

Special Occasion Events On Preserved Farmland

State Agriculture Development Committee

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Phone: 609-984-2504

Website: www.nj.gov/agriculture/sadc/



Introduction

- P.L. 2023, c.9 became law February 3, 2023
 - Amends the Ag Retention and Development Act – new N.J.S.A. 4:1C-32.15 to 32.21
- Recognizes the positive effects that holding special occasion events (SOEs) can have, under certain conditions.
 - Helping sustain the ag industry
 - Enhancing agritourism opportunities
 - Improving viability of farm operations
- SOEs should not:
 - Displace agricultural use of the land
 - Disrupt surrounding neighborhoods

What is an SOE?

A wedding, lifetime milestone event, or other cultural or social event conducted on preserved farmland that is a commercial farm.

For the purposes of the law, SOEs do **NOT** include the following:

- Activities eligible for Right to Farm Act protection;
- Recreational uses already permitted under the farmland preservation deed of easement; and
- Weddings held for the owner, operator, or employee of the commercial farm or weddings held for certain family members of the commercial farm owner





Approval Needed to Hold SOEs

- Farm must get **prior, written** approval to hold SOEs
- Approval required from the farmland preservation deed of easement holder – the “grantee”
- Easements held by counties and nonprofits do **NOT** also need SADC approval (SADC only reviews requests on farms for which it holds the easement)
- Holding SOEs without having obtained approval from the grantee is a violation of the deed of easement and the SOE law.

Application and Review Process

Who Can Apply to Hold SOEs

- Owner **OR** operator of a preserved farm
- Preserved farm must also be a “commercial farm”
Commercial farm* means the same as that term is defined in the Right to Farm Act, except that it ***does not include*** a farm that qualifies for Farmland Assessment based entirely on a woodland management plan or a forest stewardship plan.
- Preserved farmland must produce ag/hort products worth \$10,000 or more annually
- If the applicant to hold SOEs is a farm operator, and not the farm owner, the operator must submit a notarized affidavit from the owner authorizing application.



Application and Review Process

Application Process

- Grantee required to develop an application process that allows it to obtain required information on the proposed SOEs (number of events, anticipated attendance, area to be used, etc.)
- Grantee reviews and confirms eligibility requirements
- The SADC has developed a sample application and production estimator tool that partners may use.

Other Notes

- Separate applications are not required for each separate SOE. A single application is to be submitted for all the SOEs to be held on the farm in the calendar year.
- Easement holders determine how often an application is needed, whether it be annually, biennially, etc. (but an application need not be filed more than once annually).



Reviewing the \$10,000 Annual Production Requirement

- The application could ask for production information (such as the farm's Farmland Assessment forms), an attestation, or something else.
- Easement holders may use the production estimator tool developed by the SADC. See www.nj.gov/agriculture/sadc/ for a copy of the spreadsheet tool.

Agricultural/Horticultural Production Value Estimating Tool			
For Special Occasion Event (SOE) Applications			
Applicant Name			
Farm Address			
County			
Municipality			
SADC ID Number			
General Category of Production	Estimated Gross Production Value/Acre	Number of Acres	Total Estimated Gross Production Value
Vegetable	\$1,747		
Fruit (other than grapes)	\$6,335		
Winery/Grapes	\$0		
Nursery/greenhouse/floriculture	\$10,000		
Sod	\$6,000		
Field crops	\$294		
Hay	\$287		
Equine	\$190		
Livestock	\$190		
Dairy	\$190		
Christmas Trees	\$0		
Woodland	\$0		
TOTALS			
Basic Instructions: Fill in the number of acres from the farm's SOE Application. The spreadsheet estimating tool will then provide an estimated value of the farm's annual agricultural or horticultural production.			
*Notes: The SADC is in the process of adding an "Estimated Gross Production Value/Acre" for each			

Other Requirements – Compliance with the Farmland preservation Deed of Easement

- A farm **must** be in compliance with its farmland preservation deed of easement in order to be eligible to hold SOEs.
- If it is not in compliance, the farm's SOE application cannot be approved.



