

FREQUENTLY ASKED QUESTIONS

1. Where does the money come from to fund the program?

Funding comes from several sources. The State generally provides 60% of the cost to acquire development rights. The County provides the other 40% of the cost of acquisition. The County's share comes out of the Open Space, Recreation, Farmland, and Historic Preservation Trust Fund. Municipal, non-profit and private funding participation is also encouraged. The State's share comes from the Garden State Preservation Trust Fund. The State Agriculture Development Committee (SADC) is responsible for administering the Farmland Preservation component of that Fund and in turn, created in 2007 two annual grant funds for Counties in the Planning Incentive Grant program: A County Base Grant; and, a County Competitive Grant – to be utilized when a County's Base Grant funds are depleted.

2. What is the definition of a development easement?

A development easement is an agreement that conveys some of the rights associated with land ownership to an entity other than the landowner. In this program, by selling a development easement, the landowner is giving away their right to develop the land for any non-agricultural purpose.

3. Who holds the easement?

The County holds the easement to ensure the land is not developed for non-agricultural purposes, but the landowner continues to own the land. When land ownership changes, the development restrictions on the property remain unchanged and the County will continue to hold the easement.

4. What is the application and preservation procedure?

Below is a simplified outline of the process for preserving farmland (for both easement or fee purchase).

1. Landowner expresses interest in preservation and County staff conducts an initial review to determine eligibility and ranking per the CADB (County Agricultural Development Board).
2. Landowner and County meet to discuss preservation layout (ie. location of exception areas) and conduct a site visit.
3. Landowner and County staff work together to submit [Application for Farmland Preservation](#), [Appraisal Order Checklist \(AOC\)](#), and (if applicable) [Equine Questionnaire](#) to the SADC.
4. County seeks Resolution of Support from local municipality.
5. Appraisals are conducted and purchase offer is made based on the Certified Market Value approved by the SADC. If accepted, an Agreement of Sale is approved by County Commissioners and executed.
6. Due diligence is conducted, including a survey and title report.
7. SADC conducts baseline visit to property.
8. Closing.

5. How long does it take?

From the day the applicant submits his/her application to the CADB until the day of closing the process takes approximately 18 months. This includes review time by the CADB, SADC and the time needed to complete the necessary appraisals, surveys and title work. Title work and surveys must be prepared to the SADC and CADB satisfaction prior to closing.

6. Who pays for the various costs entailed in the Easement Purchase Program?

The County generally pays for the appraisals, title search, and survey. In some cases a municipality may assist with these costs. The County has the option to deal with these expenses in any manner that it deems appropriate. The applicant is advised to obtain legal and financial counsel at his or her own expense. Once the County and landowner enter into a contract, if the landowner should withdraw for any reason, the County must be reimbursed for certain expenses (including survey and title).

7. What are the tax implications if I participate in this program and what qualifies as a charitable donation?

These are both good questions, but ones that should be asked of either legal or tax professionals. Please seek out their assistance before and/or as you proceed with your application.

8. How is my application evaluated for preliminary approval?

First, the CADB evaluates the application based on the criteria adopted by the CADB (which are similar to the SADC's criteria). Once the CADB grants preliminary approval. The application is submitted to the SADC. The SADC then reviews and ranks all applications on a monthly basis.

9. Who decides whether my application is accepted?

The CADB has the ability to reject applications if they do not meet their defined criteria. The CADB has determined project areas in the County in which to pursue the purchase of farmland easements. These are identified in the [Mercer County Farm Plan](#). The CADB is further limited by the availability of funds. Only applications with CADB preliminary approval will be forwarded to SADC staff and acted upon by the SADC.

10. In general, what kind of farm will score well?

Generally speaking, it is a farm with primarily tillable prime and statewide soils that is part of a project area with existing preserved farms, located in a community where there is active awareness and participation by the municipality in the program, i.e., right to farm ordinances, and financial commitment.

11. How does price play a role in the program? If I am willing to accept a lower value, will I be given priority?

The Statute establishing the Farmland Preservation Program requires that the SADC give priority consideration to the relative best buy or formula index. Since public dollars are being used for the purchase of easements, landowners offering the best buy would receive priority when competitive grant funds are utilized. An applicant can increase his/her score by taking a discount off the certified value.

12. What is an RDSO?

RDSO stands for Residual Dwelling Site Opportunity. Whereas previously, once the easement was purchased, no further residential development was possible, an RDSO provides the opportunity to construct a residential unit within a two-acre site, as long as its construction and use is for an agricultural purpose. The price paid for the easement is reduced by 4 times the per acre value for each RDSO.

13. What is the eligibility requirement for an RDSO?

A landowner is eligible for one RDSO for every 100 acres owned. However, approval of the requested RDSO's by the CADB and SADC is not automatic. The net housing ratio, including existing housing, cannot exceed 1 house to 100 acres.

14. Who approves the RDSOs?

The CADB and the SADC. The CADB has taken a position that they do not favor RDSOs. Since an RDSO must be used for an agricultural purpose, an owner who is not actively farming the farm might not be allowed to live on the farm. Instead of an RDSO, the Mercer County Agricultural Development Board prefers to use an exception area to provide for the opportunity to reside on the farm. Where an RDSO exists, the permission to exercise it, and its location, must be granted by the CADB and SADC.

