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**N.J.S.A. 4:1C-11**

**4:1C-11. Short title**

This act shall be known and may be cited as the "Agriculture Retention and Development Act."

**4:1C-12. Legislative findings and declarations**

The Legislature finds and declares that:

- a. The strengthening of the agricultural industry and the preservation of farmland are important to the present and future economy of the State and the welfare of the citizens of the State, and that the Legislature and the people have demonstrated recognition of this fact through their approval of the "Farmland Preservation Bond Act of 1981," P.L. 1981, c. 276;
- b. All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;
- c. It is necessary to authorize the establishment of State and county organizations to coordinate the development of farmland preservation programs within identified areas where agriculture will be presumed the first priority use of the land and where certain financial, administrative and regulatory benefits will be made available to those landowners who choose to participate, all as hereinafter provided.

**4:1C-13. Definitions**

As used in this act:

- a. "Agricultural development areas" means areas identified by a county agricultural development board pursuant to the provisions of section 11 of this act<sup>1</sup> and certified by the State Agriculture Development Committee;

- b. "Agricultural use" means the use of land for common farmsite activities, 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 and water management, and grazing;
- c. "Board" means a county agriculture development board established pursuant to section 7 or a subregional agricultural retention board established pursuant to section 10 of this act;
- d. "Committee" means the State Agriculture Development Committee established pursuant to section 4 of the "Right to Farm Act," P.L.1983, c. 31 (C. 4:1C-4);
- e. "Cost," as used with respect to cost of fee simple absolute title, development easements or soil and water conservation projects, includes, in addition to the usual connotations thereof, interest or discount on bonds; cost of issuance of bonds; 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 necessary to administer this act;
- f. "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 the provisions of this act and any relevant rules or regulations promulgated pursuant hereto;
- g. "Development project" means any proposed construction or capital improvement for nonagricultural purposes;
- h. "Farmland preservation program" or "municipally approved farmland preservation program" (hereinafter referred to as municipally approved program) means any voluntary program, the duration of which is at least 8 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 this act 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 section 14 of this act;
- i. "Fund" means the "Farmland Preservation Fund" created pursuant to the "Farmland Preservation Bond Act of 1981," P.L.1981, c. 276;
- j. "Governing body" means, in the case of a county, the governing body of the county, 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;
- k. "Secretary" means the Secretary of Agriculture;

l. "Soil and water conservation project" means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity;

m. "Soil conservation district" means a governmental subdivision of this State organized in accordance with the provisions of R.S. 4:24-1 et seq.;

n. "Agricultural deed restrictions for farmland preservation purposes" means a statement containing the conditions of the conveyance and the terms of the restrictions set forth in P.L.1983, c. 32 and as additionally determined by the committee on the use and the development of the land which shall be recorded with the deed in the same manner as originally recorded.

#### **4:1C-14. County agriculture development board; membership terms; vacancies; compensation; chairman; existing public bodies**

a. The governing body of any county may, by resolution duly adopted, establish a public body under the name and style of "The County Agriculture Development Board," with all or any significant part of the name of the county inserted. Every board shall consist of three non-voting members as follows: a representative of the county planning board; a representative of the local soil conservation district; and the county agent of the New Jersey Cooperative Extension Service whose jurisdiction encompasses the boundaries of the county; and seven voting members who shall be residents of the county, four of whom shall be actively engaged in farming, the majority of whom shall own a portion of the land they farm, and three of whom shall represent the general public, appointed by the board of chosen freeholders, or, in the counties operating under the county executive plan or county supervisor plan pursuant to the provisions of the "Optional County Charter Law," P.L.1972, c. 154 (C. 40:41A-1 et seq.), by the county executive, or the county supervisor, as the case may be, with the advice and consent of the board of chosen freeholders. With respect to the members actively engaged in farming, the county board of agriculture shall recommend to the board of chosen freeholders, the county executive or the county supervisor, as appropriate, a list of potential candidates and their alternates to be considered for each appointment.

b. Of the seven members first to be appointed, three shall be appointed for terms of two years, two for terms of three years, and two for terms of four years. Thereafter, all appointments shall be made for terms of four years. Each of these members shall hold office for the term of the appointment and until a successor shall have been appointed and qualified. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

c. The board of chosen freeholders, county executive or county supervisor, as appropriate, may appoint such other advisory members to the board as they may deem appropriate.

d. Members of the board shall receive no compensation but the appointive members may, subject to the limits of funds appropriated or otherwise made available for these purposes, be reimbursed for expenses actually incurred in attending meetings of the board and in performance of their duties as members thereof.

e. The board shall meet as soon as may be practicable following the appointment of its members and shall elect a chairman from among its members and establish procedures for the conduct of regular and special meetings, provided that all meetings are conducted in accordance with the provisions of the "Open Public Meetings Act," P.L.1975, c. 231 (C. 10:4-6 et seq.). The chairman shall serve for a term of 1 year and may be reelected.

f. The chairman shall appoint three members actively engaged in farming to serve with the representatives of the general public for the purpose of mediating disputes pursuant to the provisions of section 19 of this act.<sup>1</sup>

g. Notwithstanding the provisions of subsections a. and b. of this section, any public body established by the governing body of any county prior to May 3, 1982 which was established to carry out functions substantially similar to the functions of boards pursuant to this act and which proposes to apply for grants pursuant hereto may carry out the functions authorized herein, provided that within five years following the effective date of this act those boards established prior to May 3, 1982 shall reorganize so that the board reflects no more than a simple majority of members actively engaged in farming or equal representation of the general public and those actively engaged in farming.

#### **4:1C-15. Duties**

Every board shall:

a. Develop and adopt, after public hearings, agricultural retention and development programs, which shall have as their principal purpose the long-term encouragement of the agricultural business climate and the preservation of agricultural land in the county;

b. Establish the minimum acreage of significant masses of reasonably contiguous land required for the creation of a municipally approved program or other farmland preservation programs;

c. Establish minimum standards for the inclusion of land in a municipally approved program or other farmland preservation programs;

d. Review and approve, conditionally approve or disapprove petitions for the formation of a municipally approved program or other farmland preservation programs, and monitor the operations thereof;

e. Review and approve, conditionally approve or disapprove, prior to any applications to the committee, any request for financial assistance authorized by this act;

f. Monitor and make appropriate recommendations to the committee and to county and municipal governing bodies and boards with respect to resolutions, ordinances, regulations and development approvals which would threaten the continued viability of agricultural activities and farmland preservation programs within agricultural development areas;

g. At the request of a municipality, require that any person proposing any nonagricultural development in an agricultural development area prepare and submit a statement as to the potential impact the proposed development would have on agricultural activities in the area.

#### **4:1C-16. Powers**

Every board may:

a. Develop an educational and informational program concerning farmland preservation techniques and recommended agricultural management practices to advise and assist municipalities, farmers and the general public with respect to the implementation of these techniques;

b. Provide assistance to farm operators concerning permit applications and information regarding the regulatory practices of State government agencies.

#### **4:1C-17. Subregional agricultural retention board; membership; dissolution**

a. If any board of chosen freeholders has not created a board within 1 year of the effective date of this act, the governing body of any municipality located within that county may, singly or jointly by parallel ordinance with other contiguous municipalities within the county, establish a subregional agricultural retention board, which shall have the same responsibilities as a county board, except that its jurisdiction shall not exceed the boundaries of the municipality or municipalities establishing the board. Every subregional agricultural retention board may receive State moneys from the fund pursuant to the provisions of this act.

b. The members of a subregional agricultural retention board shall be appointed in the same manner as a county board, except that the planning board representative shall be from the municipal planning board and the appointive members shall be residents of the municipality. If two or more municipalities jointly create a subregional board, the number of members thereof shall be multiplied by the number of municipalities involved.

c. If the governing body of the county creates a board subsequent to the establishment of a subregional agricultural retention board, the subregional body shall, within 90 days of the date of the creation of the

board, be dissolved but may remain advisory to the board. The board shall honor any contractual commitments of the subregional agricultural retention board.

#### **4:1C-18. Agricultural development area; recommendation and approval**

The board may, after public hearing, identify and recommend an area as an agricultural development area, which recommendation shall be forwarded to the county planning board. The board shall document where agriculture shall be the preferred, but not necessarily the exclusive, use of land if that area:

- a. Encompasses productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and in which agriculture is a permitted use under the current municipal zoning ordinance or in which agriculture is permitted as a nonconforming use;
- b. Is reasonably free of suburban and conflicting commercial development;
- c. Comprises not greater than 90% of the agricultural land mass of the county;
- d. Incorporates any other characteristics deemed appropriate by the board.

Approval of the agricultural development area by the board shall be in no way construed to authorize exclusive agricultural zoning or any zoning which would have the practical effect of exclusive agricultural zoning, nor shall the adoption be used by any tax official to alter the value of the land identified pursuant hereto or the assessment of taxes thereon.

