

RULE ADOPTIONS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

State Agriculture Development Committee Rules Soil Disturbance on Preserved Farmland and Supplemental Soil Disturbance Standards

Adopted New Rules: N.J.A.C. 2:76-25 and 25A

Proposed: August 7, 2023, at 55 N.J.R. 1573(a).

Notice of Proposed Substantial Changes Upon Adoption to Proposed New Rules: July 15, 2024, at 56 N.J.R. 1213(a).

Adopted: January 16, 2025, by the State Agriculture Development Committee, Charles Roohr, Deputy Executive Director.

Filed: January 21, 2025, as R.2025 d.027, **with substantial changes** upon adoption after additional notice and public comment pursuant to N.J.S.A. 52:14B- 4.10, and **non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 4:1C-31.2.

Effective Date: February 18, 2025.

Expiration Date: October 2, 2030.

Summary of Public Comments and Agency Responses:

Comments on the original notice of proposal were received from:

1. Susan Adams
2. Kurt Alstede, Alstede Farms, LLC
3. Mary Alstede
4. Rebekah Alstede
5. Sarah Alstede
6. Amy
7. John Anderson
8. Nancy Angle
9. Association of New Jersey Environmental Commissions
10. Curtis Aubry
11. Paul Austin
12. Pierson Backes
13. Annika Baldwin
14. Peter Banos
15. David Barclay
16. Jeremy Beer
17. Beth Behrend
18. Delores Benabou
19. Bergen County Board of Agriculture
20. Jeanette Bergeron
21. Susan Bernardo
22. David Betts
23. Kirsi Bhasin
24. Merrill Biancosino
25. Judith Blinick
26. Cathy Blumig
27. Daniel and Linda Bolis
28. Sharon Boone
29. Susan Bristol
30. Dawn Bromley
31. Michael Brooks
32. Franta Broulik
33. Robin Bruins
34. James Burd
35. Diane Burgess
36. Bradley Burke
37. Burlington County Board of Agriculture
38. Jim Bushong
39. Pat Butch

40. Mark Canright, Comeback Farm
41. Rebecca Canright
42. Cape May County Board of Agriculture
43. Christine Caputo
44. Glenn Carleton
45. Christopher Carnevale
46. Allen Carter, New Jersey Farm Bureau
47. Lisa Caroselli
48. Theodore Chase, Jr.
49. Caitlin Chione
50. Christina Chrobokowa, 360 Earth Works, LLC
51. Barbara Cochrane
52. Ken Cohen
53. Erica Colace
54. Barbara Cole
55. Joanna Coleman
56. Sharon Coleman
57. Barbara Conklin
58. Brenda Considine
59. Kristina Corvin
60. Kathleen Cosgrove
61. County Agriculture Development Boards of: Atlantic, Cape May, Cumberland, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Salem, Somerset, and Sussex
62. Bonita Craft-Grant
63. Cumberland County Agriculture Development Board
64. Cumberland County Board of Agriculture
65. Aubry Curtis
66. Scott Daum, Four Seasons Nursery & Landscape
67. Laurie DeAnglis
68. Gary DeFelice
69. Keith Dickinson, M. R. Dickinson & Son
70. Kendra DiPaolo
71. Ann Dorsett
72. Terrill Doyle
73. Cheryl Dzubak
74. Anne Louise Ennis
75. Environment New Jersey
76. Jerry Eutrell
77. Josie Faass
78. Theresa Farinella
79. Gerry Feldman
80. Antonio Ferrer
81. Hilda Feusi
82. Susan Finlay
83. Brenda Frazier
84. Russell Furnari
85. Kathy Gaffney
86. John Galiczynski, Twin Ponds Nursery
87. Jim Gambino
88. Gary
89. James Giamarese
90. Gloucester County Board of Agriculture
91. Linda Gochfeld
92. Lewis Goldshore, Esq.
93. Bill Green
94. Philip Grofsik
95. Kenneth Grosso
96. Barbara Halpern
97. Amy Hansen
98. Brian Hanson-Harding
99. Kimberly Haren
100. Elise Haring and Lucas Haring
101. Sonya Harris, The Bullock Garden Project
102. John Hart
103. Joseph Heckman

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- 104. Julia Herr
- 105. Shaun Hluchy, Hluchy Family Farm
- 106. Abby Hoffman
- 107. Daryl Hoffman
- 108. Scott Hofsaess
- 109. Robert Hornby
- 110. William Horner, Esq.
- 111. Gayle Howard
- 112. Hunterdon County Agriculture Development Board
- 113. Hunterdon County Board of Agriculture
- 114. Hunterdon Land Trust
- 115. Tom Imbrigiotta
- 116. Anne Jacobs
- 117. Casey Jansen, Holland Greenhouses
- 118. Rodger Jany
- 119. Steve Jany, West Windsor Agricultural Advisory Committee
- 120. Ross Johnson
- 121. Brian Jones and Judy Jones, Beekman Nursery
- 122. Mitchell Jones
- 123. Stephanie Jones
- 124. Martin Judd
- 125. Lisa Kaslow
- 126. Caroline Katmann
- 127. Katelyn Katzer
- 128. Tara Kenyon, Franklin Township Agricultural Advisory Committee and Franklin Township Open Space Advisory Committee
- 129. Martha Kimmerly
- 130. Kingwood Township Environmental Commission
- 131. Wade Kirby
- 132. Julia Kizar
- 133. Sarah Kleinman
- 134. Jon Knox
- 135. Mary Knowlton
- 136. Bernadette Koenig
- 137. George Koenig
- 138. Mira Korber
- 139. Jeff Lamborn
- 140. Walter Lane
- 141. Jennifer LaMonaca, Brandon Rasso, and Edward Gaines, Atlantic County Board of Agriculture
- 142. David Landry
- 143. Selene Lee
- 144. Rev. Charles Loflin, UU FaithAction NJ
- 145. Kim Lorenc
- 146. George Lucas, Lucas Greenhouses
- 147. Keith MacIndoe
- 148. Wendy Mager
- 149. Stephen Makarevich, Farm Credit East
- 150. R. Gregory Manners
- 151. Frank Marshall, NJ League of Municipalities
- 152. Karen Mason
- 153. Rene Mathez
- 154. Gregory Matthews
- 155. Julia Matthews
- 156. Shannon McArdle
- 157. William McCormack and Leah McCormack
- 158. Melanie McDermott
- 159. Nyna McKittrick
- 160. Robert McNinch
- 161. Sam Measner
- 162. Sharon Measner
- 163. Linda Meier
- 164. Meredith Melendez
- 165. Mercer County Agriculture Development Board
- 166. Mercer County Board of Agriculture
- 167. Robert Merenich, Esq.
- 168. Susan Michniewski
- 169. Middlesex County Agriculture Development Board
- 170. Middlesex County Board of Agriculture
- 171. Sophia Milone

- 172. Monmouth County Agriculture Development Board
- 173. Monmouth County Board of Agriculture
- 174. Morris County Board of Agriculture
- 175. Zuzana Mulkerin
- 176. Aimee Myers and Doug Myers
- 177. Rebecca Nadolny
- 178. Native Plant Society of New Jersey
- 179. Margaret Navitski
- 180. David Neal
- 181. New Jersey Conservation Foundation
- 182. New Jersey Environmental Lobby
- 183. New Jersey Food Democracy Collaborative
- 184. New Jersey Highlands Coalition
- 185. New Jersey State Board of Agriculture
- 186. Katherine Nguyen
- 187. Julie Noonan
- 188. Northeast Organic Farming Association of New Jersey
- 189. Karen O'Connell
- 190. Andrea Odezynska
- 191. Carolyn Olsen
- 192. Laura Oltman
- 193. Amy Ondreyka
- 194. Eva Ondreyka
- 195. Barry O'Neill
- 196. Steven Oroho, Senator, Legislative District 24
- 197. Susan Orsini
- 198. Edward J. Overdevest, Overdevest Nurseries
- 199. Alexa Parliyan
- 200. Ali Parrington
- 201. Passaic County Board of Agriculture
- 202. Andrew Philbrick
- 203. Pinelands Preservation Association
- 204. Frank Pinto, Pinto Consulting, LLC
- 205. Donald Pitches
- 206. Jean Public
- 207. Nora Pugliese, Ethos Farm to Health
- 208. Robert Puskas
- 209. Raritan Headwaters Association
- 210. Anthony Robbi
- 211. Glorianne Robbi
- 212. Sarah Roberts
- 213. Phil Rochelle and Susan Rochelle
- 214. Elizabeth Rodgers
- 215. Carol Rogaski
- 216. Elizabeth Romanaux
- 217. Jane Rothfuss
- 218. Kirk Rothfuss
- 219. Cynthia and Jacob Sage
- 220. Virginia Santana-Ferrer
- 221. Leslie Sauer
- 222. Ralph and Laura Scarola
- 223. Catherine Schaefer
- 224. Anali Schafer
- 225. Randi Scher
- 226. Cornelia and W. Marshall Schmidt
- 227. Mary Schmidt
- 228. Dena Scibilia
- 229. Gregory Scibilia
- 230. Michael Seery and Brenda Seery
- 231. Patricia Shanley
- 232. Seth Siditsky
- 233. Morgan Silk
- 234. Catherine Silva
- 235. Lisa Simms
- 236. Skylands Preservation Alliance
- 237. Lucas Slott
- 238. Somerset County Agriculture Development Board
- 239. Somerset County Board of Agriculture
- 240. Somerset County Planning Board
- 241. South Jersey Land and Water Trust

242. Parker Space, Assemblyman, Legislative District 24
 243. James Specca
 244. Anthony Sposaro, Esq.
 245. Patricia Springwell
 246. Hannah Suthers
 247. Ryck Suydam
 248. Linda Sweeney
 249. Elizabeth Thompson
 250. Theresa Thorsen
 251. Jeff Tober, Rancocas Creek Farm
 252. Jean Toher
 253. Robert Tomaselli
 254. James Totten
 255. Peter Tovar
 256. Judith Tucker and Peter Tucker
 257. Mary Tulloss
 258. Pierre Van Mater, III
 259. Sandy Van Sant
 260. Rosina Vanstrien
 261. Arie Van Vugt
 262. George Vetter
 263. Nicole Voigt, Esq.
 264. Tim Von Thun and Bob Von Thun
 265. John Wallmark
 266. Jim Waltman
 267. Paula Warner
 268. Warren County Board of Agriculture
 269. The Watershed Institute
 270. Brick Wenzel, Ocean County Board of Agriculture and Ocean County Farm Bureau
 271. Meg Whitehouse
 272. Ed Wikham
 273. Suzanne Wilder
 274. Kelly Williams
 275. Discretion Winter
 276. Harold Wirths, Assemblyman, Legislative District 24
 277. Joan Wood
 278. Matthew and Rene Wood
 279. Nick Woodbury
 280. Daniel Zenowich

Comments on the notice of proposed substantial changes upon adoption to the proposed new rules were received from:

281. Cape May County Board of Agriculture
 282. Allen Carter, New Jersey Farm Bureau
 283. Essex County Board of Agriculture
 284. Hunterdon County Agriculture Development Board
 285. William and Leah McCormack
 286. Middlesex County Board of Agriculture
 287. Monmouth County Board Agriculture
 288. Morris County Board of Agriculture
 289. New Jersey Conservation Foundation
 290. Northeast Organic Farming Association of New Jersey
 291. Ralph Scarola
 292. Gregory Scibilia
 293. Somerset County Agriculture Development Board
 294. Patricia Springwell

The comments and the State Agricultural Development Committee's ("SADC" or "Committee") responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. Comments Received During the Initial Comment Period Giving Rise to Substantial Changes in Proposal Upon Adoption

General Comments

1. COMMENT: The commenters stated that the originally proposed rules should not apply to a farmland preservation deed of easement (DOE) executed prior to the adoption of the rules because landowners didn't understand at the time they entered the farmland preservation program that soil disturbance would be subject to rulemaking. (2, 15, 19, 22, 26, 31, 33, 39, 42, 46, 61, 64, 66, 69, 71, 76, 90, 92, 93, 100, 102, 104, 108,

113, 118, 119, 120, 121, 128, 134, 141, 146, 149, 150, 154, 157, 166, 167, 170, 173, 174, 176, 196, 201, 213, 230, 231, 239, 242, 244, 247, 256, 258, 263, 266, 268, and 276)

2. COMMENT: The originally proposed rulemaking elicited comments that soil disturbance existing at the time the farm was preserved should not count toward the soil disturbance limit of 12 percent or four acres, whichever is greater, of the farm property, as set forth in the originally proposed rules, and that the limit should only count for disturbance occurring after the rules are adopted. (64, 66, 147, and 239)

RESPONSE TO COMMENTS 1 AND 2: The SADC disagrees that the adopted rules are retroactive. Rather, the soil protection rules clarify the regulatory soil disturbance limitation pursuant to the Agriculture Retention and Development Act (ARDA), N.J.S.A. 4:1C-11 et seq., and the implementing rulemaking, N.J.A.C. 2:76, that have existed since the inception of the State's farmland preservation program and that are now set forth at N.J.A.C. 2:76-6.15(a)7.

In 1983, ARDA established the farmland preservation program and required the SADC to "adopt rules and regulations necessary to carry out the purposes of" the law. N.J.S.A. 4:1C-31.2. As the New Jersey Supreme Court stated in *State Agriculture Development Committee v. Quaker Valley Farms, LLC*, 235 N.J. 37 (2018), "[t]he preservation of high quality soil and open space for future generations is one of the chief aims of the Farmland Preservation Program." *Id.* at 41.

ARDA defines "development easement" at N.J.S.A. 4:1C-13.f as "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 thereto." "Agricultural deed restrictions for farmland preservation purposes" at N.J.S.A. 4:1C-13.n is defined as a "statement containing the conditions of the conveyance and the terms of the restrictions set forth in [ARDA] and as additionally determined by the [SADC] on the use and development of the land which shall be recorded with the deed in the same manner as originally recorded." N.J.S.A. 4:1C-32.b further provides that "[u]pon the purchase of a development easement ... 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."

In order to effectuate ARDA's statutory requirement that restrictions be recorded on the use and development of preserved farmland, the SADC proposed in July 1984 (16 N.J.R. 1639) and adopted in September 1984 (16 N.J.R. 2427) rules that, among other things, established restrictions at N.J.A.C. 2:76-6.15 are incorporated in the deeds of easement. One of the restrictions existing since September 1984 to the present in substantially identical form aside from changes in its numerical order in the deed and for conformance "to plain language standards ... to help clarify the intent of each deed restriction which ultimately reduces the possibility of misinterpreting the restrictions" (see "Summary" at 18 N.J.R. 513), is currently at N.J.A.C. 2:76-6.15(a)7 (paragraph 7):

No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

In *Quaker Valley*, the Supreme Court noted that Paragraph 7 must be read together and balanced with other provisions in the deed of easement. (235 N.J. at 58). Preserved farm landowners are "permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, agricultural buildings or reservoirs as may be necessary" (N.J.A.C. 2:76-6.15(a)12) and "may construct any new buildings for agricultural purposes" (N.J.A.C. 2:76-6.15(a)14). *Id.* at 58. The court agreed with the SADC that all deed provisions must be interpreted in their entirety, but stated that clarification of Paragraph 7 through rulemaking was necessary not only to provide preserved farm landowners with "adequate direction on the tangible constraints on their agricultural use of the land," but also because:

[i]f the SADC fails to undertake the necessary rulemaking to establish guidance on the extent of soil disturbance that is permissible on preserved farms, then it can expect

administrative due process challenges to its enforcement actions. *Id.* at 63-64.

The SADC's adoption of soil protection regulations responds to the Supreme Court's direction to clarify Paragraph 7, a regulatory deed restriction in existence and applicable to all preserved farm landowners since 1984. The court instructed the SADC that the failure to do so would jeopardize the agency's ability to successfully enforce violations of Paragraph 7 against current and future preserved farm landowners.

Although the proposed soil protection rules are not retroactive, the SADC is sensitive to the claim made by commenters in response to the originally proposed rules that landowners may not have anticipated at the time they signed the deed of easement that soil disturbance would be regulated. In addition, the SADC has carefully considered the related comment that soil disturbance existing at the time the rule is adopted not count toward the 12 percent/four acre limit and that those limits should only count for soil disturbance occurring after rule adoption.

N.J.A.C. 2:76-25.5 is being revised to provide, in new subsection (c), that the total soil disturbance limit on farms preserved prior to October 1, 2024, is equal to the sum of the farm's preexisting soil disturbance plus 12 percent or four acres, whichever is greater. For farms preserved after October 1, 2024, new subsection (d) states that the total limit of soil disturbance is equal to 12 percent or four acres, whichever is greater. October 1, 2024, was the approximate date the Committee would authorize adoption of the soil protection rules.

3. COMMENT: The commenters stated that the process set forth in the originally proposed rule to obtain waivers from the soil disturbance limit was too complicated and that outside agencies and experts were available with whom the SADC could consult with regard to waivers. (39, 46, 92, 93, 141, 173, 198, 244, and 263)

RESPONSE: The originally proposed rule included two types of waivers, a production waiver allowing for a maximum soil disturbance limit of up to 15 percent or six acres, whichever is greater, of the farm property primarily intended to provide relief to preserved farm landowner whose properties were at or near the 12 percent/four acre limit; and an innovation waiver allowing for no limit on additional agricultural activities, provided the SADC determined that the activity subject to the innovation waiver did not negatively impact the farm's soil and water resources. Both waivers entailed a detailed review and approval process, including the implementation of a stewardship conservation plan and notice to neighboring properties. In addition, the production waiver required compliance with defined construction standards.

The production waiver and associated construction standards are now unnecessary in light of the substantial change for farms enrolled in the program by October 1, 2024, that will allow for 12 percent or four acres, whichever is greater, on the farm property, in addition to preexisting soil disturbance mapped on the farm as of Spring 2023.

The SADC also recognized that use of "waiver" to modify "innovation" may have resulted in the conclusion that the innovative agricultural practice constituted soil disturbance. The rule has been substantially changed to delete "waiver" and more accurately describe the agricultural practice as an "innovative agricultural practice." Substantial changes are adopted to make the review and approval process more streamlined and for the process to be less burdensome on applicants. In addition, substantial changes are adopted by listing other agencies with which the SADC can consult when evaluating the innovative practice, and deleting certain advance notice requirements as cumbersome and inappropriate.

Adopted substantial changes at N.J.A.C. 2:76-25.6(a) eliminate production waivers and instead allow for approval of an innovative agricultural practice that does not count as soil disturbance and is not otherwise an exempt agricultural practice listed at N.J.A.C. 2:76-25.4. To be eligible for approval of an innovative agricultural practice, the applicant must demonstrate to the easement holder and SADC that it is infeasible to utilize areas of existing soil disturbance sufficient to accommodate the innovative practice (proposed N.J.A.C. 2:76-25.6(c)2; recodified upon adoption as N.J.A.C. 2:76-25.6(c)1, and changing "use" to "agricultural practice"). The adopted substantial changes eliminate the need for the applicant to: show that there is no apparent feasible alternative to the project resulting in soil disturbance (originally proposed at N.J.A.C. 2:76-25.6(c)1); obtain a stewardship conservation plan, a forest

stewardship plan, and a long term maintenance plan for the conservation plan (originally proposed at N.J.A.C. 2:76-25.6(c)4, 5, and 6, respectively) and demonstrate compliance with design and construction criteria (originally proposed at N.J.A.C. 2:76-25.6(d)1 and 2).

Originally proposed N.J.A.C. 2:76-25.6(g)1, 2, and 3, providing for notice of the waiver application to the clerk and land use board of the municipality in which the farm is located, to property owners within 200 feet of the farm property, and to the county planning board, have been deleted, as has subsection (h) setting forth the contents of the notice, in response to comments about the complexity of the waiver process in the originally proposed rules. The SADC anticipates that the removal of the stewardship conservation plan requirements and notice provisions will make the process of obtaining approval for an innovative agricultural practice less burdensome for landowners and grantees.

Recodified N.J.A.C. 2:76-25.6(g), originally proposed at N.J.A.C. 2:76-25.6(j) now provides, at new paragraph (g)3 and in response to comments, that in considering the proposed innovative agricultural practice, the SADC may consult with the New Jersey Department of Agriculture; the New Jersey Agricultural Experiment Station and appropriate county agents; county agriculture development boards; the State Soil Conservation Committee; any other state departments of agriculture, land grant institutions, or agricultural experiment stations; the United States Department of Agriculture or any other Federal governmental entity; or any other organization or person that may provide expertise concerning the particular practice.

4. COMMENT: The commenters observed that the proposed soil protection rules did not specifically address the agricultural practice known as "ball and burlap" harvesting, a technique in which a tree or shrub is prepared for transplant. The commenters suggested that the proposed rules recognize that "ball and burlap" harvesting will not constitute improper soil removal. (110 and 147)

RESPONSE: The SADC agrees with the commenters. "Dug nursery stock" has been added as an example of an exception at recodified N.J.A.C. 2:76-25.5(j) (originally proposed at N.J.A.C. 2:76-25.5(g)) providing that removal of topsoil is prohibited except if incidental to the harvesting of agricultural or horticultural products.

2. Comments Received During Initial Comment Period, Not Giving Rise to Changes in the Notice of Proposal

General Comments

5. COMMENT: Adoption of the rules is essential to protect soil on permanently preserved farmland and benefits current and future generations of preserved farm landowners. (6, 7, 8, 9, 11, 13, 14, 16, 18, 20, 23, 25, 27, 28, 29, 40, 44, 47, 48, 49, 51, 55, 58, 67, 74, 75, 99, 111, 114, 123, 124, 126, 130, 131, 142, 151, 152, 161, 162, 163, 168, 171, 178, 181, 183, 184, 187, 188, 190, 197, 203, 209, 210, 211, 214, 219, 221, 223, 225, 227, 231, 233, 241, 250, 260, 266, and 275)

RESPONSE: The SADC agrees with the commenters and appreciates the commenters' support. Enrollment in the State farmland preservation program is based on a ranking system ascribing importance to the soil quality and tillable acreage criteria set forth in other SADC rules. The protection of this resource in the adopted rule makes sense, as soil protection promotes ARDA's goal that preserved farms will be devoted to agriculture as the first priority use of the land and available for a wide variety of agricultural and horticultural uses in perpetuity.

6. COMMENT: Adoption of the rules is consistent with taxpayer expectations underlying support of, and safeguards New Jersey's substantial public investment in, the State's farmland preservation program. (1, 17, 21, 30, 40, 49, 51, 59, 84, 94, 95, 107, 116, 133, 143, 145, 148, 151, 158, 175, 177, 178, 179, 182, 186, 187, 190, 195, 199, 207, 212, 215, 217, 218, 220, 246, 248, 251, 252, 253, 255, 257, 265, 266, 267, 272, and 273)

7. COMMENT: The rules establish necessary and reasonable soil protection standards that clarify the farmland preservation deed of easement and provide current and future preserved farm landowners with the opportunity to successfully operate their agricultural and horticultural businesses. (16, 48, 57, 58, 72, 77, 80, 130, 136, 151, 168, 171, 175, 182, 184, 186, 200, 206, 217, 218, 235, 237, 266, 272, and 273)

8. COMMENT: The soil protection limits in the rules are too generous, and the limits should apply to tillable acreage and not to the preserved farm's gross acreage. (137, 160, 200, and 245)

RESPONSE TO COMMENTS 6, 7, AND 8: The SADC agrees with Comment 6 and Comment 7 and disagrees with Comment 8. Since 1983, New Jersey has expended about \$1.9 billion to permanently preserve 250,000 acres on 2,870 farms. These constitutionally dedicated funds for Statewide farmland preservation efforts have been raised as a result of consistent voter approved referenda, as well as from broadly supported legislation allocating an increased share of corporate business tax revenue. Public support of the farmland preservation program is based on the expectation that soil resources on preserved farms will be protected so that future generations of landowners can engage in a variety of agricultural and horticultural uses.

The allowance of 12 percent or four acres, whichever is greater, of soil disturbance in addition to preexisting disturbance provides substantial opportunities to expand operations on preserved farms, the flexibility for new or innovative agricultural methods, techniques, and activities in accordance with N.J.A.C. 2:76-25.6, and the predictability to make appropriate business decisions free from SADC review of site-specific farm projects. The soil disturbance limit of 12 percent or four acres, whichever is greater, on farms whose landowners are considering enrolling their properties in the farmland preservation program achieves the needed balance between soil protection and the ability to create and expand agricultural and horticultural projects. The rule offers the flexibility for preserved farm owners to grow their businesses while providing clarity on the permissible limits on soil disturbance so that they can make informed business judgments. No permission from, or review by, the SADC is required for preserved farm projects resulting in disturbance below the prescribed limits, preexisting disturbance on a preserved farm is counted over and above the 12 percent or four acre limitation, and soil may be rehabilitated to no longer count toward the disturbance limit as set forth at N.J.A.C. 2:76-25.9.

The SADC understands the comments about not calculating allowable disturbance based on gross acreage. It would be extremely difficult to develop standards based on the many and varied site-specific conditions of every preserved farm in New Jersey. The Committee has sought a balanced approach between land conservation and providing preserved farm owners with the flexibility to disturb soil for future agricultural and horticultural purposes.