Process Overview

- Farm owner or operator submits SOE application to easement holder
- Easement holder reviews the application:
 - Grantee has 90 days to review the application for adherence to the SOE law
 - If Grantee does not respond within 90 days of receiving a complete application, the application is deemed approved
- Grantee should issue a formal approval document with any conditions, as necessary
- Grantee must forward a copy of any SOE approvals to the SADC
- Nonprofit grantees can approve, approve with conditions, or deny the application.



Can Easement Holders Accept and Approve SOE Applications Prior to the SADC Adopting SOE Rules?

- Yes, the SOE law took effect on February 3, 2023
- Farms can immediately apply for permission to hold SOEs
- The SADC will adopt rules to fully implement the SOE program
- SOE permittees will need to comply with rules once they are adopted.





SOE Details – Numbers of Events and Conditions

Number of Events / Number of Guests

- Farm may hold up to 26 SOEs per calendar year.
- 6 SOEs may have 250 guests or more.
- If holding more than one SOE on the same day, only one of the SOEs on that day may have 100 or more guests.

SOEs Lasting More Than One Day

- An SOE can last no more than 2 consecutive days if the event is marketed as a single event. If an event lasts more than 2 days, it would be considered multiple SOEs.

SOE Details – Numbers of Events and Conditions

SOEs held by or for a nonprofit

- SOEs held by or for a nonprofit do not count towards the 26-event limit **IF:**
 - the event has fewer than 100 guests
 - the farm does not charge, or receive fees or compensation, for hosting the event (other than being reimbursed up to \$1,000 for out-of-pocket expenses)
- For example, if a farm wanted to hold its church's annual picnic at the farm or proposed hosting a fundraiser for the local fire department or land trust, the events would not count towards the 26-event limit if the above conditions were met.
- The SOE law defines a nonprofit as “a corporation organized pursuant to the ‘New Jersey Nonprofit Corporation Act,’ N.J.S.A. 15A:1-1 et seq. or a corporation organized pursuant to Title 16 of the Revised Statutes.”





What part of a preserved farm can be used for SOEs?

The “occupied area” (as defined in the SOE law):

- The area used to hold SOEs – may not be more than 10 acres or 10% of the preserved farmland, **whichever is less**
- Includes any area that supports the SOE activities, including, but not limited to, parking, vendors, tables, equipment, infrastructure, sanitary facilities, existing buildings, and temporary or portable structures
- Occupied area could be a single area, or it could be multiple non-contiguous areas on the farm.
- Application must include the acreage of the “occupied area”, and it must be delineated on a map.

Potential Impacts on the Preserved Farmland

- SOEs may not interfere with the use of preserved farmland for agricultural or horticultural production.
- SOEs shall have only minimal effects on the occupied area, be designed to protect the agricultural resources of the land, and ensure that the land can be readily returned to productive agricultural or horticultural use after the event.
- For example, if a farm proposed holding a mud run (that would involve digging up farmland and creating a mud pit), the proposed SOE would be denied because the SOE's proposed use of the land would not be protective of land's agricultural resources.





Does the SOE law apply to exception areas?

- If an SOE is held ***ENTIRELY*** in an exception area, the SOE law does not apply.
- If an SOE is held in part on an exception area and on part of the preserved farmland, then the SOE law does apply to the part of the event occurring on the preserved farm.

SOE Details – Structures

Permanent Structures – SOEs can be held outside, or inside a building that is at least 5 years old at the time of application for the SOE.

- No new permanent structures may be constructed or used to host SOEs
- Improvements to existing structures are limited to the minimum required for the protection of health and safety
 - For example, holding SOEs and having visitors might require accessibility improvements, such as installing a handicapped ramp to a building, or require modifications to structures such as more lighting or ingress/egress

Temporary structures – Tents, canopies, etc. may be used for holding SOEs, provided they comply with all applicable provisions of the State Uniform Construction Code and Uniform Fire Code.