#### **4:1C-19. Land acquisition or construction in agriculture development area; notice of intent; review; hearing**

- a. Any public body or public utility which intends to exercise the power of eminent domain, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L. 1971, c. 361 (C. 20:3-1 et seq.), for the acquisition of land included in an agricultural development area, or which intends to advance a grant, loan, interest subsidy or other funds within an agricultural development area for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures, shall file a notice of intent with the board and the committee, the provisions of any other law, rule or regulation to the contrary notwithstanding, 30 days prior to the initiation of this action. This notice shall contain a statement of the reasons for the acquisition and an evaluation of alternatives which would not include action in the agricultural development area.
- b. Within 30 days of the receipt of this notice of intent, the board and the committee shall review the proposed action to determine its effect upon the preservation and enhancement of agriculture in the agricultural development area, the municipally approved program, and upon overall State agricultural

preservation and development policies. If the board or the committee finds that the proposed action would cause unreasonably adverse effects on the agricultural development area, or State agricultural preservation and development policies, the board or the committee may direct that no action be taken thereon for 60 days, during which time a public hearing shall be held by the board or the committee in the agricultural development area and a written report containing the recommendations of the board or the committee concerning the proposed acquisition or development project shall be made public. Notice of the hearing shall be afforded in accordance with the provisions of the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4-6 et seq.).

c. The secretary may, upon finding that the provisions of this section have been violated, request the Attorney General to bring an action to enjoin the acquisition or development project.

#### **4:1C-20. Petition for farmland preservation program; approval; agreement between board and landowner**

a. Any one or more owners of land which qualifies for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c. 48 (C. 54:4-23.1 et seq.), and which is included in an agricultural development area, may petition the board for the creation of a farmland preservation program. The petition shall include a map of the boundaries of the proposed farmland preservation program and any other information deemed appropriate by the board.

b. Approval of the petition by the board and creation of the farmland preservation program shall be signified by an agreement between the board and the landowner to retain the land in agricultural production for a minimum period of 8 years. The agreement shall constitute a restrictive covenant and shall be filed and recorded with the county clerk in the same manner as a deed.

#### **4:1C-21. Petition for municipally approved program; content; review**

a. Any one or more owners of land which qualifies for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c. 48 (C. 54:4-23.1 et seq.), and which is included in an agricultural development area may petition the board for the creation of a municipally approved program comprising that land; provided that the owner or owners own at least the minimum acreage established by the board. The petition shall include a map of the boundaries of the municipally approved program and any other information deemed appropriate by the board.

b. Upon receipt thereof, the board shall review this petition for conformance with minimum eligibility criteria as established by the committee and the board. If the board finds that the criteria have been met, it shall immediately forward a copy of the petition to the county planning board, the governing body of any municipality wherein the proposed municipally approved program is located, and to the planning board of each affected municipality.

c. Within 60 days of receipt of the petition, the municipal planning board shall review and report to the

municipal governing body the potential effect of the proposed municipally approved program upon the planning policies and objectives of the municipality.

d. The municipal governing body shall, after public hearing and within 120 days of receipt of the report, recommend to the board, by ordinance duly adopted, that the municipally approved program boundaries be approved, conditionally approved with proposed geographical modifications, or disapproved.

e. Upon receipt of a recommendation by the governing body to approve the petition, the board shall forward the petition for the creation of the municipally approved program and the municipal ordinance approving the municipally approved program to the county planning board. This action shall constitute creation of a municipally approved program.

f. Upon receipt of a recommendation by the governing body to conditionally approve the petition with proposed geographical modifications, the board shall review the recommendation for conformance with minimum eligibility criteria. If the board finds that the criteria have been met and that the proposed modifications encourage agriculture retention and development to the greatest practicable extent, the petition shall be forwarded and adopted pursuant to subsection e. of this section.

g. Upon receipt of a recommendation by the governing body to disapprove the petition, the board shall take no further action and the proposed municipally approved program shall not be adopted.

h. If the governing body proposes modifications to the petition which exclude any land from being included within a municipally approved program, the owner thereof may request that the board mediate on behalf of the landowner with the municipal governing body prior to acting on the recommendation thereof. The landowner may request mediation by the committee with respect to any action taken by the board.

i. The provisions of this section to the contrary notwithstanding, if any municipal governing body fails to act on a petition to create a municipally approved program within 180 days of the receipt by the municipal planning board of the petition, regardless of whether or not the municipal planning board has submitted a report pursuant to subsection c. of this section, the board or the landowner may appeal to the committee to intervene, and the committee may approve or disapprove a petition for the creation of a municipally approved program pursuant to the provisions of this section.

j. The board shall advise owners of any land contiguous to the proposed municipally approved program that a petition has been received, solicit opinions concerning inclusion of this land and, if the board deems appropriate, encourage the inclusion of the land in the municipally approved program.

Any landowner not included in the municipally approved program as initially created may, within two years following the creation date, request inclusion, and upon review by the board and municipal governing body, and a finding that this inclusion is warranted, become part of the municipally approved program; provided that the landowner enters into an agreement pursuant to section 17 of this act for the remaining duration of the municipally approved program.



#### **4:1C-22. Documentation of municipally approved program**

The creation of a municipally approved program shall be documented in the following manner:

- a. The petition in its final form shall be filed and recorded, in the same manner as a deed, with the county clerk and shall be filed with the municipal clerk;
- b. The petition, the municipal ordinance of adoption and the county resolution or ordinance of adoption, as the case may be, shall be filed with the committee; and
- c. The petition in its final form shall be filed with the municipal tax assessor for the purpose of qualifying for the exemption from property taxation on new farm structures and improvements within the municipally approved program, as authorized and provided in the Constitution.

The documentation of the creation of the municipally approved program as prescribed herein shall in no way be construed to constitute or in any other way authorize exclusive agricultural zoning.

#### **4:1C-23. Zoning of land in program**

Notwithstanding the provisions of P.L. 1975, c. 291 (C. 40:55D-1 et seq.) or any other law, rule or regulation to the contrary, no municipality shall alter its zoning ordinance as it pertains to land included within a municipally approved program in any way so as to provide for exclusive agricultural zoning or zoning which has the practical effect of exclusive agricultural zoning for a period of 11 years from the date of the creation of the municipally approved program, unless all landowners within that municipally approved program who entered into an agreement pursuant to the provisions of section 17 of this act agree to that alteration by express written consent at the end of the minimum period required by section 17 of this act.

#### **4:1C-24. Agreement to retain land in agricultural production or to convey development easement; restrictive covenant; filing and recording; soil and water conservation project grants**

a. (1) Landowners within a municipally approved program or other farmland preservation program shall enter into an agreement with the board, and the municipal governing body, if appropriate, to retain the land in agricultural production for a minimum period of eight years.

(2) Any landowner whose land is within a municipally approved program or other farmland preservation program or any landowner whose land qualifies for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.), and which is included in an agricultural development area, may enter into an agreement to convey a development easement on the land to the board. The development easement may be permanent or for a term of 20 years.

(3) Any agreement entered into pursuant to paragraph (1) of this subsection shall constitute a restrictive covenant and shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed. Any development easement conveyed pursuant to paragraph (2) of this subsection shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed. The recording of any such agreement or development easement of limited term shall include notification that the committee may exercise the first right and option to purchase a fee simple absolute interest in the land pursuant to P.L.1989, c. 28 (C.4:1C-38 et al.).

b. A landowner, or a farm operator as an agent for the landowner, whose land is within a municipally approved program or other farmland preservation program, or is subject to a development easement conveyed pursuant to subsection a. of this section, shall be eligible to, and may, apply to the local soil conservation district and the board for a grant for a soil and water conservation project approved by the State Soil Conservation Committee, subject to the provisions of P.L.1983, c. 32 (C.4:1C-11 et al.).

c. (Deleted by amendment, P.L.1989, c. 310.)

d. Approval by the local soil conservation district and the board for grants for soil and water conservation projects shall be contingent upon a written agreement by the person who would receive funds that the project shall be maintained for a specified period of not less than three years, and shall be a component of a farmland conservation plan approved by the local soil conservation district.

e. If the landowner applying for funds for a soil and water conservation project pursuant to this section provides 50% of those funds without assistance from the county, the local soil conservation district shall review, approve, conditionally approve or disapprove the application. The committee shall certify that the land on which the soil and water conservation project is to be conducted has had a development easement conveyed from it pursuant to subsection a. of this section or is part of a municipally approved program or other farmland preservation program.

#### **4:1C-25. Eminent domain; funding for construction of facilities to serve nonfarm structures**

The provisions of any law to the contrary notwithstanding, no public body shall exercise the power of eminent domain for the acquisition of land in a municipally approved program or from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c. 32 (C.4:1C-24), nor shall any public body advance a grant, loan, interest subsidy or other funds within a municipally approved program, or with regard to land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c. 32 (C.4:1C-24), for the construction of dwellings, commercial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures unless the Governor declares that the action is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative. If the Governor so declares, the provisions of section 12 of P.L.1983, c. 32 (C.4:1C-19) shall apply.

#### **4:1C-26. Actions; presumption; complaint**

a. In all relevant actions filed subsequent to the effective date of P.L.1983, c. 32 (C.4:1C-11 et al.), there shall exist an irrebuttable presumption that no agricultural operation, activity or structure which is conducted or located within a municipally approved program, or on land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c. 32 (C.4:1C-24), and which conforms to agricultural management practices approved by the committee, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto and which does not pose a direct threat to public health and safety shall constitute a public or private nuisance, nor shall any such operation, activity or structure be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property.

b. In the event that any person wishes to file a complaint to modify or enjoin an agricultural operation or activity under the belief that the operation or activity violates the provisions of subsection a. of this section, that person shall, 30 days prior to instituting any action in a court of competent jurisdiction, petition the board to act as an informal mediator.

c. The board shall, in the course of its regular or special meetings but within 30 days of receipt of the petition, seek to facilitate the resolution of any dispute. No statement or expression of opinion made in the course of a meeting concerning the dispute shall be deemed admissible in any subsequent judicial proceeding thereon.