9. COMMENT: By protecting preserved farm soils, the adopted rules will promote flood control and enhance stormwater management. (7, 13, 15, 19, 22, 24, 26, 40, 48, 55, 67, 99, 126, 131, 142, 162, 210, 211, 214, 219, 231, 233, and 250)

RESPONSE: The adopted soil protection rules are intended to clarify Paragraph 7 of the farmland preservation deed of easement prohibiting activities "detrimental to drainage, flood control, water conservation, erosion control, or soil conservation" in the context of agricultural or horticultural operations on a preserved farm. The SADC recognizes that the New Jersey Department of Environmental Protection has regulatory authority over flood control and stormwater management standards and compliance.

10. COMMENT: The adopted rules will assist in carbon sequestration, helping ameliorate the adverse effects of climate change. (8, 26, 31, 41, 75, 106, 116, 148, 181, 183, 184, 188, 203, 207, 209, 210, 216, 241, and 251)

RESPONSE: The purpose of the adopted rules is to increase a preserved farm's productivity and resiliency, so that current and future generations of farmers can devote the land to a variety of agricultural and horticultural uses. The SADC acknowledges that farmland soils have the capacity to sequester carbon, and the agency provides advice and financial incentives encouraging land managers to implement practices that improve soil health on preserved farms. The adopted rules set forth a limit on the amount of soil disturbance that can occur on a preserved farm, but do not mandate that preserved farm landowners manage their soil in a manner that maintains or increases soil health or carbon sequestration.

11. COMMENT: The commenters stated that adoption of the rules would result in the protection of the State's environmental and cultural resources and in positive community impacts. (43, 52, 62, 70, 83, 106, 124, 152, 161, 168, 194, and 231)

RESPONSE: The SADC thanks the commenters for their support. The SADC has no authority to regulate environmental protection and cultural resources in New Jersey. The purpose of the adopted rules is to increase a preserved farm's productivity and resiliency, so that current and future generations of farmers can devote the land to a variety of agricultural and horticultural uses. The commenters did not specify what positive community impacts would result from the adopted rules.

12. COMMENT: The rules will limit impervious cover on preserved farms. (13, 37, 39, 41, 123, and 244)

RESPONSE: The commenters equate soil protection standards to an impervious cover limit. The stated purpose of the soil protection rules is to provide clarity on activities that are detrimental to soil conservation and to the continued agricultural and horticultural use of preserved farmland, and to establish a threshold over which disturbance is prohibited. This is accomplished by setting limits on soil compaction, soil surfacing, and soil alteration. Impervious surface is generally defined as adding a surface to the land that restricts water infiltration into the soil, such as paved roads and roofs, and impervious area restrictions are utilized to improve water quality, limit runoff, reduce flooding, and to improve water infiltration for groundwater recharge. Additionally, there are several agricultural practices that create impervious surfaces, such as hoop houses and tents, but are exempt from the soil protection standards because of their temporary nature. While there may be some overlap between land management activities that count as soil disturbance and those that create impervious surfaces, they are not analogous; limits on these activities are designed for different purposes. The soil protection rules do not alter or supersede any impervious cover limitations on farms or as otherwise required by law.

13. COMMENT: The adopted rules breach the contract landowners entered into and the deed of easement that was signed when the farm was preserved. (2, 37, 39, 42, 61, 64, 92, 159, 167, 170, 222, 228, 258, and 263)

14. COMMENT: The adopted rules change the terms of the farmland preservation deed of easement allowing agricultural development. (37, 61, and 119)

15. COMMENT: Paragraph 2 of the farmland preservation deed of easement, requiring compliance with rules adopted by the SADC, refers to rules adopted as of the date landowners preserved their farm in the ARDA program. (46, 92, 157, and 244)

RESPONSE TO COMMENTS 13, 14, AND 15: The SADC disagrees that adoption of the rules result in a breach of contract. The contract in which a landowner agrees to convey development rights to counties, nonprofit organizations, or the SADC differs from, and is superseded by, the farmland preservation deed of easement, which legally confirms the conveyance, including the rights, restrictions, and obligations of permanent preservation, and is recorded in the county clerk's office. The contract is the landowner's agreement to convey the development rights, in accordance with the contract's terms, which includes provisions that the conveyance is pursuant to ARDA and is accomplished by the execution of a deed of easement; the actual conveyance of the development rights occurs when the deed of easement is signed and recorded.

The SADC disagrees with the claim that the adopted rules change the terms of the farmland preservation deed of easement without landowner consent. As the New Jersey Supreme Court noted in *Quaker Valley*, "[t]he terms of the deed of easement are lifted directly from a regulation promulgated by the SADC. N.J.A.C. 2:76-6.15." (235 N.J. at 57). The preservation of high-quality soil for future generations of farmers is one of the chief aims of the farmland preservation program. This important goal is effectuated in Paragraph 7 of the deed of easement, prohibiting activities which would be "detrimental to ... soil conservation." The adopted rules do not alter or modify the deed of easement, but clarify the constraints on soil disturbance that already exist in the language of the deed as set forth at N.J.A.C. 2:76-6.15(a)7.

N.J.A.C. 2:76-6.15(a)2 provides in part: "[t]he Premises shall be retained for agricultural use and production in compliance with [ARDA] and all other rules promulgated by the [SADC]." Paragraphs 2 and 7 were adopted in 1984 and incorporated in each deed of easement executed by farmland owners when they enrolled their property in the State preservation program. The plain language of Paragraph 2, set forth above,

is that landowners who enrolled in the farmland preservation program did so with the understanding that the SADC is authorized to modify or clarify the terms and burdens set forth in the deed of easement through the proper adoption of rules, including the protection of soil resources as stated in Paragraph 7.

The SADC also observes that it is incongruous to assert Paragraph 2 does not apply to rules adopted after preservation, given the SADC's promulgation of rules modifying the deed to provide all preserved farms, regardless of whether they were preserved prior to rule adoption, with the ability to obtain stewardship grants (N.J.A.C. 2:76-20) and special permits for rural microenterprise activities (RME) (N.J.A.C. 2:76-22), the installation of personal wireless service facilities (N.J.A.C. 2:76-23), and the installation of solar energy facilities (N.J.A.C. 2:76). The SADC is also tasked with promulgating rules allowing for special occasion events that can be held on preserved farms, rules that will also be applicable to preserved farms regardless of when they entered into the farmland preservation program.

16. COMMENT: The adopted rules result in a taking of agricultural development rights retained by the landowner in the farmland preservation deed of easement. (5, 39, 61, 104, 127, 140, 157, 159, 173, 174, 254, 258, 263, and 271)

RESPONSE: The SADC does not anticipate that the requirements imposed pursuant to the adopted rules would be considered a "taking." The rules impact preserved farms, which are properties whose owners have already voluntarily agreed to limit potential uses and development by selling the nonagricultural development rights. While the adopted rules result in limitations to soil disturbance on preserved farmland, the rules serve to clarify the regulatory provisions preserved farms are already subject to and do not eliminate agricultural uses and development on preserved farms. In determining whether a rule results in a taking, the mere potential for some impact is not sufficient to constitute a taking. Neither diminution of land value nor impairment of the marketability of land alone effects a taking. Similarly, restrictions on uses do not necessarily result in takings even though they reduce income or profits. Instead, a rulemaking will be upheld unless it denies all practical use of property, or substantially destroys the beneficial use of private property, or does not allow an adequate or just and reasonable return on investment. The courts have applied the standard that focuses on the beneficial or economic uses allowed to a property owner in the context of particularized restraints designed to preserve the special status of distinctive property.

17. COMMENT: The rules will adversely affect preserved farm property values. (37, 39, 68, 90, 113, 258, and 278)

18. COMMENT: The rules will adversely affect the preserved farm's property value upon merging contiguous premises for the purpose of aggregating soil disturbance. (64)

RESPONSE TO COMMENTS 17 AND 18: The SADC disagrees with the commenters. The effect of the rules on preserved farmland property value is speculative at best, as property values are based on a number of factors including, but not limited to, the farm's location and size, the rate of inflation, and comparable sales. The comments were also submitted before the SADC published the notice of substantial changes upon adoption. In the notice, the agency stated that "although the proposed soil protection rules are not retroactive, the SADC is sensitive to the claim made by the commenters in response to the originally proposed rules that landowners may not have anticipated at the time they signed the deed of easement that soil disturbance would be regulated." The rules now provide for soil disturbance of 12 percent or four acres, whichever is greater, in addition to preexisting soil disturbance on farms preserved prior to October 1, 2024, the original anticipated effective date of the new rules. This additional allowance provides preserved farm landowners with the flexibility to grow their operations. No facts were presented by the commenter supporting the claim that the value of preserved land will be adversely affected by merging contiguous premises for the purpose of aggregating soil disturbance. Merged parcels can continue to be devoted to a variety of agricultural and/or horticultural uses.

19. COMMENT: The SADC should have allowed soil disturbance to be aggregated on noncontiguous preserved farms. (64)

RESPONSE: The SADC seriously considered allowing disturbance on noncontiguous preserved farms, but the difference in soil types across the State, the inequity of transferring disturbance from, or to, geographically

disparate locations, and the complexity of recordkeeping, among other reasons, lead the SADC to conclude that the concept would not be ineffective.

20. COMMENT: Preserved farm landowners and the public will lose trust in the SADC and in the farmland preservation program, as adoption of soil protection rules affecting existing preserved farms could lead to future rules adversely affecting preserved farm operations. (14, 21, 25, 30, 33, 37, 38, 39, 42, 45, 46, 61, 69, 71, 76, 90, 92, 100, 102, 104, 108, 109, 112, 113, 118, 127, 134, 140, 142, 157, 159, 160, 165, 176, 180, 196, 208, 238, 239, 242, 243, 244, 247, 254, and 276)

RESPONSE: The SADC disagrees with the commenters. The SADC was given authority by the Legislature in 1983 to promulgate rules necessary to accomplish the purposes of the farmland preservation program. N.J.S.A. 4:1C-31.2. Paragraph 2 of the farmland preservation deed of easement provides advance notice to all preserved farm landowners that they must comply with SADC rules, and all landowners, whenever their farms were preserved, are subject to rules adopted from time to time, providing for benefits, such as stewardship grants and permits to engage in RMEs and to construct wireless and solar energy facilities. The SADC will continue to adopt rules deemed necessary to facilitate the goals of the farmland preservation program and in response to pertinent legislation and judicial rulings.

The SADC is precluded by law from acting arbitrarily and, in respect to the adoption of soil protection rules, is responding to the New Jersey Supreme Court's instruction that rules are needed to provide preserved farm landowners and those interested in preserving their farms with clearly defined limits on the amount of soil disturbance allowed in the deed of easement. In addition, the plain language of deed Paragraph 2 reflects that landowners who enrolled in the farmland preservation program did so with the understanding that the SADC is authorized to modify or clarify the terms and burdens set forth in the deed of easement through the proper adoption of rules. The SADC also observes that it has adopted rules applicable to all preserved farms in response to legislative direction to allow for special permits for rural microenterprise activities (N.J.A.C. 2:76-22) (RMEs), the installation of personal wireless service facilities (N.J.A.C. 2:76-23), and the installation of solar energy facilities (N.J.A.C. 2:76-24). The SADC will be promulgating rules allowing for special occasion events that can be held on preserved farms, in accordance with State legislation.

21. COMMENT: The proposed rules will negatively affect the expansion, innovation, and economic viability of agricultural operations on preserved farms. (2, 3, 4, 15, 21, 25, 38, 39, 46, 64, 66, 68, 71, 76, 86, 89, 90, 93, 100, 102, 105, 108, 112, 113, 117, 118, 119, 120, 125, 128, 134, 138, 146, 149, 165, 167, 170, 174, 176, 180, 198, 202, 204, 208, 240, 244, 247, 254, 261, 263, 264, 268, and 270)

RESPONSE: The SADC does not agree that adoption of the soil protection rules will curtail the expansion, innovation, and economic viability of preserved farm operations. Statistically, the overwhelming majority of preserved farms have no operational impediments as a result of the adoption of the soil protection rules. Approximately 91 percent of currently preserved farms in New Jersey have less than 12 percent soil disturbance and about 95 percent have less than four acres of disturbance. The allowance of 12 percent or four acres, whichever is greater, of soil disturbance in addition to preexisting disturbance provides substantial opportunities to expand operations on preserved farms, the flexibility for new or innovative agricultural methods, techniques, and activities, and the predictability needed to make appropriate business decisions, free from SADC review of site-specific farm projects. In addition, the soil protection rules provide preserved farm landowners with "adequate direction on the tangible constraints on their agricultural use of the land" (*Quaker Valley*, at 62-63), more clearly articulating the balance between agricultural development and soil conservation described in competing provisions of the deed of easement.

The SADC and stakeholders in the agricultural community worked closely to craft rules that provide opportunities for preserved farm landowners with the flexibility to maintain and expand existing farm businesses. N.J.A.C. 2:76-25.4(a) lists 24 on-farm activities that are exempt agricultural practices not counting as soil disturbance; N.J.A.C. 2:76-25.4(b) provides a further exemption for various on-farm conservation practices; and N.J.A.C. 2:76-25.4(c) also deems a practice

exempt if the conservation practice addresses specific criteria and is necessitated by conditions beyond the grantor's control, such as stormwater on the farm coming from adjacent roads and properties. N.J.A.C. 2:76-25.6 allows preserved farm landowners to propose and install, after review and approval by the SADC and grantee of the deed of easement, innovative agricultural practices that do not count as soil disturbance. N.J.A.C. 2:76-25.9 enables preserved farm landowners to rehabilitate disturbed soil so that it no longer counts toward the soil disturbance limit.

The regulatory predictability regarding soil disturbance limits, coupled with specific exemptions, conservation practices based on clearly delineated criteria, opportunities to implement other innovative agricultural practices and to rehabilitate existing soil disturbance, can help facilitate agricultural business planning, operations, and growth.

The adopted rules complement the SADC's existing soil and water, deer fence, and other cost share programs encouraging agricultural viability, natural resource management, and soil conservation.

22. COMMENT: The proposed rules will adversely affect the future participation of landowners in the State's farmland preservation program. (18, 33, 36, 37, 39, 46, 61, 64, 66, 69, 104, 105, 112, 119, 120, 128, 138, 141, 154, 157, 165, 166, 170, 173, 196, 201, 208, 238, 240, 242, 247, 271, 258, 264, 270, and 276)

RESPONSE: The SADC understands that adoption of soil protection rules may cause some landowners who currently have, or will require, intensive soil disturbance operations to evaluate whether participation in the farmland preservation program is appropriate. However, the SADC does not see the adopted rules as a substantial impediment to participation in the program for most farm landowners. The regulatory predictability regarding soil disturbance limits, coupled with specific exemptions, conservation practices based on clearly delineated criteria, opportunities to implement other innovative agricultural practices and to rehabilitate existing soil disturbance, can help facilitate entry in the farmland preservation program by assisting landowners considering entry in the farmland preservation program to make informed judgments regarding agricultural business planning, operations, and growth.

Landowners considering entry into the farmland preservation program can elect to take exception areas, which are portions of the farm not subject to the deed of easement, to accommodate additional growth without the limits set forth in the soil protection rules. Exception areas can be drawn around existing farm complexes, allowing for flexible growth on the remainder of the preserved premises within the soil disturbance limits of 12 percent or four acres, whichever is greater. In addition, the SADC is aware that the appraised value of a development easement is a more crucial factor when landowners consider program participation.

The SADC has concluded that the potential for any decrease in program participation as a result of adoption of this rulemaking is greatly outweighed by the need to provide clarity to landowners on soil disturbance limits so that they can make informed business decisions regarding whether choosing farmland preservation is appropriate, and that the rules the SADC will be proposing in response to recent legislation providing for a Statewide formula value for appraising farmland will have a positive effect on program participation.

23. COMMENT: The proposed rules focus on soil impacts from crop farming to the detriment of nursery, equine, and other livestock operations on preserved farms. (5, 46, 66, 105, 117, 135, 138, 146, 167, 198, 202, and 263)

RESPONSE: The SADC disagrees with the commenters. The rulemaking is not intended to, nor does it, result in prohibition or unreasonable limits on specific livestock or horticultural industries. Instead, the rulemaking achieves a balance between long-term soil preservation and the need to build infrastructure to support all forms of agricultural and horticultural production by allowing for an additional 12 percent or four acres, whichever is greater, on top of preexisting disturbance associated with those activities. The SADC data collected during the rulemaking process reflects that the overwhelming majority of preserved farms, with uses spanning the agricultural and horticultural spectrum, are below the soil disturbance limits. These preserved farms will be able to maintain more than sufficient flexibility to grow their operations beyond their existing infrastructure as a result of the adopted rulemaking. A substantial change is made at N.J.A.C. 2:76-25.5(j), as a

result of public comments on the original notice of proposal, to include dug nurse stock as an exemption from the prohibition on removing topsoil if incidental to the harvesting of agricultural or horticultural products. Geotextile fields and hoop houses, important components of the nursery industry, are exempt from the definition of soil disturbance (N.J.A.C. 2:76-25.4(a)5 and 6). Agency-initiated changes include exempting from the definition of soil disturbance the storage of naturally derived materials produced on the preserved premises, such as hay bales and manure (N.J.A.C. 2:76-25.5(a)14), and unimproved livestock areas are exempt from the soil disturbance definition (N.J.A.C. 2:76-25.5(a)23).

24. COMMENT: The proposed rulemaking is unnecessary, as soil protection on preserved farms can be achieved through the SADC's issuance of best management practice recommendations based on disturbance levels and types of disturbance, other written conservation guidance documents, and/or farm-specific, case-by-case interpretations and enforcement of the recorded deeds of easement. (2, 3, 4, 5, 19, 39, 42, 46, 61, 64, 105, 121, 128, 146, 157, 165, 173, 204, 229, 238, 244, 258, and 262)

25. COMMENT: The proposed rulemaking is unnecessary, as soil protection on preserved farms can be achieved through voluntary landowner participation in existing Federal farm conservation and/or State soil conservation programs. (2, 3, 4, 5, 39, 204, 238, 244, and 239)

26. COMMENT: The proposed rulemaking is unnecessary, as the SADC requires a farm conservation plan in the deed of easement and has adopted a rule providing that implementation of a farm conservation plan is a generally accepted agricultural management practice. (89, 127, 141, 167, 238, 244, and 263)

RESPONSE TO COMMENTS 24, 25, AND 26: Best management practice recommendations, other written conservation guidance documents, and/or case-by-case interpretations of the recorded deeds of easement by the SADC are insufficient responses to the Supreme Court's direction in the *Quaker Valley* case that "[i]f the SADC fails to undertake the necessary rulemaking to establish guidance on the extent of soil disturbance that is permissible on preserved farms, then it can expect administrative due process challenges to its enforcement actions." (*Id.* at 63-64; emphasis added). The SADC also observes that after the *Quaker Valley* case was decided, the best management practice concept was the subject of extensive discussion with, and presentations to, agricultural stakeholders who objected to the proposed practices as prescriptive, overly complex, and burdensome.

The SADC encourages sound conservation practices related to farming activities and agricultural development. SADC staff provides guidance during annual monitoring visits, and the SADC provides soil and water cost share grants for a variety of on-farm conservation measures. However, these efforts, by themselves, do not clarify or balance the conflicting deed terms of soil conservation and agricultural development.

Farm conservation plans pursuant to the jurisdiction of the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), do not achieve the purposes underlying the soil protection rules. The NRCS does not have the ability or obligation to write comprehensive conservation plans for all of the farms enrolled in New Jersey's farmland preservation program, as a great deal of agricultural development on farms does not fall within the purview of NRCS conservation planning. The plans are limited to farming activities for which the NRCS has conservation practice, such as nutrient management, cover crops, conservation tillage, filter strips, grass waterways, irrigation water management, livestock watering facilities, and fencing. There are no conservation practices for, for example, large scale stockpiling of soil or for farm disturbances, such as riding arenas and tracks. Ball-and-burlap nursery operations, which can be exempt pursuant to this rulemaking, do not meet NRCS planning criteria due to soil loss in excess of tolerable soil loss limits. The plans also fail to address the necessary balance between soil protection and agricultural development recognized in the farmland preservation deed of easement, and reliance on such plans would leave preserved farm landowners without clarity and without a meaningful way to undertake many desired agricultural practices. A farm conservation plan is confidential pursuant to Federal privacy laws, and implementation of the plan is voluntary, resulting in the same potential for case-by-case, administrative agency adjudication which was called into question by the

Supreme Court in *Quaker Valley*. Many of the NRCS conservation practices are exempt pursuant to the soil protection rules.

The agricultural landscape has changed significantly since 1994 when the deed of easement was revised to require a grantor to obtain and implement a farm conservation plan. NRCS farm conservation plans in 1994 could not anticipate large scale soil excavation activities that are now part of agricultural development on preserved farms. In summary, while farm conservation plans can address ways to improve agricultural productivity, they do not address the complementary goals of soil conservation and agricultural development on preserved farms.

The SADC does not agree that compliance with the natural resource conservation agricultural management practice (AMP), N.J.A.C. 2:76-2A.7, is an acceptable substitute for the adoption of soil protection rules. The AMP was adopted in March 2000 to provide commercial farmers with eligibility for protection against unduly restrictive municipal ordinances and nuisance complaints pursuant to the Right to Farm Act. The AMP is designed to help mitigate or eliminate off-farm impacts resulting from on-farm activities, such as installation of an NRCS-approved filter strip to ameliorate a farm's runoff onto adjoining properties. Similar to the discussion above about farm conservation plans, the natural resource conservation AMP does not address necessary limits on soil disturbance and cannot achieve the appropriate balance between soil conservation and agricultural development on preserved farms.

The SADC does not agree with the commenters that State soil committee or county soil conservation district standards can satisfy soil disturbance limits in lieu of the adopted soil protection rules. The purposes of the Soil Erosion and Sediment Control Act (SESCA), N.J.S.A. 4:24-39 et seq., are to address soil erosion and sedimentation resulting in "pollution of the water of the State and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resource uses" and to reduce stormwater runoff and nonpoint pollution from sediment. N.J.S.A. 4:24-40. The SESA regulates erosion and sedimentation, not soil disturbing land uses, and the law recognizes that agricultural or horticultural land uses that are or could result in soil disturbances are not within soil district jurisdiction. N.J.S.A. 4:24-41.g(6).

27. COMMENT: A commenter expressed concern that hoophouses and other temporary structures can be deemed a soil disturbance regardless of the ability to till the ground underneath the structures. (169)

RESPONSE: Hoophouses and temporary structures are defined at N.J.A.C. 2:76-25.3 to allow for an exemption from the soil protection rules while ensuring the soil underneath the structures remain undisturbed. The definitions are designed to avoid overly complex, best management practice descriptions, and address situations in which there are multiple uses at one location, for example, a sidewalk within a hoophouse. In that case, the hoophouse remains exempt, but the area of the sidewalk is counted as soil disturbance.

28. COMMENT: The commenters asked whether grassed waterways and stormwater basins would be considered soil disturbance. (146 and 147)

RESPONSE: A grassed waterway is exempt from the soil disturbance limit if it is installed as a conservation practice in accordance with N.J.A.C. 2:76-25.4(b). Stormwater management facilities play an important role in reducing flooding and replenishing groundwater, but the soil protection rules are in response to excessive land grading. The grading required to properly install a stormwater facility is significant and, because the affected area cannot likely be returned to productive farmland, would be counted toward the soil disturbance limit.

29. COMMENT: A commenter stated that soil disturbance on the preserved farm upon which his operation is located already exceeds the 12 percent or four acre limit and questioned the farm's compliance with the adopted rulemaking. (117)

RESPONSE: N.J.A.C. 2:76-25.5(c) provides that for farms preserved prior to October 1, 2024, the total limit on soil disturbance equals the sum of preexisting soil disturbance based on the Nearmap Spring 2023 Vertical Imagery, as set forth at N.J.A.C. 2:76-25.3 and 25.10, plus the allocated soil disturbance of 12 percent or four acres, whichever is greater, as provided at N.J.A.C. 2:76-25.5(b). The SADC cannot provide a further response without analyzing the imagery and conducting a site visit with the deed of easement grantee.

30. COMMENT: A commenter submitted, on behalf of preserved farm landowners who had received a preliminary map from the SADC with a calculation of existing soil disturbance, a letter containing a description of property conditions and questioning the soil disturbance calculations. (263)

RESPONSE: The letter shall be deemed a comment seeking information on the impact of the rulemaking in respect to the following areas of the property: a farm lane; a driveway; an area subject to a forest management plan; run-in sheds; fence posts; and grading and sanding an area for equine purposes. All preserved farms are being remapped based on NearMap Spring 2023 Vertical Imagery to capture preexisting disturbance. If the landowners still have concerns about their map once they receive it, SADC staff can review the areas and schedule a field visit to verify accuracy. An "unimproved travel lane" or "farm lane," defined at N.J.A.C. 2:76-25.3, is exempt pursuant to N.J.A.C. 2:76-25.4(a)24, but would count as disturbance if millings or gravel have been added. Forest management disturbance, such as tree removal, is not considered a soil disturbance, but staging areas or roads constructed as part of a forest management activity could count toward the soil disturbance limitation. Run-in sheds and driveways are counted as soil disturbance, but if these property conditions existed prior to Spring 2023, they will be counted as preexisting soil disturbance as provided at N.J.A.C. 2:76-25.5. Fence posts are not specifically listed as an exemption, but a typical post is too small to be mapped as soil disturbance, and whether an equine fence post is exempt from the soil protection rules will need to be determined on a case-by-case basis, dependent on actual size. Soil grading, or the addition of a surface, alters the soil in a way that is difficult and/or costly to rehabilitate and, therefore, counts as soil disturbance.

