination of the subject property's market value restricted. The appraiser shall consider the effect of buildings and improvements when conducting the valuation, but only the market value of the land is required to be identified.

i. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property as encumbered by the deed restrictions. The appraiser shall consider the following types of land sales;

- (1) Deed restricted properties;
- (2) Physically limited properties;
- (3) Flood plain;
- (4) Low development pressure; and
- (5) Development easements.

ii. The appraiser shall adjust the comparable sales to include, but not be limited to, the following: soil characteristics, zoning, hydrologically limited areas, date of sale and financing.

(1) The appraiser shall provide a land sale comparative rating grid in conformance with the sample in Appendix C.

(2) The final estimate of value shall be expressed as a per acre value and a total value for the property.

iii. In addition, the appraiser may consider the following methods of valuation:

- (1) Income capitalization; and
- (2) Cost approach.

PER
ACRE TOTAL

ESTIMATE OF PROPERTY VALUE
"AFTER":

2:76-10.8 Final estimate of development easement value

(a) The final estimate of development easement value section of the appraisal report shall contain the following:

1. The estimated development easement value which is arrived at by the difference between the market value unrestricted and the market value restricted and reported as a per acre value and total value of the property;
2. A discussion of the rights represented by the value conclusion and resultant changes in the highest and best use of the unrestricted versus the restricted property; and
3. A summary of the major points of the report which support the final estimate of value.

ESTIMATE OF DEVELOPMENT
EASEMENT VALUE:

2:76-10.9 Addendum

(a) The addendum section of the appraisal report shall contain the following:

1. A subject property location map;
2. A subject property tax map or survey;
3. Soils/flood/topographic maps;
4. A study of hydrologically limited areas (if appropriate);
5. Subject property photos (color);
6. Reference materials, studies, articles, or other data considered important;
7. Development easement deed restrictions; and
8. The appraiser's qualifications.

APPENDIX B

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APPENDIX A

**SUMMARY OF SALIENT FACTS
AND IMPORTANT CONCLUSIONS**

PROPERTY LOCATION

PROPERTY TYPE

LAND SIZE

ZONING

HIGHEST AND BEST USE

DATE OF VALUATION

ESTIMATE OF PROPERTY VALUE
"BEFORE":

	PER ACRE	TOTAL
	_____	_____

APPENDIX C

LAND SALE COMPARATIVE RATING GRID

Sale No.	1	2	3
Sale Price	\$ _____	\$ _____	\$ _____
Reflects in Units	\$ _____/AC	\$ _____/AC	\$ _____/AC
Date of Sale	_____	_____	_____
Conditions of Sale	_____%	_____%	_____%
Financing	_____%	_____%	_____%
Time Adjustment	_____%	_____%	_____%
Total Adjustment	_____%	_____%	_____%
Adjusted Sales Price	\$ _____	\$ _____	\$ _____
Location	_____%	_____%	_____%
Size	_____	_____	_____

Sale No.	<u>1</u>	<u>2</u>	<u>3</u>
Frontage	_____	_____	_____
Topography	_____	_____	_____
Zoning	_____	_____	_____
Easements	_____	_____	_____
Wetlands	_____	_____	_____
(Hydrologically	_____	_____	_____

Sale No.	<u>1</u>	<u>2</u>	<u>3</u>
limited areas)	_____	_____	_____
Soils	_____	_____	_____
Other	_____	_____	_____
Net Adjustment	_____	_____%	_____%
Value Indicated to	_____	_____	_____
Subject by Unit	\$_____/AC	\$_____/AC	\$_____/AC