#### **4:1C-27. Exemption from emergency restrictions on use of water and energy**

The provisions of any law, rule, regulation or ordinance to the contrary notwithstanding, agricultural activities on land in a municipally approved program, or on land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c. 32 (C.4:1C-24), shall be exempt from any emergency restrictions instituted on the use of water and energy supplies unless the Governor declares that the public safety and welfare require otherwise.

#### **4:1C-28. Farm structure design**

a. The provisions of any law, rule, regulation or ordinance to the contrary notwithstanding, any criteria developed by a land grant college or a recognized organization of agricultural engineers and approved by the committee for farm structure design shall be the acceptable minimum construction standard for a farm structure located in a municipally approved program or other farmland preservation program or on land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c. 32 (C.4:1C-24).

b. The use by a farm owner or operator of a farm structure design approved pursuant to subsection a. of this section shall, the provisions of any law, rule, regulation or ordinance to the contrary notwithstanding, be exempt from any requirement concerning the seal of approval or fee of an architect or professional engineer.

#### **4:1C-29. Length of program; termination; inclusion of additional landowners**

a. The municipally approved program shall remain in effect for a minimum of 8 years, provided that a review of the practicability and feasibility of its continuation shall be conducted by the board and the municipal governing bodies within the year immediately preceding the termination date of the municipally approved program.

b. If subsequent to notification by the board, none of the parties to the agreement entered into pursuant to section 17 of this act notify the board within this 1 year period that they wish to terminate the municipally approved program, the municipally approved program shall continue in effect for another 8-year period and may continue for succeeding 8-year periods, provided that no notice of termination is received by the board during subsequent periods of review.

c. Termination of the municipally approved program at the end of any 8-year period shall occur following the receipt by the board of any notice of termination. The municipal tax assessor shall be notified by the board if the municipally approved program is terminated.

d. Nothing in this section shall be construed to preclude the reformation of a municipally approved program, as initially created pursuant to the provisions of this act.

e. Any landowner not included in a municipally approved program may request inclusion at any time during the review conducted pursuant to subsection a. of this section. If the board and the municipal governing body find that this inclusion would promote agricultural production, the inclusion shall be approved.

#### **4:1C-30. Withdrawal of land; taxation**

a. Withdrawal of land from the municipally approved program or other farmland preservation program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4-6 et seq.) and approval by the board and in the case of a municipally approved program, the municipal governing body, at a regular or special meeting thereof. The approval shall be documented by the filing with the county clerk and county planning board, by the

board and municipal governing body, of a resolution or ordinance, as appropriate, therefor. The local tax assessor shall also be notified by the board of this withdrawal.

b. Following approval to withdraw from the municipally approved program, the affected landowner shall pay to the municipality, with interest at the rate imposed by the municipality for nonpayment of taxes pursuant to R.S. 54:4-67, any taxes not paid as a result of qualifying for the property tax exemption for new farm structures or improvements in the municipally approved program, as authorized and provided in the Constitution, and shall repay, on a pro rata basis as determined by the local soil conservation district, to the board or the committee, or both, as the case may be, any remaining funds from grants for soil and water conservation projects provided pursuant to the provisions of this act, except in the case of bankruptcy, death or incapacitating illness of the owner, where no such payback of taxes or grants shall be required.

**4:1C-31. Offer to sell developmental easement; price; evaluation of suitability of land; appraisal**

a. Any landowner applying to the board to sell a development easement pursuant to section 17 of P.L.1983, c. 32 (C.4:1C-24) shall offer to sell the development easement at a price which, in the opinion of the landowner, represents a fair value of the development potential of the land for nonagricultural purposes, as determined in accordance with the provisions of P.L.1983, c. 32.

b. Any offer shall be reviewed and evaluated by the board and the committee in order to determine the suitability of the land for development easement purchase. Decisions regarding suitability shall be based on the following criteria:

(1) Priority consideration shall be given, in any one county, to offers with higher numerical values obtained by applying the following formula:

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

(2) The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

(3) The degree of imminence of change of the land from productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the sale of development easements which is unsuitable according to the above criteria and which has not been approved by the board and the municipality.

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural

purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1989, c. 86 (C.40:55D-113 et seq.) or if any county or any municipality in any county has established a development transfer bank pursuant to section 22 of P.L.2004, c. 2 (C.40:55D-158) or the Highlands Water Protection and Planning Council has established a development transfer bank pursuant to section 13 of P.L.2004, c. 120 (C.13:20-13), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein or elsewhere where a municipal average has been established under subsection c. of this section, upon receiving an application from the landowners, the board and the committee shall compare the appraised value, or the municipal average, as the case may be, and the landowner's offer and, pursuant to the suitability criteria established in subsection b. of this section:

(1) Approve the application to sell the development easement and rank the application in accordance with the criteria established in subsection b. of this section; or

(2) Disapprove the application, stating the reasons therefor.

e. Upon approval by the committee and the board, the secretary is authorized to provide the board, within the limits of funds appropriated therefor, an amount equal to no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the purchase price of the development easement, as determined pursuant to the provisions of this section. The board shall provide its required share and accept the landowner's offer to sell the development easement. The acceptance shall cite the specific terms, contingencies and conditions of the purchase.

f. The landowner shall accept or reject the offer within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

g. Any landowner whose application to sell a development easement has been rejected for any reason other than insufficient funds may not reapply to sell a development easement on the same land within two years of the original application.

h. No development easement shall be purchased at a price greater than the appraised value determined pursuant to subsection c. of this section or the municipal average, as the case may be.

i. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant to

the “Farmland Assessment Act of 1964,” P.L.1964, c. 48 (C.54:4-23.1 et seq.).

j. (1) In determining the suitability of land for development easement purchase, the board and the committee may also include as additional factors for consideration the presence of a historic building or structure on the land and the willingness of the landowner to preserve that building or structure, but only if the committee first adopts, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations implementing this subsection. The committee may, by rule or regulation adopted pursuant to the “Administrative Procedure Act,” assign any such weight it deems appropriate to be given to these factors.

(2) The provisions of paragraph (1) of this subsection may also be applied in determining the suitability of land for fee simple purchase for farmland preservation purposes as authorized by P.L.1983, c. 31 (C.4:1C-1 et seq.), P.L.1983, c. 32 (C.4:1C-11 et seq.), and P.L.1999, c. 152 (C.13:8C-1 et seq.).

(3) (a) For the purposes of paragraph (1) of this subsection: “historic building or structure” means the same as that term is defined pursuant to subsection c. of section 2 of P.L.2001, c. 405 (C.13:8C-40.2).

(b) For the purposes of paragraph (2) of this subsection, “historic building or structure” means the same as that term is defined pursuant to subsection c. of section 1 of P.L.2001, c. 405 (C.13:8C-40.1).

**4:1C-31.1. Farmland within certified agricultural development area; sale by landowner; acquisition by committee; resale; payment of taxes by state**

a. Any landowner of farmland within an agricultural development area certified by the committee may apply to the committee to sell the fee simple absolute title at a price which, in the opinion of the landowner, represents a fair market value of the property.

b. The committee shall evaluate the offer to determine the suitability of the land for purchase. Decisions regarding suitability shall be based on the eligibility criteria for the purchase of development easements listed in section 24 of P.L.1983, c. 32 (C.4:1C-31) and the criteria adopted by the committee and the board of that county. The committee shall also evaluate the offer taking into account the amount of the asking price, the asking price relative to other offers, the location of the parcel relative to areas targeted within the county by the board and among the counties, and any other criteria as the committee has adopted pursuant to rule or regulation. The committee may negotiate reimbursement with the county and include the anticipated reimbursement as part of the evaluation of an offer.

c. The committee shall rank the offers according to the criteria to determine which, if any, should be appraised. The committee shall reject any offer for the purchase of fee simple absolute title determined unsuitable according to any criterion in this subsection or adopted pursuant to this subsection, or may defer decisions on offers with a low ranking. The committee shall state, in writing, its reasons for rejecting an offer.

d. Appraisals of the parcel shall be conducted to determine the fair market value according to procedures adopted by regulation by the committee.

e. The committee shall notify the landowner of the fair market value and negotiate for the purchase of the title in fee simple absolute.

f. Any land acquired by the committee pursuant to the provisions of this amendatory and supplementary act shall be held of record in the name of the State and shall be offered for resale by the State, notwithstanding any other law, rule or regulation to the contrary, within a reasonable time of its acquisition with agricultural deed restrictions for farmland preservation purposes as determined by the committee pursuant to the provisions of this act.

g. The committee shall be responsible for the operation and maintenance of lands acquired and shall take all reasonable steps to maintain the value of the land and its improvements.

h. To the end that municipalities may not suffer loss of taxes by reason of acquisition and ownership by the State of New Jersey of property under the provisions of this act, the State shall pay annually on October 1 to each municipality in which property is so acquired and has not been resold a sum of money equal to the tax last assessed and last paid by the taxpayer upon this land and the improvement thereon for the taxable year immediately prior to the time of its acquisition. In the event that land acquired by the State pursuant to this act had been assessed at an agricultural and horticultural use valuation in accordance with provisions of the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.), at the time of its acquisition by the State, no rollback tax pursuant to section 8 of P.L.1964, c. 48 (C.54:4-23.8) shall be imposed as to this land nor shall this rollback tax be applicable in determining the annual payments to be made by the State to the municipality in which this land is located.