- Can only be used between April 1 to November 30





SOE Details – Utilities, Parking, Food Service, and Alcohol

Utilities – Public electric and water service may be extended to the preserved farmland in support of holding SOEs. Other public utilities, such as gas and sewer lines, may not be extended for the purpose of holding SOEs.

Parking for SOEs must be provided through existing parking areas and the area around existing buildings to the extent possible. Any additional temporary, on-site parking areas must follow the SADC's standards for on-farm direct-marking facilities, activities, and events (N.J.A.C. 2:76-2A.13).

Food service – If a retail food establishment is already based at the farm, the farm can use the establishment as part of an SOE. Otherwise, the farm can only operate a temporary retail food establishment, as defined in the State Sanitary Code (N.J.A.C. 8:24) as part of the SOE.

Alcohol – SOEs that involve the service of alcoholic beverages must comply with all applicable State and local laws and regulations.

Difference Between Recreational Events Permitted by Deed of Easement vs Those Needing SOE Approval

- Recreational events that are permitted under the deed of easement – SOE law does not apply.
- Recreational events that are not permitted under the deed of easement – farm could seek SOE approval for them.
- Standard deed of easement:
 - Certain recreational uses are permitted and income may be derived from them (activities such as hunting, fishing, cross country skiing, and ecological tours) if they use the premises in its existing condition and do not interfere with the use of the land for agricultural production.
 - Other activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.
- If a recreational activity is already permitted by the deed of easement, the activity should not be included in the SOE approval.
 - Evaluation of events is fact sensitive – grantees will need sufficient detail to distinguish a permitted recreational activity from one that requires approval as an SOE



Difference Between SOEs and On-Farm Direct Marketing (OFDM) Activities and Events

- By definition, SOEs are social and cultural events that are not eligible for the benefits and protections of the Right to Farm Act (RTFA).
- If a farm is conducting marketing-related events that fit within the RTFA On-Farm Direct Marketing Agricultural Management Practice (AMP) rules, [N.J.A.C. 2:76-2A.13](#), such events would not count as SOEs.
- If a farm plans to hold both types of events – SOEs as well as events that could be eligible for RTFA protection – the farm should request a Site-Specific Agricultural Management Practice (SSAMP) determination from the CADB to identify which events are protected under the RTFA. The remaining events would count as SOEs.

On-Farm Direct Marketing (OFDM) Activities and Events

- **Right to Farm Act** – protects:
 - Conducting agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm.
- **On-Farm Direct Marketing AMP** – adds further definitions:
 1. Agriculture-related educational activities
 2. Farm-based recreational activities
 3. On-farm direct marketing activities and events



On-Farm Direct Marketing (OFDM)

Activities and Events

- **On-farm direct marketing event** – means an agriculture-related function that is **accessory to**, and serves to increase, **the direct-market sales** of the agricultural output of the farm.
 - Designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products.
 - May include on-farm direct marketing activities as components;
 - Are either **product-based or farm-based**; and
 - Occur **seasonally or periodically**
 - Some examples, provided they demonstrate the required relationship to marketing the output of the commercial farm, include:
 - Ag product festival at a farm producing that particular product (e.g., apple, pumpkin, wine)
 - Seasonal harvest festivals at a farm that produces such seasonal farm products
 - Farm open house events
 - CSA membership meetings
 - Farm-to-table events that showcase the farm's agricultural output





Administrative Process for SOE Applicants

Initial Application – Must obtain prior, written approval to hold SOEs

Annual Certification – After each calendar year, a farm that had received approval to hold SOEs must submit a certification to the grantee. Certification will include info such as:


- List of SOEs held that year
- Dates
- Type of events
- Number of attendees at each event.

