N.J. Farmland Preservation Program Overview

The state Farmland Preservation Program is administered by the State Agriculture Development Committee (SADC), which preserves farmland directly and provides grants to County Agriculture Development Boards (CADBs), municipalities and nonprofit organizations for the preservation of farmland. (www.nj.gov/agriculture/sadc)

How Is Farmland Preserved?

Sale of Development Rights: If you would like to preserve your farm and continue to own it, you can sell the nonagricultural development rights – also known as a development easement – on your land. You can apply to preserve your farm to the SADC, your CADB, your municipality if it participates in the Farmland Preservation Program, or a nonprofit organization. Most counties and many municipalities have developed comprehensive farmland preservation plans that enable them to participate in the program. You can find a listing and copies of the plans at www.nj.gov/agriculture/sadc/home/genpub/comprehensiveplans.html.

Outright Sale of Land: In some limited cases, the SADC, a nonprofit, or your CADB or municipality may be interested in purchasing your farm outright for preservation. In these cases, a farm is purchased at fair-market value and then typically re-sold at a public auction to a private owner with agricultural deed restrictions in place to ensure the land's permanent preservation. Because this process requires greater financial resources from the preservation agencies, these opportunities are more limited. In most cases, landowners sell their development rights first and then sell the deed-restricted farm afterward to a private owner when the time is right for them.

Donation: In certain situations, you may want to consider donating your development rights, or your land, to one of the preservation agencies above, particularly if you could be eligible for significant tax savings. You should contact a tax professional to fully understand the tax implications of a donation as they apply to your personal situation.

How Does the Process Work?

Land is eligible for the Farmland Preservation Program if it meets the SADC's minimum eligibility criteria and is eligible for farmland tax assessment. In most cases, your farm also must be located in an agricultural development area (ADA) – an area where the CADB has determined that farming is viable over the long term – and be a "targeted" farm in a county or municipal comprehensive farmland preservation plan.

CADBs are responsible for approving most applications to the Farmland Preservation Program. Therefore, they are the starting point for most interested landowners. CADBs review and approve applications and then forward them to the SADC, coordinating with the State and local municipalities throughout the process.

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How Is Value Determined?

The value of a farm or development easement is established through two independent appraisals. The price you will be paid for a development easement will be based on the difference between your land's value before preservation and its value after preservation – generally the difference between what someone would pay for the raw land as is, and its value as a deed-restricted farm. For example, if your farm would be worth $10,000 per acre before preservation, and $4,000 per acre after it has been preserved, the value of your development easement would be $6,000 per acre. Once a value has been determined and agreed upon, the process of finalizing approval and the sale can proceed.

What Happens After Preservation?

When your farm is preserved, a Deed of Easement will be recorded with the County Clerk's office that will run with the land and forever protect it for agricultural use. You are allowed to erect barns and other agricultural structures in accordance with the Deed of Easement, however most nonagricultural uses are not permitted unless they were recognized in the Deed of Easement at the time of preservation.

Within one year of preserving your farm, you will need to obtain a farm conservation plan approved by your local soil conservation district. The plan, which will be developed in cooperation with the U.S. Department of Agriculture's Natural Resources Conservation Service, will detail practices that will assist you in managing soil, water and other natural resources on your farm.

Incentives for Farmland Preservation

Farmland preservation can:

- Provide you with capital that you can use to expand your existing operation or meet other financial goals;
- Help you reduce your debt load;
- Further your estate or retirement planning, e.g., by allowing you to leave the land to an heir who is interested in farming and a monetary inheritance to other heirs;
- Allow you to apply for up to 50 percent State cost-sharing grants for eligible soil and water conservation projects on your farm, subject to available funding;
- Help protect your land from government acquisition through eminent domain, or emergency restrictions on the use of water and energy supplies;
- Provide you with the personal satisfaction of knowing your farm will be preserved in perpetuity.

