



# Eligibility for Farmland Preservation

12/10/2019



NEW JERSEY  
State Agriculture Development Committee

## APPLICATION ELIGIBILITY

- This application is not being considered in any other farmland preservation program at this time.
- The Municipality, Board, or County has not owned title to the land for more than three years.
- The landowner has not rejected an offer for an amount equal to or greater than the certified market value under any farmland preservation program within the past 2 years. (This provision applies only to an application from the same landowner for the same farm.)
- The application is located within an adopted Agricultural Development Area.
- The application is a targeted farm within the County's or Township's approved Planning Incentive Grant Project Area. **Project Area:** \_\_\_\_\_
- The subject farm is eligible for farmland assessment.

## LANDOWNER ELIGIBILITY

Pursuant to N.J.A.C. 2:76-6.18(z) an applicant or the applicant's immediate family defined as applicant's spouse, child, parent, or sibling residing in the same household cannot be a current CADB board member or Municipal Agriculture Advisory Committee member at the time of application to sell their development easement.

1. Are you or anyone in your immediate family a current member of the CADB?  **YES**  **NO**
2. Are you or anyone in your immediate family a current member of a Municipal Agriculture Advisory Committee (AAC)?  **YES**  **NO**
3. Are you or anyone in your immediate a current member of the Township Committee or Board of Chosen Freeholders?  **YES**  **NO**

**If Yes,** Position \_\_\_\_\_ Term \_\_\_\_\_



## **MINIMUM ELIGIBILITY CRITERIA**

Pursuant to [N.J.A.C. 2:76-6.20](#),

The land must exhibit development potential based on the following standards:

- (1) The municipal zoning ordinance for the land as it is being appraised must allow additional development, and in the case of residential zoning, at least one additional residential site beyond that which will potentially exist on the farm.
- (2) Where the purported development value of the land depends on the potential to provide access for additional development, the municipal zoning ordinances allowing further subdivision of the land must be verified. If access is only available pursuant to an easement, the easement must specify that further subdivision of the land is possible. To the extent that this potential access is subject to ordinances such as those governing allowable subdivisions, common driveways and shared access, these facts must be confirmed in writing by the municipal zoning officer or planner.
- (3) If the land is 25 acres or less, the land shall not contain more than 80 percent soils classified as freshwater or modified agricultural wetlands according to the NJDEP wetlands maps <http://njogis-newjersey.opendata.arcgis.com/datasets/2012-land-use-land-cover-wetlands>. If the DEP wetlands maps are in dispute, further investigation and onsite analysis may be conducted by a certified licensed engineer or qualified wetlands consultant and/or a letter of interpretation issued by the NJDEP may be secured.

\_\_\_\_\_ % **soils classified as freshwater or modified agricultural wetlands.**

- (4) If the land is 25 acres or less, the land shall not contain more than 80% soils with slopes in excess of 15% as identified on a USDA NRCS SSURGO version 2.2 or newer soils map.

\_\_\_\_\_ % **soils with slopes in excess of 15%.**

If the land does not meet any of the standards above, is it eligible for allocation of development credits pursuant to a transfer of development potential program authorized and duly adopted by law?     **YES**     **NO**

**FOR LANDS LESS THAN OR EQUAL TO 10 ACRES** the land also must meet the criteria below to be eligible for preservation with SADC funding:

- The land produces agricultural or horticultural products of at least \$2,500 annually. Supporting documentation must be provided (tax forms, receipts, etc.)
- At least 75% of the land is tillable or a minimum of 5 acres, whichever is less. \_\_\_\_\_ % or \_\_\_\_\_ ac
- At least 75% of the land, or a minimum of 5 acres, whichever is less, consists of soils that can support agricultural or horticultural production. \_\_\_\_\_ % or \_\_\_\_\_ ac

**FOR LANDS GREATER THAN 10 ACRES** the land also must meet the criteria below to be eligible for preservation with SADC funding:

- At least 50% of the land or a minimum of 25 acres, whichever is less, is tillable. \_\_\_\_\_ % or \_\_\_\_\_ ac
- At least 50% of the land or a minimum of 25 acres, whichever is less, consists of soils that can support agricultural or horticultural production. \_\_\_\_\_ % or \_\_\_\_\_ ac



# References



NEW JERSEY  
State Agriculture Development Committee

## CONTACTS

Please don't hesitate to contact the Regional Acquisition Coordinators with any questions

(609) 984-2504 or SADC emails are [firstname.lastname@ag.nj.gov](mailto:firstname.lastname@ag.nj.gov)