All sums of money received by the respective municipalities as compensation for loss of tax revenue pursuant to this section shall be applied to the same purposes as is the tax revenue from the assessment and collection of taxes on real property of these municipalities, and to accomplish this end the sums shall be apportioned in the same manner as the general tax rate of the municipality for the tax year preceding the year of receipt.

#### **4:1C-31.2. Rules and regulations**

The committee shall adopt rules and regulations necessary to carry out the purposes of this amendatory and supplementary act according to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.).

#### **4:1C-32. Conveyance of easement following purchase; conditions and restrictions; payment**



a. No development easement purchased pursuant to the provisions of this act shall be sold, given, transferred or otherwise conveyed in any manner except in those cases when development easements have been purchased on land included in a farmland preservation program included in a sending zone established by a municipal development transfer ordinance adopted pursuant to P.L.1989, c. 86 (C.40:55D-113 et al.).

b. Upon the purchase of the development easement by the board, the landowner shall cause a statement containing the conditions of the conveyance and the terms of the restrictions on the use and development of the land to be attached to and recorded with the deed of the land, in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development for nonagricultural purposes is expressly prohibited, shall run with the land and shall be binding upon the landowner and every successor in interest thereto.

c. At the time of settlement of the purchase of a development easement, the landowner, the board, and the committee may agree upon and establish a schedule of payment which provides that the landowner may receive consideration for the easement in a lump sum, or in installments over a period of up to 40 years from the date of settlement, provided that, if a schedule of installments is agreed upon, the State Comptroller each year shall retain in the fund, or the governing body each year shall retain, an amount of money sufficient to pay the landowner for the current year pursuant to the schedule. For installment purchases, (1) the landowner may receive annually interest on any unpaid balance remaining after the date of settlement, which shall accrue at a rate established in the installment contract; and (2) the committee shall make annual payments to the board in an amount equal to the committee's proportionate annual share of the purchase price of the development easement.

d. Nothing in this section shall prevent a board from receiving a lump sum from the committee and establishing a schedule of installment payments with the landowner.

#### **4:1C-32.1. Special permit for rural microenterprise activity on qualifying land**

a. Any person who owns qualifying land may apply for a special permit pursuant to this section to allow a rural microenterprise activity to occur on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the owner of the premises if the development easement is owned by the committee or a board. If the development easement is owned by a qualifying tax exempt nonprofit organization, the committee, in consultation with the qualifying tax exempt nonprofit organization, may issue a special permit pursuant to this section to the owner of the premises. The committee shall provide the holder of any development easement on the farm with a copy of the application submitted for the purposes of subsection a. of this section, and the holder of the development easement shall have 30 days after the date of receipt thereof to provide comments to the committee on the application. Within 90 days after receipt of a completed application, submitted for the purposes of subsection a. of this section, the committee shall approve, approve with conditions, or disapprove the application.

c. There shall be two categories of rural microenterprise activities, as follows:

(1) Class 1 shall include customary rural activities, which rely on the equipment and aptitude historically possessed by the agricultural community, such as snow plowing, bed and breakfasts, bakeries, woodworking, and craft-based businesses; and

(2) Class 2 shall include agriculture support services, which have a direct and positive impact on agriculture by supplying needed equipment, supplies, and services to the surrounding agricultural community, such as veterinary practices, seed suppliers, and tractor or equipment repair shops.

d. A special permit may be issued pursuant to this section provided that:

(1) the owner of the premises establishes, through the submission of tax forms, sales receipts, or other appropriate documentation, as directed by the committee, that (a) the qualifying land is a commercial farm as defined pursuant to section 3 of P.L.1983, c. 31 (C.4:1C-3), and (b) the owner of the premises is a farmer, as defined pursuant to subsection k. of this section;

(2) the permit is for one rural microenterprise only;

(3) no more than one permit is valid at any one time for use on the qualifying land;

(4) the permit is for a maximum duration of 20 years;

(5) the permit does not run with the land and may not be assigned;

(6) the rural microenterprise does not interfere with the use of the qualifying land for agricultural or horticultural production;

(7) the rural microenterprise utilizes the land and structures in their existing condition, except as allowed in accordance with the use restrictions prescribed in subsection g. of this section;

(8) the total area of land and structures devoted to supporting the rural microenterprise does not exceed a one-acre envelope on the qualifying land;

(9) the rural microenterprise does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area; and

(10) the rural microenterprise is not a high traffic volume business, and is undertaken in compliance with the parking and employment restrictions prescribed by subsection h. of this section.

e. The owner of the premises may apply to the committee to renew a permit within 10 years before the date of the scheduled permit expiration. The committee shall review the renewal application in accordance with the process and criteria set forth in this section for the issuance of a special permit, including the consultation required by subsection b. of this section.

f. The committee shall provide reasonable opportunity for the continued operation of a rural microenterprise in the event of:

(1) the death, incapacitation, or retirement of the owner of the premises;

(2) transfer of the ownership of the farm; or

(3) disruption of income from gross sales of agricultural or horticultural products, caused by circumstances beyond the farmer's control, such as crop failure.

g. The use of land and structures for a rural microenterprise activity shall be subject to the following conditions and restrictions:

(1) A structure that is designated in the deed of easement as agricultural labor housing, or a structure that has been constructed or designated as agricultural labor housing since the date of the conveyance of the easement, shall not be used for the rural microenterprise;

(2) No new structures may be constructed on the premises to support a rural microenterprise. Any structure constructed on the premises since the date of the conveyance of the easement, and in accordance with the farmland preservation deed restrictions, shall not be eligible for a special permit for

a rural microenterprise for a period of five years following completion of its construction;

(3) Improvements shall not be made to the interior of a non-residential structure in order to adapt it for residential use;

(4) The entire floor area of existing residential or agricultural building space may be used to support a rural microenterprise where the building has not been substantially altered or finished to support the microenterprise;

(5) No more than 2,500 square feet of the interior of existing residential or agricultural building space may be substantially altered or finished to support the rural microenterprise, except that, at the request of the owner of the premises, the committee may allow the alteration or finishing of up to 100 percent of an existing heritage farm structure, provided that the owner agrees to place on the structure, in a form approved by the committee, a heritage preservation easement, which shall be recorded against the premises, shall be held by the committee, and shall run with the land;

(6) The expansion of existing building space shall be permitted, provided that: (a) the expansion does not exceed 500 square feet in total footprint area; (b) the purpose or use of the expansion is necessary to the operation or functioning of the rural microenterprise; and (c) the area of the proposed footprint of the expansion is reasonably calculated, based solely upon the demands of accommodating the rural microenterprise, and does not incorporate excess space;

(7) Improvements to the exterior of a structure shall be compatible with the agricultural character of the premises, and shall not diminish the historic or cultural character of the structure;

(8) Repairs may be made to the interior or exterior of a building provided that they do not diminish the historic or cultural character of the structure;

(9) The location, design, height, and aesthetic attributes of the rural microenterprise shall reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(10) No public utilities, including water, gas, or sewage, other than those already existing and available on the qualifying land, shall be permitted to be extended to the qualifying land for purposes of the rural microenterprise, except that the establishment of new electric service required for the rural microenterprise shall be permitted;

(11) On-site septic and well facilities may be established, expanded, or improved for the purpose of supporting the rural microenterprise provided such facilities are contained within the one-acre envelope provided for in paragraph (8) of subsection d. of this section; and

(12) No more than a combined total of 5,000 square feet of land may be utilized for the outside storage of equipment, vehicles, supplies, products, or by-products, in association with the microenterprise. Any improvements to the land that are undertaken for the purposes described in this paragraph or paragraph (11) of this subsection shall be limited to those that are necessary either to protect public health and safety or to minimize disturbance of the premises and its soil and water resources.

h. Parking and employment at a rural microenterprise shall be subject to the following conditions and restrictions:

(1) The area dedicated to customer parking shall not exceed 2,000 square feet or provide for more than 10 parking spaces;

(2) Improvements to the parking area shall be limited to those improvements that are required to protect public health and safety or minimize the disturbance of soil and water resources on the premises;

(3) The number of parking spaces shall be sufficient to accommodate visitors to the rural microenterprise under normal conditions; and

(4) At peak operational periods, the maximum number of employees or workers who are associated with the rural microenterprise and work on the premises shall not exceed four full-time employees, or the equivalent, in addition to the owner or operator.

i. Committee approval of a special permit for a rural microenterprise activity pursuant to this section shall not relieve the applicant from obtaining all other permits, approvals, or authorizations that may be required by federal, State, or local law, rule, regulation, or ordinance.

j. (1) A rural microenterprise shall not be considered to be an agricultural use as defined in subsection b. of section 3 of P.L.1983, c. 32 (C.4:1C-13).

(2) Nothing in this section shall be interpreted as providing a rural microenterprise with protection under section 6 of the "Right to Farm Act," P.L.1983, c. 31 (C.4:1C-9) if that rural microenterprise is not otherwise eligible for such protection.

k. For the purposes of this section:

"Farmer" means the owner and operator of the premises who:

(1) exclusive of any income received from the rental of lands, realized gross sales of at least \$2,500 for agricultural or horticultural products produced on the premises during the calendar year immediately preceding submission of a special permit application; and

(2) continues to own and operate the premises and meet that income threshold every year during the term of the permit.

"Heritage farm structure" means a building or structure that is significantly representative of New Jersey's agrarian history or culture and that has been designated as such by the committee exclusively for the purposes of sections 1 and 3 of P.L.2005, c. 314 (C.4:1C-32.1 and C.4:1C-32.3).