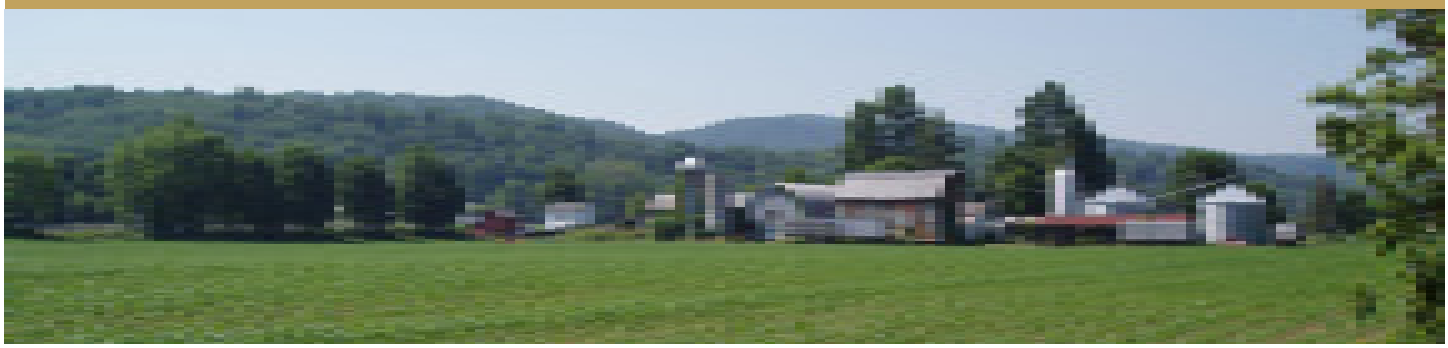
The preservation of your farm does not make your land public property. The public has no right to access or use your preserved farm without your consent.

A representative of the agency that purchased the development rights on your farm will contact you once a year to arrange to visit your farm to ensure you are maintaining it in accordance with the provisions of the Deed of Easement. The visit typically takes less than an hour, and you do not need to be present unless you choose to do so. You may find the annual visit a good opportunity for you to ask any questions you have about farmland preservation or about related programs that may be helpful to you and your agricultural operation.

For more information, please visit the SADC's Guidance Library at www.state.nj.us/agriculture/sadc/publications/guidance.html or call (609) 984-2504.

SADC Guidance Document

Farmland Preservation: Frequently Asked Questions



Minimum Eligibility Criteria

What Are the Minimum Criteria for State Farmland Preservation Funding?

Land must be eligible for Farmland Assessment, be in an agricultural development area and meet the following minimum eligibility criteria to qualify for State farmland preservation funding.

For farms less than or equal to 10 acres:

- The land must produce agricultural or horticultural products of at least $2,500 annually;
- At least 75 percent of the land, or a minimum of five acres, must be tillable;
- At least 75 percent of the land, or a minimum of five acres, whichever is less, must consist of soils that are capable of supporting agricultural or horticultural production; and
- the land must exhibit development potential based on a finding that a number of standards have been met (including that the municipal zoning ordinance allows additional development, and the land does not exceed standards regarding extent of wetlands and steep slopes), or the land must be eligible for allocation of development credits under an authorized transfer of development rights program.

For farms greater than 10 acres:

- At least 50 percent of the land, or a minimum of 25 acres, whichever is less, must be tillable;
- At least 50 percent of the land, or a minimum of 25 acres, whichever is less, must consist of soils that are capable of supporting agricultural or horticultural production; and
- the land must exhibit development potential based on a finding that a number of standards have been met (including that the municipal zoning ordinance allows additional development, and the land does not exceed standards regarding extent of wetlands and steep slopes), or the land must be eligible for allocation of development credits under an authorized transfer of development rights program.

Lands that do not meet the minimum eligibility criteria are not eligible for a State cost-share grant. [N.J.A.C. 2:76-6.20]

Photo by Stefanie Miller

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Residential Opportunities

What types of residential opportunities are available?

The State Agriculture Development Committee (SADC) is mindful about the number, size and location of residential opportunities on preserved farms, and their impact on the future agricultural viability and affordability of the land.

A "Residential Opportunity" means any existing or planned residence on the farm to be preserved, and those to be located inside a severable or non-severable exception area. In addition, recently subdivided lots for residential purposes may be a relevant factor when evaluating the overall number of houses associated with a particular application.

Residential opportunities include:

- Houses in exception areas (must stay within exception area)
- Houses on the preserved farm (may be relocated subject to Committee and County Agriculture Development Board approvals)
- RDSOs or residual dwelling site opportunities (constructed and used for agricultural purposes; overall gross density may not exceed one residence per 100 acres; and at least one person living in the residence must be regularly engaged in common farmsite activities on the premises.)