- Northwest (Warren & Hunterdon): Stefanie Miller [stefanie.miller@ag.nj.gov](mailto:stefanie.miller@ag.nj.gov)
- Northeast (Sussex, Passaic, Bergen, Morris, Somerset, Middlesex, Mercer, Burlington & Monmouth): Amy Mandelbaum [amy.mandelbaum@ag.nj.gov](mailto:amy.mandelbaum@ag.nj.gov)
- South (Camden, Gloucester, Cape May): Cindy Roberts (acting) [cindy.roberts@ag.nj.gov](mailto:cindy.roberts@ag.nj.gov)
- Southwest (Atlantic, Ocean, Salem & Cumberland): Katie Mazzella [katie.mazzella@ag.nj.gov](mailto:katie.mazzella@ag.nj.gov)

## REFERENCES

**SADC REGULATIONS AND POLICIES** <https://www.nj.gov/agriculture/sadc/rules/>

- Minimum Eligibility Criteria N.J.A.C. 2:76-6.20(c), -6.23 (a), 6.20(d), -17.4(a)
- Residual Dwelling Site Opportunities (RDSOs) N.J.A.C. 2:76-6.17
- SADC Policy: Exercising a Residual Dwelling Site Opportunity
  - <https://www.nj.gov/agriculture/sadc/rules/p31RDSOpolicy.pdf>
- SADC Guidance Library: <http://www.nj.gov/agriculture/sadc/publications/guidance.html>

## GUIDANCE DOCUMENTS

- Exception Areas: <http://www.nj.gov/agriculture/sadc/publications/exceptionsSign.pdf>
- Non-agricultural Uses: <http://www.nj.gov/agriculture/sadc/publications/nonag%20usesonepagerVsignoff.pdf>
- Division of Preserved Land: <http://www.nj.gov/agriculture/sadc/publications/divisionSign.pdf>
- Septic Policy (P-49): <http://www.nj.gov/agriculture/sadc/rules/pol49.pdf>
- Access to Exception Areas [https://www.nj.gov/agriculture/sadc/rules/P41%20\\_Access%20to%20Exception%20Areas\\_.pdf](https://www.nj.gov/agriculture/sadc/rules/P41%20_Access%20to%20Exception%20Areas_.pdf)

## **MAPPING RESOURCES**

<https://www.njmap2.com/>

<https://njdasadc.maps.arcgis.com/home/index.html>

## **APPRAISAL RESOURCES**

<https://www.nj.gov/agriculture/sadc/farmpreserve/appraisals/appraisalresources.html>

# Applying to the Farmland Preservation Program

## Key Issues for Consideration

You and your family's goals and objectives for your farmland are important considerations when contemplating an application to the Farmland Preservation Program (FPP). Once a FPP easement is sold you still own the land, but it will be forever restricted to agricultural use, with the potential for a limited number of residences as may be permitted in the final easement document (the Deed of Easement).

Issues that should be considered *as soon as possible in the application process* include, but are not limited to:

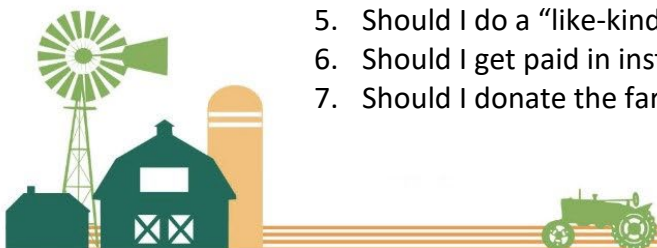
- How will the owners of the farm:
  - pay off debt?
  - fund their retirement?
  - purchase more land?
  - invest in equipment?
- Is there a succession plan for the farm?
  - Do one or more of the owners' heirs want to farm?
  - Are their multiple heirs, some who farm but others who don't? How can one generation be "fair" to the farmer and non-farmer heirs?
  - Are there no heirs who want to farm the property?

In order to properly address the above issues, we strongly encourage you to seek advice from **one or more qualified financial professionals**, *as early as possible in the application process*, regarding a FPP easement sale. These professionals have the expertise and personal familiarity with your individual circumstances to help you make informed decisions.

We also recommend that the financial offer you receive for the purchase of a FPP easement on your farm be brought to the attention of your professionals to determine how to maximize the net financial gain from the sale.

### Examples of questions to ask your financial professionals:

1. How much (if any) will I pay in taxes as a result of the sale?
2. What (if any) will be the net gain from the sale?
3. What are the implications if the farm is or was part of an estate?
4. Should I make a "bargain sale"?
5. Should I do a "like-kind exchange"?
6. Should I get paid in installments?
7. Should I donate the farmland easement?