31. COMMENT: The soil protection limit of 12 percent or four acres of disturbance, whichever is greater, should apply to tillable acreage and not to the preserved farm's gross acreage. (137 and 245)

32. COMMENT: The rule allowing for 12 percent or four acres of disturbance, whichever is greater, is too generous and/or should have included stricter limits. (78 and 153)

RESPONSE TO COMMENTS 31 AND 32: The SADC understands the comments, but notes that it would be very difficult to develop a standard based on the many and varied site-specific conditions of the approximately 3,000 farms that have been preserved or are anticipating the condition on other farms that may qualify for preservation in New Jersey. The Committee has sought a balanced approach between land conservation and the flexibility for a preserved farm owner to disturb soil for future agricultural and horticultural purposes.

33. COMMENT: The *Quaker Valley* decision did not mandate that the SADC adopt soil protection rules, only that the SADC issue soil protection guidelines. (46, 92, 167, and 263)

34. COMMENT: The Supreme Court decision in *Quaker Valley* dealt with interpretation of a farmland preservation deed of easement not containing a requirement that the grantor obtain a farm conservation plan. (167 and 263)

RESPONSE TO COMMENTS 33 AND 34: In *Quaker Valley*, the Supreme Court noted that Paragraph 7 of the farmland preservation deed of easement requiring protection of soil resources must be read together and balanced with other provisions in the deed of easement. 235 *N.J.* at 58. Preserved farm landowners are "permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary" (N.J.A.C. 2:76-6.15(a)12) and "may construct any new buildings for agricultural purposes" (N.J.A.C. 2:76-6.15(a)14). The court agreed with the SADC that all deed provisions must be interpreted in their entirety, but stated that clarification of Paragraph 7 through rulemaking was necessary not only to provide preserved farm landowners with "adequate direction on the tangible constraints on their agricultural use of the land," but also because:

[i]f the SADC fails to undertake the *necessary rulemaking* to establish guidance on the extent of soil disturbance that is permissible on preserved farms, then it can expect administrative due process challenges to its enforcement actions. *Id.* at 63-64. (Emphasis added).

Elsewhere, the *Quaker Valley* decision observed that "those who own deed-restricted farmland must have well delineated guidelines *or rules* that will permit them to make informed decisions about the permissible

limits of their activities ... Farmers must know where the goalposts are set before the State burdens them with costly enforcement actions.” *Id.* at 41-42. (Emphasis added). The court noted that the New Jersey Farm Bureau, which had filed an amicus brief, asserted that “the SADC’s case-by-case approach—without clear pre-existing standards—violate[d] substantive due process.” *Id.* at 54.

The SADC’s adoption of soil protection rules responds to the Supreme Court’s instruction in *Quaker Valley* that the agency “undertake necessary rulemaking” and avoid subjective, case-by-case adjudication of enforcement actions pursuant to the farmland preservation deed of easement.

The absence of a farm conservation plan requirement in the deed of easement at issue in *Quaker Valley* has no bearing on the need for the SADC to adopt soil protection rules. The SADC initially notes that whether and how the Supreme Court would have dealt with a farm conservation plan requirement, had it existed in *Quaker Valley*’s deed of easement, is purely speculative. The Response to Comment 26 makes clear that even if a farm conservation plan was set forth in *Quaker Valley*’s deed of easement, such plans do not address soil disturbance and fail to balance the competing interests of soil protection and agricultural development.

35. COMMENT: Adoption of the soil protection rules conflicts with the Farmland Preservation Bond Act of 1981 (Bond Act) and ARDA, both of which recognize the importance of preserving agriculture as a viable business pursuit. (92, 167, and 263)

RESPONSE: The SADC disagrees with the commenters. The principal purpose of the Bond Act, which financed the acquisition of development easements on farmland, and ARDA is “the long-term preservation of significant masses of reasonably contiguous agricultural land.” N.J.S.A. 4:1C-31.h. As the Supreme Court observed in *Quaker Valley*, “the easements are aimed at preserving farms in perpetuity.” *Id.* at 55-56. The Bond Act and ARDA also state that the purposes of farmland preservation are to strengthen the agricultural industry, encourage agricultural production as the first priority use of the land, and create a positive agricultural business climate. N.J.S.A. 4:1C-12.a, b, and c. ARDA specifically provides, at N.J.S.A. 4:1C-31.2, that “[t]he committee shall adopt rules and regulations necessary to carry out the purposes of [the Act] according to the Administrative Procedure Act.” (emphasis added).

The adopted soil protection rules achieve the goals set forth in the Bond Act and ARDA of promoting agricultural businesses by ensuring that preserved farms’ soil resources are available for a variety of agricultural purposes for current and future generations of farmers. Also, by establishing clearly defined standards, the adopted rulemaking provides current and all future preserved farm landowners with the predictability needed to make informed business decisions.

36. COMMENT: The September 27, 2023 public hearing on the proposed rulemaking was conducted in a manner that unreasonably constrained the time for public comments in violation of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (APA), and hearings should have been conducted in the north and south portions of the State. (46, 92, and 207)

RESPONSE: The SADC disagrees with the commenters. The September 27, 2023 public hearing was conducted in compliance with the APA, which states that an agency shall afford all interested persons “a reasonable opportunity to submit data, views, comments, or arguments, orally, or in writing.” N.J.S.A. 54:14B-4(a)(3). Thirty individuals from throughout New Jersey provided comments lasting at least four minutes each, ample time to make their positions known. The written comment period on the original notice of proposal published on August 7, 2023, at 55 N.J.R. 1573(a), was extended to February 23, 2024.

37. COMMENT: The commenters expressed concern about soil disturbance mapping inaccuracies and outdated imagery upon which preexisting soil disturbance will be determined. (45, 61, 167, 170, 238, 258, and 263)

38. COMMENT: Mapping should be finalized before the rulemaking is adopted. (93)

RESPONSE TO COMMENTS 37 AND 38: Soil disturbance maps were transmitted to preserved farm landowners to provide advance notice and transparency during the rulemaking process showing estimated soil disturbance calculations and areas of the farm that could be subject to the

adopted rulemaking. The maps contained a description of the sources from which they were derived, including 2020 aerial imagery, with a disclaimer that they were not to be relied upon for exact locations, dimensions, and physical features. The agency-initiated changes to the original notice of proposal add a new definition of “image of record” at N.J.A.C. 2:76-25.3 relevant to the mapping criteria at N.J.A.C. 2:76-25.10. For farms preserved prior to October 1, 2024, the image of record is the Nearmap Spring 2023 Vertical Imagery; for farms preserved after October 1, 2024, the image of record will be the most current aerial imagery available as determined by the SADC. N.J.A.C. 2:76-25.5(c) allows farms preserved prior to October 1, 2024, for a total soil disturbance limit equal to preexisting disturbance plus the allocated disturbance of 12 percent or four acres, whichever is greater. Accordingly, mapping of preexisting soil disturbance is needed on those farms. Landowners who dispute the accuracy of their maps have the right to appeal in accordance with N.J.A.C. 2:76-25.10.

39. COMMENT: The NRCS should be allocated more resources to prepare farm conservation plans, and the State should provide resources to ensure the NRCS is able to process plans more expeditiously. (173)

RESPONSE: The comment is beyond the scope of this rulemaking.

40. COMMENT: All farms should grow their products organically. (206)

RESPONSE: The comment is beyond the scope of this rulemaking.

41. COMMENT: Existing preserved farm landowners should be given the opportunity to create new or additional exception areas, that is, areas of the farm not subject to the deed of easement, so that the landowners can conduct agricultural activities in those areas free from the soil protection limits, and the commenters suggested that preserved farm landowners reimburse the deed of easement grantee for the newly created exception areas. (45, 88, 120, 121, and 147)

RESPONSE: The SADC understands the comment to propose that a portion of farmland preserved by a recorded development easement become unpreserved, and that the landowner will reimburse the grantee of the development rights for the loss of preserved land. There is no legal authority for such an arrangement. N.J.S.A. 4:1C-32.a of ARDA prohibits reconveyance of the easement once the farm is preserved unless the farm is included in a sending district established in a municipal transfer of development rights program.

N.J.A.C. 2:76-25.1

42. COMMENT: The “applicability” section of the rulemaking was objected to on the grounds of impermissible retroactive application of the rules; breach of contract; violations of the deed of easement and of the preserved farm landowner’s contract rights; and a taking of the landowner’s agricultural and residential property rights without compensation. (263)

RESPONSE: No change at N.J.A.C. 2:76-25.1 was requested by the commenter, and the SADC declines to make any further revisions due to agency-initiated changes in the notice of substantial changes upon adoption at 56 N.J.R. 1213(a), and for the reasons set forth in the Response to Comments 13 and 16.

N.J.A.C. 2:76-25.2

43. COMMENT: The “purpose” section of the rulemaking was objected to on the grounds that preexisting soil disturbance should not count toward the soil disturbance limit, and that the additional allowance of one acre or two percent, whichever is greater, is not available to farms with deed of easement violations. (263)

RESPONSE: No change at N.J.A.C. 2:76-25.2 was requested by the commenter, and no revision is needed as a result of agency-initiated changes in the notice of substantial changes upon adoption at 56 N.J.R. 1213(a), providing that farms preserved prior to October 1, 2024, with preexisting soil disturbance receive an additional allocation of 12 percent or four acres of disturbance, whichever is greater.

N.J.A.C. 2:76-25.3

44. COMMENT: “Agricultural productivity” should be revised to “soil agricultural productivity” to avoid interpretive confusion with the concept of “agricultural production,” which is not limited to agricultural products grown in soil, but also includes many other forms of agricultural production, and to ensure the SADC will not adopt rules in the future

favoring crop production over other forms of agricultural production. (263)

RESPONSE: The SADC declines to revise the definition. The term defines productivity as it relates to preserved farmland soil and does not define the kinds of agricultural production permitted on the farm pursuant to the deed of easement. The SADC disagrees with the commenter that it would adopt rules in the future with a bias toward crop production over other forms of agricultural production, as Paragraph 2 of the deed of easement specifically identifies a variety of common farmsite activities that includes the production of plants and animals, not just crops. The farm must also be available for a variety of agricultural uses for future landowners of the preserved farm.

45. COMMENT: The definition of “normal tillage” includes, among other criteria, only tillage where the practice does not meet the definition of human-altered or human-transported soils. “Human-altered and human-transported soils” is defined as: 1) soils that have profound and purposeful alteration; 2) soils that occur on landforms with purposeful construction or excavation and the alteration is of sufficient magnitude to result in the introduction of a new parent material (human-transported material); or 3) a profound change in the previously existing parent materials (human-altered material). The commenter asked whether paragraph 3 is meant to be a separate criterion or a continuation of paragraph, and asked the SADC to provide examples of non-exempt tillage due to human activities. (263)

RESPONSE: The commenter did not request revisions to the definitions of “normal tillage” or “human-altered or human-transported soils.” However, use of the word “or” prior to the phrase “a profound change in the previously existing parent materials (human-altered material),” indicates a separate criterion. Examples of human-altered and human-transported soils include, but are not limited to, excavation for a stormwater basin, grading for a manure pit, soil removal for a basement, fill brought in and leveled for building construction, soil excavated from one side of the farm and used to fill a different part of the farm, and the importation of material from off-site. Tillage activities are intended to be exempt unless the landowner engages in land grading under the guise of “tillage.” Minor adjustments to field contours as part of standard tillage is not considered disturbance. Deliberate grading as part of installation of on-farm infrastructure is considered disturbance.

46. COMMENT: The adopted rulemaking defines “livestock training area,” but the term is not used elsewhere in the rules. The commenter believes that, as a result, agricultural production of livestock is arbitrarily limited by the soil disturbance limit. (263)

RESPONSE: The commenter did not request a revision to the definition of “livestock training area.” The definition is intended to supplement the exemption for “unimproved livestock areas” at N.J.A.C. 2:76-25.4(a)23. The overall intent of the adopted rulemaking is to clarify what is detrimental to soil conservation. Exemptions were carved out based on farmer input for unimproved livestock areas, which includes both training and confinement areas.

47. COMMENT: The definition of “temporary tent” limits the exemption for temporary tents to tents that are in place for no more than 120 cumulative days per calendar year and is inconsistent with the SADC’s determination that temporary tents in place for 180 cumulative days or less will not be treated as impervious cover nor a violation of the deed of easement, provided vegetative cover is maintained. Tents should also be permitted for a minimum of 180 cumulative days for consistency with the Uniform Construction Code (UCC) at N.J.A.C. 5:23-2.14(b). (263)

48. COMMENT: Reducing the number of days that tents may exist on a preserved farm from 180 days to 120 days regardless of vegetative cover is arbitrary when compared to temporary overflow parking which may exist pursuant to the adopted rules, provided minimum vegetative cover is maintained. (263)

RESPONSE TO COMMENTS 47 AND 48: The SADC declines to revise the definition of “temporary tent.” UCC regulations addressing tents are intended for a different purpose than the rules proposed in the soil protection standards. The temporary tent time frame of 120 days allows enough time during the growing season for vegetation to be established after the tents are removed. The 120-day period is a more practical and less restrictive standard than that existing for other

exemptions requiring “minimum vegetative cover” of 70 percent for at least nine months in a calendar year, as set forth at N.J.A.C. 2:76-25.3 and 25A.6.

The SADC disagrees with the commenter that the treatment of tents reflects a bias favoring crop production over equine other livestock production. “Temporary tents” and “nominal tents” were included as exemptions at N.J.A.C. 2:76-25.3 as a direct result of comments from livestock farmers. Farming infrastructure for all types of agriculture is considered soil disturbance because of the impact on soil quality. All infrastructure, whether packing houses for vegetable farmers, dry storage for hay farms, and barns and tents for horse farms, is evaluated based on its impact on the soil and is not related to a specific agricultural industry.

The SADC disagrees that the rulemaking creates arbitrary distinction between tents and temporary parking areas. Tents are exempt as to both size and duration as set forth in the definitions of “nominal tent” and “temporary tent,” respectively. Tents larger or left up longer than the exemptions are detrimental to the soil beneath and around them. The temporary parking of vehicles, where vegetation is still able to be maintained at the levels specified at N.J.A.C. 2:76-25A.6, is less detrimental to soil quality.

49. COMMENT: The definition of “unimproved travel lane” includes a condition that, to be exempt, the unimproved travel lane may not be located closer than 300 feet to another travel lane, whether or not unimproved, and the commenter asked for clarification that the location requirement is not inclusive of intersections. (263)

RESPONSE: The 300-foot distance is not inclusive of intersections. However, the exemption is not intended to allow the creation of multiple intersections increasing the potential for soil disturbance in a concentrated area.

50. COMMENT: The definitions do not include “soil conservation” or “soil conservation methods,” contrary to the direction in *Quaker Valley* that the SADC provide guidance as to the meaning of these phrases in the deed of easement. (263)

RESPONSE: The SADC declines to add the requested definitions. N.J.A.C. 2:76-25.2, Purpose, clearly provides that exceeding the soil disturbance limitation established in the subchapter constitutes a violation of the deed of easement, which prohibits activities detrimental to soil conservation and to the continued agricultural use of the premises as set forth at N.J.A.C. 2:76-6.15(a)7. The soil protection rules serve as the foundation for which soil conservation is defined in response to the Supreme Court’s instruction in *Quaker Valley* that the SADC engage in rulemaking.

N.J.A.C. 2:76-25.4

51. COMMENT: Definitions of “nominal grading,” “nominal tents,” and “hoophouses” were requested, and clarification was sought as to the meaning of “temporary” to describe various surfacing activities. (164)

52. COMMENT: Agricultural practice exemptions from soil disturbance limits should also include municipal leaf piles, mulch piles, sand piles used for soil mixes and floors in production spaces, soil mix components (for example, bales of soilless media, sand, bark), soil amendment piles, soil brought to refill holes left in nurseries, shrub and tree locations, woodchip piles, areas of active composting and finished compost, and pastures. (164)

53. COMMENT: Exemptions from soil disturbance limits should also include high tunnels, caterpillar tunnels, temporary tents for as long as the growing season requires silage, tarps, and other tarps used for weed management. (164)

RESPONSE TO COMMENTS 51, 52, AND 53: The commenter may have confused “nominal grading” with “nominal smoothing,” the definition of which is set forth at N.J.A.C. 2:76-25.3. The definitions of “temporary geomembranes,” “temporary ground protection mats,” “temporary movable structures,” and “temporary tents” all have a 120-day limit in a 12-month-year or calendar-year period. The allocated timeframe is to facilitate vegetative cover after the temporary structure is removed. “Hoophouses” are defined at N.J.A.C. 2:76-25.3 and include high tunnels and caterpillar tunnels. Silage tarps and tarping are considered “temporary geomembranes.”

The SADC will not revise the exemptions to include the various piles requested by the commenter. On most farms, the piles are established and

ongoing in the same area for extended periods of time. The equipment used to manipulate these piles, and the soil conditions below the piles, for example, no vegetation, typically moist soil with minimal biological activity, can lead to substantial long-term soil compaction. However, consistent with the commenter's request, agency-initiated changes set forth at 56 N.J.R. 1213(a) added an exemption for "storage of naturally derived materials" at N.J.A.C. 2:76-25.4(a)14. The materials must be required for use on the preserved premises within a 12-month period and not otherwise associated with soil alteration, soil surfacing, or soil compaction. Leaf piles, mulch piles, wood chips, and compost could fall under the definition of naturally derived materials and would be considered exempt if the other exemption criteria were met.

The SADC will not revise the exemption list to include "pastures" since pasture areas do not have evidence of soil compaction, soil alteration, or soil surfacing as contemplated in the rulemaking. In addition, the exemptions already include "unimproved livestock areas" at N.J.A.C. 2:76-25.4(a)23, which would include pastures.

54. COMMENT: The language at N.J.A.C. 2:76-25A.4(h) should be clarified to put readers on notice that some soil disturbance exemptions are conditional. (263)

RESPONSE: The SADC understands the commenter to mean that some exemptions listed at N.J.A.C. 2:76-25.4 are subject to the technical standards at N.J.A.C. 2:76-25A, and that N.J.A.C. 2:76-25.4 should be revised to so state. The SADC declines to revise N.J.A.C. 2:76-25.4 as requested by the commenter. The rules at N.J.A.C. 2:76-25 and 25A can be read together and in context for a complete understanding of the rulemaking's meaning and purpose.

55. COMMENT: N.J.A.C. 2:76-6.15(a)7i and ii of the farmland preservation deed of easement and the SADC's prior interpretation of these provisions permit soil conservation compliance through farm conservation planning. Accordingly, any agricultural development conducted in accordance with an approved farm conservation plan that addresses soil conservation is already compliant with the deed of easement and, therefore, must be included as an exemption. (263)

RESPONSE: The SADC declines to include as an exemption any agricultural development conducted in accordance with an approved farm conservation plan. A conservation plan addresses conservation concerns but does not necessarily ensure that the practice included in the plan is compliant with the farmland preservation deed of easement. For example, wetland creation can be included in a conservation plan, but is not a land use permitted on a preserved farm. The SADC refers the commenter to its Response to Comment 26. The SADC also observes that it has no authority to delegate enforcement of deed of easement compliance to third parties, including the NRCS.

N.J.A.C. 2:76-25.5

56. COMMENT: The "limitation" section of the rulemaking establishing a soil disturbance limit of 12 percent or four acres, whichever is greater, with additional disturbance allowances, was objected to for the reasons stated in Comment 43, and a recommendation was made for N.J.A.C. 2:76-25.5 to refer to N.J.A.C. 2:76-25.2 for clarification. (263)

57. COMMENT: The commenter asked that the SADC provide a "rational basis" for the 12 percent or four acre limit and waiver allowance of up to 15 percent or six acres, whichever is greater. (263)

58. COMMENT: The soil disturbance limit, determined as of July 1, 2023, in preliminary mapping provided to preserved farm landowners, is based on 2020 aerial photography and soil surveys; preserved farm landowners may not understand that the soil surveys are not perfect representations of site conditions and/or may have installed additional improvements causing soil disturbance between 2020 and 2023. (167 and 263)

59. COMMENT: Time limits on any relief available to preserved farm landowners, including the two percent or one acre allowance for additional disturbance, should be based on a verified field map. (263)

RESPONSE TO COMMENTS 56, 57, 58, AND 59: The SADC declines to make changes to N.J.A.C. 2:76-25.5 for the reasons set forth at its Response to Comment 43. Establishment of the 12 percent or four acre standard was based on various research methods and sources described at length in the original rulemaking at 55 N.J.R. 1573(a).

Preserved farm landowners are provided with notice and an opportunity to be heard with regard to soil disturbance mapping. Soil surveys have always been identified by the NRCS as a reference source, and the SADC relies upon the surveys with the understanding that they are not 100 percent accurate. The USDA's web soil survey homepage states, at <https://websoilsurvey.nrcs.usda.gov/>, that "soil surveys can be used for general farm, local, and wider area planning. Onsite investigation is needed in some cases, such as quality assessments and certain conservation and engineering applications."

Agency-initiated changes set forth at 56 N.J.R. 1213(a) added a definition of "image of record" that captures more current, preexisting, preserved farm disturbance conditions based on the Nearmap Spring 2023 Vertical Imagery. N.J.A.C. 2:76-25.10 provides that the mapping generated by the Nearmap Spring 2023 Vertical Imagery will be transmitted, in writing, to preserved farm landowners, who will have the right to seek reconsideration of the calculated extent or assigned classification of allocated soil disturbance. If reconsideration is sought, SADC staff will conduct a site visit to field verify disturbance and ensure the accuracy of the mapping of the preserved premises. Review of soil disturbance mapping shall occur regularly as part of the monitoring of each preserved farm. Agency-initiated changes set forth at 56 N.J.R. 1213(a) also eliminated the additional allowance of two percent or one acre of disturbance, obviating the need for the change requested by the commenter.

N.J.A.C. 2:76-25.6(l)

60. COMMENT: N.J.A.C. 2:76-25.6(l) provides that approved waivers from the soil disturbance limit are revocable and that references throughout N.J.A.C. 2:76-25.6 should so indicate. (263)

RESPONSE: Waivers were removed from the rulemaking and replaced with "innovative agricultural practice approval" as set forth in the notice of substantial changes upon adoption at 56 N.J.R. 1213(a). Innovative agricultural practice approvals are revocable as set forth at new N.J.A.C. 2:76-25.6(i). The SADC declines to make the requested changes, as all provisions at Subchapter 25 can be read together and in context for a reasonable understanding of the rules' meaning and purpose.

N.J.A.C. 2:76-25.6(b)

61. COMMENT: Deed of easement compliance is a requirement for the granting of a waiver, so farms with disturbance exceeding 12 percent or four acres, whichever is greater, cannot obtain a waiver. (263)

RESPONSE: Deed of easement compliance is still a requirement for obtaining an innovative agricultural practice approval, but the changes set forth in the notice of substantial changes upon adoption at 56 N.J.R. 1213(a) address the commenter's concern. Farms preserved prior to October 1, 2024, with preexisting soil disturbance receive an additional allocation of 12 percent or four acres, whichever is greater.

N.J.A.C. 2:76-25.6(c)

62. COMMENT: The SADC should provide examples of the "no feasible alternative" requirement for obtaining waivers from the soil disturbance limit. (263)

63. COMMENT: The SADC should clarify the requirement that a revocable production waiver can be obtained not only if the proposed project has a positive impact on the capacity of the soil to produce a specific plant, but also if the project promotes other forms of agricultural production. (263)

64. COMMENT: The requirement that a stewardship conservation plan and forest stewardship plan be obtained in order to be eligible for a production waiver exceeds the deed of easement requirement in Paragraph 7 that the landowner must obtain a farm conservation plan. (263)

RESPONSE TO COMMENTS 62, 63, AND 64: Waivers were deleted in the notice of substantial changes upon adoption at 56 N.J.R. 1213(a), including the requirement that "[t]here is no apparent feasible alternative to a proposed project resulting in soil disturbance on the preserved farm" (previously codified at N.J.A.C. 2:76-25.6(c)1). N.J.A.C. 2:76-25.6(c)1 now provides that an innovative agricultural practice is eligible for approval upon a showing that "[i]t is not feasible to utilize areas of existing soil disturbance which would provide sufficient land area for the proposed innovative agricultural practice." Providing examples of feasibility would be speculative given that each of the almost 3,000

preserved farms in New Jersey is unique and that landowners' specific circumstances and plans for an innovative agricultural practice will vary.

The production waiver was deleted through the notice of substantial changes upon adoption at 56 N.J.R. 1213(a), and the SADC reiterates its Response to Comment 44. Paragraph 2 of the deed of easement specifically identifies a variety of common farm site activities that include the production of plants and animals, not just crops. The farm must also be available for a variety of agricultural uses for future landowners of the preserved farm. The stewardship conservation plan and forest stewardship plan requirements were also deleted in the notice of substantial changes upon adoption.

N.J.A.C. 2:76-25.6(e)

65. COMMENT: The SADC should clarify the requirement that a revocable innovation waiver can be obtained not only if the proposed project has a positive impact on the capacity of the soil to produce a specific plant, but also if the project promotes other forms of agricultural production. (263)

RESPONSE: The innovation waiver was deleted through the notice of substantial changes upon adoption at 56 N.J.R. 1213(a), and the SADC reiterates its Response to Comment 44. Paragraph 2 of the deed of easement specifically identifies a variety of common farm site activities that include the production of plants and animals, not just crops. The farm must also be available for a variety of agricultural uses for future landowners of the preserved farm.