"Heritage preservation easement" means an interest in land less than fee simple absolute, stated in the form of a deed restriction executed by or on behalf of the owner of the land, appropriate to preserving a building or structure that is significant for its value or importance to New Jersey's agrarian history or culture, and to be used exclusively for the purposes of implementing sections 1 and 3 of P.L.2005, c. 314 (C.4:1C-32.1 and C.4:1C-32.3), to limit alteration in exterior form or features of such building or structure.

"Owner of the premises" means the person or entity who owns qualifying land.

"Qualifying land" means a farm on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization prior to January 12, 2006, the date of enactment of P.L.2005, c. 314 (C.4:1C-32.1 et seq.), and in accordance with the provisions of section 24 of P.L.1983, c. 32 (C.4:1C-31), section 5 of P.L.1988, c. 4 (C.4:1C-31.1), section 1 of

(C.4:1C-38), section 1 of P.L.1999, c. 180 (C.4:1C-43.1), or sections 37 through 40 of P.L.1999, c. 152 (C.13:8C-37 through C.13:8C-40), and for which no portion of the farm was excluded from preservation in the deed of easement .

“Qualifying tax exempt nonprofit organization” means the same as that term is defined pursuant to section 3 of P.L.1999, c. 152 (C.13:8C-3).

“Rural microenterprise” means a small-scale business or activity that is fully compatible with agricultural use and production on the premises, does not, at any time, detract from, diminish, or interfere with the agricultural use of the premises, and is incidental to the agricultural use of the premises. “Rural microenterprise” shall not include a personal wireless service facility as defined and regulated pursuant to section 2 of P.L.2005, c. 314 (C.4:1C-32.2).

#### **4:1C-32.2. Personal wireless service facilities on qualifying land with a development easement; special permit; factors; definitions**

a. Any person who owns land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c. 32 (C.4:1C-31), section 5 of P.L.1988, c. 4 (C.4:1C-31.1), section 1 of P.L.1989, c. 28 (C.4:1C-38), section 1 of P.L.1999, c. 180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c. 152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes may apply for a special permit pursuant to this section to allow a personal wireless service facility to be erected on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the landowner if the development easement is owned by the committee. The committee and the board, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a board. The committee and the qualifying tax exempt nonprofit organization, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a qualifying tax exempt nonprofit organization.

c. A special permit may be issued pursuant to this section provided that:

(1) the land is a commercial farm as defined pursuant to section 3 of P.L.1983, c. 31 (C.4:1C-3);

(2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the committee may waive the requirements of this paragraph, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to R.S.4:10-1, derived from the farm, or (b) for other good cause shown by the applicant;

(3) the permit is for one personal wireless service facility only, although this paragraph shall not prohibit the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, from approving the sharing of the single permitted facility by more than one personal wireless service company, or the use of the facility for other compatible wireless communication uses deemed by the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, to not be violative of the intent or the goals, purposes, or requirements of this section;

(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the personal wireless service facility utilizes, or is supported through the occupation of, existing structures, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed 500 square feet in footprint area in total for all of the structures, or the construction of a new structure not to exceed 500 square feet in footprint area which is independent of any existing structure, provided that in either case the applicant demonstrates to the satisfaction of the committee that:

(a) the expansion or the new structure is necessary to the operation or functioning of the personal wireless service facility;

(b) for a new structure, (i) there are no existing structures on the land which could be utilized or occupied to adequately support the personal wireless service facility, and (ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion; and



(c) the area of the proposed footprint of the expansion or the new structure is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;

(8) the location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(9) the personal wireless service facility does not interfere with the use of the land for agricultural production;

(10) the personal wireless service facility utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(11) the personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the personal wireless service facility.

d. In addition to those factors enumerated under subsection c. of this section, the committee, in evaluating an application for a special permit for a personal wireless service facility, shall also consider such additional factors as traffic generated and the number of employees required by the proposed personal wireless service facility so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. Notwithstanding any law, rule, or regulation to the contrary, a personal wireless service company whose proposed facility is the subject of a permit application pursuant to this section shall be required to obtain all applicable local zoning and land use approvals and any other applicable approvals that may be required by State or local law, rule, regulation, or ordinance even if the proposed facility includes a compatible wireless communication use, such as law enforcement or emergency response communication equipment, which may otherwise allow the proposed facility to be exempt from

obtaining any such approvals.

f. As a condition of the issuance of a permit pursuant to this section, a personal wireless service facility shall agree to allow, at no charge to the requesting State or local governmental entity, the sharing of the facility for any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, approved by the committee.

g. For the purposes of this section:

“Qualifying tax exempt nonprofit organization” shall have the same meaning as set forth in section 3 of P.L.1999, c. 152 (C.13: 8C-3); and

“Personal wireless service facility” means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to federal law.

#### **4:1C-32.3. Special permit application fees; suspension or revocation of special permit by committee; review and approval of applications; rules and regulations; report**

a. The application fee for a special permit authorized pursuant to section 1 of P.L.2005, c. 314 (C.4:1C-32.1) shall be \$250. The application fee for a special permit authorized pursuant to section 2 of P.L.2005, c. 314 (C.4:1C-32.2) shall be \$1,000. All application fees shall be payable to the committee regardless of whether or not a permit is issued. All proceeds from the collection of application fees by the committee pursuant to P.L.2005, c. 314 (C.4:1C-32.1 et seq.) shall be utilized by the committee for farmland preservation purposes.

b. The committee may suspend or revoke a special permit issued pursuant to section 1 or 2 of P.L.2005, c. 314 (C.4:1C-32.1 or C.4:1C-32.2) if the permittee violates any term or condition of the permit, or any provision of the applicable statutory section.

c. (1) In order to expedite the review and approval of routine applications for a special permit, which have been submitted pursuant to section 1 or 2 of P.L.2005, c. 314 (C.4:1C-32.1 or C.4:1C-32.2), the committee may delegate to its executive director, by resolution, the authority to review and approve an application. The delegation of review and approval authority pursuant to this subsection shall be authorized by the committee only in those cases where (a) the committee has not received comments from the board or a qualifying nonprofit organization concerning the potential negative impacts of an

application's approval, and (b) the application complies with all provisions of P.L.2005, c. 314 (C.4:1C-32.1 et seq.) and the rules and regulations adopted pursuant thereto.

(2) An applicant whose application is denied by the executive director may appeal the decision to the committee.

(3) Nothing in this subsection shall preclude the executive director from bringing any application before the committee for review and approval, when such action is deemed by the executive director to be appropriate.

d. The committee may take action to deny an application for a special permit or to suspend or revoke a special permit issued pursuant to P.L.2005, c. 314 (C.4:1C-32.1 et seq.). The applicant or permittee shall be afforded the opportunity for a hearing prior to the committee taking any such action.

e. Within two years after the date of enactment of P.L.2015, c. 275, the committee shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), as is necessary to implement and administer the provisions of P.L.2005, c. 314 (C.4:1C-32.1 et seq.), as amended by P.L.2015, c. 275. These rules and regulations shall include, at a minimum, procedures and standards for the filing, evaluation, and approval of special permit applications, which procedures and standards shall seek to balance, as equally important concepts, the public interest in: (1) protecting farmland from further development as a means of preserving agriculture ; (2) protecting heritage farm structures and enhancing the beauty and character of the State and the local communities where farmland has been preserved ; and (3) providing support to sustain and strengthen the agricultural industry in the State.

f. Every two years, the committee shall prepare a report on the implementation of P.L.2005, c. 314 (C.4:1C-32.1 et seq.), as amended by P.L.2015, c. 275. The report shall include a survey and inventory of:

(1) all rural microenterprise activities occurring , and all personal wireless service facilities placed, on preserved farmland in accordance with the provisions of P.L.2005, c. 314 (C.4:1C-32.1 et seq.);

(2) the extent to which existing structures, such as barns, sheds, and silos, are used for the purposes identified in paragraph (1) of this subsection, and the manner in which those existing structures have been modified to serve those purposes;

(3) the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities, and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos;

(4) the extent to which heritage farm structures have been protected through the placement thereon of heritage preservation easements; and

(5) any other information the committee deems useful.

Any report prepared pursuant to this subsection shall be transmitted to the Governor, and, in accordance with the provisions of section 2 of P.L.1991, c. 164 (C.52:14-19.1), to the President of the Senate and the Speaker of the General Assembly, as well as to the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment and Energy Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee, or their designated successors. Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted at a publicly-accessible location on the committee's Internet website.

#### **4:1C-32.4. Biomass, solar or wind energy on preserved farmland; conditions and restrictions on construction and operation**

a. Notwithstanding any law, rule or regulation to the contrary, a person who owns preserved farmland may construct, install, and operate biomass, solar, or wind energy generation facilities, structures, and equipment on the farm, whether on the preserved portion of the farm or on any portion excluded from preservation, for the purpose of generating power or heat, and may make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose, provided that the biomass, solar, or wind energy generation facilities, structures, and equipment:

(1) do not interfere significantly with the use of the land for agricultural or horticultural production, as determined by the committee;

(2) are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of an agreement with the installer of the biomass, solar, or wind energy generation facilities, structures, or equipment by which the landowner uses the income or credits realized from the biomass, solar, or wind energy generation to purchase the facilities, structures, or equipment;

(3) are used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm; and

(4) are limited (a) in annual energy generation capacity to the previous calendar year's energy demand plus 10 percent, in addition to what is allowed under subsection b. of this section, or alternatively at the option of the landowner (b) to occupying no more than one percent of the area of the entire farm including both the preserved portion and any portion excluded from preservation.