**NEW JERSEY**  
State Agriculture Development Committee  
P.O. Box 330  
Trenton, NJ 08625-0330

phone: 609-984-2504  
fax: 609-633-2004  
email: [sadc@ag.nj.gov](mailto:sadc@ag.nj.gov)  
web: [www.nj.gov/agriculture/sadc](http://www.nj.gov/agriculture/sadc)

# Applying to the Farmland Preservation Program

## Key Issues for Consideration

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**For further reference on some of the prior questions and ideas, please see:**

<http://farmlandinfo.org/selling-an-agricultural-easement-capital-gains-tax-implications-and-opportunities/>

<https://www.state.nj.us/treasury/taxation/inheritance-estate/inheritance.shtml>

<http://2020 AFT overview bargain sale taximplication.pdf>

<https://www.irs.gov/businesses/like-kind-exchanges-real-estate-tax-tips>

<http://s3.amazonaws.com/landtrustalliance.org/ConservationEasementTaxIncentiveBrochure2016.pdf>

**We recommend that you provide the following documents when first meeting with your financial team:**

1. Original property deed from time of purchase and current deed, if different
2. Last year's tax return
3. If you inherited the property, all estate documents
4. If the property is held by a Corporation, Limited Liability Company, Partnership, or Trust, all related business documents to ensure they are accurate and up to date
5. Any mortgage documents – be sure to discuss if the intent is to pay off the mortgage or obtain a subordination of the mortgage to the Deed of Easement (document signed at closing). *It is also important to begin discussions with the lender early in the process if you will not be paying the mortgage off in full at closing, as not all lenders are willing to subordinate their mortgage to a Farmland Preservation Program deed of easement.*

**After settlement, we recommend you provide your financial team with copies of:**

1. Certification of market value report (if you didn't get a copy at settlement, request it from the easement holder)
2. A property appraisal if you are declaring a bargain sale. Please consult with your financial professional regarding the filing of other necessary tax documents.
3. SADC final approval resolution.
4. Documents received at closing, including the HUD statement and 1099 form

**Note: Nothing contained in this document is intended to provide legal or tax advice**



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fax: 609-633-2004  
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web: [www.nj.gov/agriculture/sadc](http://www.nj.gov/agriculture/sadc)





# New Jersey Farmland Preservation Overview



State Agriculture Development Committee (SADC)

## Farmland Preservation

Preserving a farm is accomplished by paying farmland owners in exchange for recording a farmland preservation “development easement”. The farmland preservation easement restricts the amount of future non-agricultural activity while **supporting** the continuation and expansion of the **agricultural operation**.



*Cassaday Farms, Salem County*



*Babinsky Farm, Warren County - photo by Stefanie Miller*

## Income Benefits

Besides gaining peace of mind from knowing their land will always remain a farm, farmland owners typically use the **capital** from preservation to **invest in the farm operation**, save for retirement, **reduce debt**, or acquire additional land to expand their agricultural operation.

Farmland Preservation can help farmland owners **meet their financial goals** or further estate and retirement planning.

The farm remains **private property** where the owner can continue to farm, rent, sell, and utilize the farm for agricultural purposes.

Preservation is a means to **access** some of the **equity** in the farm without selling it entirely.

## What is the “SADC”?

**New Jersey’s Farmland Preservation Program** is administered by the State Agriculture Development Committee (SADC), which supports and partners with County Agriculture Development Boards, Municipal Agriculture Advisory Committees, and Nonprofit organizations throughout the State on farmland preservation projects. The SADC also purchases development easements directly from landowners, focusing on the largest and highest quality farms across the state.

In addition to land preservation, the SADC administers New Jersey’s Right to Farm Program, oversees the Transfer of Development Rights Bank, and operates the Farm Link Program, which helps connect farmland owners with farmers seeking access to farmland and farming opportunities.

## Fair Market Value

Farmland is preserved by removing non-agricultural development rights and recording an easement on the property. **Two independent appraisers** are hired to determine the land value of the property under current market conditions based on factors including local zoning, state regulations, wetlands, soils and septic suitability. The appraisers evaluate comparable sales based on the use of the property for development and sales of preserved farmland in the geographic region. The value of the easement is the difference between those two values. SADC Appraisal staff review the two appraisals and recommend values to the

Committee which approves a value that is utilized as the basis of an offer to purchase the easement. There is **no cost to the landowner or obligation** to accept an offer through the SADC Direct Easement Program and most County, Municipal and Nonprofit Programs.

Specialized appraisal and alternate valuation procedures are available for qualified farms in the Highlands and Pinelands Region. SADC staff can provide information and guidance regarding eligibility for these alternate valuation processes.