N.J.A.C. 2:76-25.6(g)

66. COMMENT: An objection was raised to the requirement that notice of the waiver application be sent to the clerk and land use board secretary of the municipality in which the preserved premises are located and to the owners of property within 200 feet of the premises. (264)

RESPONSE: The notice of substantial changes upon adoption at 56 N.J.R. 1213(a) deleted the notice provisions objected to by the commenter. The application for approval of an innovative agricultural practice is provided to the SADC, which shall provide a copy of the application to the grantee, if applicable. N.J.A.C. 2:76-25.6(e).

N.J.A.C. 2:76-25.6(j)

67. COMMENT: The SADC should provide examples of landowners' "actions or inaction causing or contributing to the need to obtain a waiver" that will be considered by the SADC in determining whether a waiver can be approved. (263)

RESPONSE: Although waivers have been deleted in the rulemaking, eligibility for an innovative agricultural practice approval continues to include that the preserved farm landowner's actions or inaction did not cause or contribute to the need to request approval. N.J.A.C. 2:76-25.6(g)1. A landowner's violation of ARDA, the deed of easement, and/or other SADC rules could amount to "actions or inaction" affecting eligibility for innovative agricultural practice approval, but providing further examples would be speculative.

N.J.A.C. 2:76-25.9

68. COMMENT: The commenter supported the SADC's ability to develop templates for rehabilitation of common soil disturbances that may be followed to meet the technical rehabilitation requirements at N.J.A.C. 2:76-25A.9. (263)

RESPONSE: The SADC appreciates the commenter's support.

N.J.A.C. 2:76-25.10(b)

69. COMMENT: The 60-day deadline for preserved farm landowners to seek reconsideration of soil disturbance mapping only applies to those who want to avail themselves of additional soil disturbance of one acre or two percent, whichever is greater; the period within which to seek reconsideration should not begin to run from adoption of the rulemaking; and the period should be increased from 60 days to 180 days. (263)

RESPONSE: The SADC removed the additional disturbance allowance of one acre or two percent, and revised the 60-day period to run from the landowner's receipt of notice of the baseline soil disturbance mapping, through the notice of substantial changes upon adoption at 56 N.J.R. 1213(a). The SADC declines to revise the period within which to seek reconsideration to 180 days, as 60 days is reasonably sufficient time

given the importance of establishing baseline soil disturbance upon which the provisions of the rulemaking will apply.

N.J.A.C. 2:76-25A.2

70. COMMENT: The "purpose" section of the supplemental soil disturbance standards should refer not only to applicability to waivers and rehabilitation, but also to exemptions, such as on-farm utilities, solar, and temporary overflow parking. (263)

RESPONSE: The SADC made the requested change in the notice of substantial changes upon adoption published at 56 N.J.R. 1213(a) by deleting "waivers" and inserting "exemptions," and retaining "soil rehabilitation."

3. Comments Received Upon Publication of Proposed Substantial Changes Upon Adoption to Proposed New Rules at N.J.A.C. 2:76-25.3 through 25.8, 25.10, 25.12, 25A.2, 25A.3, 25A.7, and 25A.8

71. COMMENT: Support was expressed for allowing an additional 12 percent or four acres, whichever is greater, in addition to existing soil disturbance on preserved farms as of October 1, 2024, and for eliminating the waiver process by which additional soil disturbance would be permitted pursuant to certain circumstances. (282, 286, and 288)

RESPONSE: The SADC thanks the commenters for their support.

72. COMMENT: The adopted rulemaking allowing for 12 percent or four acres, whichever is greater, of soil disturbance in addition to existing soil disturbance on preserved farms as of October 1, 2024, should also apply to existing soil disturbance on farms whose applications for preservation were submitted by or after that date. (284 and 293)

RESPONSE: N.J.A.C. 2:76-25.5(c) provides that the total soil disturbance limit on farms preserved prior to October 1, 2024, is equal to the sum of the farm's preexisting soil disturbance plus 12 percent or four acres, whichever is greater. For farms preserved after October 1, 2024, N.J.A.C. 2:76-25.5(d) states that the total limit of soil disturbance shall be equal to 12 percent or four acres, whichever is greater. October 1, 2024, was anticipated to be the approximate effective date of the rulemaking, and reasonably accommodates those landowners who were about to close on the sale of their development easement during the pendency of the rulemaking process. In addition, landowners who have not yet applied but are considering enrolling in the farmland preservation program will be aware of the soil disturbance limits and have the flexibility to configure the premises with exception areas accommodating existing infrastructure so that the remainder of the farm, if preserved, will be able to take advantage of the 12-percent or four-acre limit. The SADC declines to revise the rules in the manner requested by the commenters.

73. COMMENT: Preserved farm landowners did not agree to be subjected to additional rules after they preserved their farms, and the adopted rules improperly change a binding written contract between the parties to the farmland preservation deeds of easement and unilaterally change the terms of the deed of easement. (281, 283, 284, 285, 286, 287, and 292)

RESPONSE: The SADC disagrees, for the reasons set forth in the Response to Comments 13, 14, and 15.

74. COMMENT: Concerns were expressed that farmland preservation deeds of easement will be arbitrarily modified by the SADC in the future. (281, 285, and 292)

RESPONSE: The SADC was given authority by the Legislature in 1983 to promulgate rules necessary to accomplish the purposes of the farmland preservation program. N.J.S.A. 4:1C-31.2. Paragraph 2 of the farmland preservation deed of easement provides advance notice to all preserved farm landowners that they must comply with SADC rules, and all landowners, whenever their farms were preserved, are subject to rules adopted from time to time providing for benefits such as stewardship grants and permits to engage in RMEs and to construct wireless and solar energy facilities. The SADC will continue to adopt rules deemed necessary to facilitate the goals of the farmland preservation program and in response to pertinent legislation and judicial rulings.

The SADC is precluded by law from acting arbitrarily and, in respect to the adoption of soil protection rulemaking, is responding to the New Jersey Supreme Court's instruction that rules are needed to provide preserved farm landowners with clearly defined limits on the amount of soil disturbance allowed in the deed of easement. In addition, the plain

language of deed Paragraph 2 reflects that landowners who enrolled in the farmland preservation program did so with the understanding that the SADC is authorized to modify or clarify the terms and burdens set forth in the deed of easement through the proper adoption of rules. The SADC also observes that it has adopted rules applicable to all preserved farms in response to legislative direction to allow for special permits for rural microenterprise activities (N.J.A.C. 2:76-22) (RMEs), the installation of personal wireless service facilities (N.J.A.C. 2:76-23), and the installation of solar energy facilities (N.J.A.C. 2:76-24). The SADC will be promulgating rules allowing for special occasion events that can be held on preserved farms, in accordance with State legislation.

75. COMMENT: The adopted rules remain too complex. (287)

RESPONSE: The SADC disagrees with the commenter. The rules have been greatly simplified, as set forth through the notice of substantial changes published on July 15, 2024, at 56 N.J.R. 1213(a). For farms preserved prior to October 1, 2024, the adopted rule simplifies the original rulemaking by excluding soil disturbance on the farm existing as of spring 2023 from counting toward the allocated 12-percent or four-acre limit, whichever is greater. The exclusion of preexisting disturbance obviates the need for an additional disturbance allowance or waiver process in exchange for implementation of stewardship and construction practices. The adopted rulemaking eliminates many definitions and simplifies other procedures set forth in the original notice of proposal.

76. COMMENT: The amount of soil disturbance allowed in the adopted rules could result in preserved farm landowners' future non-agricultural construction projects exceeding lot coverage limitations in municipal ordinances. (291)

RESPONSE: The adopted rules apply to soil disturbance, not development, and do not provide for variances or waivers from local zoning ordinances. Preserved farm landowners will need to evaluate how, if at all, future projects may impact municipal lot coverage limits, given existing agricultural and/or horticultural infrastructure.

77. COMMENT: The rules constitute a taking of agricultural development rights retained by the landowner in the farmland preservation deed of easement. (281 and 285)

RESPONSE: The SADC does not anticipate that the requirements imposed pursuant to the adopted rulemaking would be considered a "taking." The rules impact preserved farms, which are properties whose owners have already voluntarily agreed to limit potential uses and development by selling the nonagricultural development rights. While the adopted rules result in limitations to soil disturbance on preserved farmland, the rules serve to clarify the regulatory provisions preserved farms are already subject to and do not eliminate agricultural uses and development on preserved farms. In determining whether a rule results in a taking; the mere potential for some impact is not sufficient to constitute a taking. Neither diminution of land value nor impairment of the marketability of land alone affect a taking. Similarly, restrictions on uses do not necessarily result in takings even though they reduce income or profits. Instead, a rulemaking will be upheld unless it denies all practical use of property, or substantially destroys the beneficial use of private property, or does not allow an adequate or just and reasonable return on investment. The courts have applied the standard that focuses on the beneficial or economic uses allowed to a property owner in the context of particularized restraints designed to preserve the special status of distinctive property.

78. COMMENT: Soil protection on preserved farms can be achieved through SADC guidance or case-by-case enforcement, rather than rulemaking. (282 and 288)

RESPONSE: The commenters did not describe the form of guidance suggested, but the SADC disagrees with the commenters because a guidance approach, whether written or verbal, does not respond to the Supreme Court's direction in the *Quaker Valley* case that "[i]f the SADC fails to undertake the necessary rulemaking to establish guidance on the extent of soil disturbance that is permissible on preserved farms, then it can expect administrative due process challenges to its enforcement actions." (235 N.J. at 63-64; emphasis added). The SADC disagrees with the commenters that soil conservation can be addressed on a case-by-case basis. Case-by-case adjudication of the deed of easement runs counter to the Supreme Court decision and, as a practical matter, would be administratively burdensome, given SADC resources.

79. COMMENT: The soil protection limit of 12 percent or four acres, whichever is greater, should apply to tillable acreage and not to the preserved farm's gross acreage. (294)

RESPONSE: The SADC understands the commenter, but notes that it would be too difficult to develop a standard based on the many and varied site-specific conditions of every farm that is preserved or may qualify for preservation in New Jersey. The Committee has sought a balanced approach between land conservation and the flexibility for a preserved farm owner to disturb soil for future agricultural and horticultural purposes.

80. COMMENT: A commenter expressed concern about the rules allowing for an additional 12 percent or four acres of disturbance, whichever is greater, on top of existing disturbance on farms preserved as of October 1, 2024. (289)

81. COMMENT: The SADC should educate preserved farm landowners on the benefits of cover cropping, crop rotation, low tillage, and the reduction in, or elimination of, the use of synthetic chemicals. (289 and 290)

RESPONSE TO COMMENTS 80 AND 81: The SADC is sensitive to the claim made by numerous commenters in response to the original notice of proposal that landowners may not have anticipated at the time they signed the deeds of easement that soil disturbance would be regulated. The SADC also carefully considered the related comments that the 12-percent or four-acre limit should only count for soil disturbance occurring after the effective date of the rulemaking. The SADC is mindful that the overwhelming majority of preserved farm landowners will not need or use the additional allowance of soil disturbance but that they should be afforded some flexibility to accommodate future agricultural or horticultural business planning. The SADC agrees with the commenters that soil protection methods are important.

The SADC has always provided educational outreach to landowners as part of the SADC's monitoring of preserved farms, has increased its conservation staff in the past few years, continues to provide cost share grants to preserved farm landowners for soil conservation, and partners with agencies involved in soil protection education such as the United States Department of Agriculture-Natural Resources Conservation Service, the New Jersey Department of Agriculture-Division of Agriculture and Natural Resources, the Northeast Organic Farming Association, and North Jersey Resource and Conservation Development.

Summary of Agency-Initiated Changes Upon Adoption:

The SADC is making substantial changes not requested in the public comments submitted on the original notice of proposal, but necessary to properly effectuate the administration of the soil disturbance rules. These agency-initiated substantial changes delete unnecessary, or add needed, definitions; add and delete words and provisions, where necessary or appropriate; and reorganize and clarify certain parts of the original notice of proposal. The agency-initiated changes were published in the notice of substantial changes upon adoption, therefore, they are appropriate to make upon adoption.

N.J.A.C. 2:76-25.3

"Allocated soil disturbance" is adopted as a new definition to mean soil disturbance of 12 percent or four acres, whichever is greater, on the premises, and in order to differentiate the 12-percent or four-acre disturbance limit from any preexisting soil disturbance on premises preserved prior to October 1, 2024. The new definition is needed as a result of the changes upon adoption at N.J.A.C. 2:76-25.5.

"Baseline soil disturbance map," meaning a map generated by the Committee using the "image of record" (described below) reflecting the extent and location of soil disturbance on a premises, is a new definition needed in connection with differentiating between maps provided to preserved farm landowners and those provided to prospective preserved farm landowners with notice of the extent of soil disturbance occurring on the premises. This new definition is required as a result of the changes upon adoption at N.J.A.C. 2:76-25.5 and 25.10.

"Contiguous premises" has been revised by replacing "properties" with "premises" for consistency with how the rules address the distribution of allocated soil disturbance when a division of premises is approved.

“Divided premises” is a new definition to address those instances when the allocated soil disturbance is distributed after a division of the originally preserved premises into two or more preserved properties.

The definitions of “existing agricultural water impoundment” and “existing open ditch” in the original notice of proposal have been revised. The word “existing” in both definitions has been revised to clarify that those features, if “preexisting” on the farm as reflected on the Nearmap Spring 2023 Vertical Imagery, will not be counted as soil disturbance for all farms, whether already preserved or preserved in the future. The description of the image in both definitions is now more accurately described as “the Nearmap Spring 2023 Vertical Imagery,” replacing the term “baseline map.” The phrase “established pursuant to N.J.A.C. 2:76-25.10” in the original notice of proposal has been deleted as unnecessary. For grammatical purposes, the period and the word “and” after the regulatory citation in the “open ditch” definition have been deleted, with a new sentence beginning with “A preexisting open ditch” before the words “may be” and the terms have been alphabetically relocated.

The definitions of “forest land” and “forest stewardship plan” in the original notice of proposal have been eliminated as unnecessary because the requirement of a stewardship conservation plan in the original notice of proposal at N.J.A.C. 2:76-25.6(c)5 has been deleted.

The definition of “hoophouse” in the original notice of proposal has been revised by deleting “and does not have a permanent foundation, footings, ground-level surface, or anchoring system” to preclude an interpretation that the entire area of a hoophouse constitutes soil disturbance if it is secured permanently in the ground, and because surfacing is already addressed in the exemption for hoophouses at N.J.A.C. 2:76-25.4(a)6.

“Image of record” is a new definition resulting from revisions at N.J.A.C. 2:76-25.10. N.J.A.C. 2:76-25.10 provides for notice to preserved farm landowners in the form of a map of soil disturbance. The definition is intended to distinguish between the aerial photography used as a basis for the maps of farms that were preserved prior to, and as a basis for the maps of farms that are preserved after October 1, 2024. For farms preserved before October 1, 2024, the image of record is the Nearmap Spring 2023 Vertical Imagery; for those farms preserved after October 1, 2024, the image of record is the most current aerial imagery available, as determined by the Committee. October 1, 2024, was the approximate date the Committee would authorize adoption of the soil protection rules.

“Innovative agricultural practice” is added to replace the term “innovation waiver” to correct any misinterpretation of the original notice of proposal and the SADC’s understanding that use of the word “waiver” to modify “innovation” may have resulted in the conclusion that the innovative agricultural practice constituted soil disturbance. The definition provides that an innovative agricultural practice is not otherwise listed in the exempt practices at N.J.A.C. 2:76-25.4, and that an approved innovative practice will not count as soil disturbance pursuant to N.J.A.C. 2:76-25.5.

The proposed definition of “limit of disturbance” is deleted because it pertained to the production waiver process eliminated in the revisions at N.J.A.C. 2:76-25.6.

The definition of “premises” in the original notice of proposal has been revised to clarify that the word includes either an original premises or a divided premises.

“Original premises” is a new definition needed for referencing the originally preserved “parent” farm described by metes and bounds in the deed of easement recorded at the time of preservation, and is to be employed in the context of a division of the premises and resulting distribution of allocated soil disturbance.

“Preexisting soil disturbance” is a new definition, meaning soil disturbance that exists on the premises as reflected in the Nearmap Spring 2023 Vertical Imagery.

The definitions of “production waiver” and “riparian zone” in the original notice of proposal have been deleted, as the production waiver has been eliminated, and the reference to riparian zone is inapplicable because there is no need for a stewardship conservation plan, at revised N.J.A.C. 2:76-25.6.

The definition of “stewardship conservation plan” has been deleted because it pertained to the production waiver process eliminated in the revisions at N.J.A.C. 2:76-25.6.

N.J.A.C. 2:76-25.4

Certain agricultural practices exempt from the soil disturbance limit at N.J.A.C. 2:76-25.5 and listed at N.J.A.C. 2:76-25.4(a) have been revised for consistency with other rules set forth in the notice of proposed substantial changes and, in one instance, a practice has been added.

N.J.A.C. 2:76-25.4(a)3 has been revised to exempt preexisting open ditches, and paragraph (a)4 has been revised to exempt preexisting agricultural water impoundments, as reflected on the Nearmap Spring 2023 Vertical Imagery.

N.J.A.C. 2:76-25.4(a)14 is a new provision that exempts storage of naturally derived materials, such as, but not limited to, hay bales, lime, silage, compost, wood chips, and manure, that are produced on the premises, or required for use on the premises within a 12-month period, provided the storage is not otherwise associated with soil alternation, soil surfacing, or soil compaction.

N.J.A.C. 2:76-25.4(c) has been revised by replacing the vague word “farm” with “premises” for consistency with other new definitions and changes made through the notice of substantial changes.

N.J.A.C. 2:76-25.5

N.J.A.C. 2:76-25.5(a) is a new provision clarifying that only authorized activities pursuant to the deed of easement may count as permissible soil disturbance at N.J.A.C. 2:76-25.5(b). Other disturbances determined by the SADC to constitute impermissible activities pursuant to the deed of easement, such as the dumping of waste material or the altering of a farm in connection with recreational activities, do not count toward the 12-percent/four-acre limit.

Adopted new N.J.A.C. 2:76-25.5(b) establishes the allocated soil disturbance on each farm premises of 12 percent of the area of the premises, or four acres, whichever is greater. “Premises” includes any part of an originally preserved premises that is proposed to be divided in a complete division application received by the Committee on or before October 1, 2024, and subsequently approved by the Committee.

Proposed N.J.A.C. 2:76-25.5(b) and (b)1 and 3 included provisions allowing a preserved farm landowner the option of seeking review and approval by the SADC to increase the extent of soil disturbance over and above the disturbance existing as of July 1, 2023, in an amount equal to two percent of the premises or one acre, whichever is greater. This originally proposed language has been deleted in its entirety based on new N.J.A.C. 2:76-25.5(c), allowing for a total disturbance limit on premises existing before October 1, 2024, equal to preexisting soil disturbance plus the allocated soil disturbance of 12 percent or four acres, whichever is greater.

Proposed N.J.A.C. 2:76-25.5(b)2 (recodified upon adoption as N.J.A.C. 2:76-25.5(e)) has been revised to reflect that the soil disturbance limit is based on mapping or amended mapping developed by the SADC and provided to the landowner as set forth at N.J.A.C. 2:76-25.10 and 25.10(e), respectively.

N.J.A.C. 2:76-25.6

Proposed N.J.A.C. 2:76-25.6(b) has been revised, consistent with other changes at N.J.A.C. 2:76-25.6, eliminating the production waiver, by deleting language regarding a waiver and replacing it with “approval of an innovative agricultural practice.” Similar revisions are adopted at paragraph (c)2 (originally proposed paragraph (c)3), in which “project” is replaced with “agricultural practice”; subsection (d) (originally proposed subsection (e)), in which “an innovation waiver” is replaced with “approval of an innovative agricultural practice”; at subsection (e) (originally proposed subsection (f)), in which “a waiver” is replaced with “an innovative agricultural practice approval”; and at paragraph (e)3 (originally proposed paragraph (f)3), in which “a waiver” is replaced with “an innovative agricultural practice approval.”

At recodified N.J.A.C. 2:76-25.6(f)1ii, “project” has been replaced with “innovative agricultural practice”; subparagraph (f)1iii has been revised to require “a statement of the economic impact of the innovative agricultural practice to the farm operation”; originally proposed subparagraph (i)1iv, requiring an alternatives analysis, has been deleted in keeping with the intent to streamline the application process; at originally proposed subparagraph (f)1v (recodified as subparagraph (f)1iv), the word “project” has been replaced with “practice”; at originally

proposed subparagraph (i)1vi (recodified subparagraph (f)1v), “disturbance area” has been replaced with “practice”; originally proposed subparagraph (i)1vii has been deleted due to the now inappropriate reference to a stewardship conservation plan; originally proposed paragraph (i)2 has been deleted based on an expectation that innovation waivers will not be sought for structures, thus rendering moot an applicant’s submittal of zoning, building, and development plans, site plans, permits, and stormwater management plans. Recodified paragraph (f)2 is revised to insert “location,” before “extent”; modifying “existing” to “preexisting” and adding “and allocated” before the word “disturbance”; deleting “disturbance with a tabulation of total combined disturbances” and replacing it with “innovative agricultural practice; and”; originally proposed paragraphs (i)4, 5, and 6 have been deleted due to the elimination of the need for a stewardship conservation plan and forest stewardship plan for approval of an innovative agricultural practice; and at recodified paragraph (f)3, the word “waiver” is deleted and replaced with “innovative agricultural practice.”

Recodified N.J.A.C. 2:76-25.6(g) has been revised. In addition to the changes at paragraph (g)3 noted in the response to comments, paragraph (g)1 has been revised to delete “application for a waiver satisfying the requirements at (b), (c), and (d) or (e) above” and to replace that phrase with “approval of a proposed innovative agricultural practice satisfying the requirements of this section.” Proposed N.J.A.C. 2:76-25.6(j)2, requiring a calculation to three decimal places, has been deleted because the location and extent of an innovative practice are already required in the rules, thus obviating the need for such a calculation. Recodified N.J.A.C. 2:76-26.5(g)2, providing that when a county or qualified tax-exempt nonprofit organization is the deed of easement grantee, the innovative practice must be jointly authorized by that grantee and by the Committee; also, at paragraph (g)2, the word “waiver” has been replaced with “innovative agricultural practice.”

Recodified N.J.A.C. 2:76-25.6(g)4 is adopted with the following revisions: the word “waiver” at paragraph (g)4 is replaced with “innovative agricultural practice”; the phrase “waiver activity” at subparagraph (g)4i is replaced with “innovative agricultural practice”; subparagraph (g)4ii is deleted due to the elimination of the requirement of a stewardship conservation plan; at recodified subparagraph (g)4ii, “proposed disturbance” is deleted, “waiver” is replaced with “innovative practice,” and “proposed conservation measures set forth in the proposed stewardship conservation plan” and “including the limit of disturbance area” are deleted; at recodified subparagraph (g)4iii, “proposed disturbance,” is deleted, “waiver” is replaced with “innovative practice,” and “proposed conservation measures” is deleted; at recodified subparagraph (g)4iv “waiver activity” is deleted and replaced with “innovative practice request”; and at recodified subparagraph (g)4v “of the waiver” is deleted as unnecessary.

At proposed N.J.A.C. 2:76-25.6(k) (recodified as N.J.A.C. 2:76-25.6(h) upon adoption), the word “waiver” is replaced by “innovative agricultural practice.” N.J.A.C. 2:76-25.6(h) is now a complete sentence with deletion of the colon after “until” and inclusion of the phrase “the grantor obtains and complies with all required permits and approvals” that appeared at originally proposed N.J.A.C. 2:76-25.6(k)4. Proposed N.J.A.C. 2:76-25.6(k)1, 2, and 3 have been deleted because of now unnecessary references to conservation plans. New N.J.A.C. 2:76-25.6(i) is adopted to provide for Committee inspection of farms that have received approval for an innovative practice, as needed.

At recodified N.J.A.C. 2:76-26.5(i), “Waiver(s)” is replaced with “An innovative agricultural practice approval”; the word “waiver” is deleted before the word “approval”; and in the next sentence, the words “a waiver” is deleted and replaced with “the approval”; and “limit of disturbance area” is deleted and replaced with “area occupied by the innovative agricultural practice.”

N.J.A.C. 2:76-25.7

Proposed N.J.A.C. 2:76-25.7(a) has been revised by deleting the words “The” and “allocation allowed” and inserting in their place “Allocated” and “authorized,” respectively, and the cross-reference has been revised to include the reference to N.J.A.C. 2:76-25.5(b) to make clear that allocated disturbance can be moved from one premises to another contiguous premises, but that preexisting disturbance cannot be so moved.

The phrase “provided the total new combined allocated disturbance acreage does not exceed the combined individual allocations for each premises comprising the contiguous premises” has been deleted as unnecessary and, in its place, “or which will be owned by the same grantor upon effectuation of the aggregation” has been inserted. This change is intended to address the situation in which contiguous premises are not owned by the same owner at the time of application for the consolidation, but the conveyance of one or more contiguous premises to consolidate ownership precedes the approval of an application to aggregate soil disturbance on those premises.