Future Application(s) – May be required to submit future applications (but not more than once annually)

Administrative Process for Easement Holder

- Accept, review, and decide on SOE applications
- Forward a copy of any SOE approvals to the SADC
- Obtain farms' annual SOE certification forms and forward a copy to the SADC
- Provide the SADC with information for the initial and annual reports that the SADC is required to submit
- May inspect preserved farms on which SOEs are held





Administration of the SOE Law – Municipality Role

- All applicable State and local laws and regulations apply to holding SOEs, including but not limited to those concerning food safety, litter, noise, solid waste, traffic, and the protection of public health and safety.
- A municipality “**MAY**” require the submission of an application if the proposed SOEs would:
 - Generate parking or traffic flow that could unreasonably interfere with the movement of normal traffic or emergency vehicles or other organized group sharing similar common purposes or goals (on any street, park, or other public place within the municipality);
 - Require the expenditure of municipal resources or require municipal inspections


Administration of the SOE Law – Municipality Role

- Municipalities may not charge more than a **\$50** application fee, and the application may not require more information than the following:
 - The locations of tents and other temporary structures, sanitary facilities, parking, and access and egress for each event;
 - Where music will be played;
 - The number of expected guests; and
 - Other information that may be of public concern and would be required of a similar event when conducted at a public park or another public venue.
- In order for the municipality to play its appropriate role under the SOE law, the SADC recommends grantees submit a copy of SOE applications to the municipality in which the farm is located, so that the municipality is aware of the request to hold SOEs.

Inspections & Enforcement

- Inspections
 - The grantee and SADC have the right, without advance notice, to inspect preserved farms on which SOEs are held in order to determine compliance with the SOE law. Such an inspection may occur during an SOE event.
- Enforcement
 - The SADC is responsible for enforcement of the SOE law. This includes: notice of alleged violations and, if requested, holding a hearing.
 - If the SADC finds that a violation has occurred, the SADC may issue a final order imposing a civil administrative penalty and, if applicable, a suspension from holding SOEs for a period of time.





Administration of the SOE Law – Penalties

- **Penalties**

- Civil administrative penalty process
- Up to \$1,000 for the first offense
\$2,500 for the second offense, or
\$5,000 for a third or subsequent offense.
- Each day in which a violation occurs is considered a separate offense.

- **Suspensions** – SADC shall suspend:

- Up to 6 months for a second offense
6 mo. to 1 year for a third offense
≥ 1 year (or permanently) for a fourth or subsequent offense

Can SOEs be Held on Farms Preserved With Federal Funding?

- Yes, farms preserved with federal funding can apply to hold SOEs.
- Easement holders (grantees) can approve a farm's application provided the holding of SOEs is consistent with the language in the farm's specific federal deed of easement.
- Grantees have to review the specific language in the easement.
- Additional review and approval by the federal government (USDA Natural Resources Conservation Service (NRCS)) is not required; however, grantees may consult NRCS on a case-by-case basis concerning the grantee's interpretation.
- NRCS review and approval is necessary only when the easement terms require it or in the event NRCS must exercise its enforcement rights.



If the easement holder is a county, is it the county commissioners, or CADB's, responsibility to administer the SOE law?

- The law refers to the “grantee” as having the responsibility of administering the SOE law.
- Some easements list the grantee, (the easement holder) as a county board of commissioners (or, formerly, freeholders); some list the CADB; and some list both.
- If a county is the easement holder, the board of county commissioners would have to determine whether it or the CADB would be responsible for administering the SOE law.





For more information

- Please visit the SADC website, www.nj.gov/agriculture/sadc/, for a copy of the SOE law and resource documents:
 - SOE Guidance Document – Overview
 - SOE Guidance Document – Q&A
 - Sample Application
 - Production Estimator Tool
- Contact the SADC at 609-984-2504 and ask for **David Kimmel**