*Blue Moon Acres, Mercer County— photo by Paul Bartholomew*



## Sample Easement Calculations:

### Example 1:

\$20,000 per acre (unpreserved value “before”)

\$5,000 per acre (preserved value “after”)

\$15,000 per acre easement value

### Example 2:

\$12,000 per acre (unpreserved value “before”)

\$4,000 per acre (preserved value “after”)

\$8,000 per acre easement value

*Note: Most farmland easement appraisals do not consider the value of improvements (house, barn, etc..)*



## Planning Ahead

A carefully thought-out application will leave **flexibility** for current and future residential and non-agricultural needs which **support** the overall **agricultural strength** of the farming operation. SADC staff and local preservation partners, working with participating County, Municipal and Nonprofit organizations, can provide assistance in developing an application which **meets the needs of the farming operation** as well as current and future owners.

## Cost-Share Grants for Preserved Farms

The SADC provides **grants** to eligible preserved farmland owners to fund up to 50% of the costs of approved **soil and water conservation projects** in coordination with local United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) offices and New Jersey Soil Conservation Districts, which assist farmers in developing their project applications and farm conservation plans. There are many types of eligible projects including **irrigation**; terrace systems; diversions; stream protection; water impoundment reservoirs; sediment retention, erosion or **water control** systems; **drainage systems**; animal waste control facilities; agri-chemical handling facilities; and land shaping or grading.

Owners of permanently preserved farmland may also apply for **deer fencing grants** that provide a 50% cost-share for fencing materials and installation for a maximum grant of \$200 per acre and up to \$20,000 per farm.



## Tax Benefits

The easement represents only a portion of a farm's **value**. The preserved farm retains value, and there may be **tax benefits** associated with preserving and transferring the preserved farm.

Because every situation is unique, farmland owners should consult an attorney, accountant and/or financial planner experienced with agricultural real estate transactions to create an estate plan and **tax strategy** that works best in order to access **financial benefits** beyond the receipt of funds for the preservation of a farm.



## Contact the SADC Acquisition Team

SADC staff are available to meet with you **at your convenience** to discuss preservation options which fit the needs of you and your business.

**For General Information Contact:**      **For Specific Counties Contact:** (609) 984-2504

When leaving messages, please include the street address and/or the municipality, Block and Lot of the property you are contacting us about.

**Stefanie Miller**

Acquisition Program

Manager (609) 913-6572

[stefanie.miller@ag.nj.gov](mailto:stefanie.miller@ag.nj.gov)

- Atlantic, Burlington, Camden, Cape May, Cumberland & Gloucester:  
Cindy Roberts [cindy.roberts@ag.nj.gov](mailto:cindy.roberts@ag.nj.gov)
- Bergen, Mercer, Middlesex, Morris, Passaic, Somerset, Sussex & Warren:  
David Zaback [david.zaback@ag.nj.gov](mailto:david.zaback@ag.nj.gov)
- Monmouth, Ocean & Salem:  
Katie Mazzella [katie.mazzella@ag.nj.gov](mailto:katie.mazzella@ag.nj.gov)
- Hunterdon:  
Stefanie Miller [stefanie.miller@ag.nj.gov](mailto:stefanie.miller@ag.nj.gov)



[www.nj.gov/agriculture/sadc](http://www.nj.gov/agriculture/sadc)

New Jersey State Agriculture Development Committee  
P.O. Box 330, 200 Riverview Plaza, Trenton, NJ 08625-0330

# 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]



## 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 farm site 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.

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P.O. Box 330

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# Farmland Preservation: Frequently Asked Questions

## 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 pre-acquisitions, 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 <https://www.nj.gov/agriculture/sadc/publications/guidance.html>



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# Farmland Preservation: Frequently Asked Questions

## 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.

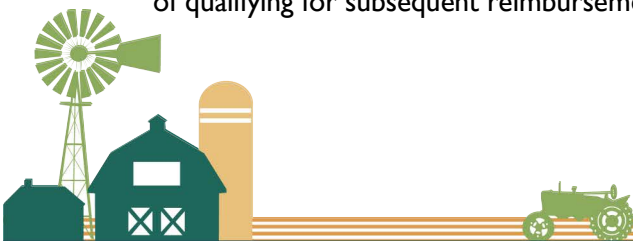
In the past, many counties and municipalities pursued the purchase of easements prior to submission of individual farm applications to the SADC. The lack of prior coordination with the SADC has resulted in situations that have caused serious delays and, on occasion, the inability to obtain a cost-share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

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# Farmland Preservation: Frequently Asked Questions

## 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 farm- land in fee simple in the Highlands region, the land must be appraised in two ways:

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

What if a Governmental Agency or Nonprofit owns the farm?

- A governmental unit or a qualifying tax-exempt nonprofit organization is eligible for the special appraisal valuation procedure provided that it:
  - 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; and
  - 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. [N.J.A.C. 2:76-10.5(d)]

## Production

### 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)]



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web: [www.nj.gov/agriculture/sadc](http://www.nj.gov/agriculture/sadc)