Proposed N.J.A.C. 2:76-25.7(b) and (c) have been revised for accuracy and consistency. At subsection (b), “aggregation between” has been replaced with “consolidation of” required in the context of merging contiguous premises, not distributing allocated soil disturbance; in the last sentence at subsection (b), and for the same reasons, “aggregated parcels” has been deleted and “consolidated premises” inserted in its place for textual consistency. At subsection (c), the same context discussed in the changes at subsection (b) result in adding “of soil disturbance” after “aggregation” and “of premises” after “consolidation”; “permitted” has been replaced with “allocated” and “respective” has been replaced with “consolidated.”

Proposed N.J.A.C. 2:76-25.7(d) was revised to better describe the separation of previously consolidated premises. “Rescission” replaces “disaggregation,” and “aggregated premises” is replaced with “the consolidation previously approved.” At paragraph (d)1, “allocated” is inserted before “soil disturbance” and “limitation” is deleted; “disaggregated” is replaced by “consolidated” to describe the premises more accurately.

N.J.A.C. 2:76-25.8

Proposed N.J.A.C. 2:76-25.8(a) has been deleted, and proposed N.J.A.C. 2:76-25.8(b) has been substantially revised, due to changes at N.J.A.C. 2:76-25.7, the new definition of “allocated soil disturbance” at N.J.A.C. 2:76-25.3, and new criteria for distributing soil disturbance upon a division of premises. Newly codified N.J.A.C. 2:76-25.8(a) allows for the reallocation of “allocated soil disturbance” to each parcel resulting from a division of premises, so long as the reallocation ensures that each divided premises is agriculturally viable as determined by the Committee in accordance with N.J.A.C. 2:76-6.15(a)15, but in no case can the reallocation to a divided premises be less than two acres of disturbance. Proposed N.J.A.C. 2:76-25.8(c) and (d) (recodified upon adoption as subsections (b) and (c), respectively), are amended to add “acreage of the” before “total soil disturbance” for clarity, and “(b)” added after “N.J.A.C. 2:76-25.5” for accuracy.

N.J.A.C. 2:76-25.10

Proposed N.J.A.C. 2:76-25.10(a) has been revised to delete “July 1, 2023,” as unnecessary.

N.J.A.C. 2:76-25.10(b) has been revised to address farms preserved prior to October 1, 2024, the approximate effective date of the rulemaking and requires that written notice and the baseline soil disturbance map shall be sent to the preserved farm landowner at the landowner’s last known address through certified mail, return receipt requested, and to the grantee, if applicable. Delivery of the notice and map through regular mail has been deleted from subsection (b); however, the change at paragraph (b)1 adds that if the certified mail is returned, unclaimed, or undeliverable, the Committee shall make good faith efforts to provide an alternate manner of service, including regular mail or email delivery of the notice and map. Proposed N.J.A.C. 2:76-25.10(b)2 adds “soil disturbance” after “baseline” for consistency.

Proposed N.J.A.C. 2:76-25.10(b)4, allowing for the dispute of the baseline soil disturbance map, has been revised to delete the reference to two percent or one acre of disturbance, as that provision has been eliminated from revised N.J.A.C. 2:76-25.5. Revisions also clarify, by deleting “grantor,” that anyone can seek reconsideration of the calculated extent or assigned classification of soil disturbance features by submitting a written request to the Committee within 60 days of receipt of the written notice provided at subsection (b), and in accordance with N.J.A.C. 2:76-25.12(a).

New N.J.A.C. 2:76-25.10(c) addresses farms preserved after October 1, 2024. For those farms, subsection (c) provides that the baseline soil disturbance map shall be furnished to the grantor and grantee prior to the date of closing on the purchase of the development easement, and the grantor and grantee are to acknowledge receipt of and concur with the map prior to the closing taking place.

Proposed N.J.A.C. 2:76-25.10(c) has been substantially revised and recodified as subsection (d). This revised rule allows a grantor to dispute any aspect of the baseline soil disturbance map by submitting a written request to the Committee, in accordance with N.J.A.C. 2:76-25.12(a), within 60 days of receipt of the map, seeking reconsideration of the calculated extent or assigned classification of soil disturbance features. The failure to submit such a written request within the 60-day period constitutes grantor's consent to the soil disturbance baseline mapping for the premises.

Recodified N.J.A.C. 2:76-25.10(e) provides that grantors and grantees may submit a written request to the Committee, in accordance with N.J.A.C. 2:76-25.12(a), for reconsideration of the calculated extent or assigned classification of "allocated," as opposed to preexisting soil disturbance reflected on the then-current soil disturbance map features at any time.

Proposed N.J.A.C. 2:76-25.10(h) has been relocated to N.J.A.C. 2:76-25.6(i), for clarity.

N.J.A.C. 2:76-25A.2

Proposed N.J.A.C. 2:76-25A.2 has been revised by deleting "waivers," which are no longer part of Subchapter 25, and inserting "exemptions."

N.J.A.C. 2:76-25A.3

The definitions of "avoid control trap system," "constrained slopes," "forest land," "highly erodible land," "limit of disturbance," "production waiver," and "vegetated filter strip" have been deleted because those terms were associated with criteria to obtain and implement waivers that are no longer part of Subchapter 25.

N.J.A.C. 2:76-25A.7 and 25A.8

Proposed N.J.A.C. 2:76-25A.7 and 25A.8 have been deleted in their entirety, as those sections were associated with criteria to obtain and implement waivers, which are no longer part of Subchapter 25.

The SADC made a change at N.J.A.C. 2:76-25.4(a)14, changing "alternation" to "alteration."

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the adopted new rules.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 25. SOIL DISTURBANCE ON PRESERVED FARMLAND

2:76-25.1 Applicability

This subchapter applies to premises subject to farmland preservation deed restrictions recorded pursuant to the Agriculture Retention and Development Act, P.L. 1983, c. 32 (N.J.S.A. 4:1C-11 et seq.), and enrolled in the State's farmland preservation program.

2:76-25.2 Purpose

The purpose of this subchapter is to define what activities on the premises constitute soil disturbance and to establish a soil disturbance limitation. Exceeding the soil disturbance limitation established in this subchapter shall constitute a violation of the deed of easement, which prohibits activities detrimental to soil conservation and detrimental to the continued agricultural use of the premises in accordance with N.J.A.C. 2:76-6.15(a)7.

2:76-25.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Actively cropped" means land on portions of the premises that is available for agricultural use and production where the following apply:

crops or forages are grown directly in the soil profile for a minimum of 150 consecutive days in one calendar year or for two periods of not less than 90 consecutive days each in one calendar year, and annual crops and hay are harvested, or perennial crops other than hay are maintained annually, or forages are consumed by direct grazing, or cover crops are grown as part of a production rotation, which are included in a farm conservation plan.

"Agricultural productivity" means the capacity of a soil to produce a specified plant or sequence of plants under a physically defined set of management practices as measured in terms of inputs of production factors in relation to outputs or yields.

****"Allocated soil disturbance" means disturbance authorized pursuant to N.J.A.C. 2:76-25.5(b).**

"Baseline soil disturbance map" means a map generated by the Committee pursuant to N.J.A.C. 2:76-25.10 using the image of record and which reflects the extent and location of soil disturbance on a premises.*

"Bulk density" means the dry weight of soil divided by its volume.

"Committee" means the State Agriculture Development Committee.

"Contiguous premises" means adjacent ***[properties]* *premises***, even if they are separated by human-made barriers or structures or legal boundaries. Contiguous premises shall include, but are not limited to, land areas ***[which]* *that*** directly abut or are separated by a general access roadway or other rights-of way, including waterways.

"Cover crop" means an annual or perennial crop consisting of a specific plant or mix of plants that are planted and grown primarily to improve soil quality by reducing soil compaction, increasing soil organic matter content, trapping or producing nitrogen, or reducing soil erosion.

"Cranberry bog," also known as a cranberry bed, means a naturally acidic bog that has been drained, cleared, leveled, and covered with sand and includes appurtenant canals and earthen dikes for purposes of cultivating cranberry varieties developed from the native species *Vaccinium macrocarpon*.

"Deep tillage" means performing tillage operations below the normal tillage depth in a manner consistent with an approved farm conservation plan to modify adverse physical or chemical properties of a soil that inhibit plant growth, such as, but not limited to, compacted layers formed by field operations, restrictive layers, such as cemented hardpans in the root zone, overwash or deposits from wind and water erosion or flooding, or contaminants in the root zone. "Deep tillage" does not include elevation or topography change.

"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 and acquired pursuant to the provisions at N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and any relevant rules promulgated pursuant thereto. A development easement is conveyed by a deed of easement.

****"Divided premises" means two or more portions of the original premises resulting from a division approved by the Committee.***

***["Existing agricultural water impoundment" means an excavated, unlined farm pond, or dammed impoundment fed by surface water or groundwater for irrigating agricultural crops or watering livestock that is reflected in the baseline map established pursuant to N.J.A.C. 2:76-25.10. Agricultural water impoundments shall not include other types of water-related structures including, but not limited to, decorative or recreational ponds, wildlife ponds, stormwater management facilities, aquaculture ponds, pools, manure lagoons, tailwater recovery ponds, ponds constructed primarily for hydropower uses, or naturally occurring ponds and wetlands but not including existing open ditches, as that term is defined in this subchapter. Associated berms or dams are considered soil alteration or soil surfacing.**

"Existing open ditch" means a vegetated, unlined canal, ditch, open drain, conveyance swale, or similar structure used to convey water that is reflected in the baseline map established pursuant to N.J.A.C. 2:76-25.10 and may be associated with an existing agricultural water impoundment or utilized to convey runoff from crop fields or underground drainage systems.]*

"Farm conservation plan" has the same meaning as that term is defined at N.J.A.C. 2:76-2A.7.

“Field moisture capacity” means the amount of water retained in a soil after it has been saturated and has drained freely, expressed as a percentage of the oven dry weight of the soil.

“Field Office Technical Guide” or “FOTG” means United States Department of Agriculture Field Office Technical Guide, incorporated herein by reference, as amended and supplemented, and available at <https://efotg.sc.egov.usda.gov/#/state/NJ/documents>.

*[“Forest land” means a portion of the premises covered with a large and thick collection of growing trees of at least five contiguous acres in size and not less than 120 feet wide. Forest land does not include land devoted to the production of Christmas trees, nursery stock, orchard, or similar areas where trees are primarily grown to harvest their fruits, nuts, stems, or flowers.

“Forest stewardship plan” has the same meaning as that term is defined at N.J.A.C. 7:3-1.3.]*

“Geotextile fabric” means a permeable, woven or non-woven, plastic fabric typically used for separation of soil layers, erosion control, and weed management, but does not include biodegradable or paper fabrics.

“Geotextile field” means an area that has been covered with geotextile fabric for purposes of agricultural or horticultural production in which the fabric is placed over native soil that has not undergone soil alteration, soil surfacing, or soil compaction, but may be top-dressed with organic mulch.

“Grantee” means the entity to which the development easement was conveyed.

“Grantor” means the owner who conveyed the development easement, their heirs, executors, administrators, personal or legal representatives, successors, and assigns.

“Ground-level surface” means a surface placed in contact with the soil and includes, but is not limited to, flooring, paving, asphalt, asphalt millings, reinforced concrete, recycled concrete, porous asphalt, porous concrete, stone, rock, gravel, pavers, bricks, block, rubber, sand, cinders, construction mats, pond liners, and non-topsoil stockpiles.

“Hoophouse” means an individual temporary agricultural structure that is used exclusively for the production and storage of live plants by protecting them from the sun, wind, excessive rainfall, or cold, or to extend the growing season. A hoophouse is constructed of a metal, wood, or durable plastic frame covered with polyethylene, polycarbonate, plastic, or fabric material *[and does not have a permanent foundation, footings, ground-level surface, or anchoring system]*. The frame and exterior covering may or may not be removed during the growing season. “Hoophouse” includes structures commonly known as “high tunnel,” “low tunnel,” “temporary greenhouse,” or “polyhouse.”

“Human-altered and human-transported soils” also known as anthropogenic soils, means soils that have profound and purposeful alteration or occur on landforms with purposeful construction or excavation and the alteration is of sufficient magnitude to result in the introduction of a new parent material (human-transported material) or a profound change in the previously existing parent material (human-altered material). Human-altered and human-transported soils do not include soils with incidental or unintentional surficial changes due to exempt agricultural practices.

“Image of record” means the aerial imagery upon which the baseline soil disturbance map and preserved farmland land use features are generated. For premises preserved prior to October 1, 2024, the image of record is the Nearmap Spring 2023 Vertical Imagery. For premises preserved after October 1, 2024, the image of record is the most current aerial imagery available, as determined by the Committee.

***[Innovation waiver]* *Innovative agricultural practice** means [a waiver that allows]* *an agricultural practice proposed by* the grantor *[to implement a new or innovative agricultural practice]* that is not otherwise considered exempt pursuant to N.J.A.C. 2:76-25.4 and which, if approved by the Committee in advance, shall not count towards the soil disturbance limit set forth at N.J.A.C. 2:76-25.5.**

[“Limit of disturbance” means a clearly delineated area around a proposed area of disturbance authorized pursuant to a waiver, inside which all construction-related activities occur, including, but not limited to site preparation, grading, equipment traffic, construction, and staging. Existing disturbed areas are not part of the limit of disturbance.]

“Livestock confinement area” includes feedlots, cow yards, dry lots, and exercise yards used exclusively for livestock.

“Livestock training area” means an uncovered, outdoor area of the premises used for riding, racing, training, showing, or rehabilitating livestock. Examples include, but are not limited to, arenas, tracks, and training rings.

“Maximum dry bulk density” has the same meaning as that term is defined at N.J.A.C. 2:76-25A.3.

“Minimum rooting depth” means at least 40 inches or a lesser depth equal to the depth to a subsurface layer in the natural soil profile that inhibits or prevents root penetration.

“Minimum vegetative cover” means vegetative cover of at least 70 percent for at least nine months per calendar year measured pursuant to the procedures set forth at N.J.A.C. 2:76-25A.6.

“NRCS” means the Natural Resources Conservation Service, an agency of the United States Department of Agriculture providing technical assistance for the conservation of agricultural and related natural resources.

“Nominal smoothing” means the movement of topsoil to reduce irregularities from the soil surface that does not alter the elevation of the existing ground surface more than three inches from the original pre-existing natural landform.

“Nominal tent” means a tent that covers up to 2,000 square feet of the premises for any length of time. Nominal tents may be comprised of multiple tents or the first 2,000 square feet of a larger tent.

“Normal tillage” means generally accepted agricultural practices for seedbed preparation and cultivation of soil, including moldboard plowing, disking, chisel plowing, hill and furrow plowing, bed shaping, and the use of similar site preparation practices as determined by the Committee, where the practice does not meet the definition of human-altered and human-transported soils. Normal tillage is limited to the depth of the topsoil layer.

“On-farm utilities” means buried electric, sewer, water, gas, or communication lines, or similar utilities that serve residential units, agricultural labor housing, farm buildings, or other permitted uses on the premises, and installed in compliance with the on-farm utilities construction standards established at N.J.A.C. 2:76-25A.4. On-farm utilities do not include utilities installed for the purpose of supplying resources for, or being interconnected with, off-farm utility demand or generation.

“Organic” means a material derived from living matter such as leaves, crop residues, or compost.

“Organic mulch” means a material consisting exclusively of organic material used for weed control, moisture retention, landscaping, travel paths, livestock bedding, soil-compaction alleviation, or as a soil amendment, that is composed of tree bark, wood chips, straw, pine straw, grass clippings, leaves, compost, manure, coconut fibers, or similar materials, and applied at a depth capable of being incorporated into the soil profile without diminishing soil productivity. Organic mulch does not include rubber mulch or materials with synthetic fibers, oils, or other inorganic substances added.

“Original premises” means the property described by metes and bounds in the farmland preservation program deed of easement recorded at the time of preservation.

“Parking area” means an area used for vehicular parking that does not meet the definition of a travel lane or storage area. A parking area encompasses parking spaces and the aisles used to connect to travel lanes. Parking areas are delineated by roads, travel lanes, fences, or otherwise delineated by land use and vegetative cover.

“Parking structure” means any fence, barrier, bollard, parking aid, traffic control device, lighting fixture, or similar structure that is installed to manage vehicular traffic and limits or prohibits normal harvesting or tillage activities. Temporary traffic control devices, such as wooden stakes, fiberglass reflective rods, rope, and traffic cones that are installed only during a farm event and removed at the event’s completion are not considered parking structures. Agricultural fencing whose primary purpose is to contain livestock or exclude wildlife and generally follows the field perimeter is not considered a parking structure.

“Permeable” means a material or surface treatment that allows the passage of water into the soil at a rate equal to, or greater than, the

surrounding surface soils, or that allows the passage of water into the soil at a rate equal to or greater than the saturated hydraulic conductivity for the soil type identified in the soil survey.

“Planning criteria” means the United States Department of Agriculture National Resource Concern List and Planning Criteria, incorporated herein by reference, as amended and supplemented, at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=45689.wba>.

*“**Preexisting agricultural water impoundment**” means an excavated, unlined farm pond or dammed impoundment fed by surface water or groundwater for irrigating agricultural crops or watering livestock that is reflected in the Nearmap Spring 2023 Vertical Imagery. Agricultural water impoundments shall not include other types of water-related structures including, but not limited to, decorative or recreational ponds, wildlife ponds, stormwater management facilities, aquaculture ponds, pools, manure lagoons, tailwater recovery ponds, ponds constructed primarily for hydropower uses, or naturally occurring ponds and wetlands, but not including existing open ditches. Associated berms or dams are considered soil alteration or soil surfacing.

“**Preexisting open ditch**” means a vegetated, unlined canal, ditch, open drain, conveyance swale, or similar structure used to convey water that is reflected in the Nearmap Spring 2023 Vertical Imagery. A preexisting open ditch may be associated with an existing agricultural water impoundment or utilized to convey runoff from crop fields or underground drainage systems.

“**Preexisting soil disturbance**” means soil disturbance that exists on the premises as reflected on the Nearmap Spring 2023 Vertical Imagery.*

“Premises” means the property *[under easement that is defined]* *described* by *[the legal]* metes and bounds *[description]* in the *farmland preservation program* deed of easement*, including an original premises or a divided premises*.

*[“Production waiver” means a waiver that allows the grantor to exceed the soil disturbance limits established at N.J.A.C. 2:76-25.5, up to a maximum of 15 percent of the premises or six acres, whichever is greater.

“Riparian zone” has the same meaning as the term that is defined at N.J.A.C. 7:13-1.2.]*

“Saturated hydraulic conductivity” means a quantitative measure of a saturated soil’s ability to transmit water when subjected to a hydraulic gradient.

“Soil alteration” means human-altered and human-transported soils and includes soil movement, grading, leveling, importation, exportation, cut, and fill, but does not include normal tillage or deep tillage.

“Soil compaction” means any activity other than normal tillage that results in an increase in soil dry bulk density above the root limiting levels, or in the consolidation of or a reduction in a soil’s capacity to infiltrate and percolate water. The causes of soil compaction include, but are not limited to: static force, tamping, vibration, kneading, and rolling techniques. Examples of preparing or using land that result in soil compaction include, but are not limited to: footings, foundations, earth-retaining structures, parking areas, storage areas, travel lanes, or the placement of engineered structures.

“Soil disturbance” means soil alteration, soil surfacing, or soil compaction.

“Soil horizon” means a layer within a soil profile differing from layers of soil above and below it in one or more of the soil morphological characteristics including color, texture, coarse fragment content, structure, consistency, and presence of redoximorphic features.

“Soil profile” means a vertical cross-section of soil showing the characteristic horizontal layers or soil horizons, which have formed as a result of the combined effects of parent material, topography, climate, biological activity, and time.

“Soil surfacing” means a human-made or human-placed covering over the soil including both suspended surfaces and ground-level surfaces unless identified by the Committee as an exempt agricultural practice.

“Solar energy facilities” has the same meaning as that term is defined at N.J.A.C. 2:76-24.3.

“Solar panels” means photovoltaic panels that are mounted to the ground by a screw, piling, or similar system that does not require a footing,

concrete, or other permanent mounting and that are part of a solar energy facility meeting the criteria at N.J.A.C. 2:76-25A.4.

[“Stewardship conservation plan” means a farm conservation plan that meets or exceeds the planning criteria for all soil and water resources identified on the premises.]

“Stockpile” means a pile of any material located on the premises for more than 120 cumulative days in a 12-month period. Stockpiles include, but are not limited to, subsoil, sand, manure, leaves, wood chips, compost, building materials, gravel, road surfacing materials, timber, and metal.

“Storage area” means an area of land not in crop production used for the storage of equipment or other farm-related items, but not otherwise meeting the definition of a parking area or travel lane.

“Subsoil” means the layer of soil immediately beneath the topsoil where there is visibly less organic matter and root development than the topsoil layer, typically noticed by a change in soil color.

“Substitute soil material” means soil that has been created from a blend of basic components to have equivalent physical, chemical, and biological properties as the native soil.

“Suspended surface” means a surface placed above the soil and includes, but is not limited to, trailers, greenhouses, run-in sheds, pavilions, open-floored arenas, decks, and roofs of buildings.

“Technical service provider” means a private individual or entity certified by the NRCS as capable of providing technical service activities according to NRCS standards and specifications for specific conservation activities.

“Temporary geomembrane” means an impermeable plastic film used for a variety of agricultural uses including, but not limited to, plastic mulch and silage wraps, which are typically removed annually.

“Temporary ground protection mats” means construction mats consisting of wood (not including plywood), plastic, or metal that are specifically designed to distribute heavy loads to reduce soil compaction and that are in place for less than 120 cumulative days per calendar year.

“Temporary movable structure” means a structure that is removed from the premises without demolition, and which does not have a permanent foundation, floor, or anchoring system and is in place for no more than 120 cumulative days in a 12-month period. Temporary movable structures include, but are not limited to, office trailers, portable trailer-mounted-bathrooms, portable toilets, horse trailers, food carts, campers, and similar structures.

“Temporary parking area” means an actively cropped area used seasonally or periodically for public parking of vehicles related to the operation of the farm and which maintains minimum vegetative cover. Temporary parking areas do not contain parking structures.

“Temporary storage area” means an area utilized for the storage of infrequently used farm equipment or privately owned equipment associated with permissible farm activities and which maintains minimum vegetative cover.

“Temporary tent” means a tent in place on the premises for less than 120 cumulative days in a calendar year.

“Tent” means a temporary structure with an impermeable covering to provide shelter. It is also known as a tensioned membrane structure or canopy. A tent does not have a permanent foundation, footing, floor, or anchoring systems. A hoop house is not a tent.

“Topsoil” means the uppermost layer in a natural or cultivated soil profile where cultivation, root growth, biological activity, and organic matter are concentrated. Topsoil is composed of mineral particles (sand, silt, and clay) and organic material, and allows for air exchange and water retention. Topsoil is also known as the “plow layer,” “surface soil,” “Ap layer,” “Ap horizon,” or the “surface layer.” Topsoil depth is site-specific, but typically varies between six and 12 inches.

“Topsoil stockpile” means a stockpile of topsoil constructed in accordance with N.J.A.C. 2:76-25A.5.

“Travel lane” means a generally linear feature on a farm primarily used for the conveyance of vehicles, pedestrians, livestock, and/or equipment.

“Underground drainage system,” also known as “drain tile,” means a subsurface drainage system made of conduit, such as corrugated plastic tubing, tile, or pipe, installed beneath the ground surface to collect and/or convey drainage water to improve farming conditions.

“Unimproved travel lane,” also known as a “farm lane,” means a travel lane that is not more than 10 feet wide for one-way traffic or 16 feet wide

for two-way traffic, measured from the outside of the tire tracks, plus an additional two-foot allowance per side for a shoulder, that has not been surfaced, and is not constructed closer than 300 feet to another unimproved travel lane or travel lane.

“USDA” means the United States Department of Agriculture.

“Vegetative cover” means living plant cover or intact residues but does not include weeds.

“Unimproved livestock area” means a livestock training area or livestock confinement area that has not been surfaced or subjected to soil alteration.

“Weed” means a plant that is not grown deliberately or is otherwise prohibited, invasive, or noxious. Examples of weeds include, but are not limited to, plantain, thistle, burdock, garlic mustard, and ground ivy.

2:76-25.4 Exemptions

(a) The following agricultural practices shall not constitute soil disturbance for purposes of determining compliance with the soil disturbance limitation set forth at N.J.A.C. 2:76-25.5, and shall be considered exempt agricultural practices:

1. Cranberry bogs/beds;
2. Deep tillage;
3. ***[Existing]* *Preexisting* open ditches*, as reflected on the Nearmap Spring 2023 Vertical Imagery*;**
4. ***[Existing]* *Preexisting* agricultural water impoundments*, as reflected on the Nearmap Spring 2023 Vertical Imagery*;**
5. Geotextile fields;
6. Hoophouses, including those placed on geotextile fields, without soil alteration, soil surfacing, or soil compaction;
7. Normal tillage;
8. Nominal smoothing;
9. Nominal tents;
10. On-farm utilities;
11. Organic mulch;
12. Rehabilitated soils;
13. Solar panels;

14. Storage of naturally derived materials produced on the premises, or required for use on the premises within a 12-month period, and which is not otherwise associated with soil alteration, soil surfacing, or soil compaction. “Naturally derived materials” include, but are not limited to, hay bales, lime, silage, compost, wood chips, and manure;

- *[14.]* *15.* Temporary geomembranes;
- *[15.]* *16.* Temporary ground protection mats;
- *[16.]* *17.* Temporary movable structures;
- *[17.]* *18.* Temporary parking areas;
- *[18.]* *19.* Temporary storage areas;
- *[19.]* *20.* Temporary tents;
- *[20.]* *21.* Topsoil stockpiles;
- *[21.]* *22.* Underground drainage systems;
- *[22.]* *23.* Unimproved livestock areas; and
- *[23.]* *24.* Unimproved travel lanes.