Some counties already have size restrictions on houses associated with preserved farms, and the SADC restricts the number of residential opportunities on farms preserved through the Direct Easement and Fee Simple programs. Through the SADC Fee Simple program, farms purchased and auctioned by the SADC carry a restriction on the size of the residential unit associated with the RDSO. The residential unit cannot exceed 3,500 square feet of heated living space and 1,000 square feet of building footprint for ancillary structures such as porches, decks and garages.

What is an exception and what is the SADC policy regarding them?

Exceptions are portions of the applicant's land holdings that are not to be encumbered by the deed of easement restrictions contained in N.J.A.C. 2:76-6.15 (except for limited purposes as defined in the deed of easement, e.g., no more than one residence is permitted, the exception area cannot be further divided).

Landowners may decide to create exception areas around their existing homes and infrastructure to not be limited by the deed of easement restrictions and retain some flexibility in these areas.

Most exception areas are created for "residential opportunities," meaning to either create a place to build a new house or except out the area around an existing house. Careful attention must be given to the extent and location of such exceptions to avoid potential conflicts with the preserved premises.

There are two kinds of exception areas:

- Severable: may be subdivided from the farm
- Non-Severable: may not be subdivided from the farm

What does the SADC consider in evaluating exception areas?

SADC staff considers the following information when evaluating the size and location of exception areas for housing:

- Is the size and location appropriate for, or necessitated by, the topography of the farm?
- How much land will be taken out of production?
- How does the land taken out of production affect the pattern and viability of farming? Does it fragment the operation?
- What is the local zoning? If the exception is severable, can it be further subdivided?
- Does the severable exception have its own access to a roadway?
- Are the number of housing opportunities within the exception area restricted?
- Has the suitability of the intended uses been explored (e.g., have percolation and water supply questions been resolved)?
- Is the total number of proposed housing units appropriate given the size of the farm and the tillable acreage available for agriculture on the farm?

Until such time as the SADC adopts formal rules regarding the number and placement of housing opportunities and exceptions, we will review and consider applications on a case-by-case basis. Regarding preacquisitions, we strongly encourage seeking an SADC informal review if you have any reservations regarding housing and exceptions. For more information on exceptions, visit the SADC's guidance library at www.nj.gov/agriculture/sadc/publications/exceptions.pdf.

County/Municipal Planning Incentive Grant Process

What is Green Light Approval?

"Green Light approval" is the informal name referring to the SADC granting approval of an application for the sale of a development easement for the purpose of enabling the application to proceed to the appraisal stage. This step of the County and Municipal Planning Incentive Grant (PIG) process follows Plan Approval.

During the Green Light approval process, SADC staff reviews an individual application to assure the farm meets any eligibility requirements, that housing opportunities and exception areas are deemed reasonable, and that whatever appraisal anomalies exist (easements, exceptions, limited access, etc.) are fully understood prior to commencing appraisals.

In the past, many counties and municipalities pursued the purchase of easements prior to submission of individual farm applications to the SADC. The lack of prior coordination with the SADC has resulted in situations that have caused serious delays and, on occasion, the inability to obtain a cost-share grant from the SADC.

Counties and municipalities that pre-acquire a development easement or farmland in fee simple without Green Light approval proceed at their own risk. The SADC strongly advises counties and municipalities to carefully adhere to SADC guidelines and regulations so as to not jeopardize chances of qualifying for subsequent reimbursement. [N.J.A.C. 2:76-17.9 and 17A.9]

Valuation

What is the 1/01/04 Appraisal Provision?

Pursuant to the Garden State Preservation Trust Act, whenever the SADC or a local or nonprofit partner seeks to acquire a development easement on farmland or farmland in fee simple in the Highlands region, the land must be appraised in two ways:

1) using the land use zoning of the land, and any State environmental laws or Department of Environmental Protection rules and regulations in effect at the time of the appraisal date of valuation; and

2) using the land use zoning of the land, and any State environmental laws or Department of Environmental Protection rules and regulations in effect on January 1, 2004.

The higher of those two values must be used as the basis for negotiation with the landowner with respect to the acquisition price for the lands. The landowner must be provided with both values. A landowner may waive these requirements and agree to sell the lands for less than the values otherwise determined pursuant to these requirements.