The person who owns the farm and the energy generation facilities, structures, and equipment may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to paragraph (2) of this subsection.

b. The limit on the annual energy generation capacity established pursuant to subparagraph (a) of paragraph (4) of subsection a. of this section shall not include energy generated from facilities, structures, or equipment existing on the roofs of buildings or other structures on the farm as of the date of enactment of P.L.2009, c. 213 (C.4:1C-32.4 et al.).<sup>1</sup>

c. A landowner shall seek and obtain the approval of the committee before constructing, installing, and operating biomass, solar, or wind energy generation facilities, structures, and equipment on the farm as allowed pursuant to subsection a. of this section. The committee shall provide the holder of any development easement on the farm with a copy of the application submitted for the purposes of subsection a. of this section, and the holder of the development easement shall have 30 days within which to provide comments to the committee on the application. The committee shall, within 90 days of receipt, approve, disapprove, or approve with conditions an application submitted for the purposes of subsection a. of this section. The decision of the committee on the application shall be based solely upon the criteria listed in subsection a. of this section and comments received from the holder of the development easement.

d. No fee shall be charged of the landowner for review of an application submitted to, or issuance of a decision by, the committee pursuant to this section.

e. The committee may suspend or revoke an approval issued pursuant to this section for a violation of any term or condition of the approval or any provision of this section.

f. The committee, in consultation with the Department of Environmental Protection and the Department of Agriculture, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410

(C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this section, including provisions prescribing standards concerning impervious cover which may be permitted in connection with biomass, solar, or wind energy generation facilities, structures, and equipment authorized to be constructed, installed, and operated on lands pursuant to this section.

g. In the case of biomass energy generation facilities, structures, or equipment, the landowner shall also seek and obtain the approval of the Department of Agriculture as required pursuant to section 5 of P.L.2009, c. 213 (C.4:1C-32.5) if the land is valued, assessed and taxed pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c. 48 (C.54:4-23.1 et seq.).

h. Notwithstanding any provision of this section to the contrary, the construction, installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the “Pinelands Protection Act,” P.L.1979, c. 111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c. 111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L.1979, c. 111.

i. For the purposes of this section:

“Biomass” means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm and which can be used to generate energy in a sustainable manner.

“Net metering” means the same as that term is used for purposes of subsection e. of section 38 of P.L.1999, c. 23 (C.48:3-87).

“Preserved farmland” means land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c. 32 (C.4:1C-31), section 5 of P.L.1988, c. 4 (C.4:1C-31.1), section 1 of P.L.1989, c. 28 (C.4:1C-38), section 1 of P.L.1999, c. 180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c. 152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes.

#### **4:1C-32.5. Approval requirements for construction, installation or operation of biomass generation facilities, structures or equipment on certain land**

a. No person may construct, install, or operate biomass energy generation facilities, structures, or equipment on any land that is valued, assessed and taxed pursuant to the “Farmland Assessment Act of

1964,” P.L.1964, c. 48 (C.54:4-23.1 et seq.), without the approval of the Department of Agriculture, in addition to any other approvals that may be required by law.

b. The Department of Agriculture, in consultation with the Department of Environmental Protection, shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations concerning: (1) the construction, installation, and operation of biomass energy generation facilities, structures, and equipment and the management of biomass fuel for such facilities, structures, and equipment on farms; and (2) the process by which a landowner may apply for the approval required pursuant to subsection a. of this section, including establishment of reasonable application fees, if necessary, to help pay for the cost of review of the application, except no application fee may be charged for preserved farmland as defined in section 1 of P.L.2009, c. 213 (C.4:1C-32.4).

c. Notwithstanding any provision of this section to the contrary, the construction, installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the “Pinelands Protection Act,” P.L.1979, c. 111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c. 111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L.1979, c. 111.

d. For the purposes of this section, “biomass” means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner, except with respect to preserved farmland, “biomass” means the same as that term is defined in section 1 of P.L.2009, c. 213 (C.4:1C-32.4).

#### **4:1C-32.6. Report to the Governor and Legislature; website posting**

Every two years, the Department of Agriculture, in consultation with the State Agriculture Development Committee and the Department of the Treasury, shall prepare a report on the implementation of P.L.2009, c. 213 (C.4:1C-32.4 et al.). The report shall include: a survey and inventory of all biomass, solar, or wind energy generation facilities, structures, and equipment placed on farmland in accordance with P.L.2009, c. 213 (C.4:1C-32.4 et al.); the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified therefor; the extent to which new structures, instead of existing structures, have been erected; and such other information as either of the departments or the committee deems useful.

The report prepared pursuant to this section shall be transmitted to the Governor, the Legislature pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1), and the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee or their designated successors. Copies of the report shall also be made available to the public upon request and

free of charge, and shall be posted on the website of the Department of Agriculture.

**4:1C-32.7. Definitions relating to wineries engaged in conducting special occasion events on preserved farmland**

As used in P.L.2014, c. 16 (C.4:1C-32.7 et seq.):

“Preserved farmland” means land on which a development easement was conveyed to, or retained by, the State Agriculture Development Committee, a county agriculture development board, a county, a municipality, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c. 32 (C.4:1C-31), section 5 of P.L.1988, c. 4 (C.4:1C-31.1), section 1 of P.L.1989, c. 28 (C.4:1C-38), section 1 of P.L.1999, c. 180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c. 152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes.

“Special occasion event” means a wedding, lifetime milestone event, or other cultural or social event as defined by the appropriate county agriculture development board, and conducted pursuant to the requirements set forth in subsection a. of section 2 of P.L.2014, c. 16 (C.4:1C-32.8).

“Winery” means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to R.S.33:1-10.

**4:1C-32.8. Establishment of pilot program permitting special occasion events on preserved farmland at wineries**

a. The State Agriculture Development Committee shall establish a pilot program permitting special occasion events to be conducted on preserved farmland at a winery provided that:

(1) the gross income generated by the winery from all special occasion events conducted for the calendar year together account for less than 50 percent of the annual gross income of the winery;

(2) the special occasion event uses the agricultural output of the winery, to the maximum extent practicable, to promote agricultural tourism and advance the agricultural or horticultural output of the winery;



(3) the special occasion event is conducted on a Friday, Saturday, Sunday, or federal or State holiday, except that a special occasion event may be conducted on any other day of the week with the approval of the State Agriculture Development Committee. The committee may delegate its authority in that regard to a county agriculture development board;

(4) the special occasion event is conducted in: (a) a temporary structure, such as an enclosed or open canopy or tent or other portable structure or facility, and any temporary structure would be put in place for only the minimum amount of time reasonably necessary to accommodate the special occasion event; (b) an existing permanent agricultural building; (c) a farm or open air pavilion; or (d) another structure used in the normal course of winery operations and activities;

(5) the special occasion event complies with applicable municipal ordinances, resolutions, or regulations concerning litter, solid waste, and traffic and the protection of public health and safety;

(6) the winery shall be subject to a site plan review and any applicable development approvals as may be required under an ordinance adopted pursuant to the "Municipal Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.);

(7) the special occasion event is subject to the noise standards set forth pursuant to the "Noise Control Act," P.L.1971, c. 418 (C.13:1G-1 et seq.), and the rules and regulations adopted thereto;

(8) the special occasion event complies with any applicable municipal ordinance that restricts performing or playing music inside the winery's buildings and structures;

(9) the special occasion event ends at a specific time, if required pursuant to a curfew established by a municipal ordinance;

(10) the special occasion event would not knowingly result in a significant and direct negative impact to any property adjacent to the winery; and

(11) the winery hosting a special occasion event enforces State and federal requirements concerning the legal drinking age.

b. In determining the annual gross income of a winery pursuant to this section, the gross income received from any special occasion event shall include, but need not be limited to, admission fees; rental fees; setup, breakdown, and cleaning fees; and all other revenue that is not directly related to the agricultural output of the winery but is received by the winery in conjunction with conducting a special occasion event.

**4:1C-32.9. Audit of winery engaged in conducting special occasion events on preserved farmland; annual certification; additional documentation**

a. (1) A county agriculture development board or the State Agriculture Development Committee may order, and specify the scope of, an audit of the owner or operator of any winery engaged in conducting special occasion events on preserved farmland, for the purpose of determining compliance with section 2 of P.L.2014, c. 16 (C.4:1C-32.8). The audit shall be conducted by an independent certified public accountant approved by the board or the committee, and the reasonable costs thereof shall be paid by the owner or operator of the winery. A county agriculture development board, or the committee, may establish a list of independent certified public accountants approved for the purposes of conducting an audit pursuant to this paragraph. Copies of the audit shall be submitted to the board and the committee.

(2) An owner or operator of a winery engaged in conducting special occasion events on preserved farmland shall not be subject to an audit authorized pursuant to this section more than once per year without good cause demonstrated by the applicable board or the committee.

b. An owner or operator of a winery engaged in conducting special occasion events on preserved farmland shall annually certify to the county agriculture development board that the special occasion events together account for less than 50 percent of the annual gross income of the winery during the prior calendar year, pursuant to paragraph (1) of subsection a. of section 2 of P.L.2014, c. 16 (C.4:1C-32.8). The board shall forward the certification of annual gross income to the committee.

c. In conjunction with an audit ordered pursuant to subsection a. of this section, a board or the committee may request, and the winery shall then submit, additional documentation as may be necessary for the board or committee to verify compliance with paragraph (1) of subsection a. of section 2 of P.L.2014, c. 16 (C.4:1C-32.8).