(b) Conservation practices meeting the criteria in this subsection shall not constitute soil disturbance for the purpose of determining compliance with the soil disturbance limitation set forth at N.J.A.C. 2:76-25.5, when the conservation practice:

1. Is required to address runoff or erosion resulting from normal tillage;
2. Is planned and installed in accordance with the planning criteria and conservation practice standards developed by the NRCS;
3. Has a positive conservation effect under section 5 of the FOTG for one or more of the following resource concerns:
 - i. Sheet and rill erosion;
 - ii. Wind erosion;
 - iii. Ephemeral gully erosion;
 - iv. Classic gully erosion;
 - v. Bank erosion from streams, shorelines, or water conveyance channels; or
 - vi. Compaction;
4. Is designed to minimize excavation, cuts, and fills;
5. Ensures that all topsoil shall be stripped and reapplied in accordance with the topsoil stockpiling standard at N.J.A.C. 2:76-25A.5;

6. Does not utilize suspended surfaces or ground-level surfaces and maintains minimum vegetative cover;

7. Is included in a farm conservation plan approved by the local soil conservation district and NRCS prior to installation;

8. Is installed under the supervision of a licensed professional engineer, the Committee, a technical service provider, or NRCS; and

9. Is subject to the submission of an as-built design certifying the conservation practice, as implemented, which meets or exceeds NRCS standards, and which is provided to the Committee and the grantee.

(c) A conservation practice may also be considered exempt, if the Committee finds that the water and erosion control measure meets the criteria at (b)2, 3, 4, 5, 7, 8, and 9 above, and is necessitated by factors beyond the control of the grantor including, but not limited to, natural weather conditions or drainage coming from off the ***[farm]* *premises***, such as stormwater from public roads and/or adjacent properties.

(d) Conservation practices, including stormwater management facilities, required to address runoff or erosion resulting from soil disturbance activities or from exempt agricultural practices set forth at this section, excluding normal tillage, shall not be considered exempt from the soil disturbance limitations at N.J.A.C. 2:76-25.5.

(e) The Committee, on its own, or at the request of a grantor or grantee, may designate additional exempt agricultural practices by rule.

1. In considering the adoption of additional exempt agricultural practices, the Committee may consult with the following agencies, organizations, or persons:

- i. The New Jersey Department of Agriculture;
- ii. The New Jersey Agricultural Experiment Station, including appropriate county agents;
- iii. County agriculture development boards;
- iv. The State Soil Conservation Committee;
- v. Any other states’ departments of agriculture, land grant institutions, or agricultural experiment stations;
- vi. The United States Department of Agriculture, or any other Federal governmental entity; or
- vii. Any other organization or person that may provide expertise concerning the particular practice.

(f) Exempt agricultural practices shall not violate any other provision of the deed of easement.

(g) Soil disturbance created solely as a result of other property interests in the premises superior in title to the farmland preservation easement, such as utility easements and road rights-of-way, shall not constitute soil disturbance for the purposes of determining compliance with the soil disturbance limitations set forth at N.J.A.C. 2:76-25.5.

2:76-25.5 Soil disturbance limitations

*[(a) Soil disturbance may occupy up to 12 percent of the premises or four acres, whichever is greater.

(b) If a grantor does not elect to use the soil disturbance calculation provided at (a) above, the grantor may seek permission from the Committee to increase the extent of soil disturbance on the premises over and above the total soil disturbance existing on the premises as of July 1, 2023, in an amount totaling an additional two percent of the premises, or one acre, whichever is greater.

1. The grantor is eligible for an allocation of an additional two percent or one acre of disturbance if the grantee and Committee determine that:

- i. The premises complies with the farmland preservation deed of easement; and
- ii. The disturbance proposed on the premises exceeds the soil disturbance limitation pursuant to (a) above.]*

*** (a) Only activities authorized pursuant to the deed of easement may count as permissible disturbance for purposes of this section. Other disturbance associated with activities that are determined by the Committee to constitute impermissible activities pursuant to the deed of easement including, but not limited to, the dumping of waste material or alteration of a farm in connection with recreational uses, do not count toward the soil disturbance allowances set forth at (b) below.**

(b) The allocated soil disturbance for each premises is equal to 12 percent of the area of the premises, or four acres, whichever is greater. For purposes of this section, “premises” shall include any

portions of an original premises proposed to be divided as set forth in a complete division application received by the Committee on or before October 1, 2024, and which application is subsequently approved by the Committee.

(c) For premises preserved prior to October 1, 2024, the total limit on soil disturbance equals the sum of preexisting soil disturbance in addition to the allocated soil disturbance as set forth at (b) above.

(d) For farms preserved after October 1, 2024, the total limit on soil disturbance equals the allocated soil disturbance set forth at (b) above.*

[2.] *(e)* The Committee shall utilize the *baseline* soil disturbance *[base]* map issued to the grantor pursuant to N.J.A.C. 2:76-25.10 or, if applicable, the amended *[base]* *baseline soil disturbance* map established pursuant to N.J.A.C. 2:76-25.10(e), as the basis upon which the *[additional two percent or one acre, whichever is greater.]* *soil disturbance limit* shall be calculated.

[3.] The Committee shall issue a final decision on the grantor's request to increase the extent of soil disturbance on the premises over and above the total soil disturbance existing on July 1, 2023, totaling an additional two percent of the premises, or one acre, whichever is greater.]**

[(f)] *(f)* In calculating the permissible soil disturbance limit, acreage shall be rounded to three decimal places (0.000).

[(d)] *(g)* Once an area of the premises has been disturbed, it will continue to be considered soil disturbance unless and until the Committee determines that the area has been successfully rehabilitated in accordance with N.J.A.C. 2:76-25.9 and *[25A.9]* *25A.7*.*

[(e)] *(h)* Activities occurring within the footprint of areas already considered disturbed will not be counted as additional soil disturbance.

[(f)] *(i)* Soil disturbance located outside the boundaries of the premises, including, but not limited to, severable and non-severable exception areas, residential exclusion areas, and any other area(s) of a farm not subject to the terms and conditions of the deed of easement, shall not count towards the limitation set forth at *(a)* *(c)* or *(d)* above*, as applicable*.*

[(g)] *(j)* Removal of topsoil from the premises is expressly prohibited, except as directly related and incidental to the harvesting of agricultural and horticultural products, such as in soil that is *typically* removed with roots when sod *[is]* *or dug nursery stock are* harvested.

2:76-25.6 *[Waivers]* *Innovative agricultural practice approval*

(a) Upon the approval of both the Committee and grantee, a grantor may receive *[a waiver or waivers of the soil disturbance limitation pursuant to N.J.A.C. 2:76-25.5. The grantor may apply for one or both types of the following waivers:

1. A production waiver, which shall allow additional soil disturbance to a maximum limit of 15 percent of the premises or six acres, whichever is greater, provided the grantor meets all the eligibility criteria and conditions listed at (b), (c), and (d) below and the disturbance proposed on the premises exceeds the soil disturbance limitation at N.J.A.C. 2:76-25.5; and/or

2. An innovation waiver, which] *approval to implement an innovative agricultural practice that* shall *[allow additional]* *not count as* soil disturbance *[beyond the limits established pursuant to N.J.A.C. 2:76-25.5 and the production waiver limit at (a)1 above]* *and is not considered exempt pursuant to N.J.A.C. 2:76-25.4*, provided the grantor meets all the eligibility criteria and conditions at (b), (c), and *[(e)]* *(d)* below.

(b) A grantor shall be eligible to apply for *[a waiver]* *approval of an innovative agricultural practice* pursuant to this section if the grantee and Committee determine that the premises complies with the farmland preservation deed of easement.

(c) For a grantor to be eligible for *[either waiver]* *approval of an innovative agricultural practice* pursuant to (a) above, the proposed *[project]* *innovative agricultural practice* shall meet the following conditions, as determined by the grantee and the Committee:

[1.] There is no apparent feasible alternative to a proposed project resulting in soil disturbance on the preserved farm beyond the limitation pursuant to N.J.A.C. 2:76-25.5, which would avoid or substantially reduce the proposed soil disturbance;]**

[2.] *1.* It is not feasible to utilize areas of existing soil disturbance that would provide sufficient land area for the proposed *[use, nor is it feasible to implement a certified rehabilitation project on the premises pursuant to N.J.A.C. 2:76-25.9 which, once completed, would render the need for a waiver unnecessary]* *innovative agricultural practice*; *and*

[3.] *2.* The proposed project:

- i. Has an exclusively agricultural or horticultural production purpose;
- ii. Has a positive impact on agricultural productivity on the premises;
- iii. Is compliant with relevant Federal and State laws and rules; and
- iv. Does not cause a measurable, negative impact on or off the premises to any of the following:

- (1) Drainage;
- (2) Flood control, including stormwater runoff quantity;
- (3) Water conservation, including groundwater recharge;
- (4) Erosion control, including runoff quality; and
- (5) The continued agricultural use of the premises for a variety of agricultural operations; or

v. Does not cause soil contamination*[*]**.*

[4.] The grantor has obtained, and the Committee has approved, a stewardship conservation plan for the premises.

i. The stewardship conservation plan shall maintain the functional integrity of vegetation in the riparian zone.

ii. For the purposes of meeting the planning criteria for sheet and rill erosion, the following shall apply:

(1) Soil attached to crops at harvest shall be excluded from the soil loss calculation; and

(2) Soil loss shall be averaged over a crop rotation period not to exceed five years;

5. The grantor has obtained a forest stewardship plan for all forest land on the premises; and

6. The grantor provides a long-term maintenance plan for conservation measures associated with the proposed disturbance.

(d) A grantor shall be eligible for a production waiver if the grantee and Committee, in addition to (b) and (c) above, determine all the following conditions are met:

1. All site preparation, grading, equipment traffic, construction, and staging is confined to a specified limit of disturbance area or area of existing disturbance; and

2. The project design adheres to one or more the following sets of standards and criteria, as determined by the Committee:

i. Construction standards for expedited production waivers pursuant to N.J.A.C. 2:76-25A.7; or

ii. The low impact disturbance design criteria pursuant to N.J.A.C. 2:76-25A.8.]**

[(e)] *(d)* A grantor shall be eligible for *approval of* an *[innovation waiver]* *innovative agricultural practice* if the grantee and Committee, in addition to (b) and (c) above, determine all the following conditions are met:

1. The *[project]* *innovative agricultural practice*:

- i. Maintains minimum vegetative cover;
- ii. Does not cause the maximum dry bulk density of the soil to increase beyond the limit identified pursuant to N.J.A.C. 2:76-25A.9(c)6ii; and
- iii. Does not cause any soil resource concerns, including soil alteration; and

2. Any soil surfacing proposed can be deployed and readily removed without causing negative impacts to all soil resources, including topsoil.

[(f)] *(e)* An application for *[a waiver]* *an innovative agricultural practice approval* shall be filed with the Committee, and the Committee shall provide the grantee, if applicable, a copy of the application.

1. The Committee shall, within 30 days of receipt of the application, provide written notice to grantor and grantee, if applicable, whether the application is complete or incomplete. If incomplete, the notice shall specify the missing information.

2. If the application is incomplete, the grantor shall have 120 days from receipt of the notice of incompleteness to provide the Committee with any missing information.

3. The grantee shall take no action on the request for *[a waiver]* *an innovative agricultural practice approval* until the grantee receives

copies of the complete application and all supporting materials from the Committee.

*(g) Within 30 days of receipt of written notice from the Committee that the application is complete, the grantor shall provide written notice of the application, at the grantor's sole expense, through certified mail, return receipt requested, and/or by personal service, to:

1. The clerk and land use board secretary of the municipality in which the premises is located. If the premises is located within 200 feet of an adjoining municipality, then written notice of the application shall also be given to the clerk and land use board secretary of the adjoining municipality;

2. The owners of all real property, on the current tax duplicates, within 200 feet in all directions of the premises. The grantor shall be solely responsible to pay for, and obtain, a certified list of property owners in accordance with N.J.S.A. 40:55D-12c.; and

3. The county planning board, if the premises is located adjacent to a county road.

(h) The notice provided by the grantor pursuant to (g) above shall include the following: the type of waiver sought in the application, a complete description of the project, the conservation measures set forth in the proposed stewardship conservation plan, the conservation measures set forth in the forest stewardship plan, if applicable, the reason(s) necessitating the application, that comments on the application may be provided to, and that copies of the application materials can be obtained from, the Committee at: State Agriculture Development Committee, PO Box 330, Trenton, NJ 08625-0330, and sadc@ag.nj.gov.*

(i) *(f)* The application shall include, but not be limited to, the following information, as applicable:

1. A detailed narrative that includes all the following:

i. The agricultural purpose of the *[project]* ***proposed innovative practice***;

ii. A description of the physical attributes of the proposed *[project]* ***innovative agricultural practice***, including location, type*,* and characteristics of ***the*** proposed *[disturbance,]** ***practice*** and the materials to be utilized or placed on the land;

iii. ***[The]* *A statement of the*** economic impact of the *[project]* ***proposed practice*** to the farm operation;

*(iv. An alternatives analysis demonstrating alternate designs, locations, and/or rehabilitation of other areas for the project are infeasible;]**

(v.) ***iv.*** A description of any potential physical impacts of the proposed *[project]* ***practice*** upon the premises and any contiguous properties; ***and***

(vi.) ***v.*** A description of the existing land use(s) on the premises adjacent to the proposed *[disturbance area]* ***practice*** and any potential impacts of the proposed *[project]* ***practice*** on those land uses*]; ***and]***;***

*(vii. A description of the conservation measures set forth in the proposed stewardship conservation plan and forest stewardship plan;

2. If the waiver request relates to the construction of agricultural structures, all necessary information relevant to support the request including, but not limited to, zoning, building and development plans, site plans, relevant permits, and, if applicable, stormwater management plans and calculations;]**

(3.) ***2.*** A site map, or copy of the most recent soil disturbance map established pursuant to N.J.A.C. 2:76-25.10 for the premises, clearly depicting the ***location,*** extent*,* and type of both *[existing]* ***preexisting and allocated soil*** disturbance and the proposed new *[disturbance with a tabulation of total combined disturbances]* ***innovative agricultural practice***; ***and***

*(4. A copy of the stewardship conservation plan;

5. A maintenance plan for all resource management practices necessary to comply with the waiver, if applicable;

6. A copy of the forest stewardship plan, if applicable; and]**

(7.) ***3.*** Any additional information that the grantee or Committee determines is reasonable and necessary to evaluate whether the *[waiver]* ***innovative agricultural practice*** request meets the requirements of this section.

(j) *(g)* Application review and approval shall be as follows:

1. In determining whether to grant *[an application for a waiver]* ***approval of a proposed innovative agricultural practice*** satisfying

the requirements *[at (b), (c), and (d) or (e) above]* ***of this section***, consideration shall be given to the extent to which the grantor's actions or inaction caused or contributed to the need to submit a request for *[a waiver]* ***approval***;

*(2. In calculating the permissible waiver limit, acreage shall be rounded to three decimal places (0.000);]**

(3.) ***2.*** If a county or a qualified tax-exempt nonprofit organization is the grantee of the development easement, any approval of *[a waiver]* ***an innovative agricultural practice*** pursuant to this section must be jointly authorized by the grantee and the Committee;

***3. In considering the proposed innovative agricultural practice, the Committee may consult with the following agencies, organizations, or persons, as applicable:**

i. The New Jersey Department of Agriculture;

ii. The New Jersey Agricultural Experiment Station, including appropriate county agents;

iii. County agriculture development boards;

iv. The State Soil Conservation Committee;

v. Any other states' departments of agriculture, land grant institutions, or agricultural experiment stations;

vi. The United States Department of Agriculture, or any other Federal governmental entity; or

vii. Any other organization or person that may provide expertise concerning the particular practice;*

4. The grantee and Committee shall prepare resolutions approving, conditionally approving, or denying the *[waiver request]* ***innovative agricultural practice***. The resolution shall include, but not be limited to:

i. A description of the proposed *[waiver activity]* ***innovative agricultural practice***;

*(ii. A description of conservation measures set forth in the proposed stewardship conservation plan;]**

(iii.) ***ii.*** A map locating all existing soil disturbance, *[proposed disturbance]* areas subject to the *[waiver]* ***innovative practice*** request, *[proposed conservation measures set forth in the proposed stewardship conservation plan,]* and exempt activities on the premises*[, including the limit of disturbance area]*;

(iv.) ***iii.*** Area calculations of all existing soil disturbance, *[proposed disturbance]* areas subject to the *[waiver]* ***innovative practice*** request, *[proposed conservation measures]* and exempt activities proposed on the premises;

(v.) ***iv.*** Any conditions specific to the *[waiver activity]* ***innovative practice request***; and

(vi.) ***v.*** The reasons for approval, conditional approval, or denial *[of the waiver]*; and

5. The Committee resolution shall be recorded with the Office of the County Clerk, and a copy of the recorded document shall be provided to the grantor, and if applicable, to the grantee.

(k) ***h)*** No disturbance associated with an approved *[waiver]* ***innovative agricultural practice*** may occur until*];

1. The grantor has implemented all required engineering practices, if applicable, as defined in the FOTG that are planned for year one of the stewardship conservation plan;

2. The grantor is on or ahead of schedule with implementation of all other practices prescribed in the stewardship conservation plan;

3. The forest stewardship plan has been approved by the New Jersey Forest Service and the grantor is on schedule with all prescribed management activities; and

4. The]* ***the*** grantor obtains and complies with all required permits and approvals.

1. The Committee reserves the right to inspect all farms that have received Committee approval of an innovative agricultural practice request pursuant to this section, as needed, to determine ongoing compliance with such approval.

(l) ***i)*** *[Waiver(s)]* ***An innovative agricultural practice approval*** granted pursuant to this section may be revoked at any time by the Committee if the grantor fails to maintain compliance with all conditions of *[waiver]* approval, the deed of easement, or this subchapter. If *[a waiver]* ***the approval*** is revoked, the *[limit of disturbance]* area ***occupied by the innovative agricultural practice***

shall be rehabilitated in accordance with N.J.A.C. 2:76-25.9 and *25A.9* *25A.7*.

2:76-25.7 Aggregation and consolidation

(a) *The* *Allocated* soil disturbance *allocation allowed* *authorized* pursuant to N.J.A.C. 2:76-25.5*(b)* may, upon joint approval, if applicable, of the grantee and the Committee, be aggregated on contiguous premises owned by the same grantor *provided the total disturbance acreage does not exceed the combined individual allocations for each premises comprising the contiguous premises* *or that will be owned by the same grantor upon effectuation of the aggregation*.

1. The decision set forth at (a) above shall be memorialized by resolution of the grantee, if applicable, and the Committee setting forth detailed findings of fact and conclusions of law.

2. The grantee shall provide the grantor and Committee with a copy of its decision to approve, approve with conditions, or deny the application.

i. The grantee shall provide the Committee with a copy of the grantee's decision within 10 days of the issuance of the decision.

3. The Committee shall approve, approve with conditions, or deny the request for aggregation within 60 days of receipt of the grantee's approval.

i. Such time period may be extended by the Committee for good cause or with the consent of the grantor.

ii. The Committee shall provide the grantor and grantee with a copy of its decision to approve, approve with conditions, or deny the application.

4. Decisions by the Committee and by the grantee, as applicable, shall be memorialized by resolution, and decisions by the Committee shall be considered final administrative agency action subject to the right of appeal to the Appellate Division of the Superior Court.

(b) No *aggregation between* *consolidation of* contiguous premises shall be permitted unless those premises are restricted, such that each premises is permanently associated with, and shall not be conveyed separate and apart from, each other, except as provided at (d) below. The further division of *aggregated parcels* *consolidated premises* is prohibited.

(c) In the event the Committee approves an aggregation *of soil disturbance* and consolidation *of premises* in compliance with this section, the Committee shall prepare a document reflecting the reallocation of the *permitted* *allocated* disturbance and prohibiting further division of the *respective* *consolidated* premises in the future. The document shall be recorded with the county clerk, and a copy of the recorded document shall be provided to the grantor and, if applicable, to the grantee.

(d) The Committee may, upon a showing of reasonable cause, approve the *disaggregation* *rescission* of *parcels as permitted in* *a consolidation of premises previously approved pursuant to* this section.

1. The approval shall require that the *allocated* soil disturbance *limitation* for each *disaggregated* *unconsolidated* premises not exceed that set forth at N.J.A.C. 2:76-25.5*(b)*.

(e) The Committee may require such other reasonable terms and conditions in granting approval.

2:76-25.8 Division of the premises

(a) Each parcel resulting from a division of the premises approved by the Committee pursuant to N.J.A.C. 2:76-6.15(a)15 must comply with the soil disturbance limitation prescribed at N.J.A.C. 2:76-25.5 at the time of division.

(b) *(a)* The *acreage of allocated* soil disturbance *limitation prescribed at* *pursuant to* N.J.A.C. 2:76-25.5*(b)* *and disturbance associated with production waiver eligibility prescribed at N.J.A.C. 2:76-25.6(a)1* shall be *proportionally* *reallocated* to each of the *parcels* *divided premises* resulting from a division of premises pursuant to N.J.A.C. 2:76-6.15(a)15. *Such reallocation shall ensure that each divided premises has a sufficient allocated disturbance to be considered agriculturally viable, as determined by the Committee. In no case shall the disturbance reallocated to each premises be less than two acres.*

(c) *(b)* In the event the Committee approves a division of the premises, the Committee shall prepare a document reflecting the division and the *allocation* *distribution* of the *allowable* *reallocated* soil disturbance *on* *acreage to* the respective *divided* premises. The document shall be recorded with the county clerk, and a copy of the

recorded document shall be provided to the grantor and, if applicable, to the grantee.

(d) *(c)* In no event shall an increase in the *acreage of the* total soil disturbance limitation prescribed at N.J.A.C. 2:76-25.5*(b)* result from a division of the premises.

2:76-25.9 Soil rehabilitation application and certification procedures

(a) A grantor may complete a certified soil rehabilitation project pursuant to this section and N.J.A.C. 2:76-25.9* *25A.7* for purposes of rehabilitating disturbed soils, so that they no longer count towards the soil disturbance limit established pursuant to N.J.A.C. 2:76-25.5.

(b) The Committee shall have the discretion to reduce, and/or determine, the non-applicability of rehabilitation plan components set forth at N.J.A.C. 2:76-25.9* *25A.7*.

1. Reduction of the components at N.J.A.C. 2:76-25.9* *25A.7* shall be based on relevant, site-specific conditions of the premises including, but not limited to, soil type and the nature and duration of the disturbance.

2. The Committee may develop templates for rehabilitation of common soil disturbances that may be followed to meet the requirements at N.J.A.C. 2:76-25.9* *25A.7*.

(c) Prior to commencing any proposed rehabilitation activities, the grantor shall submit a rehabilitation application and plan (application package) to the Committee consistent with this subchapter and with the soil rehabilitation standards set forth at N.J.A.C. 2:76-25.9* *25A.7*.

(d) The Committee shall, within 60 days of receipt of the application package, notify the grantor whether the application package is administratively complete.

1. If the application package is determined administratively incomplete, the grantor shall be notified, in writing, with a summary of deficiencies.

2. If the application package is determined administratively complete, the Committee shall commence a technical review of the rehabilitation plan.

3. The Committee shall provide written notice to the grantee, if applicable, when the Committee has deemed an application for rehabilitation complete and provide an opportunity for the grantee to provide comments on the proposed rehabilitation plan.

(e) The rehabilitation plan technical review period shall be 90 days.

1. If the Committee determines portions of the rehabilitation plan are missing technical information necessary to complete a technical review:

- i. The grantor shall be notified, in writing;
- ii. The review period shall be paused pending submission of any requested information;
- iii. The grantor shall have 30 days to supply the requested information;
- iv. Acceptance of the submitted information shall restart the review period; and
- v. Failure to submit the documentation within the timeframe shall be considered a withdrawal of the application package.

2. If the Committee determines that the rehabilitation plan does not meet the soil rehabilitation standards set forth at N.J.A.C. 2:76-25.9* *25A.7*, the Committee shall provide a written denial letter to the grantor stating the reason(s) for the denial. The grantor may request a hearing before the Committee for any such denial in accordance with N.J.A.C. 2:76-25.12(a) within 30 days of receipt of the denial.

3. If the Committee determines the rehabilitation plan meets the soil rehabilitation standards set forth at N.J.A.C. 2:76-25.9* *25A.7*, the Committee shall provide written notice advising the grantor and grantee that the grantor may commence the rehabilitation process. Notice shall be by certified mail, return receipt requested. The grantor shall commence the rehabilitation project within 12 months of receipt of the notice to commence.

(f) The Committee may extend the application review timeframes listed above with appropriate justification. Notice of all such extensions shall be, in writing, to the grantor. Failure by the Committee to act upon an application package within the review period(s) shall constitute approval of the rehabilitation plan.