15. What is an exception?

Exceptions are portions of the land that are not covered by the deed restrictions and thus provide flexibility to the property owner. Landowners are not paid for the acres contained in an exception. A formal subdivision is not usually needed to except a portion of the property; but there must be a specific location accompanying the request and septic suitability documented if a structure requiring sanitary sewage disposal is proposed. Exceptions will be approved by the CADB at the time the farmland preservation application is filed.

16. How do exceptions work?

An exception can be severable (it can be subdivided from the farm in the future) or non-severable (it will remain with the farm and may not be subdivided off). A severable exception will need to meet the minimum lot size for the local municipality's zoning and can be sold separately from the preserved farm. Such areas could be subdivided in advance of a preservation application to simplify the process.

A non-severable exception is preferred by the CADB and is sometimes utilized to provide a site for a future farmhouse (if for example, no house presently exists on the farm). A non-severable exception will be tied permanently to the farm, meaning it cannot be subdivided and sold separately. The non-severable exception cannot be further subdivided and is commonly restricted to a single-family residence and ancillary residential uses. Often, a non-severable exception is located on the road frontage to minimize intrusions into the farm. The Mercer CADB restricts the size of a house that can be built within an exception to a maximum of 4,000 square feet of livable space. Any existing farmhouse will also be restricted so that any additions after preservation will not cause the total house to exceed 4,000 square feet of living space.

Many landowners request an exception around an existing farmhouse. This would ensure that the existing house would not be subject to all the farmland preservation deed restrictions. This is especially useful for a home-based business because it provides the greatest flexibility to the landowner. Be advised that some restrictions are placed on the exception area but some of these can be written to address any specific needs unique to the farm. In addition, the farmhouse would continue to be subject to local zoning.

17. Can a landowner subdivide his/her preserved farm?

Yes, however there must be joint prior approval in writing by the CADB and SADC. Any "division of premises" will require that the resulting parcels are agriculturally viable and that the division serves an agricultural purpose. If RDSOs exist, they must be allocated between the resulting parcels. Without an existing house, RDSO, or exception, there is no provision for housing on the resulting parcels.

18. How is easement value determined?

Two independent appraisers, contracted by the County, look at the market value of the property unrestricted and then the market value if the property was restricted. The difference between the two is the easement value. These appraisal reports are submitted to the SADC review appraiser who examines the appraisals for errors, omissions, appropriate procedure, and fully justified reasoning. Upon completion of the review, the review appraiser recommends a value to the SADC for certification.

19. Will wetlands be considered?

A formal survey of the wetlands is not required. The County provides the appraiser an estimate of how many acres of the subject property are within a wetlands area, if any, and approximately how many acres are within a buffer area. This information would be accompanied by a sketch of these areas on the best available map of the subject property.

20. Once the farm has been deed restricted, can it be sold?

Yes, but all future owners must still conform to the deed restrictions on the property.

21. How much can I sell it for?

Whatever price you wish and the market will support.

22. Do I need permission to sell it?

You do not need permission to sell the property, unless you plan to subdivide it in the process. However, please notify the County with intentions to sell, to help ensure the realtor and possible buyers are aware of the property's restrictions.

23. Can I build a house for my children on the deed-restricted ground?

Only if an exception included in the deed of easement provides for the construction of a house. The only permitted residential unit would be within an exception. Any exception must be requested at the time of application.

24. What are some of the prohibited practices?

No sand, gravel, loam or rock or other minerals shall be deposited on or removed from the premises except those materials required for the agricultural operation. No dumping or placing of trash or other waste material shall be permitted unless expressly recommended by the Committee. Essentially, no activity shall be permitted on the property that would be detrimental to drainage, flood control, water conservation, erosion control or soils conservation or any other activity that might negatively affect the continued agricultural use of the land. Additionally, the land may only be used for agricultural purposes. Unless otherwise stated in the deed of easement, non-agriculture businesses may not be conducted on the property.

25. Can agricultural labor housing units be built?

Yes, but only with approval by the CADB and the SADC.

26. Is there a monitoring program?

Yes. At least once a year, County staff visit deed restricted properties to make sure that the deed restrictions are being upheld. The landowner is given notice prior to site visits and encouraged to attend. Landowners will also be asked to complete an annual survey, indicating any changes.

27. Must the deed-restricted grounds be farmed?

No, the deed of easement does not require the land is actively farm, but it must remain available for farming. This means that existing fields must be mowed annually to prevent forests from establishing. Unrelated to preservation, if the ground is not farmed, the landowner may lose the benefit of farmland assessment.

28. Are there other requirements to preserving the property?

Yes, at the time of closing, the landowner must sign a restrictive covenant with the County insuring that at least once a year, all fields and open spaces not in pasture or with crops will be mowed to maintain that land for agriculture. In addition, because the Deed of Easement requires that a Conservation Plan be obtained from the local Soil Conservation District, the landowner will, at closing, sign a release of the Conservation Plan to the CADB and SADC to ensure compliance with the Deed.