**4:1C-32.10. Violation of provisions relating to wineries engaged in conducting special occasion events on preserved farmland; penalties**

a. An owner or operator of a winery who violates P.L.2014, c. 16 (C.4:1C-32.7 et seq.) shall be liable to a civil penalty of up to \$1,000 for the first offense, up to \$2,000 for the second offense, or up to \$3,000 for a subsequent offense, to be collected in a civil action commenced by the State Agriculture Development Committee.

b. In addition to the penalties established pursuant to subsection a. of this section:

(1) for a second offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of up to six months;

(2) for a third offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of at least six months but not more than one year; and

(3) for a fourth or subsequent offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of at least one year but not more than two years.

c. Any penalty imposed pursuant to this section may be collected, with costs, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L.2014, c. 16 (C.4:1C-32.7 et seq.).

**4:1C-32.11. Rules, regulations, and agricultural management practices relative to wineries engaged in conducting special occasion events on preserved farmland**

a. The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary for the implementation of P.L.2014, c. 16 (C.4:1C-32.7 et seq.).

b. The committee may adopt, as may be necessary and appropriate, agricultural management practices for the implementation of P.L.2014, c. 16 (C.4:1C-32.7 et seq.).

#### **4:1C-32.12. Effective date provisions for §§ 4:1C-32.7 through 4:1C-32.11**

Notwithstanding the provisions of section 6 of P.L.2014, c. 16 to the contrary, sections 1 through 5 of P.L.2014, c. 16 (C.4:1C-32.7 through C.4:1C-32.11) shall be and remain in effect for two years following the effective date of this act<sup>1</sup>, and shall be retroactive to March 1, 2018.

<sup>1</sup>

L.2018, c. 30, eff. May 30, 2018.

#### **4:1C-32.13. Reports; annual, interim, and final; findings**

a. Each county agriculture development board shall prepare and submit to the Governor and to the Legislature, pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1), an annual report. Each annual report shall include findings that summarize the activities of wineries on preserved farmland in the county of the board's jurisdiction and make recommendations for the pilot program established pursuant to P.L.2014, c. 16 (C.4:1C-32.7 et seq.).

b. The State Agriculture Development Committee shall prepare and submit to the Governor and to the Legislature, pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1):

(1) an interim report, within 30 days after the effective date of this act;<sup>1</sup> and

(2) a final report, at least 45 days before the expiration of the pilot program established pursuant to P.L.2014, c. 16 (C.4:1C-32.7 et seq.) and extended pursuant to this act.<sup>2</sup>

c. The interim and final reports required pursuant to subsection b. of this section shall review the implementation and operation of the pilot program established pursuant to P.L.2014, c. 16 (C.4:1C-32.7 et seq.), summarize the findings and recommendations of the annual reports prepared pursuant to subsection a. of this section, and make recommendations to the Governor and Legislature to amend, extend, or make permanent the program.

<sup>1</sup>

L.2018, c. 30, eff. May 30, 2018.

<sup>2</sup>

See N.J.S.A. 4:1C-32.12.

#### **4:1C-32.14. Special occasion events; applicability of pilot program; authority to regulate**

a. Notwithstanding any other law, or rule or regulation adopted pursuant thereto, to the contrary, the pilot program established pursuant to P.L.2014, c. 16 (C.4:1C-32.7 et seq.) and extended pursuant to this act<sup>1</sup> shall not apply to any special occasion event at a winery that is not on preserved farmland.

b. The State Agriculture Development Committee shall not have any authority to regulate or restrict any special occasion event conducted at a winery beyond the scope of the authority granted pursuant to P.L.2014, c. 16 (C.4:1C-32.7 et seq.).

<sup>1</sup> See N.J.S.A. 4:1C-32.12.

#### **4:1C-33. Enforcement of conditions or restrictions**

The committee or the board is authorized to institute, in the name of the State, any proceedings intended to enforce the conditions or restrictions on the use and development of land on which a development easement has been purchased pursuant to this act.

#### **4:1C-34. Persons acquiring developmental easement; sale to board**

Any person or organization acquiring a development easement, by purchase, gift or otherwise, may apply to sell that development easement to the board, provided that the land on which the development easement was acquired shall be subject to the conditions and provisions of this act and that the board and the committee make a determination to purchase the development easement in the manner prescribed in section 24 of this act.

#### **4:1C-35. Donation of development easement to board**

If a person wishes to donate all or a portion of the value of the development easement to the board, the value of the donation shall be appraised pursuant to the provisions of section 24 of this act. This requirement shall apply only if the board is requesting State funds. In order to qualify for State funds, pursuant to the provisions of this act, the county shall make up the difference between its required share of the total appraised value of the easement and the appraised value of the donation. In the event the value of the donation exceeds the required county share, the amount in excess shall be deducted from the State share.

#### **4:1C-36. Pinelands area, Highlands Region; farmland preservation**

Nothing herein contained shall be construed to prohibit the creation of a municipally approved program or other farmland preservation program, the purchase of development easements, or the extension of any other benefit herein provided on land, and to owners thereof, in the Pinelands area, as defined pursuant to section 3 of P.L. 1979, c. 111 (C. 13:18A-3), or in the Highlands Region, as defined in section 3 of P.L.2004, c. 120 (C.13:20-3) .

#### **4:1C-37. Joint legislative oversight committee; duties**

The Senate Natural Resources and Agriculture Committee and the Assembly Agriculture and Environment Committee are designated as the Joint Legislative Oversight Committee on Agricultural Retention and Development. The duties and responsibilities of the joint oversight committee shall be as follows:

- a. To monitor the operation of the committee and its efforts to retain farmland in productive agricultural use and to recommend to the committee any rule, regulation, guideline, or revision thereto which it deems necessary to effectuate the purposes and provisions of this act;
- b. To review and evaluate the implementation of development easement purchases on agricultural land;
- c. To review and evaluate all relevant existing and proposed statutes, rules, regulations and ordinances, so as to determine their individual effect upon the conduct of agricultural activities in this State; and
- d. To recommend to the Legislature any legislation which it deems necessary in order to effectuate the purposes of this act.

##### **4:1C-37.1. Purchase and acquisition of fee simple absolute interest in land; authority of county, county agricultural development board and municipality to acquire**

A county, county agriculture development board, or municipality may acquire real property in fee simple for farmland preservation purposes, which property may be resold or leased by the county, county agriculture development board, or municipality with an agricultural deed restriction placed on the property by the county, county agriculture development board, or municipality.

#### **4:1C-38. Purchase and acquisition of fee simple absolute interest in land**

In addition to those powers and duties provided for by section 5 of P.L.1983, c. 31 (C.4:1C-6) and by sections 5 and 6 of P.L.1983, c. 32 (C.4:1C-5 and C.4:1C-7), the State Agriculture Development Committee also shall have the power to purchase and acquire, in the name of the State, fee simple absolute interest in land in accordance with section 2 of P.L.1989, c. 28 (C.4:1C-39).

#### **4:1C-39. Notice of executed contract of sale of fee simple absolute interest in land enrolled in farmland preservation program; first right and option to purchase of committee**

a. A landowner who wishes to sell a fee simple absolute interest in land that becomes enrolled after the effective date of P.L.1989, c. 28 (C.4:1C-38 et al.) in a municipally approved program or other farmland preservation program established pursuant to sections 14 and 13 of P.L.1983, c. 32 (C.4:1C-21 and 4:1C-20), respectively, shall give to the committee written notice, by certified mail, that a contract of sale has been executed for the property. The notice shall set forth the terms and conditions of the executed contract of sale and shall have attached a copy of that contract. The notice of executed contract of sale shall also include any other information that the committee may reasonably require by regulation. The committee shall have the first right and option to purchase the land upon substantially similar terms and conditions, which right and option shall be exercisable as provided by this section. If the committee chooses to exercise the first right and option, the committee shall give notice of that intent to the landowner within a period of 30 days following the date of receipt of the notice of executed contract of sale. The committee shall submit its offer to match the terms and conditions of the executed contract of sale to the landowner within the 60 days following the expiration of the 30-day period. If no notice is given within the 30-day period that the committee intends to exercise the first right and option, or if no offer is submitted to the landowner within the 60-day period following the 30-day period, the owner may at the expiration of the 30-day period or the 60-day period, as the case may be, convey the land to the proposed purchaser named in the executed contract of sale upon the terms and conditions specified therein, or to the proposed purchaser's assignee as provided in that executed contract of sale. If the owner fails to convey the land to the named proposed purchaser or an assignee thereof pursuant to the executed contract of sale, the land shall again become subject to the committee's first right and option to purchase as provided by this section. A landowner may elect to convey the land to the committee upon the exercise of the committee's first right and option to purchase without breaching the original contract of sale, notwithstanding that the committee's offer is different than, or provides for lower consideration than, that in the original executed contract of sale.

b. The provisions of this section shall apply to any sale of a fee simple absolute interest in land that becomes enrolled in a municipally approved program or other farmland preservation program subsequent to the effective date of P.L.1989, c. 28 (C.4:1C-38 et al.), except that any person enrolled in a municipally approved program or other farmland preservation program prior to the effective date of P.L.1989, c. 28 (C.4:1C-38 et al.) may agree to provide this first right and option to purchase in a manner consistent with this section.

c. The provisions of subsection a. of this section shall apply to the sale of a fee simple absolute interest in land from which a development easement of limited term has been conveyed pursuant to paragraph

(2) of subsection a. of section 17 of P.L.1983, c. 32 (C.4:1C-24) during the term of that development easement and for one year thereafter.