(g) If the rehabilitation plan is approved, the grantor shall complete rehabilitation in accordance with the approved rehabilitation sequence.

1. The grantor shall notify the Committee of intent to commence the rehabilitation plan, and each step in the rehabilitation sequence, at least five business days prior to start of physical work.

2. The Committee shall inspect each step in the rehabilitation sequence within five business days of notice thereto. The grantor shall obtain interim certification of the previous step from the Committee prior to commencing the subsequent step.

i. If interim certification is not obtained, the grantor shall have not more than one year to meet the standards of that step or the rehabilitation plan shall be considered unsuccessful.

(1) Not more than one extension of not more than one year shall be approved per step.

(2) Not more than two extensions shall be approved per rehabilitation plan.

ii. If interim certification is obtained, the grantor shall retain the documentation for final certification and shall proceed with the rehabilitation sequence.

3. The Committee, in its discretion, may require an inspection of the premises before, during, or after rehabilitation to determine compliance with rehabilitation criteria.

4. The Committee may conduct an inspection of the site and may collect soil samples or other relevant site information to determine if rehabilitation was conducted according to the rehabilitation criteria.

5. The Committee reserves the right to issue a stop-work order upon evidence of work being undertaken that violates the approved rehabilitation plan.

6. Upon completion of all rehabilitation activities, the grantor shall submit a final certification report in accordance with N.J.A.C. 2:76-25A.9(d)* **25A.7(d)**.*

i. The Committee shall complete an administrative review within 60 days of receipt of the final report.

ii. The Committee shall schedule a site visit and review all submitted materials for technical completeness.

iii. If the Committee determines rehabilitation was not completed according to the approved rehabilitation plan, the Committee shall notify the grantor, in writing, of deficiencies and recommend corrective measures to bring the rehabilitation area into compliance with the standards within the timelines described at N.J.A.C. 2:76-25A.9)* **25A.7**.*

iv. If the Committee determines that the rehabilitation work is still deficient after all stated timelines have passed, a resolution shall be issued denying the certification of rehabilitation, and the land area subject to the deficient rehabilitation work will continue to be counted towards the soil disturbance limitations set forth at N.J.A.C. 2:76-25.5.

v. If the Committee determines that rehabilitation has been completed according to the approved rehabilitation plan, the Committee shall issue a final certification that all soil rehabilitation standards at N.J.A.C. 2:76-25A.9)* **25A.7*** have been satisfied. A resolution memorializing the certification shall be issued and the rehabilitated land area will no longer be counted towards the soil disturbance limitations set forth at N.J.A.C. 2:76-25.5.

2:76-25.10 Soil protection mapping and monitoring requirements

(a) A baseline soil disturbance map of each premises shall be established by the Committee [as of July 1, 2023]*.

(b) [Written]* **For farms preserved prior to October 1, 2024, written*** notice of the baseline soil disturbance map shall be provided by the Committee to the grantor [by regular]* **by certified*** mail*, **return receipt requested***, to the grantor's last known address. The Committee shall provide a copy of the baseline soil disturbance map to the **grantor and, if applicable, the*** grantee*[, if applicable]*.

1. If the mailing is returned as unclaimed or undeliverable, then the Committee shall make good faith efforts to provide an alternate manner of notice*, **including through regular mail or electronic mail***.

2. The written notice shall include the baseline **soil disturbance*** map and a link to the Committee's website connecting to an online version of the [baseline]* map depicting the extent and classification of identified soil disturbance features on the premises.

3. The written notice shall include a statement that the grantor and/or grantee may request reconsideration of the calculated extent or assigned

classification of baseline soil disturbance map features, in writing, to the Committee in accordance with N.J.A.C. 2:76-25.12(a).

4. The written notice shall include a statement specifying that [any grantor seeking to qualify for an additional two percent or one acre of soil disturbance on the premises pursuant to N.J.A.C. 2:76-25.5(b), and]* **anyone*** who wishes to dispute the baseline soil disturbance map issued by the Committee pursuant to this section, shall submit, in writing, a request for reconsideration of the calculated extent or assigned classification of soil disturbance features contained in the baseline **soil disturbance*** map [by (]* **within*** 60 days of [the effective date of these new rules)]* **receipt of the written notice***, and in accordance with N.J.A.C. 2:76-25.12(a).

(c) For farms preserved after October 1, 2024, the baseline soil disturbance map shall be provided to the grantor and to the grantee prior to the date of closing on the purchase of the development easement. The grantor and grantee shall acknowledge receipt of and concurrence with the baseline soil disturbance map.*

[(c)]* **(d)*** A grantor [seeking to qualify for approval of an additional two percent or one acre of soil disturbance on the premises pursuant to N.J.A.C. 2:76-25.5(b), and]* who wishes to dispute **any aspect of*** the baseline soil disturbance map issued by the Committee pursuant to this section*[,] shall submit a written request for mapping reconsideration of the calculated extent or assigned classification of soil disturbance features contained in the baseline map [by (]* **within*** 60 days of [the effective date of these new rules)]* **receipt thereof*** and in accordance with N.J.A.C. 2:76-25.12(a). Failure to submit a request for mapping reconsideration by the date specified in this subsection will constitute grantor's consent to the soil disturbance baseline mapping for the premises.

[(d)]* **(e)*** [All other grantors]* **Grantors*** and grantees may submit to the Committee*, a written request for mapping reconsideration of the calculated extent or assigned classification of **allocated*** soil disturbance reflected on the then-current soil disturbance map features at any time.

[(e)]* **(f)*** Upon receipt of a written request for reconsideration, Committee staff shall conduct a site visit, as necessary, in order to ascertain the accuracy of the current soil disturbance map for the premises.

1. Within 60 days of the site visit, the Committee staff shall solicit comments and information from the grantor and the grantee that may inform the evaluation of the soil disturbance mapping.

2. Within 120 days of receipt of the request for reconsideration, the Executive Director of the Committee shall issue a final, updated soil disturbance map for the premises to the grantor and the grantee.

3. Any grantor and/or grantee who disagree(s) with the revised soil disturbance calculation issued by the Executive Director of the Committee may request a hearing before the Committee and the Committee will issue a final decision.

[(f)]* **(g)*** Review of soil disturbance mapping shall occur regularly as part of the monitoring of each premises required in accordance with applicable Committee rules, or upon request of the grantee.

1. The current version of soil disturbance mapping shall be available to the grantor and/or grantee at any time, upon written request.

2. Any increase in identified, or proposed, soil disturbance of two acres or more shall be identified in the annual monitoring report submitted to the Committee by the grantee.

3. For farms within 75 percent of the soil disturbance limit established pursuant to N.J.A.C. 2:76-25.5, all newly identified actual or proposed soil disturbances must be reported to the Committee by the grantee within 60 days of identification.

[(g)]* **(h)*** For farms within 50 percent of the soil disturbance limit established at N.J.A.C. 2:76-25.5, the grantee shall include the following documentation as part of its annual monitoring report submission to the Committee:

1. Description of newly identified or amended disturbances characterized by type, location, and size (in square feet (sq./ft.)), as follows:

i. Soil disturbance types set forth at N.J.A.C. 2:76-25.3:

- (1) Altered soil;
- (2) Surfaced soil; and/or
- (3) Compacted soil;

ii. Property location identified by tax block and lot number and general description (for example, Northeast corner of Block A, Lot X) and with georeferencing, using latitude and longitude, being preferred;

iii. Size measured coarsely using basic field tools, including, but not limited to, tape measures, pacing, or hand-held Global Positioning System (GPS) units, with GPS measurements being preferred. Vegetative cover shall be measured in accordance with N.J.A.C. 2:76-25A.6; and

iv. For areas where classification of soil disturbance is unclear, such as with soil alteration (cut/fill), minimum vegetative cover, or exemptions, the monitor shall err on the side of including the potential disturbance, and additional follow-up may be required to more accurately quantify disturbance areas with more precise tools;

2. Photos of each new disturbance shall be taken and provided to the Committee in digital format; and

3. Any additional information that the Committee determines is reasonable and necessary.

[(h) The Committee reserves the right to inspect all farms which received Committee approval of an additional soil disturbance allocation pursuant to N.J.A.C. 2:76-25.5(b) and/or of a waiver request pursuant to N.J.A.C. 2:76-25.6, as needed, to determine ongoing compliance with such approvals.]

2:76-25.11 Enforcement

The grantee and/or the Committee, upon a finding that the owner of the premises has violated this subchapter, may pursue remedies available at N.J.S.A. 4:1C-33 and the deed of easement pursuant to N.J.A.C. 2:76-6.15.

2:76-25.12 Reconsideration and hearings requests

(a) Requests for reconsideration and for hearings shall be, in writing, and addressed to: State Agriculture Development Committee, PO Box, 330, Trenton, NJ 08625-0330.

(b) All hearings *[by the Committee and a grantee that is a county in connection with]* ***pursuant to*** applicable provisions at N.J.A.C. 2:76-24.5 through 25.10 shall be held ***by the Committee, or by a grantee that is a county,*** in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

2:76-25.13 Committee action and decision

(a) The Committee may delegate to its Executive Director, by resolution, any action of the Committee required pursuant to this subchapter, except for a hearing as set forth at (b) below.

(b) Any applicant aggrieved by the decision of the Executive Director shall be entitled to a hearing before the Committee.

(c) Nothing in this section shall preclude the Executive Director from bringing any application or request of any kind before the Committee for review and approval, when such action is deemed appropriate by the Executive Director.

(d) A final decision by the Committee shall be considered final administrative agency action subject to the right of appeal to the Appellate Division of the Superior Court.

2:76-25.14 Severability

Should any section, subsection, sentence, clause, phrase, or term of this subchapter be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction, such a declaration shall not affect the validity of the remaining provisions, which are hereby declared to be severable and which shall continue to remain in full force and effect.

SUBCHAPTER 25A. SUPPLEMENTAL SOIL DISTURBANCE STANDARDS

2:76-25A.1 Applicability

This subchapter applies to premises subject to farmland preservation deed restrictions recorded pursuant to the Agriculture Retention and Development Act, P.L. 1983, c. 32 (N.J.S.A. 4:1C-11 et seq.).

2:76-25A.2 Purpose

The purpose of this subchapter is to promulgate technical standards necessary for *[waivers]* ***exemptions*** and soil rehabilitation as set forth at N.J.A.C. 2:76-25.

2:76-25A.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[“Avoid-control-trap system” means a system for preventing pollution from sediment, nutrients, bacteria, and pesticides (pollutants) that prioritizes avoiding the introduction of pollutants into the environment, controlling the risks from the unavoidable introduction of pollutants and utilizing best management practices to trap pollutants close to their source to avoid their spread.]

“Basal cover” means the portion of the soil surface covered by the base of plants. It does not include foliar cover (the vertical projection of exposed leaf area) or canopy cover (the vertical projection of the outermost perimeter of natural spread of foliage).

“Bulk density” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Coarse mulch” means wood chip mulch consisting of shredded leaves, bark, and wood particles ranging from one to four inches in length, with at least 50 percent of the mulch having a length of two inches or greater.

[“Constrained slopes” means any slopes equal to or greater than five percent as measured over a minimum run of 10 feet.]

“Dense vegetative cover” means more than 90 percent live vegetative cover over a topsoil stockpile year-round.

“Farm conservation plan” has the same meaning as that term is defined at N.J.A.C. 2:76-2A.7.

“Farm management unit” has the same meaning as that term is defined at N.J.A.C. 2:76-2.1.

*[“Forest land” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Highly erodible land” means land that can erode at excessive rates as determined by the NRCS.

“Limit of disturbance” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.]*

“Low ground pressure equipment” means construction and/or agricultural equipment specifically designed to distribute the weight of the equipment over a larger area to reduce soil compaction, typically with tracks or other design features. Examples include a tracked excavator, tracked skid steer, or wide tracked tractor.

“Low intensity topsoil stockpile” means an option for stockpiling topsoil designed in accordance with N.J.A.C. 2:76-25A.5.

“Maximum dry bulk density” means the maximum bulk density measured in grams per cubic centimeter as set forth at N.J.A.C. 2:76-25A.5.

“Minimum rooting depth” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Minimum vegetative cover” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Moderate intensity topsoil stockpile” means an option for stockpiling topsoil from which hay may be harvested pursuant to N.J.A.C. 2:76-25A.5.

“On-farm utilities” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Premises” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Prime farmlands” has the same meaning as that term is defined at N.J.A.C. 2:76-24.3.

[“Production waiver” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.]

“Soil compaction” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Soil disturbance” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Soil horizon” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Soil loss tolerance rate,” or “T,” means the maximum rate of annual soil loss that will permit crop productivity to be sustained economically and indefinitely on a given soil as defined in the USDA-NRCS Soil Survey Manual, issued March 2017, with Minor Amendments 2018, at: https://www.nrcs.usda.gov/wps/PA_NRCSConsumption/download?cid=nrkseprd1333016&ext=pdf.

“Soil profile” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Soil structure” means the arrangement of soil particles into aggregates that form cohesive and distinct structural units.

“Soil survey report” means a report generated from the NRCS Web Soil Survey that includes maps showing the distribution of soil mapping units throughout a particular geographic area, together with narrative descriptions of the soil series shown and other information relating to the uses and properties of the various soil series.

“Solar energy” has the same meaning as that term is defined at N.J.A.C. 2:76-24.3.

“Solar energy facilities” has the same meaning as that term is defined at N.J.A.C. 2:76-24.3.

“Solar panels” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Solar-related disturbance area” means the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure. The total area calculation shall include all areas of land that are devoted to or support the solar energy facilities; any areas of land no longer available for agricultural or horticultural production due to the presence of the solar energy facilities; and any areas of the farm used for underground piping or wiring to transmit solar energy or heat where the piping or wiring is less than three feet from the surface. A solar-related disturbance area does not include building-mounted solar energy facilities.

“Step-point method” means the quantitative means of determining minimum vegetative cover pursuant to N.J.A.C. 2:76-25A.6.

“Stockpile” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Subsoil” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Topsoil” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“Topsoil stockpile” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

“USDA” has the same meaning as that term is defined at N.J.A.C. 2:76-25.3.

[“Vegetated filter strip” means a grassed filter area that meets or exceeds the requirements in the conservation practice standard for filter strips at (https://efotg.sc.egov.usda.gov/api/CPSFile/13129/393_NJ_CPS_Filter_Strip_2017) to reduce excess sediment in surface waters and dissolved contaminants, suspended solids, and associated contaminants in runoff.]

2:76-25A.4 On-farm utilities construction

(a) In order for on-farm utilities to be considered exempt pursuant to N.J.A.C. 2:76-25.4, the grantor shall meet the criteria listed at (b), (c), and (d) below, as applicable.

(b) On-farm utilities general construction criteria are as follows:

1. Construction activities shall be completed while soil moisture is significantly below field moisture capacity;

2. Low ground pressure equipment and/or ground protection mats shall be used during construction to reduce soil compaction. Gravel construction roads and unprotected construction roads are counted towards the soil disturbance limitation set forth at N.J.A.C. 2:76-25.5 and shall adhere to the requirements at N.J.A.C. 2:76-25.9 and *[25A.9]* *25A.7* after construction is complete;

3. No mechanical or structural soil compaction (for example, with a sheep-foot compactor or vibratory compactor) shall occur prior to or during installation;

4. Topography shall not be altered as part of utility construction;

5. After construction is complete, bare soil over, under, and around the utility shall be seeded to a permanent vegetative cover that is compliant with the “Permanent Vegetative Cover for Soil Stabilization” standards at N.J.A.C. 2:90-1.3(a)1, or compliant with a farm conservation plan approved by the soil conservation district; and

6. Soil loss from the utility area shall be maintained at or below the soil loss tolerance rate “T.”

(c) Additional criteria for buried utility construction are as follows:

1. All underground utilities (electric, sewer, water, gas, communication lines, or similar) shall be buried below the minimum rooting depth, or compliant with the depths required by building code or other relevant regulations, if greater.

i. To the maximum extent practicable, underground utilities shall be buried using a trenching machine or by horizontal directional drilling.

ii. Horizontal directional drilling may be utilized below the minimum rooting depth. Any soil disturbance remaining on the surface of the ground as a result of horizontal directional drilling shall be rehabilitated in compliance with N.J.A.C. 2:76-25.9 and *[25A.9]* *25A.7*.

iii. If use of a trenching machine or horizontal directional drilling is not feasible, an open (excavated) ditch may be used and should be the minimum width necessary to install the utility. The following conditions apply when underground utilities are installed using an open ditch:

(1) Topsoil and subsoil shall be staged separately from each other and stored in accordance with N.J.A.C. 2:76-25A.5;

(2) Topsoil shall not be used as bedding beneath buried utility infrastructure; and

(3) After installation, topsoil shall be replaced to an equivalent depth as existed before installation. Excess subsoil may be removed from the premises or reused on-site in compliance with an approved farm conservation plan.

(d) Additional criteria for solar energy facility construction are as follows:

1. The solar energy facility must be approved pursuant to N.J.A.C. 2:76-24 prior to commencement of construction.

2. Solar energy facilities shall be designed in a manner to minimize the solar-related disturbance area.

3. The land within the solar-related disturbance area may be utilized for crop production, pasture/grazing, or other soil-based agriculture when part of an approved farm conservation plan.

4. Solar-related disturbance areas that maintain minimum vegetative cover shall not count toward the soil disturbance limitation at N.J.A.C. 2:76-25.5.

5. Travel lanes used solely to access the solar energy facility do not qualify for the unimproved travel lane exemption pursuant to N.J.A.C. 2:76-25.4.

6. Maintenance shall be as follows:

i. Minimum vegetative cover shall be maintained over the entire solar-related disturbance area to minimize runoff and soil erosion;

ii. The solar energy facility shall be kept in good working order; and

iii. Land beneath non-functioning solar panels does not qualify for soil disturbance exemptions at N.J.A.C. 2:76-25.4.

7. Removal shall be as follows:

i. At the end of the solar energy facilities’ useful life, all associated infrastructure shall be removed from the soil and properly disposed of. All permanent footings, concrete structures, conduits, and underground utilities shall be removed to a minimum depth of 36 inches. Infrastructure buried deeper than 36 inches may be left in place.

ii. The entire solar-related disturbance area shall comply with the rehabilitation standards pursuant to N.J.A.C. 2:76-25.9 and *[25A.9]* *25A.7* once the infrastructure has been removed.

8. Nothing in this section shall be interpreted to abrogate, supersede, or replace solar energy generation laws and rules applicable to preserved farmland.

2:76-25A.5 Topsoil stockpiling

(a) General performance criteria are as follows:

1. Topsoil stockpiles shall not be located in regulated areas such as wetlands, waters of the State, floodplains, or wetland transition areas.

2. Topsoil stockpiles shall be oriented to allow drainage around the stockpile, to keep the topsoil well drained and aerobic, and to avoid ponding water around the soil.

3. Topsoil movement shall only take place when soils on the site are significantly below field moisture capacity to minimize soil compaction.

4. Topsoil shall be removed and placed using low ground pressure equipment unless work is done from ground protection mats or existing travel lanes.

5. The area to be stripped of topsoil:

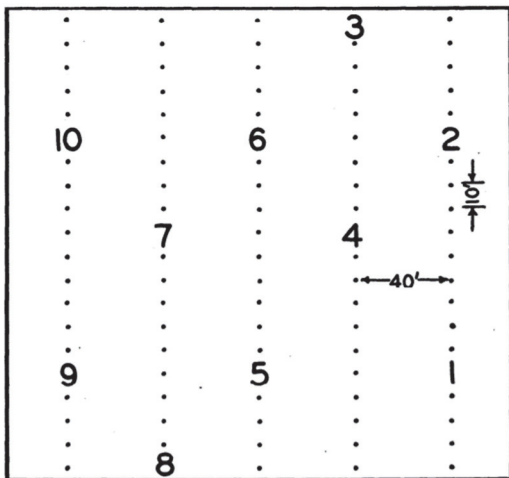
- i. Shall have existing vegetation removed by harvesting, mowing, or treating with herbicide according to the manufacturer’s label; and
 - ii. Shall not be tilled before excavating topsoil to maintain the soil structure.
6. Bulky vegetation (for example, mulch, corn stover, excessive grass) shall not be incorporated into topsoil stockpiles but shall be harvested or otherwise removed.
7. When moving, handling, and grading topsoil, care shall be taken to avoid overhandling and compaction.
- i. Topsoil shall not be moved using any equipment that substantially reduces soil aggregate structure, increases soil compaction, or leads to excessive soil smearing.
 - ii. When possible, the topsoil shall be placed directly onto the final stockpile location or shall be placed directly into a vehicle to be transported to the stockpile location.
8. Topsoil stockpile placement shall avoid overlying prime farmlands, when feasible.
9. Topsoil shall be managed in a way to maintain its soil structure to the maximum extent practicable (for example, avoid deliberately pulverizing soil clods).
10. Care shall be taken to avoid soil smearing; if the soil is smeared during construction, soil shall be scarified to allow for water and air infiltration and exchange.
11. Topsoil stockpiles shall be maintained to be free of woody vegetation unless specifically permitted in this subchapter.
12. Topsoil stockpiles shall be created as either low intensity topsoil stockpiles or moderate intensity topsoil stockpiles, depending on the goals of the farming operation, as described in this section.
13. If equipment travel over the topsoil stockpile is necessary for construction or maintenance of the stockpile, travel shall be limited to the minimum number of passes required. Travel shall not increase soil dry bulk density above the values listed in the following table:

Soil Type/Texture	Bulk Density (g/cc)
Coarse, Medium and Fine Sands and Loamy Sands	1.80
Very Fine Sand and Loamy Very Fine Sand	1.77
Sandy Loam	1.75
Loam, Sandy Clay Loam	1.70
Clay Loam	1.65
Sandy Clay	1.60
Silt, Silt Loam	1.55
Silty Clay Loam	1.50
Silty Clay	1.45
Clay	1.40

- (b) Performance criteria for low intensity and moderate intensity topsoil stockpiles are as follows:
- 1. Low intensity topsoil stockpile areas cover a smaller area than moderate intensity topsoil piles but do not grow a harvestable crop. For low intensity topsoil stockpile areas:
 - i. Existing vegetation shall be removed before placement of topsoil fill.
 - ii. The existing topsoil shall be tilled or ripped to eliminate any transition zone between the existing topsoil and the topsoil stockpile to be placed on the area.
 - iii. Topsoil shall be stockpiled to a maximum height of three feet above original grade.
 - iv. The side-slopes of the topsoil stockpile shall be no greater than 4 horizontal:1 vertical (25 percent) to reduce erosion potential and allow for routine mowing.
 - v. When topsoil is planned to be stockpiled for more than 30 days it shall be seeded and mulched in compliance with the “Permanent Vegetative Cover for Soil Stabilization” standards, or the “Temporary Vegetative Cover for Soil Stabilization” standards, at N.J.A.C. 2:90-1.3(a)1, depending on the purpose and nature of the stockpile; and
 - 2. Moderate intensity topsoil stockpile areas are lower in height than low intensity stockpiles, and cover more land area, but may be cropped with hay. For moderate intensity topsoil stockpile areas:

- i. All vegetation shall be removed prior to placement of topsoil fill;
 - ii. The existing topsoil shall be tilled or ripped to eliminate any transition zone between the existing topsoil and the topsoil stockpile to be placed on the area;
 - iii. Topsoil shall be placed at a depth of not less than 12 inches and not more than 18 inches;
 - iv. Side slopes shall be no greater than 6 horizontal: 1 vertical (17 percent);
 - v. Seeding shall be an appropriate long-term, deep rooting perennial hay crop within 30 days; and
 - vi. During establishment, no harvesting shall occur until the crop has reached a sufficient height to ensure vigorous, deep root establishment.
- (c) Maintenance of topsoil stockpiles shall be as follows:
- 1. Agronomic nutrient testing of the surface of the topsoil stockpile shall be completed as soon as the stockpile is constructed. Appropriate amendments shall be added to the soil to establish and maintain dense vegetative cover as recommended by the soil test results;
 - 2. Dense vegetative cover shall be established and maintained on the topsoil stockpiles within 30 days of final soil placement and grading. Topsoil stockpiles shall be reseeded, as necessary, to maintain dense vegetative cover. There shall be no tillage of topsoil stockpiles after initial establishment, except as expressly provided in this subchapter;
 - 3. Permanent vegetation on low intensity soil stockpiles shall be mowed no lower than six inches and shall be maintained free of woody vegetation, unless otherwise specified in this subchapter. Equipment travel over the stockpiles shall be minimized and shall only occur when the stockpile is significantly below field moisture capacity;
 - 4. Permanent vegetation on moderate intensity soil stockpiles shall be mowed or harvested not less than four inches and shall be allowed to regrow at least 12 inches prior to subsequent harvests. Care shall be taken to avoid excessive equipment traffic over the topsoil stockpile. Hay bales shall not be stockpiled on the soil stockpile and shall not be removed from the field unless the ground is significantly below field moisture capacity or the ground is frozen;
 - 5. Tillage may occur on moderate intensity topsoil stockpiles to establish a hay crop not more than once every five years. Seeding or overseeding of hay crops may occur at any frequency necessary to maintain the hay;
 - 6. Trees, shrubs, and woody vegetation shall not be planted or be allowed to establish on topsoil stockpiles unless specifically approved by resolution of the Committee. Nursery stock shall not be established on topsoil stockpiles;
 - 7. Signage shall be maintained on each topsoil stockpile preventing improper use. Topsoil stockpiles shall not be used for picnic areas, parking, travel, pasture or other livestock use, growing crops, filling depressions or containers, or any other use unless specifically provided for in this subchapter; and
 - 8. All erosion rills that form on the stockpile shall be addressed promptly by stabilization with seed and mulch or biodegradable erosion control matting, if necessary, for vegetation to establish.
- 2:76-25A.6 Vegetative cover
- (a) Temporary parking areas and temporary storage areas are exempt agricultural practices pursuant to N.J.A.C. 2:76-25.4 when minimum vegetative cover as defined at N.J.A.C. 2:76-25.3 is maintained.
 - (b) The Committee recognizes that there may be circumstances beyond the reasonable control of the grantor affecting the grantor’s ability to maintain minimum vegetative cover including, but not limited to, the type of soil present or extended weather conditions. The Committee and grantee, as appropriate, shall consider the following factors affecting the quality of vegetation and the ability of a field to maintain minimum vegetative cover in determining whether these areas shall be considered exempt agricultural practices:
 - 1. The weight of the equipment or vehicles that traverse the vegetative cover;
 - 2. The frequency of use of the area each day or season;
 - 3. The yield potential of the pasture;
 - 4. Pasture management (that is, mowing, irrigating, fertilizing, seeding, and pasture rotation);
 - 5. Plant species present;

- 6. Drainage;
 - 7. Soil type; and
 - 8. Weather conditions and season.
- (c) The following method shall be used to measure vegetative cover:
- 1. Delineate land use area by physical breaks (for example, fences, roads, hedge rows) and/or by visible evidence of soil degradation captured from a drone, aerial imagery, other remote sensing device, or in-person observation.
 - i. Measurement areas within a land use area to be sampled shall be grouped by soil type and topography.
 - (1) Each measurement area shall have uniform vegetative cover to avoid undercounting degraded areas.
 - (2) Each measurement area shall be contiguous (a single polygon, instead of multiple parts).
 - (3) Measurement areas shall not exceed one-acre.
 - (4) The minimum measurement of vegetative cover shall be 0.1-acre.
 - ii. Sampling results shall be reported separately for each measurement area.
 - 2. Measurement areas shall be sampled at a frequency of 100 points per acre using the following methodology:
 - i. Establish five equally spaced transects of 20 equally spaced points;
 - ii. For smaller areas, proportionally reduce the number of points, not the spacing;
 - iii. To the maximum extent practicable, utilize a pre-determined transect design with points spaced 10 feet apart and rows spaced 40 feet apart (see figure below);
 - iv. Pace or measure to each sampling location and look at the land cover touching the middle of the boot tip. Alternatively, a measuring tape or pre-measured rope with knots may be used;
 - v. Record land cover at each sampling location on a chart or spreadsheet as "vegetation," "weed," "crop residue," "bare ground," or "other" (rocks, wood); and
 - vi. A leaf hanging over bare soil shall be marked as bare soil;
 - 3. The step-point method is used to estimate basal cover of grass and is not a method to estimate vegetative cover beneath trees.
 - 4. Tally points in each land cover category and divide by the total points collected in that measurement area; measurement areas with more than 70 points per acre (70 percent) of "vegetation" and/or "crop residue" are not considered disturbed soil.