This appraisal provision applied to lands statewide acquired from the date of enactment of the Highlands Act (August 10, 2004) through June 30, 2009. The appraisal provision was extended through June 30, 2014 for farms in the Highlands region only. [N.J.S.A. 13:8C-38j]

Who is eligible to have their land valued in accordance with the 1/01/04 appraisal provision?

The provision is applicable only if the land is owned by the same person who owned it on August 10, 2004, and has owned it continuously since; if it is owned by an immediate family member of that person; if the owner is a farmer as defined by the SADC; or if the

owner is a governmental agency or qualifying nonprofit organization (see below). [N.J.A.C. 2:76-10.5(b)]

How does the SADC define "farmer"?

A "farmer" for farmland preservation purposes means an owner or operator of a farming operation who during the calendar year immediately preceding submittal of a farmland preservation application, realized gross sales of at least $2,500 of agricultural or horticultural products produced on the farming operation, exclusive of any income received for rental of lands.

The farmland preservation applicant will be required to provide documentation including, but not limited to, sales receipts and federal tax forms. [N.J.A.C. 2:76-10.5(c)]

Do timber sales count toward "production"?

Yes, as long as they are associated with lands eligible for Farmland Assessment. A landowner will be required to demonstrate that the land is eligible for Farmland Assessment and provide proof of timber sales to support whatever sales will be counted toward the $2,500 gross sales requirement.

What income from equine farms can be counted toward "production"?

The following income from equine-related activities may be used to satisfy production requirements: income from breeding; imputed income from pasturing horses; income from the sale of a horse that was trained on the farm for at least 120 days prior to the time of sale, and income from fees associated with raising a horse on the farm for at least 120 days.

The following income from equine-related activities cannot be used to satisfy production requirements: fees from boarding, riding and driving lessons or equine-assisted therapy; monetary proceeds from racing; or fees from training horses. [N.J.A.C. 2:76-2B.3(e)]

What if a Government Agency or Non-Profit owns the farm?

A governmental unit or a qualifying tax-exempt nonprofit organization is eligible for the special appraisal valuation procedure provided that it:

1. Acquired land or an interest in land, or is a contract purchaser to acquire land or an interest in land, for farmland preservation purposes pursuant to the Agriculture Retention and Development Act and the Garden State Preservation Trust Act;

2. Submitted a farmland preservation application to the Committee for a grant pursuant to the Agriculture Retention and Development Act and the Garden State Preservation Trust Act within three years of the date of acquisition of the land or interest in land; and

3. Acquired the land or interest in land from a farmer as defined by the SADC. [N.J.A.C. 2:76-10.5(d)]

What if the farm is owned by a corporation?

If an owner of land who meets the SADC's definition of a farmer transferred ownership to a business entity, such as a corporation, limited liability company, partnership, or trust, after the August 10, 2004 enactment of the Highlands Water Protection and Planning Act, the new owner is eligible for the 1/01/04 valuation provision provided that:

1. The transferring owner, or an immediate family member of the owner, continues to hold an interest in the business entity or trust, and;

2. The business entity or trust meets the gross sales criteria of at least $2,500 of agricultural or horticultural products produced on the farming operation, not including any income received for rental of lands during the calendar year immediately preceding submittal of a farmland preservation application.The farmland preservation applicant will be required to provide documentation including, but not limited to, deeds of ownership or other official documentation showing that the original owner has an interest in the business entity or trust, and sales receipts and Federal tax forms showing that both the transferring owner and the business entity or trust meet the SADC's definition of a farmer.

If the ownership of land has been transferred from a person who meets the definition of a farmer to an estate after August 10, 2004, the estate will be eligible for the special valuation procedure. Required documentation will include, but is not limited to, deeds of ownership or other official documentation verifying the estate's ownership of the land, and sales receipts and Federal tax forms providing proof that the original owner was a farmer as defined by the SADC.

The landowner must submit all required documentation to the appropriate County Agriculture Development Board (CADB) if the farmland preservation application has been submitted to the CADB; to the SADC if the application has been made to the SADC, or to the municipal governing body or nonprofit organization if application has been made there. If a CADB received the farmland preservation application, it will determine if the landowner is eligible for the special valuation procedure based on the documentation submitted by the landowner. [N.J.A.C. 2:76-10.5(e)]

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