

"Agriculturally viable parcel" means a parcel that is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output.

"Application," as relates to the purchase of development easements, means a standard form adopted by the county agriculture development board.

"Appraisal handbook standards" means the rules and requirements for conducting appraisals established at N.J.A.C. 2:76-10.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Committee" means the State Agricultural Development Committee (SADC) established pursuant to N.J.S.A. 4:1C-4.

"Cost" as used with respect to cost of development easements includes, in addition to the usual connotations thereof, the cost of inspection, appraisal, legal, financial, and other professional services, estimates and advice; and the cost of organizational, administrative and other work and services, including salaries, supplies, equipment and materials.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and any relevant rules or regulations promulgated pursuant thereto.

"Exceptions," unless the text indicates otherwise, means portions of the applicant's land holdings which are not to be encumbered by the deed restrictions contained in N.J.A.C. 2:76-6.15.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981", P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and the maintenance and support of increased agricultural production as the first priority use of that land.

"Formula index" means the value obtained by application of the formula contained in N.J.S.A. 4:1C-31b(1).

"Governing body" means, in the case of a county, the board of chosen freeholders, and in the case of a municipality, the commission, council, board or body, by whatever

name it may be known, having charge of the finances of the municipality.

"Landowner" means the record owner of the land, duly authorized contract purchaser of the land or record owner of the development easement acquired pursuant to N.J.S.A. 4:1C-34.

"Landowner asking price" means the applicant's per acre confidential offer for the sale of a development easement.

"Municipally approved farmland preservation program", hereinafter referred to as "municipally approved program", means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981", P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32, and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C-21.

"Non-agricultural development value—agricultural value" means the fair market value of the development easement as certified by the committee.

"Option agreement" means a written agreement for consideration between an owner of land and the board whereby the board has a right to purchase the development easement within a specified time for a designated price.

"Premises" means the property under easement which is defined by the legal metes and bounds description contained in the deed of easement.

"Quality score" means the Committee's numeric total derived from the application of the criteria for evaluating a development easement application contained in N.J.A.C. 2:76-6.16.

"Residential unit" means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.

"Residual dwelling site" means the location of the residential unit and other appurtenant structures.

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures on the premises in accordance with N.J.A.C. 2:76-6.17.

"Secretary" means the Secretary of Agriculture.

"Use for agricultural purposes," as related to the exercise of a residual dwelling site opportunity and the continued use of the residential unit constructed thereto, means at least

one person residing in the residential unit shall be regularly engaged in common farmsite activities on the premises including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage, water management and grazing.

Amended by R.1986 d.386, effective September 22, 1986.
See: 18 N.J.R. 1328(a), 18 N.J.R. 1930(a).

Added "premises".

Amended by R.1988 d.493, effective October 17, 1988.
See: 20 N.J.R. 1503(a), 20 N.J.R. 2565(a).

Added definitions "Agricultural Development Area" and "project area".

Amended by R.1989 d.49, effective January 17, 1989.
See: 20 N.J.R. 1761(a), 21 N.J.R. 158(a).

Added definitions.

Amended by R.1989 d.537, effective October 16, 1989.
See: 21 N.J.R. 3294(a).

Change to "project area" made upon adoption.

Amended by R.1990 d.529, effective November 5, 1990.
See: 22 N.J.R. 1244(a), 22 N.J.R. 3359(a).

Added definitions for "ancillary costs", "formula index", "landowner asking price" and "non-agricultural development value—agricultural value".

Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).

Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).

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

Deleted definitions of "Ancillary costs" and "Project area" and added definition of "Agriculturally viable parcel".

2:76-6.3 Eligible applicants

(a) Any landowner that applies to the board in compliance with N.J.A.C. 2:76-6.4 and whose land is in a farmland preservation program, a municipally approved program or qualifies for differential property tax assessment pursuant to the Farmland Assessment Act of 1964 and which is included in an agricultural development area shall be eligible to sell a development easement on that land.

(b) Any person or organization acquiring a development easement, by purchase, gift or otherwise, may apply to sell that development easement to the board pursuant to N.J.S.A. 4:1C-34.

Amended by R.1993 d.392, effective August 2, 1993.
See: 25 N.J.R. 1804(d), 25 N.J.R. 3453(e).
Amended by R.1994 d.393, effective August 1, 1994.
See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).

2:76-6.4 Application

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

(b) The board shall require the landowner to sign a certification confirming that the information provided in the application is true.

(c) The board and/or Committee reserve the right to take any necessary action against the landowner to require the return of any funds provided by the board for the purchase of a development easement in the event that the board and/or Committee has determined that the landowner supplied false or misleading information in the application.

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

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

Amended by R.1996 d.212, effective May 6, 1996.

See: 28 N.J.R. 319(a), 28 N.J.R. 2373(a).

Added (b) and (c).

2:76-6.5 Preliminary board review

(a) The board shall review and evaluate the easement purchase application and respective project area to determine the suitability of the land for development easement purchase and establish a priority ranking of the applications on the basis of the following factors:

1. Criteria duly adopted by the board which evaluates the degree to which the purchase would encourage the survivability of the land in productive agriculture and the degree of imminence of change of the land from productive agriculture to nonagricultural use pursuant to N.J.S.A. 4:1C-31b.

(b) The board shall review the application pursuant to N.J.A.C. 2:76-6.17(a) and determine the number of residual dwelling site opportunities to be allocated to the premises.

(c) The board shall inform the landowner of the number of residual dwelling site opportunities allocated to the premises.

(d) The board shall approve or disapprove the application.

(e) An application approved by the board shall be forwarded to the municipal governing body for review.

1. Unless previously granted by prior ordinance, the municipal governing body shall by resolution approve or disapprove the application and so notify the board.

(f) The board shall submit a request for a grant for the purchase of a development easement to the Committee on or before November 15. 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.

(g) 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 a municipality, 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.

(h) In the event that the board grants preliminary approval to more than the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a), it shall forward to the Committee all such application(s) in excess of the maximum number with its justifications for granting such approvals along with other information required in (f) above for preliminary approval.

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).

Amended by R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

in (g), substituted "on or before November 15" for "within 30 days of the date appraisal work is authorized pursuant to N.J.A.C. 2:76-6.7" at the end of the first sentence of the introductory paragraph; and in (i), substituted references to the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a) for references to seven applications throughout.

Amended by R.2001 d.47, effective February 5, 2001.

See: 32 N.J.R. 3513(a), 33 N.J.R. 550(a).

Rewrote the section.

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 the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a) 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 the maximum number of applications authorized pursuant to N.J.A.C. 2:76-6.11(a) 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).

Amended by R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

In (b) and (c), substituted references to the maximum number of applications authorized by the Committee pursuant to N.J.A.C. 2:76-6.11(a) for references to seven applications.

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:

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

ii. The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

iii. The degree of imminence of change of the land from productive agriculture to nonagricultural use;

2. The final purchase price of the development easement for each application.