• Step-point
 3 Frame-point and step-point

*[2:76-25A.7 Construction standards for expedited production waivers

- (a) A project proposed for an expedited production waiver shall meet all the criteria at (b) through (g) below, as applicable.
- (b) The following criteria shall apply to all projects seeking to utilize expedited waiver construction standards:

- 1. No soil disturbance shall be planned:
 - i. Within wetlands or other regulated areas;
 - ii. In areas with karst topography, shallow depth to bedrock, organic soils, Highly Erodible Land designation, or acid producing soils, pursuant to a soil survey report or identified by NRCS;
 - iii. On any constrained slopes; or
 - iv. In forest land;
 - 2. Disturbed areas shall be minimized while meeting the agronomic needs;
 - 3. No deliberate mechanical soil compaction (for example, with a sheep-foot compactor or vibratory compactor, or similar) shall occur on the disturbed area;
 - 4. Low ground pressure equipment and/or ground protection mats shall be used during construction on exposed soil;
 - 5. No disturbance shall occur within the dripline of any wooded area, tree, or perennial crop outside the limit of disturbance;
 - 6. At no time shall the topsoil be removed from the premises or mixed with the underlying subsoil;
 - 7. All subsoil shall remain on the premises;
 - 8. Preparation of proposed soil disturbance areas shall only occur when soil moisture within the limit of disturbance is at or below field capacity to avoid excessive rutting, mixing of topsoil and subsoil, and to minimize compaction; and
 - 9. Soil disturbance activities shall not commence unless and until a waiver has been approved by the grantee and the Committee.
- (c) The following maintenance requirements shall apply to all projects seeking to utilize construction standards for expedited production waivers:
- 1. Erosion occurring within or downslope of the disturbed area shall be stabilized promptly. If erosion occurs repeatedly within or adjacent to a disturbed area, additional conservation measures shall be adopted and implemented that meet the planning criteria; and
 - 2. Topsoil stockpiles shall be maintained according to N.J.A.C. 2:76-25A.5.
- (d) When a proposed project will cause soil compaction as defined at N.J.A.C. 2:76-25.3, all the following criteria shall apply:
- 1. Compacted areas shall not have soil alteration or soil surfacing;
 - 2. No topsoil or subsoil shall be removed or moved for the construction or use of the compacted area;
 - 3. Coarse organic mulch and/or ground protection mats shall be utilized when practical; and
 - 4. The grantor shall plant and maintain a vegetated filter strip downstream of the compacted area.
 - i. Additional vegetated filter strips shall be planned at an interval within the compacted area necessary to prevent concentrated flow erosion.
 - ii. Vegetated filter strips shall be maintained until the compacted area is rehabilitated.
- (e) When a proposed project will utilize ground-level surfaces, as defined at N.J.A.C. 2:76-25.3, all the following criteria shall apply:
- 1. Prior to construction of the ground-level surface, topsoil shall be removed, stockpiled, and stabilized pursuant to N.J.A.C. 2:76-25A.5;
 - 2. Surfaced areas which require additional grading are considered soil alteration and shall also follow the criteria for altered soils at (g) below;
 - 3. Surfaced areas shall be underlain with a suitable permeable woven or non-woven geotextile fabric to prevent base or surface material from becoming embedded into native soil while allowing water infiltration.
 - i. Fabric shall extend sufficiently beyond the ground-level surface to ensure native soil/surface material separation;
 - ii. The fabric shall be installed according to manufacturer's guidelines; and
 - iii. Additional layers of pressure-distributing material may be added;
 - 4. At least six inches of appropriate permeable subbase shall be installed to properly distribute loads into the subsoil; and
 - 5. Additional surfacing above the subbase:
 - i. May be added as necessary for the agricultural operation;
 - ii. Shall have an infiltration rate greater than or equal to the porosity of the underlying native soil;
 - iii. May include gravel, crushed concrete, cinders, shells, sand, soil, pavers, bricks, or blocks;

iv. Appropriate edging shall be installed around the perimeter of the facility to limit movement of material off the facility into the neighboring soil;

v. On-site topsoil shall not be used as a surface; and

vi. Shall not include poured concrete, asphalt, asphalt millings, porous asphalt, or porous concrete. If those surfaces are necessary, the design shall follow the low impact disturbance design criteria pursuant to N.J.A.C. 2:76-25A.8.

(f) When a proposed project will utilize suspended surfaces, as defined at N.J.A.C. 2:76-25.3, all the following criteria shall apply:

1. Rooftop runoff shall be managed using gutters or other management system to capture water for future use, infiltrate water to groundwater, and/or delay the timing of runoff to reduce the impact of the runoff;

2. A stormwater management plan and design shall be obtained for any required stormwater management facilities; and

3. For the land beneath the suspended surface:

i. The criteria for ground-level surfaces at (e) above shall be followed;

ii. The soil shall be protected with ground protection mats; or

iii. The soil shall be protected with coarse mulch of at least three inches.

(g) Where soil alteration, as defined at N.J.A.C. 2:76-25.3, is proposed, all the following criteria shall apply:

1. Prior to construction, topsoil shall be removed, stockpiled, and stabilized pursuant to N.J.A.C. 2:76-25A.5;

2. Grading shall only occur within the B soil horizon (the first soil horizon below the topsoil);

3. No grading shall go into lower soil horizons or bedrock;

4. All subsoil shall stay on-site, either stockpiled or as part of fill for the project.

i. Subsoil stockpiles shall be stabilized with temporary control measures to prevent soil loss due to wind and water erosion;

5. Exposed soil shall be permanently vegetated or otherwise stabilized within the first growing season;

6. For fill piles, including organic material, soil amendments, construction materials, or long-term subsoil piles:

i. The volume of material to be piled on-site shall be commensurate with the volume of material needed for an agricultural purpose on the grantor's farm management unit, using a nutrient management plan or other applicable NRCS conservation practices; and

ii. All imported material shall be free of asphalt, concrete, stone, other rubble, or other undesirable characteristics, as determined by the Committee; and

7. For organic fill piles, including mulch, compost, wood chips, manure, livestock bedding, and leaves, a vegetated filter shall be planted and maintained around the fill area. The vegetated filter strip shall be maintained until the fill area is rehabilitated.

(h) If a deviation from the standards in this section is necessary, the grantor shall follow the low impact disturbance design criteria pursuant to N.J.A.C. 2:76-25A.8.

2:76-25A.8 Low impact disturbance design criteria

(a) For a project to be eligible for a production waiver, the grantor shall describe how the proposed project addresses all the low impact disturbance design criteria described below:

1. Topsoil shall be stockpiled pursuant to N.J.A.C. 2:76-25A.5;

2. The following criteria for soil shall, to the maximum extent practicable, be adhered to:

i. Protect the existing soil profile, by minimizing, including cuts, fills, and excavations;

ii. Maintain soil physical properties such as soil texture, consistency, and structure;

iii. Maintain soil chemical properties;

iv. Maintain the natural contour of the land;

v. Retain the existing subsoil depth and thickness;

vi. Keep the soil profile free of gravel, foreign material, and debris;

vii. Keep the bulk density within appropriate levels for plant growth; and

viii. Support practices that maintain organic matter content;

3. The following criteria for water shall, to the maximum extent practicable, be adhered to:

i. Design to maintain existing topography;

ii. Prioritize nutrient management in an avoid-control-trap system;

iii. Prioritize long-term maintenance of water management systems;

iv. Avoid concentrating flows;

v. Avoid creating or disturbing constrained slopes;

vi. Employ practices that maintain or increase the infiltration rate of water;

vii. Protect flow through natural drainage areas;

viii. Minimize impermeable surfaces; and

ix. Forest land shall be maintained; and

4. The project design and accompanying narrative for the waiver application shall be completed and certified by a technical service provider, professional engineer, NRCS-certified conservation planner, or other Committee-approved conservation professional.]*

2:76-[25A.9]**25A.7* Soil rehabilitation plan requirements

(a) The purpose of this section is to establish the minimum application, plan, and certification requirements for a rehabilitation plan to be certified by the Committee as a soil rehabilitation project pursuant to N.J.A.C. 2:76-25.9.

(b) A rehabilitation application and plan shall be prepared in accordance with application documents developed by the Committee.

(c) The rehabilitation plan shall meet or exceed the criteria identified below:

1. General criteria applicable to all rehabilitation plans:

i. All rehabilitation activities shall be completed while the soil moisture is sufficiently below field moisture capacity to avoid rutting of and damage to soil structure.

ii. Soil rehabilitation activities shall be timed for completion at the onset of the optimal seeding period to minimize the duration and area of exposure of bare soil to erosion.

iii. Vegetative cover shall be established in accordance with the specified cover crop mixture or crop rotation immediately after rehabilitation activities.

iv. Low ground-pressure equipment and/or ground protection mats shall be used during rehabilitation activities.

v. The following soil physical properties shall approximate or be more favorable for plant growth after soil rehabilitation than pre-disturbance conditions:

(1) Surface infiltration rate;

(2) Hydraulic conductivity;

(3) Texture;

(4) Structure;

(5) Porosity (for example, bulk density);

(6) Consistency;

(7) Penetration resistance; and

(8) The reaction (pH) and other chemical properties of the major horizons of the rehabilitated soil must be within the ranges of the pre-disturbed soil or be similar to, or as favorable for, plant growth.

vi. The depth and quality of the rooting zone of the rehabilitated soil shall be equal to or greater than the pre-disturbance soil rooting zone or the rooting zone of a similar reference site if pre-disturbance rooting zone depth is unknown.

2. Additional criteria applicable to the removal of surfaces or structures are as follows:

i. All structures, surfaces, and associated foreign materials and debris, including buried infrastructure, shall be removed in their entirety within the soil profile as provided in the rehabilitation plan. Buried infrastructure below parent material may remain in place.

ii. Demolished structures and surfaces shall be removed from the premises for disposal, reuse, or recycling, or may be retained on the premises for beneficial reuse if approved in the rehabilitation plan.

iii. Removal of gravel or other surfacing shall be completed in a manner that minimizes gravel mixing with soil and compaction of the soil. The removal equipment shall remain on the gravel or ground protection mats during the rehabilitation process.

iv. After removal of surfaces or structures, human-made or processed artifacts (for example, concrete, glass, brick, gravel) in each horizon shall be less than five percent by volume of the soil profile.

3. Additional criteria applicable to modified topography and soil profile reconstruction are as follows:

i. Rehabilitated areas shall be consistent with the pre-disturbance contour of the land, and any rehabilitated slope shall be within one percent of the pre-disturbance slope.

ii. Final grading of the reconstructed soil shall provide for adequate surface drainage.

iii. The minimum depth of soil and/or substitute soil material to be reconstructed shall be 48 inches; or another depth, if deemed necessary or appropriate by the Committee, to restore the pre-disturbance soil productivity.

4. Additional criteria applicable to subsoil replacement and/or grading:

i. Subsoil shall be replaced at the same depth and thickness of the undisturbed soil or a similar reference site if the original depth and thickness are unknown.

ii. If importation of subsoil is necessary for rehabilitation, certified clean subsoil shall be utilized and records retained for submission with the final certification report, as described at (d)1 through 7 below.

iii. Replacement subsoil shall have similar physical characteristics to the native subsoil unless the grantor can demonstrate using soil with similar physical characteristics will prohibit rehabilitation (for example, excessive clay content).

iv. Subsoil shall be tested for bulk density according to the additional criteria for soil bulk density and decompaction testing set forth at (c)6 below.

v. Subsoil shall be placed in lifts of not more than six inches and excessive voids shall be removed prior to placement of additional subsoil.

vi. Subsoil shall be scarified before placing additional subsoil or topsoil layers, and any reconstructed soil horizons shall be deep-tilled with appropriate implements to ensure root penetration and that restrictive layers do not limit downward water percolation.

5. Additional criteria related to topsoil replacement and/or grading are as follows:

i. Replacement topsoil shall be applied to the remediation area to a depth not less than that of the pre-disturbed soil, accounting for soil settling.

ii. Topsoil shall not be removed from undisturbed portions of the farm to be utilized for rehabilitation.

iii. Replacement topsoil utilized shall be sourced, in order of preference, from:

(1) An on-site topsoil stockpile, if topsoil was stockpiled prior to disturbance;

(2) An off-premises topsoil source; and

(3) Vendor supplying substitute soil material, provided the applicant submits a written justification that is approved by the Committee.

iv. Replacement topsoil shall have similar soil properties as the pre-existing soil as identified in the application package.

(1) Replacement topsoil shall be friable, loamy, with similar coarse fragment content to the original topsoil, free of debris, objectionable weeds and stones, and contain no toxic substance or adverse chemical or physical condition that may be harmful to plant growth. In all cases, topsoil shall have not more than 15 percent coarse rock fragments greater than one inch in size.

(2) Replacement topsoil shall have an organic matter content greater than or equal to that of the pre-existing topsoil.

(A) Organic matter content may be increased by additives not explicitly prohibited by the deed of easement. Paper-mill byproducts, sludge, biosolids, and other waste products shall not be permitted as soil amendments without the Committee's written approval and as part of a farm conservation plan.

(B) Manure may be incorporated into the soil as part of a manure management plan or farm conservation plan.

v. Prior to applying replacement topsoil:

(1) Complete the additional criteria for bulk density testing and decompaction within the subsoil as set forth at (c)6 below.

(2) Scarify the subsoil surface to ensure root penetration and that restrictive layers do not limit downward water percolation.

vi. When placing replacement topsoil:

(1) Soil handling shall be limited to the minimum necessary for replacement to maintain soil structure.

(2) Place additional topsoil to allow for settling so the final depth of replacement topsoil is equivalent to or greater than pre-disturbance conditions.

vii. After final topsoil replacement, the grantor shall complete the:

(1) Additional criteria for bulk density testing and decompaction, set forth at (c)6 below;

(2) Additional criteria for soil testing and amendments, set forth at (c)7 below; and

(3) Additional criteria for crop yield comparisons, set forth at (c)8 below.

6. Additional criteria for bulk density testing and decompaction are as follows:

i. Test the soil in at least five locations per acre at the minimum rooting depth and at the surface for excessive compaction using the soil test methods described in this section.

ii. Rehabilitated soils shall have bulk density values less than or equal to bulk density values in an undisturbed reference location and not more than those listed in the table at N.J.A.C. 2:76-25A.5(a)13.

iii. Soil test methods shall be selected from the handheld soil penetrometer test method, tube bulk density test method, or nuclear density test method described in the Land Grading standards at N.J.A.C. 2:90-1.3(a)2.

iv. If soil is determined to be above the maximum bulk density after testing, the soil shall be tilled or scarified to the depth of compaction or the minimum rooting depth, whichever is less, using a chisel plow, subsoiler, or other similar equipment. Vegetative measures designed to loosen the soil (forage radish, cover crops) may be utilized alone or in conjunction with other mechanized methods.

v. After decompaction, the soil density shall be retested at least at the minimum rooting depth, the subsoil surface, and the topsoil surface until compaction has been rehabilitated. The Committee may require additional bulk density sampling within the soil profile for especially compacted soils.

7. Additional criteria for soil testing and soil amendments are as follows:

i. Collect topsoil samples after all grading, soil replacement, and decompaction has been completed. Collect five to 10 representative topsoil samples across each rehabilitation area to create a composite mixture for testing at a rate of at least one soil test per disturbance within the rehabilitation area, but not less than one sample per three acres.

ii. Soil sample collection shall follow laboratory standards.

(1) For rehabilitation projects where no topsoil was imported from off-site, the soil shall be tested utilizing the New Jersey Agriculture Experiment Station's Full Farm Test, or equivalent, including nutrients, pH, estimated cation exchange capacity (CEC) and cation saturation, plant-available (inorganic) nitrogen, and organic matter content.

(2) For rehabilitation projects where topsoil was imported from off-site or substitute soil material was created, the New Jersey Agriculture Experiment Station's Topsoil Specification Test, Ecological Research Test, and/or Compost/Technical Test, or equivalent, may be required based on site-specific conditions.

(3) The Committee reserves the right to require any additional soil tests, as is necessary, to prove the quality of imported topsoil or substitute soil material.

iii. Amendments shall be applied according to soil test results and recommendations from a Rutgers Cooperative Extension agent or similarly qualified agronomist or soil scientist.

iv. Soil organic matter within the rehabilitation area shall be amended until organic matter content within the rehabilitation area is equal to pre-existing conditions or that of the surrounding farm fields if pre-existing levels are unknown.

v. Topsoil shall be tilled to incorporate all necessary fertilizers and amendments using a large offset disk, rototiller, chisel plow or similar equipment, then seeded with a fast-growing cover crop until the next crop is planted.

vi. Once soil amendment is completed, follow additional criteria for crop yield comparisons, as set forth at (c)8 below.

8. Additional criteria for crop yield comparisons are as follows:

i. Establish a baseline for comparison using one or more of the following methods:

(1) Pre-recorded crop yields from not more than five years prior to the date of rehabilitation, with farming practices enumerated.

(2) Parallel crop yields from another field farm with the same soil type and under equivalent management practices (irrigation, fertilizer application, seed type, tillage).

(3) If pre-recorded or parallel crop yields are not feasible, county yield values from the soil survey report as defined at N.J.A.C. 2:76-25.3 may be permitted at the discretion of the Committee.

ii. Determine post-rehabilitation crop yield:

(1) Develop and implement a planned cropping rotation for measuring crop yield. Acceptable crops for yield comparison testing may include row crops, such as corn or soybeans or small grains, but shall not include vegetables, tree fruit, or hay, unless approved, in writing, by the Committee.

(2) Crop yield shall be measured at harvest utilizing a standardized protocol developed by the grantor in the application package and approved, in writing, by the Committee.

(3) Crop production shall be measured for at least five years after all other rehabilitation standards have been met and certified.

(4) For sites where parallel crop yield comparison is not possible, adjustment for weather-induced variability in the annual crop production may be permitted by the Committee for not more than two of the five crop yield measurements.

iii. Crop yield testing shall be considered successful when the five-year averaged yield is not less than 90 percent of the pre-recorded crop yields or county values, or when the parallel crop yields are not less than 90 percent of the yields in the control fields for three of the five testing years.

iv. Crop yields that fail to meet the minimum rehabilitation thresholds after 10 years will be considered unsuccessful and the land will continue to be counted towards the soil disturbance limitations set forth at N.J.A.C. 2:76-25.5.

(d) After rehabilitation activities and testing have been completed, the grantor shall submit to the Committee and the grantee, a final certification report which, at a minimum, shall include:

1. Records of interim certifications for each step in the approved rehabilitation sequence;
2. A comparison of the pre-existing and rehabilitated soil properties;
3. Documentation of acceptable bulk density tests with a map depicting the approximate location of the tests, and date(s) of testing;
4. Certification of clean fill, including source of soil, if applicable;
5. Results of soil tests, including quantity and type of amendments applied;
6. Crop yield comparisons, farming practices, and sampling pattern and locations; and
7. An as-built survey showing slopes, if grading occurred.

2:76-[25A.10]**25A.8* Severability

Should any section, subsection, sentence, clause, phrase, or term of this subchapter be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction, such a declaration shall not affect the validity of the remaining provisions, which are hereby declared to be severable and which shall continue to remain in full force and effect.

ENVIRONMENTAL PROTECTION

(a)

WATER RESOURCE MANAGEMENT DIVISION OF WATER MONITORING, STANDARDS AND PESTICIDE CONTROL

Notice of Administrative Correction Ground Water Quality Standards Remediation Standards

N.J.A.C. 7:9C Appendix Table 1

Effective Date: January 23, 2025.

Take notice that the Office of Administrative Law (OAL) discovered an OAL error in the publication of the notice of proposal published on January 2, 2024, at 56 N.J.R. 3(a) and adopted effective February 3, 2025, published at 57 N.J.R. 234(a). In the notice of proposal filed by the Department of Environmental Protection (Department), the Department proposed to amend four “constituents” at N.J.A.C. 7:9C Appendix Table 1, to add two asterisks or three asterisks. The table “Explanation of Terms” was revised to include the two and three asterisks explanation to refer to prior revisions completed through administrative changes at 39 N.J.R. 3538(a) and 50 N.J.R. 1963(a), respectively. Three asterisks were appropriately proposed and adopted to be added to Table 1 regarding Perfluorononanoic (PFNA) and 1,2,3-Trichloropropate (TCP). The Department inadvertently did not add two asterisks to Barium or Toluene, which were the two compounds changed at 38 N.J.R. 3538(a). During the administrative review of the notice of proposal, OAL inadvertently deleted the references to the two notices of administrative change and the formatting of the table changed.

Through this notice of administrative correction, the Department has requested, and OAL has agreed, to add two asterisks to Barium and Toluene at N.J.A.C. 7:9C Appendix Table 1 and to correct the formatting of the two and three asterisks in the Explanation of Terms, as well as to add the description of what two and three asterisks refer to.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface thus):

CHAPTER 9C GROUND WATER QUALITY STANDARDS

APPENDIX

Table 1

Specific Ground Water Quality Criteria — Class II-A and Practical Quantitation Levels

<u>Constituent</u>	<u>CASRN</u>	<u>Ground Water Quality Criterion*</u>	<u>Practical Quantitation Level (PQL)*</u>	<u>Higher of PQL and Ground Water Quality Criterion (ug/L)*</u>
..				
Barium**	7440-39-3	6,000	200	6,000
..				
Toluene**	108-88-3	600	1	600
..				

Explanation of Terms:

- * = Ground water quality criteria and PQLs are expressed as micrograms per liter (µg/L) unless otherwise noted. Table 1 criteria are all maximum values unless clearly indicated as a range for which the minimum value is to the left and the maximum value is to the right.
- ** = Revised through administrative change (see 39 N.J.R. 3538(a)).
- *** = Revised through administrative change (see 50 N.J.R. 1963(a)).
- PQL = Practical quantitation level as defined at N.J.A.C. 7:9C-1.4
- CASRN = Chemical Abstracts Service Registry Number
- NA = not available for this constituent
- a = Asbestos criterion is measured in terms of fibers/liter longer than 10 micrometers (f/L >10 µm)
- CU = Standard Cobalt Units
- b = Threshold Odor Number