#### **4:1C-40. Certificate of termination of first right and option to purchase; conclusiveness**

A certificate executed and acknowledged by the committee stating that the provisions of section 2 of P.L.1989, c. 28 (C.4:1C-39) have been met by the landowner, and that the first right and option to purchase of the committee has terminated, shall be conclusive upon the committee and the owner in favor of all persons who rely thereon in good faith, and this certificate shall be furnished to any landowner who has complied with the provisions of section 2 of P.L.1989, c. 28 (C.4:1C-39).

#### **4:1C-41. Sale of land to third party likely to negatively impact maintenance of positive agricultural business climate; priority purchase for committee**

The committee shall give priority to the purchase of land in those cases in which the committee determines that sale of the land to a third party is likely to lead to loss of all or substantially all of the land for agricultural use and production or is likely to negatively impact on the maintenance of a positive agricultural business climate in the municipality or county in which the land is located.

#### **4:1C-42. Land acquired by committee; held of record in name of state; offer for sale with permanent restriction on nonagricultural development**

Any land acquired by the committee pursuant to the terms of P.L.1989, c. 28 (C.4:1C-38 et al.) shall be held of record in the name of the State and shall be offered for sale by the committee with a deed restriction permanently prohibiting nonagricultural development. Land sold with a deed restriction permanently prohibiting nonagricultural development pursuant to this section is exempt from the provisions of section 2 of P.L.1989, c. 28 (C.4:1C-39).

#### **4:1C-43. Appropriation**

Such moneys as are reasonable and necessary to carry out the intent of this act shall be appropriated from the "Farmland Preservation Fund" established pursuant to section 5 of the "Farmland Preservation Bond Act of 1981," P.L.1981, c. 276.

##### **4:1C-43.1. Farmland preservation planning incentive grant program; eligibility and procedures**

a. There is established in the State Agriculture Development Committee a farmland preservation planning incentive grant program, the purpose of which shall be to provide grants to eligible counties



and municipalities for farmland preservation purposes as authorized pursuant to this act.

b. To be eligible to apply for a grant, a county or municipality shall:

(1) Identify project areas of multiple farms that are reasonably contiguous and located in an agriculture development area authorized pursuant to the “Agriculture Retention and Development Act,” P.L.1983, c. 32 (C.4:1C-11 et seq.);

(2) Establish an agricultural advisory committee. In the case of a county, the county agriculture development board shall serve this function. In the case of a municipality, members of a municipal agricultural advisory committee shall be appointed by the mayor with the consent of the municipal governing body, and the committee shall report to the municipal planning board. A municipal agricultural advisory committee shall be composed of at least three, but not more than five, members who shall be residents of the municipality, with a majority of the members actively engaged in farming and owning a portion of the land they farm. For the purposes of this paragraph, “mayor” shall mean the same as that term is defined pursuant to section 3.2 of P.L.1975, c. 291 (C.40:55D-5);

(3) Establish and maintain a dedicated source of funding for farmland preservation pursuant to P.L.1997, c. 24 (C.40:12-15.1 et seq.), or an alternative means of funding for farmland preservation, such as, but not limited to, repeated annual appropriations or repeated issuance of bonded indebtedness, which the State Agriculture Development Committee deems to be, in effect, a dedicated source of funding because of a demonstrated commitment on the part of the county or municipality; and

(4) In the case of a municipality, prepare a farmland preservation plan element pursuant to paragraph (13) of section 19 of P.L.1975, c. 291 (C.40:55D-28) in consultation with the agriculture advisory committee established pursuant to paragraph (2) of this subsection.

c. In the event a municipality is seeking funding from the county toward the purchase of development easements, the municipality shall submit an application to the county agriculture development board. In all other cases, a municipality shall submit its application directly to the State Agriculture Development Committee.

d. A municipality, in submitting an application to the county agriculture development board or the State Agriculture Development Committee as appropriate, or a county, in submitting an application to the State Agriculture Development Committee, shall outline a multi-year plan for the purchase of multiple farms in a project area and indicate its annual share of the estimated purchase price. The municipality, in order to enhance its application, may submit its proposal jointly with one or more contiguous municipalities if the submission would result in the preservation of a significant area of reasonably contiguous farmland. The application shall include, in the case of a municipality, a copy of the farmland preservation plan element prepared pursuant to paragraph (13) of section 19 of P.L.1975, c. 291 (C.40:55D-28); an estimate of the cost of purchasing development easements on all of the farms in a designated project area, to be determined in consultation with the county agriculture development board or through an appraisal for the entire project area; and an inventory showing the characteristics of each

farm in the project area which may include, but need not be limited to, size, soils and agricultural use.

e. The State Agriculture Development Committee shall make decisions regarding suitability for funding of development easement purchases for planning incentive grants based on whether the project area provides an opportunity to preserve a significant area of reasonably contiguous farmland that will promote the long term viability of agriculture as an industry in the municipality or county. After the State Agriculture Development Committee has given approval to an application, the municipality or county shall submit two appraisals for each parcel for which funding is requested. The appraisals shall be conducted pursuant to the provisions of section 24 of P.L.1983, c. 32 (C.4:1C-31). Approved funding shall be allocated by the municipality, the county and the State to each parcel in the project area under an agreement that commits each level of government to a specific payment in each of the years included in the plan for purchase. Nothing in this act shall be construed to require that any parcel in a project area receive a price per acre that is the same as any other parcel in that project area or that any parcel must be purchased with installment payments because other parcels in the project area are so purchased.

f. Purchases of development easements on farmland pursuant to this act shall be made with the approval of the State Agriculture Development Committee and the municipality, and in the event county funds are provided, with the approval of the county agriculture development board.

g. If a county does not provide funding toward the purchase of the development easement, the State Agriculture Development Committee shall hold title to the development easement.

h. The State Agriculture Development Committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement this act, and shall establish ranking and funding criteria separately from, but similar to, those used in the program established pursuant to P.L.1983, c. 32 (C.4:1C-11 et seq.), except that ranking and funding criteria shall be applied to the project area as a whole and not to individual parcels and priority shall be given to those applications that utilize option agreements, installment purchases, donations, and other methods for the purpose of leveraging monies made available by P.L.1999, c. 152 (C.13:8C-1 et al.).

#### **4:1C-44. Legislative findings and declarations**

The Legislature finds that development in the State has reduced the number of acres in agricultural use by 90,000 acres during the last two years; that the depletion of agricultural land has forced the closure of agricultural support services, thus putting an additional burden on the farmers in the State; and that there is a need for leasable farmland to allow those farmers who do not own land to continue to farm. The Legislature further finds that the State owns over 5,600 parcels of property consisting of approximately 480,000 acres, but that it does not know which of these lands may be suitable for agricultural production. The Legislature therefore declares that putting otherwise dormant land to productive agricultural use would serve the best interest of all citizens of this State by insuring the numerous social, economic, and environmental benefits which accrue from agricultural production.

#### **4:1C-45. Inventory of state properties suitable for agricultural production, not currently farmed**

### **by state agency and available for lease**

Within one year of the effective date of this act, the Department of Agriculture, in cooperation with the Department of the Treasury and other State agencies, shall prepare an inventory of properties owned by the State of New Jersey suitable for agricultural production not currently being farmed by a State agency and available for leasing to private sector farm operators. Land shall be deemed suitable for agricultural production if:

- a. The acreage of the parcel of property economically would support or is adjacent or proximate to other State-owned or private sector agricultural land the combined acreage of which would, in the opinion of the applicable County Agriculture Development Board or the State Agriculture Development Committee, in counties where there is no county board, economically support an agricultural enterprise;
- b. The soil is of sufficient quality to support agricultural production as determined by the applicable Soil Conservation District;
- c. The land does not provide habitat for rare or endangered species as determined by the Department of Environmental Protection pursuant to law; and
- d. A determination is made by the respective State agency that the land is no longer needed or being used by the State for non-agricultural purposes, and the agricultural production of that land would pose no significant environmental harm to persons working or living on or near that land.

### **4:1C-46. Priority of offering for agricultural production**

Land deemed suitable for agricultural production shall be offered for agricultural production in the following priority:

- a. For use by the Department of Corrections or other State agencies conducting farm operations;
- b. For lease to private sector farm operators, on the basis of a competitive bid, pursuant to the provisions of section 5 of this act.

### **4:1C-47. Rules and regulations**

The Department of Agriculture shall, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a procedure for the application and awarding of leases under this act. The terms of the lease shall be established by the department so as to be the most advantageous to the State. The lease shall require the lessee to apply soil conservation

techniques to maintain the soil quality of the leased land and to use acceptable agricultural management practices that have been approved by the State Agriculture Development Committee.

**4:1C-48. Sale of surplus state land for agricultural use; covenant of use in conveyance**

Lands deemed suitable for agricultural production pursuant to this act and deemed by the State House Commission to be surplus to the needs of the State and any of its agencies, shall be offered for sale for agricultural use, in fee simple, to private sector purchasers on the basis of a competitive bid. Any conveyance by the State shall include a covenant that the land may be used only for agricultural production, that the covenant shall run with the land in perpetuity, that the severed development rights shall be held by the local County Agriculture Development Board or the State Agriculture Development Committee, and that the board or committee shall monitor and enforce the covenant.

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