

STATE AGRICULTURE DEVELOPMENT COMMITTEE
**Summary of Rules Regarding Commercial Nonagricultural Activities and Cellular
Towers on Preserved Farms**

BACKGROUND -- S-206, signed into law on January 12, 2006, provided for commercial nonagricultural activities to occur, and personal wireless service facilities to be erected, on preserved farmland under certain circumstances, and directed the SADC to develop rules to implement the act. The intent of the act was to provide an opportunity for a commercial nonagricultural use to landowners who preserved their farmland prior to the act and were not aware of the possibility or potential benefit of excluding land from preservation for such future uses. It also was intended to recognize the need of erecting cell phone towers on preserved farms due to the unique location of the land and, in doing so, provide all owners of preserved farms with the opportunity to realize supplemental income from the use of a very small portion of the farm for that purpose. The SADC adopted rules (N.J.A.C. 2:76-22 and 23) to implement this legislation, which became effective on June 2, 2008.

SUMMARY – The new rules set forth the eligibility, information required, evaluation criteria, review process and conditions to obtain a special permit to erect a cell tower or conduct a commercial nonagricultural use on a preserved farm. In developing these rules, the SADC was particularly mindful of the following:

- the Legislature’s directive that buildings and land for nonagricultural uses be utilized in their “existing condition” and that only “small enterprises” could qualify for a special permit;
- the understanding that the extent of allowable improvements to farm structures can exacerbate the obstacles to future farmers to be able to afford to purchase preserved farms; and
- the recognition that farmland is preserved for agricultural use and the need to ensure that nonagricultural uses are a supplemental, not primary, focus of activity and investment for the preserved farm.

MAJOR PROVISIONS – Farms must meet the definition of a commercial farm under the Right to Farm Act to qualify for a special permit for either a commercial nonagricultural use or cell tower.

To qualify for a commercial nonagricultural use, a farm must have been preserved prior to January 12, 2006, with no land excepted from the deed of easement at time of preservation. Any landowner of a preserved farm is eligible to apply for a special permit for a cell phone tower, regardless of when the farm was preserved and whether land was excepted from the deed of easement.

The commercial nonagricultural use must be compatible with the agricultural use of the premises and surrounding land use of adjacent properties. It cannot use any equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference that affects the quiet enjoyment of property owned by neighbors.

The commercial nonagricultural use cannot have multiple businesses/uses within the same structure or structures, including commercial, industrial or office use within the same structure or structures.

The commercial nonagricultural activity must use structures in their existing condition. No more than 2,500 square feet of the interior of an existing structure may be converted, or "finished," to accommodate the use, including but not limited to installation of new walls, insulation, flooring, lighting, HVAC systems, sanitary plumbing and associated wiring. There can be no expansion of waste-water facilities to accommodate the use. New public utilities (water, gas, electric, sewage, etc.) will not be permitted. However, an expansion of a public utility that already exists on the farm, other than waste-water facilities, will be permitted.

No new parking areas may be created to support the nonagricultural use. The existing area to be dedicated to parking may not exceed 1,000 square feet. Equipment, vehicles, supplies, products or by-products associated with the commercial nonagricultural use may not be stored outside the structure, with the exception that vehicles or equipment too large to store within the structure such as vehicles and trailers may be parked outside the structure within the 1,000 square foot parking area.

The commercial nonagricultural use can employ no more than four full-time employees at peak operational periods.

For cell phone towers, the applicant to the maximum extent possible must avoid placement of the facility on prime agricultural soils.

A nonrefundable application fee of \$1,000 payable to the SADC is required for a special permit for either a commercial nonagricultural use or cell tower. The standard duration for a special permit will not exceed five years and may be up to a maximum of 20 years. Renewals may be sought within two years of the date of scheduled permit expiration and will not require another \$1,000 application fee.

A landowner who receives a special permit to erect a cell tower is not precluded from applying to obtain a special permit to conduct a commercial nonagricultural use, and vice versa.